MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
Saturday, May 9, 2026, 9:30 a.m.
Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
Nadia Dahab
Hon. Andrew Erwin
Barry J. Goehler
Hon. Jonathan R. Hill
Melissa Hopkins
Ryan Jennings
Lara Johnson
Derek Larwick
Julian Marrs
Hon. Thomas A. McHill
Hon. Michelle McIver
Hon. Melvin Oden-Orr
Hon. Robert Raschio
Michael Shin
Hon. Scott Shorr
Tom Spooner
Hon. Todd Van Rysselberghe

Members Absent:

Hon. Christopher L. Garrett
YoungWoo Joh
Eric Kekel
Bryce Whitman Passadoré
Alicia Wilson

Guests:

Council Staff:

Shari C. Nilsson, Executive Assistant
Hon. Mark A. Peterson, Executive Director

ORCP/Topics Discussed this Meeting	ORCP/Topics Discussed & Not Acted on this Biennium			ORCP Amendments Promulgated this Biennium	ORCP/Topics to be Reexamined Next Biennium
• ORCP 7 • ORCP 9 • ORCP 22 • ORCP 36 • ORCP 37 • ORCP 55	• ORCP 60 • Abusive Litigants in Probate Proceedings • Arbitration • Clarity • Civil Motion Practice • Contempt • Default Orders/Judgments • Depositions • Disclosures • Discovery • Ex Parte	• Federalization • Guardians Ad Litem • “How To” Guides • Offers of Judgment • Pleadings • Receiverships • Remote Appearance • Security Bonds • Self-Represented Litigants • Subpoenas • Summary Judgment	• Timelines • Trial Practice • Uniform Collaborative Law Act • UTCR		

I. Call to Order

Mr. Goehler called the meeting to order at 9:30 a.m.

II. Approval of March 14, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the April 11, 2026, meeting (Appendix A) and asked whether there were any suggestions for corrections. Hearing none, he asked for a motion to approve the minutes. Judge Raschio made such a motion, Ms. Dahab seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the June agenda.

B. September Council Meeting

Judge Peterson explained that Rosh Hashanah falls on the currently scheduled date of the September Council meeting, September 12, 2026. In terms of rescheduling, September 5 is during Labor Day weekend, and staff is not available on September 12. That leaves two options: moving the meeting to an earlier date of August 29 or moving it to the last weekend of the month, on September 26. Both dates would allow the Council to meet its statutory deadline for publishing its draft amendments to the bench and bar 30 days prior to the promulgation meeting.

After some discussion, the Council decided to tentatively set the meeting for September 26, 2026, barring any strong objections by Council members who were not present at today's meeting. Mr. Goehler also mentioned that, while the Council traditionally does not meet during the months of July and August during even-numbered years, it is possible to schedule a meeting during those months if work still needs to be done prior to the publication meeting.

C. Council Website

Judge Peterson reported that, since the Council is a state agency, it is required to make its materials compliant with the Americans with Disabilities Act (ADA). Ms. Nilsson explained that there was a deadline for making websites accessible by the end of April, 2026; however, that deadline had been extended to April, 2027. She stated that she had reached out to a web developer that she has worked with at Campaign for Equal Justice to get a quote for making the Council's website ADA compliant. It would cost over $15,000 to make every PDF document on the site accessible. The developer's recommendation is to make the site itself and the most regularly accessed documents accessible, to train staff on how to make future PDFs accessible, and to include a

disclaimer on the site to let people know that they can reach out to the Council for accessible versions of any documents that they require. The quote for this is approximately $1,600.

Judge Hill recommended moving forward with the less extensive quote for now and asking the Legislature during the next session for a one-time expenditure to make the site fully compliant, as this is an important goal. Since it is an unanticipated expense, he thought that the Legislature might be willing to allocate funds for it. The Council agreed that this is a good idea. Judge Hill made a motion to move forward with the $1,600 proposal and to make a request for additional funding next biennium. Judge Raschio seconded the motion, which was approved unanimously by voice vote.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Goehler explained that Mr. Joh was not present at the meeting and that he had asked that discussion on Rule 47 be deferred until the June meeting.

2. Post-Judgment Subpoenas/Rule 55

Judge Peterson stated that the full committee was not able to meet but that he, Mr. Larwick, and Mr. Marrs did have a meeting and discussed changes to Rule 36 (Appendix B). He reminded the Council that the proposed changes were in response to a concern raised in the biennial survey that some judgment debtors have used language in Rule 36 and in Rule 55 to argue that discovery is not available post-judgment. He explained that the committee had borrowed language from the federal rule, FRCP 69(a)(2), and inserted it into Rule 36. At the committee meeting there was a suggestion that the last sentence of the new subsection was too long or was confusing. The sentence was therefore broken in two. The language has also been modified to state the general rule first, that discovery is available from the judgment debtor or others. The exception is then stated second.

Judge Peterson noted that, at the last Council meeting, Judge Shorr had raised the question of whether post-judgment discovery should be allowed if the judgment has been secured with an adequate undertaking, and the Council's sense was that it should not be. After the committee meeting, staff tweaked the second sentence a little bit to indicate that, if the court has stayed enforcement of a judgment as a result of a satisfactory undertaking or for any other reason, authority to issue a subpoena or to obtain discovery is available only pursuant to a court order. At the last Council meeting, it was also raised that, with joint and several liability, any one judgment debtor's undertaking should secure the

judgment adequately. However, if it is apportioned liability, a minor judgment debtor having an adequate undertaking does not protect the judgment creditor. The new language states that, if some part of the judgment is not secure, the judgment creditor can pursue post-judgment discovery. It would also permit, if a creditor has a good faith belief that the undertaking is no longer adequate for any number of reasons, to ask the court for an order permitting discovery. There is not a bar to obtaining post-judgment discovery but, rather, a constraint if there is an undertaking.

Mr. Goehler wondered whether the language "for a satisfactory undertaking" was necessary when the "for any other reason" language is already included in the last sentence. He stated that it seems redundant. He wondered whether the language could be simplified. Judge Peterson thanked him for the suggestion and noted that this is why putting drafts before the entire Council is helpful.

Judge Peterson observed that the general consensus of the Council seemed to be that the change to Rule 36 meant that Rule 55 did not need to be changed. The committee tended to agree with that assessment; however, Judge Peterson stated that he likes to see a draft of a potential change before making a final decision about it. He stated that the problem with Rule 55 seems to be the phrase "where an action is pending." Pending is a troublesome word because some people think that an action is no longer pending once a judgment has been entered. The Council's thought was that an action is still pending because there are judgment creditor remedies and the case remains subject to collection. The draft before the Council (Appendix B) changes the word "pending" to "was commenced," which would eliminate this issue. He asked the Council whether this would be a worthwhile change to help prevent the occasional situation where a judgment debtor makes post-judgment discovery more difficult and more expensive.

Mr. Spooner pointed out that this language might cause some downstream problems. He stated that it does not happen frequently but, from time to time, there is a change of venue in a case. This could cause confusion with practitioners and self-represented ligitants as to where a subpoena should be issued. Judge Peterson stated that he had considered this while preparing the latest draft, but that he thought that the venue statute would take care of it. However, he appreciates that confusion could arise where an action was commenced in one court but is now properly in a different court. Mr. Goehler agreed. Judge Peterson stated that the previous draft used the words, "where the action is pending or where there is a judgment," but he felt that language was awkward.

Judge Peterson stated that the real question is whether a change actually needs to be made to Rule 55 if a specific change mentioning subpoenas is made to Rule 36. Mr. Goehler opined that the word "pending" in Rule 55 would not

trump Rule 36 if Rule 36 specifically provides for post-judgment subpoenas or discovery in general. Judge Hill suggested carrying over the topic to next month to allow the Council to deliberate further. Judge Peterson stated that he would bring the drafts back to the committee for further consideration and bring any new drafts back to the Council in June. He noted that he has no particular interest in changing Rule 55 yet again this biennium, and he thinks that the consensus seems to be that a change to Rule 36 will be sufficient. Mr. Goehler summarized that, at the June meeting, the Council will look at a final draft of Rule 36 and get input from the committee on whether Rule 55 needs to be amended.

3. Service/Rules 7, 9, & 10

Judge Raschio referred the Council to Appendix C, new drafts of Rule 7 and Rule 9, as well as drafts of the summons forms with the proposed new language. He noted that the committee did not meet but, rather, voted by email to approve the the new drafts by Council staff.

Judge Peterson reminded the Council that he had previously proposed a change to Rule 9 that the committee decided was not a good idea; however, during that process, a few issues with the rule were noted and those are the changes in the draft before the Council now. One change is to the language in the last sentence of section B to more clearly state that service of a notice to bring a party into contempt must be by personal service on the party. Other changes are to the lead line in section D and to the language in that section to clarify what documents are not to be filed with the court. The remaining changes are grammatical and are not intended to affect the operation of the rule. Judge Peterson asked whether anyone noticed any unintended consequences or issues from these changes. Mr. Goehler recommended including the draft on the June agenda to give the Council more time to review it before approving it for the publication agenda. He wondered whether the phrase “are not to be filed” in section D could be better worded, as that language is a bit different from what is used in other rules.

Judge Peterson noted that, just prior to today’s Council meeting, the person who had recommended changes to the summons language in Rule 7 had emailed him with further suggestions, some of which might help with the conciseness of the language. Ms. Nilsson shared those suggestions with the Council. Judge Peterson noted that one suggestion was to use bullet points to help emphasize the steps to be taken. However, he pointed out that there is no other ORCP that includes bullet points and stated that he was reluctant to introduce that formatting here.

Judge Hill asked whether Judge Peterson was suggesting that the committee meet again to consider these new suggestions. Judge Raschio noted that it has been hard to assemble all committee members for a meeting, but that he understands the importance of getting the rule and the format correct. Judge Peterson suggested that Council staff could provide committee members with a new draft for review and that a poll could be held by email as to whether the changes are acceptable or whether the committee needs to meet again. Judge Raschio agreed with this suggestion.

Mr. Goehler suggested that it would be helpful for the committee and for the Council as a whole to see a side-by-side comparison between the current and next versions where it is easy to see the differences between the two. Ms. Nilsson stated that she can provide this.

4. Third Party Practice/Rule 22

Ms. Dahab referred the Council to the latest material from the Rule 22 committee (Appendix D). She noted that the material included the historical summary previously circulated to the Council as well as a slightly revised summary of options for changes, or no changes, to Rule 22. A change was made to option number two, consent with judicial override. She noted that the committee made this change based on feedback from the last Council meeting about the difficulty with “notwithstanding clauses,” so the goal was to more clearly rewrite the language to eliminate potential confusion down the road. The new language reads:

> If a party objects to such service, the court may nonetheless grant leave upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not prejudice any appearing party or unreasonably delay the trial.

Ms. Dahab stated that the other options provided have not changed, and that the committee has still not reached consensus on any particular recommendation about what to do, if anything, with Rule 22. Part of the committee would vote to leave it as is and part of the committee would vote to change it, with no particular consensus on the nature of the change. She noted that the committee would like broader Council discussion on the issue, but she was not sure of the best method to get this input. Mr. Goehler suggested asking for comments first and then taking an informal poll on the threshold issue of whether there is a majority of Council members wanting to make a change.

Judge Bloom pointed out that this part of Rule 22 is unique within the ORCP. There is no other rule that gives one party veto power over whether any motion can be allowed. He opined that the workaround to this veto power is a nonsensical process under Rule 53, where the defendant who wants to file a third-party complaint is forced to file a separate action against the person who, in effect, becomes the third-party defendant, and then files a motion to consolidate those actions. He pointed out that the only issue to be decided in the hearing on the motion for consolidation is what would be considered in allowing a third-party complaint if the "90-day rule" did not exist. His suggestion would be to get rid of that extra step and leave the issue to the discretion of the court after hearing the arguments of both parties. He opined that this will get to the correct result and make the rule substantially the same as similar rules in every other jurisdiction in the country.

Judge Bloom stated that he respects the well-presented arguments and the hard work by all of the members of the committee, and noted that everyone's involvement has been critical. He acknowledged that this is and has been a contentious issue on the Council. He stated that he had opinions as a litigator, but that he now has opinions as a judge managing these dockets and these issues. Judges want to get the issues resolved, but not at the cost of having the plaintiff's action be continued because of a late filing. He noted that these are issues that the court can consider, and that he is very much against including reasons to limit the court's discretion, as that would cause more litigation and more work on the appellate level. Judge Bloom reiterated that his solution would be leaving it to the discretion of the court, because that is already being done with the motion to consolidate as a workaround, which is a more time consuming and intensive procedure.

Judge Peterson thanked the committee for doing what committees should do, which is really digging in, going through the history, and then presenting a range of proposals. He stated that he was not sure that any of the proposals for a change would get a majority or a supermajority vote, but suggested that it might be a good idea to try to coalesce around a particular proposal. He stated that the Council has heard from the plaintiffs' attorneys that they do not want their cases hijacked, and from the defense attorneys that they have concerns about discovering the real culprit only after the 90 days has passed. He opined that the only suggestion that might be a bad one is the federal one of starting the time from when the answer is filed, because Oregon has a practice rooted in professionalism of letting parties file their answers late. If the time to implead a new party is tied to when the answer is filed, that professionalism is gone because it has a negative consequence for the client.

Mr. Shin echoed Judge Bloom's comments, and added that the committee did a good job of looking at the history of the rule and figuring out why the existing language was adopted and whether it should remain. His opinion is that the "90-

day rule" is largely a historical artifact, and that the landscape has changed since the circumstances and discussions at the time the language was added to the rule. The current rule really just does not fit with, in particular, comparative negligence law, among other potential issues. He stated that the committee had some really good discussions, and the main concern from plaintiffs' attorneys seemed to be the timing issue where, very late in the game, someone is trying to bring in a third party close to trial in a way that is going to prejudice a plaintiff, either by gaming the system or just by circumstance. He agreed that, of course, the plaintiff should be able to bring the case the way they want to; however, he emphasized the importance of all necessary parties being included. He pointed out that this issue arises in other contexts, such as an ORCP 23 A motion for leave to amend a complaint, and it is left to the discretion of the judge to figure out whether it is too late and how it should be handled. Looking at the federal rule, or any other jurisdiction besides Oregon, problems are not arising. He stated that he did a pretty extensive case law search to see what other jurisdictions do, and did not find issues arising.

Ms. Hopkins stated that, as a plaintiffs' attorney, her experience is that defendants control the bulk of discovery, so there are no surprises to defendants. She does not understand that argument. Her vote would be for no change. She pointed out that Oregon is unique in many ways when it comes to state court trials and, just because other states do things differently than Oregon, that is not necessarily a reason to change.

Ms. Johnson noted that the Council had reconsidered Rule 22 after comparative fault was adopted and after joint and several liability was addressed, so there has been a great deal of continuity about the rule for many, many years. She stated that plaintiffs rely on defendants to provide discovery. Oftentimes, key information is solely within the hands of a defendant. She opined that allowing an extension for discovery to determine whether the defendant knew or should have known of the existence of a third party, separate from the existing consolidation route, is problematic. She presented an example of a medical malpractice case where the only party that really knows what the defendant knew or should have known would be the defendant. She wondered how it would be determined what other medical providers the defendant knew about that could have contributed to an injury or a death. She stated that, for example, very extensive, expensive, and time-consuming discovery may be required in shared hospital computer systems to determine whether the defendant knew or should have known about the existence of a third party, if that is an element that would overcome a plaintiff's opposition to adding the new party. Ms. Johnson opined that a change to Rule 22 would reduce the number of claims that can be brought, because expense is a factor that plaintiffs use when determining the risks and benefits of bringing a claim. She expressed strong concerns about any change that extends the discovery requirement, because it would increase discovery and the burden on the courts and make

litigation more expensive. She stated that she is in favor of no change because there is an existing workaround: consolidation. If the defendant can demonstrate that consolidation works for the economy of the courts and judicial efficiency, but without prejudice to the parties and without an unreasonable delay of trial, consolidation will be granted. That is the case law in Oregon.

Mr. Spooner stated that he wanted to give some input based on his former practice on the defense side in the construction world. He stated that there is an inherent tension in the type of proposal before the Council because of the relationship between the defense attorney and the defendant. He noted that the ORCP reads as though the defense attorney and the defendant are working in unison, when in reality there is always a back-and-forth between defense counsel and the defendant behind the scenes. A number of times he has had the experience of having to continually prod his defendant client to provide him with the information he required to prepare the defense. The client either had it and did not want to provide it, or was being ignorant or lazy about communicating it. It is the defendant that controls the information, and they are sometimes not getting it to the attorney in a timely manner. He opined that this should not be rewarded and allowed to negatively impact the plaintiff's side of the case.

Judge Hill stated that he was not sure how the Council could move forward if the committee did not have a consensus, and he was also not hearing much consensus from the Council. Mr. Goehler stated that Ms. Nilsson had proposed to him in the chat that she conduct a Zoom poll to check in on the Council's thoughts on whether to proceed with this issue. Judge Raschio asked whether the Council might be willing to set over this issue until the next biennium, because it seems like there has not been enough progress made to craft any meaningful draft, if that is the direction the Council decides to go in. He stated that the committee had worked very hard and that there is a lot of information to absorb, and that he would like to have time to think things through. Judge Peterson suggested taking the Zoom poll now to see how the Council is feeling about the matter overall, but also suggested that the committee try to narrow the proposals for change to just one or two solutions for the Council to consider. Ms. Dahab stated that the committee would be happy to reconvene before the June meeting to do that if the Council would like them to.

Ms. Nilsson conducted a Zoom poll. With 18 members voting, 10 were in favor of the committee continuing to work on the issue and 8 were opposed. The committee agreed to meet again and report back at the June Council meeting.

B. Rule 37

Judge Peterson reminded the Council that the cleanup of Rule 37 (Appendix E) only occurred because the post-judgment discovery committee had previously considered inserting language into Rule 37. The main impetus for change was internal citations that are inconsistent with Council drafting standards and also inconsistent within their sections (letters in one section and numbers in the next). There was one sentence that was also one of the longest in the entire ORCP that is now broken into several sentences for ease of comprehension. Lead lines have also been added and, unlike in statutes, lead lines are part of the rule. There is no intent to change the substance of the rule, just to clean it up.

Mr. Goehler stated that one part of subsection A(2) of the existing rule was difficult for him to read due to internal sub-clauses, despite the staff's attempt to clean it up:

> The court must appoint an attorney to represent persons not served in the manner provided in Rule 7 and, if the unserved person is not otherwise represented, to cross examine the deponent. The services of any appointed attorney must be paid for by the petitioner in an amount fixed by the court.

He suggested the following language:

> For persons not served with summons in the manner provided in Rule 7, the court will appoint an attorney to represent them and cross examine the deponent. The services of such attorney must be paid for by petitioner in an amount fixed by the court.

Judge Peterson agreed that language like this would make the rule more understandable. Mr. Goehler asked Council staff to make another draft and provide it to the Council prior to the June meeting.

C. Address Confidentiality Program and Service

Mr. Goehler noted that Ms. Wilson was not present at the meeting and that she was going to do some research on the issue. He stated that, since it is so late in the biennium, the Council will obviously not have a final resolution by December, but that it is good to think about the issue. He stated that he had spoken to a colleague who had encountered this issue in Washington who had to do a motion to seal to get the personal information out of the public record. While there is a process, it is not a very efficient one, so it would be nice to have something cleaner.

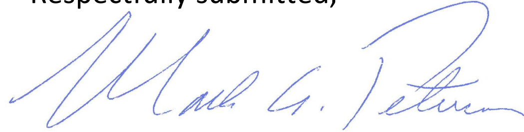
V. New Business

No new business was raised.

VI. Adjournment

Mr. Goehler adjourned the meeting at 10:52 a.m.

Respectfully submitted,



Hon. Mark A. Peterson
Executive Director

<u>DRAFT</u> MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES

Saturday, April 11, 2026, 9:30 a.m.
Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
Hon. Andrew Erwin
Hon. Christopher L. Garrett
Barry J. Goehler
Hon. Jonathan R. Hill
Melissa Hopkins
YoungWoo Joh
Lara Johnson
Eric Kekel
Derek Larwick
Julian Marrs
Hon. Thomas A. McHill
Hon. Michelle McIver
Hon. Melvin Oden-Orr
Bryce Whitman Passadoré
Hon. Robert Raschio
Michael Shin
Tom Spooner
Hon. Todd Van Rysselberghe
Alicia Wilson

Members Absent:

Nadia Dahab
Ryan Jennings
Hon. Scott Shorr

Guests:

Matt Shields, Oregon State Bar
Rachel Trickett, Oregon Judicial Department

Council Staff:

Shari C. Nilsson, Executive Assistant
Hon. Mark A. Peterson, Executive Director

ORCP/Topics Discussed this Meeting	**ORCP/Topics Discussed & Not Acted on this Biennium**			**ORCP Amendments Promulgated this Biennium**	**ORCP/Topics to be Reexamined Next Biennium**
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I. Call to Order

Mr. Goehler called the meeting to order at 9:30 a.m.

II. Approval of March 14, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the March 14, 2026, meeting (Appendix A) and asked whether there were any suggestions for corrections. Mr. Joh asked for a clarification of his statement on page 10 of the draft minutes. He suggested that the sentence that reads, "Mr. Joh asked whether the committee had considered the fact that the defendant who is trying to bring in a third party would still have a claim, even if it is not within that case," would better read, "Mr. Joh asked whether the defendant who is trying to bring in a third party would still have a claim, even if it is not within that case."

Mr. Goehler asked for a motion to approve the minutes as amended. Judge Raschio made such a motion, Ms. Johnson seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the May agenda.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Joh reported that the committee had met on March 23, 2026. He stated that the bulk of the discussion regarded a concern about the procedure in considering changes to the ORCP that were not raised in the Council's biennial survey. The attending members of the meeting voted 4-2 to recommend that the Council dissolve the committee. The committee's report (Appendix B) lays out some of the issues discussed. Mr. Joh explained that the report is not intended to serve as minutes of the meeting but, rather, a summary. At least one member wanted to include a summary of the substantive issues that he raised at the meeting, and that is included in the report. Another member had followed up in comments by email after a draft report was circulated, and that is also included.

Mr. Joh stated that he also included proposed edits to the report by Ms. Hopkins, and welcomed her to speak on that if she wished. Mr. Goehler asked Mr. Joh to further explain the parts of the report that were stricken through and in red text. Mr. Joh stated that the red line portion was the edited summary

submitted by Ms. Hopkins. He stated that he wanted to be sure to include her thoughts on what the report should reflect.

Judge Peterson asked to clarify the record due to the amount of consternation there has been with regard to how proposals for amendment to the Oregon Rules of Civil Procedure (ORCP) come to the Council. He explained that there is no rule or law that states that ideas need to be presented to the Council at the time of the biennial survey and at no other time. The biennial survey was not even a tool of the Council at the time he started as Executive Director. When he came on board, funds were tight with the state, the Council had irritated a lobbyist, and the Council had been zero funded for a biennium. The Legislature gave the Council a list of things to do as a state agency, one of which was to meet some key performance measures. The requirement to meet those measures has now gone by the wayside, but one measure that the Council has found to be useful and has kept doing is to conduct a survey of its performance. It has become not only a tool to measure performance but, also, a good way to bring in ideas from trial and appellate judges and members of sections and committees of the bar that are liable to have dealings in the state courts.

In this instance, the suggestion for a change to ORCP 47 E came to the Council via Judge Peterson after the survey. He does not solicit ideas from judges; however, some of the Multnomah County judges know of his work with the Council and will send him ideas from time to time. Judge Peterson noted that the survey brings both good ideas and inane ideas. It also brings suggestions for changes that were already made in previous biennia from lawyers who do not read the ORCP very carefully. The survey, therefore, ought not to be held up as something that is incredibly important. Judge Peterson stated that he has no position on whether the Council should make a change to Rule 47 E. However, the issue should be considered on its merits and not based on the method by which it was received by the Council.

Mr. Goehler thanked Judge Peterson for that explanation, which he suggested incorporating into the agenda for the first meeting of each new biennium. He stated that, in his 7 years on the Council, ideas for change have come from many places, including the survey, appellate court opinions inviting consideration, members of the public, members of the bar, colleagues of Council members, past Council members, and current Council members. The Council is broader rather than narrower in terms of where its input comes from. Mr. Goehler opined that It is good to remind ourselves of that. Likewise, as far as when an idea comes in, it is not necessary for it to happen at the beginning of the biennium, but that is a plus. A new suggestion toward the end of the biennial cycle that requires substantial research and effort may not be something that is reasonable for the Council to be able to take on until the following biennium. So, it is less a stricture of whether an idea came in through the survey and more just a reality of whether the Council is able to do the work necessary on a

suggestion within the limited time it has.

Ms. Hopkins clarified that the committee did discuss the substantive issues, and this is why she wanted to include Mr. Jennings' notes about them in her edits to the report. She stated that the vote of the committee reflects not only the discussion about how the issue came before the Council but, also, whether or not it actually is an issue that the Council should address. She wanted Mr. Jennings' comments to be included in the body of the report and not as an afterthought. She stated that four committee members chose to vote to disband the committee. Mr. Goehler asked Ms. Hopkins for a summary of the rationale for disbanding the committee. Ms. Hopkins stated that, in a nutshell, there is already a mechanism in the rule, section G, to address the issue of a false declaration being filed to thwart the motion for summary judgment. She stated that, if another Council member thinks differently, they need to explain why the way the rule is written right now is insufficient.

Mr. Shin stated that he is a committee member who was unable to attend the meeting. He noted that the report discusses what happened during the meeting, but he wanted to raise a procedural issue. He expressed concern over the fact that a plaintiff's side member of the committee made a motion to disband the committee and that all the members who voted to do so are on the plaintiffs' side, and the only other committee members present were one defense side member and one judge. He also raised a concern as to whether a committee can internally decide to disband on a motion from a committee member without the issue being heard and fully presented to the Council. Mr. Goehler thanked Mr. Shin for raising this issue and noted that, ultimately, the Council formed the committee and it is the Council that will decide whether to disband the committee or whether to move forward. He stated that he interprets the vote as a recommendation from the majority committee members to stay with the status quo. Mr. Goehler asked whether the Council wished to discuss the matter further.

Judge Peterson stated that he does not have a vote or a stake in the matter but, in terms of the purpose of the rule and the perceived problem, he wondered whether anyone has any data about how many cases are resolved by settlement as opposed to by trial. His guess would be that many more cases are resolved by settlement. He wondered how Rule 47 G comes into play if a Rule 47 motion is successfully thwarted and the case is then settled.

Ms. Johnson agreed with Mr. Goehler that the vote of the committee was to recommend that the committee table any further discussion to the Council as a whole. She stated that Rule 47 G does provide a solution, if there is a belief that there was a bad faith use of a Rule 47 E affidavit. She stated that she does not know if someone can better answer Judge Peterson's inquiry, but she thinks that, if the parties completely and totally resolve a case by settlement and

general dismissal, there will not be any remaining issues about how that settlement was achieved. She stated that she has never seen a party go back and attempt to raise questions about the legitimacy of a Rule 47 E affidavit after a general dismissal is entered and that she does not foresee it happening. Mr. Goehler agreed that settling the case means settling all issues and he did not see this as an issue.

Mr. Joh stated that he would like to provide his understanding of how the committee meeting proceeded. He agreed that there were substantive concerns that various members raised. He did not think that they were discussed in particular detail because the vote, as described in the report, was about tabling the issue because some of the members were concerned that the committee was looking for a problem. On some level, he thinks that discussion of the substantive concerns was somewhat premature, because there was no actual proposal for a substantive change before the committee. The committee's previous idea of conducting a survey was to find out what the specific concerns were before thinking about whether there were any changes that were appropriate to consider. That is among the reasons why he voted no on disbanding the committee. Mr. Joh pointed out that Judge Eric Dahlin had a concern, and it seems to him that the fact that the Council did not hear widespread complaints from the defense bar or otherwise in the survey is not necessarily indicative of there not being changes that can be made that would be good for the bench and bar.

Ms. Hopkins stated that her reason to table the issue is because it appeared that the committee was seeking to find things to change, rather than addressing needs expressed by practitioners. To her, that is a clear line that she found to be problematic, and why she agreed with Mr. Jennings' discussion in the committee report about how there is already a way to address concerns in the rule itself.

Mr. Marrs stated that he is a committee member but had been unable to attend the last meeting. His recollection from the committee meeting prior to that was that the committee had not actually focused on the concerns that Judge Dahlin expressed and determined definitively whether there is a problem with the rule. His understanding of Judge Dahlin's concerns boils down to two points. The first is that there is an incongruity between the Rule 47 E's use of the word "require," and what the appellate case law says the word means, so the rule should perhaps be conformed to what the appellate cases say. The second is, if there is reason to believe that there has been a bad faith affidavit made, what record does the court actually have to go back and look at to make that determination? In the case that Judge Dahlin references, it seems that he just used his best judgment, which may work most of the time, or all of the time, but the real next question is whether there should there be a mechanism in place for crystallizing what an expert actually has opinions on that will create an issue of fact so that the court has a record to go back and look at. He stated that he did not believe

that the committee has fully discussed and resolved whether there is an issue or not. He expressed concern that the necessary substantive review has not been done so that, if somebody went back and looked at the minutes, they could be assured that the Council has determined that the current language in the rule works. He stated that he would have voted no on dissolving the committee, because he does not think that the committee has done the work it was formed to do.

Judge Peterson noted that, at the first Council meeting, there was a suggestion regarding Rule 47 and when the expert's file should be disclosed. He noted that some Council members said that it is always the day before. However, it does not seem to be uniform, and Judge Peterson recalled that Mr. Joh had mentioned that it is confusing from court to court. Judge Peterson pointed out that this is clearly a procedural matter. He suggested that perhaps a change could be made to indicate that the expert file will be disclosed either by stipulation or by motion, so that everyone knows that either the parties stipulate or that somebody files a motion and the court will decide. Mr. Goehler recalled that there was some discussion about whether the expert file at trial testimony is tethered to the rule of evidence on expert testimony or whether it is tethered to trial court rules. If the Council puts an expert discovery rule into the ORCP, that would be a big change. Mr. Goehler stated that his thought is that it is probably tethered to a rule of evidence and trial practice.

Mr. Joh stated that, with respect to Judge Peterson's discussion of the expert file, he did not think that was within the scope of what the committee was looking at because it was not part of Judge Dahlin's suggestion. He stated that, the last time that issue came before the Council, the Council decided not to pursue it. Mr. Joh also pointed out that it was not a majority of the committee that voted to recommend disbanding the committee but, rather, a majority of the members present. He stated that he agreed with Mr. Marrs' articulation of the two primary issues raised by Judge Dahlin, and agreed that the committee did not really get into discussion of that, primarily because of the belief of the members that voted to dissolve the committee that, if there was an actual issue or concern, it would have come up in the biennial survey.

Ms. Johnson stated that she believes that Judge Shorr has addressed the second point that Mr. Marrs raised, which is the extent to which there needs to be clarification on the word "required." It was Judge Shorr's view that there has been appellate case law that provides clear guidance to practitioners on the context of that word. She stated that she does not believe that there needs to be clarification on that. She noted that she has been practicing for over 30 years and, in her experience, she has never had a practitioner bring a Rule 47 G allegation against her that a Rule 47 E affidavit was made in bad faith. She does not foresee that procedure being used because she thinks that Oregon practitioners, generally, submit those affidavits in good faith. She stated that her

concern was not merely the means by which the issue was brought to the attention of the Council. Firstly, she does not believe that there is a problem based on personal experience and the experience of her colleagues. Secondly, she thinks that starting with the expectation that Oregon practitioners are practicing in bad faith cheapens the practice of law in Oregon and ignores the common courtesies that are now exchanged within the bar.

Mr. Passadoré noted that the committee report states that any changes to the rule would be a solution in search of a problem that would increase costs and burden plaintiffs. He wondered why the Council would create new procedural hurdles that favor the defense based on an isolated complaint, rather than waiting to hear from the actual public and practitioners in the biennial survey.

Judge Hill observed that there seem to be strong feelings on different sides about this issue. He pointed out that nothing needs to be decided today. He suggested pausing and thinking about the suggestion of the committee and revisiting the issue at the next Council meeting. He noted that Judge Peterson has some good points that helped him to think about what Judge Dahlin was suggesting, and that there might be a need for some change.

Mr. Goehler agreed that this was good idea. He stated that this is a big issue and that any changes may have repercussions. He asked Ms. Nilsson to keep the item on the agenda for May. He noted that the committee is welcome to meet again if it wishes to, but that it is not necessary. He thanked the committee for its work so far.

2. Joinder/Rule 24

Judge Peterson reported that the draft amendment to Rule 24 before the Council (Appendix C) had already been approved by the Council for the September publication agenda, but that it had been placed on the agenda again so that it could be reviewed to ensure that no unintended consequences would arise from the changes.

Mr. Passadoré asked whether this proposed amendment would negatively affect a self-represented tenant's time to prepare for trial when they join a legitimate, equitable claim to an eviction action. Judge Peterson explained that, the way the rule is written, it prevents a plaintiff landlord from stacking on any claim other than a claim for possession, which is what receives the summary FED process. He stated that a tenant is permitted to raise certain counterclaims pursuant to ORS 90.370 and that, with those counterclaims included, the case remains on the summary track. The tenant can either join a claim or, if they feel they will not have sufficient time to prepare it adequately during a summary FED trial, they can choose to bring it as a separate claim.

Mr. Goehler pointed out that the publication vote will not be taken until September, so there is still time to consider whether any approved draft amendment raises any unintended consequences.

3. Judgments/Rule 67

Mr. Kekel stated that Council staff had incorporated new suggestions into the previous draft of Rule 67 that the committee had met and discussed. Judge Peterson pointed out that one obvious change in the new draft (Appendix D) from the previous version was to move the new proposed language regarding recitation of prior judgments from section B to a new section C. He stated that the new language did not fit very well into section B and that this version seems cleaner. Judge Peterson noted that, at the last Council meeting, there was concern about a difference in the language regarding recitation in regular judgments versus supplemental judgments. He stated that the two sentences regarding recitation are now parallel in requiring the date of entry of any previous judgment that has not been vacated, and not the substance. He recalled that there had been discussion within the committee and the Council that it might be nice to require inclusion of information such as limited judgments dismissing parties; however, there had been concern expressed that this could cause an impasse over whether the form of judgment is satisfactory. The new language takes it down to the minimum and, for supplemental judgments, does not require that every judgment not vacated prior to the general judgment to be listed.

Mr. Goehler stated that the new language reads more clearly to him and that it makes sense on the supplemental judgment side. It makes clear that a recitation of the substance of the judgment is not required. Judge Raschio stated that he appreciates the committee's work and thinks that the new language will be perfect for courts, particularly with longer domestic relations cases, and make their work easier. He made a motion to put the draft amendment on the publication agenda for September. Judge Hill seconded the motion.

Mr. Joh asked for clarification as to the difference in what is required of a supplemental judgment versus any other form of judgment. Mr. Goehler stated that his understanding is that the first sentence requires recitation of the date of all the prior judgments in order to keep track of what has happened before. However, with a supplemental judgment, there is no need to do a recitation of every past judgment, just back to the general judgment, because that is the only reference point that is needed. The general judgment disposes of all claims and all parties, but a supplemental judgment is usually just related to fees and costs or something along those lines so it only needs to refer back to the one general judgment. Judge Peterson and Mr. Kekel agreed with this assessment. Mr. Joh thanked them for this explanation and likened the requirement for supplemental judgments to the Cliff Notes version.

Mr. Passadoré agreed that the draft amendment might be convenient for judges, but expressed concern that a self-represented litigant trying to finalize a divorce or a protective proceeding might fall into an administrative trap if they were to miss listing a judgment, for example. He wondered whether a clerk would reject their final judgment if this were to happen. He did not want to prioritize judicial convenience over the public's ability to actually finish their case. Mr. Goehler pointed out that the public will also be on the receiving end judgments and will receive the benefit of having a summary of all judgments in front of them by the other party. He noted that, ultimately, the judge is going to be the one that signs a final judgment, so the accuracy is on the judge. Judge Peterson agreed that it is more work on whoever prepares the judgment. One of the points is to make sure that the party that submits the judgment does not miss anything. The judge will take a look at it, but it is up to both parties to sign off that it is an accurate statement.

Ms. Wilson stated that another thing that actually could benefit self-represented parties is having the history clearly laid out to assist with contempt or enforcement. Particularly with two self-represented parties, it would avoid one party later saying that they did not realize, for example, that a previous judgment had been modified. That argument would be diminished in a contempt procedure.

Mr. Goehler called for a vote on Judge Raschio's motion to put the proposed amendment on the September publication agenda. The motion was approved by voice vote with one vote in opposition.

4. Out-of-State Depositions/Rule 38 C

Mr. Goehler reminded the Council that it had discussed Judge Peterson's proposed changes to Rule 38 (Appendix E) at the March meeting and had agreed that they were positive. However, since Ms. Wilson was not present at that meeting, the draft was carried over to the April meeting so that she could weigh in. Ms. Wilson thanked Judge Peterson for presenting those changes, which made sense to her. She suggested that the draft can be put on the September publication docket.

Judge Peterson stated that he believes that the changes help solve the issue brought to the Council by Mr. Kekel's partner: that the current Rule 38 does not spell out exactly what is required for those states that are not "states" under the rule because they have not adopted the Uniform Interstate Discovery and Deposition Act.

Judge Hill made a motion to move the draft to the September publication agenda. Judge Raschio seconded the motion, which was approved unanimously by voice vote.

5. Post-Judgment Subpoenas/Rule 55

Mr. Passadoré stated that the committee had met on March 31, 2026, and reviewed drafts of Rule 36 and Rule 55 (Appendix F). Among other matters, they discussed whether the phrase “action is pending” in Rule 55 allows for post-judgment subpoenas. He stated that he had expressed concern about clarifying the rule so that a self-represented litigant can confidently use a subpoena to collect what they are legally owed without being outmaneuvered by an attorney finding loopholes.

Judge Peterson noted that a committee member had wondered whether the word “action” covers everything, including probate cases. He stated that his assumption is that it does, but there was some discussion about how all-encompassing the word is. Mr. Goehler stated that he believes that there is a statutory definition of action. Mr. Marrs agreed and stated that Judge Erwin had found both the rule-based (ORCP 2) and statutory definition and resolved that issue.

Judge Peterson stated that this was a fairly well-written suggestion that came from the biennial survey and noted that both Rule 36 and Rule 55 might be implicated. He stated that there was a proposal with Rule 36 that might be sufficient to get the job done, but that he had also taken a look at Rule 55 in case a “belt and suspenders” approach is needed. He pointed out, however, that he thinks that the Council agreed at its last meeting that an action is still pending post-judgment, and that the court has the authority to enforce its judgments, so the Rule 36 proposed change may be sufficient. Mr. Goehler agreed that his recollection was that the Council’s consensus was that a change to Rule 36 would be sufficient. Judge Peterson stated that he hopes that the reference to Rule 55 in the proposed new subsection B(4) will be sufficient to address the concern that was raised.

Judge Peterson noted that he had raised a few additional questions in the committee’s report (Appendix F). One issue is whether judgments are immediately enforceable. He believes that they are, unless there is a stipulation between the parties, in which case this does not become a problem, or unless the court, in its discretion, stays execution of the judgment. Another question is what happens if there are multiple judgment debtors and one has a satisfactory undertaking but another does not. The committee thought that question should be flagged for the Council. He stated that it seems to him that, if any defendant has an adequate undertaking on a judgment with joint and several liability, that would take care of it. However, if defendants have apportioned liability, a particular judgment debtor’s undertaking would not necessarily protect the judgment creditor. He wondered whether the language needs to be modified to clarify that particular instance.

Mr. Larwick stated that he is a member of the committee and that he thinks it would be helpful for the committee to meet again to discuss some of these issues. Mr. Goehler agreed that this is a good idea. He suggested that the number one issue is whether the changes to Rule 36 are sufficient or whether something needs to be done with Rule 55. Judge Peterson asked any Council member who has experience with multiple judgment debtors to share that with the committee.

6. Service/Rules 7, 9, & 10

Judge Raschio reported that the committee was suggesting final changes to the summons language to the Council (Appendix G). He stated that there are also style and usage changes throughout Rule 7, such as to eliminate the word "shall," and he thought that these are accurate based on past Council conversations and do not need to be discussed again. He stated that he believes that Rule 7 may be ready for the publication docket.

Judge Raschio stated that this is his first year on the Council and that he appreciates the amount of work and effort and thought that goes into each of these rules, and that he looks forward to seeing them all litigated in his courtroom at a later time.

Judge Peterson countered that he was not sure that Rule 7 is quite ready for the publication docket. He noted that Council staff and the committee have spent time on it between the last iteration and this one. The person who made the suggestion about cleaning up the summons from the biennial survey pointed out that some people are respondents, not defendants, so a change has been made to encompass both. It is now also now mentioned that there *may* be a filing fee. It is also made clear where the response should be filed – the court listed at the top of the summons. Changes have been made to all three summonses in the rule. Judge Peterson noted that there were some things missed in the changes to the second and third summons form in this draft that will need to be fixed.

Mr. Goehler suggested that the committee take another look and create a revised draft and bring it back to the Council next month for review and vote. Judge Raschio stated that the committee may not have to meet but, rather, may be able to circulate a new draft by email and vote on it.

Ms. Nilsson asked Council members for an opinion on the language on all three summonses that reads "Notice to Defendant." She noted that a summons does not always go to a defendant and asked whether language such as "Notice to Recipient" would be more appropriate. Mr. Goehler suggested simply, "Notice." The Council agreed.

Judge Peterson noted that he had made a suggestion for an amendment to Rule

9 that the committee had not agreed with. However, in reviewing the rule for that unsuccessful amendment, staff had made some cleanup changes, including removing indefinite pronouns to make the rule easier to read and changing some instances of the word “shall.” There is one change that defines personal service as well. None of the changes are intended to change the function of the rule, just to make it more readable, user-friendly, accurate, and consistent with modern drafting standards. He asked the Council to look carefully at the proposed draft of Rule 9 before the next meeting to ensure that it does not do any unintended harm.

7. Third Party Practice/Rule 22

Mr. Goehler stated that Ms. Dahab had let him know that she was unable to attend today’s meeting and that she had asked that the Council not have any substantive discussion on the matter. The committee is still considering whether to recommend any changes to the Council.

B. Rule 37

Judge Peterson reminded the Council that the changes to Rule 37 (Appendix H) had been made because, initially, the post-judgment discovery committee had inserted some proposed language into that rule as an alternative to placing that language in Rule 36. Ms. Nilsson had noticed how poorly written the rule was in terms of Council standards and had asked to make some stylistic changes not intended to change the function or meaning of the rule. Staff wanted to ensure that the Council had enough time to review the rule to ensure that there are no unintended consequences.

Ms. Nilsson suggested including the draft on the May agenda as well to allow enough time for review. Mr. Goehler asked Ms. Nilsson to circulate the draft early. She stated that she would get an advance meeting packet out immediately after this meeting with the items that are already set so that everyone has plenty of time to review them.

C. Recommendation to Legislature re: ORS 46.415 - Making ORCP 35 Applicable in Small Claims Cases

Judge Peterson reported to the Council that its proposed change to ORS 46.415 is set for hearing before the Public Affairs Committee of the Oregon State Bar’s Board of Governors on April 16, 2026, at 4:00 p.m. He noted that he would be on an airplane at that time, so he had asked a former Council member, Judge Susie Norby, the principal drafter of Rule 35, to make a presentation. She is trying to clear her calendar. Judge Peterson asked whether any Council member would be available if Judge Norby is unable to present. Mr. Goehler stated that he would make himself available if Judge Norby is unable to do so.

V. New Business

A. Address Confidentiality Program and Service

Judge Peterson explained that a self-represented litigant with a protected address under Oregon's Address Confidentiality Program (ACP) had written to the Council with a problem she had encountered (Appendix I). Apparently the other side would not honor the provisions of the program, and the court had admonished her for trying to insist on her efforts to maintain her address as confidential. Judge Peterson stated that he is not familiar with the statute that established the ACP but, after a brief review, it appears that it allows victim of domestic violence or trafficking and certain other people, including some public officials, to use the Oregon Judicial Department (OJD) as their address rather than their personal address in order to protect their privacy for public records such as the Department of Motor Vehicles. He stated that he was unsure as to whether this would also be applicable to service in private litigation.

Mr. Goehler stated that he could see where it could be problematic to have a protected address that becomes part of a court file. Mr. Joh stated that he does not know whether the statute specifically applies to the courts. He looked at the statute and it relies on the definition of "public body," which does include a state governmental body, which presumably would include the OJD. Mr. Goehler stated that it is probably a good idea for the Council to take a look at the issue but, at this late stage of the biennium, the Council will likely not be able to devote the brainpower and research necessary to determine whether something can be done and whether the Council is the appropriate body to do it. If changes to the ORCP are appropriate, changes to many rules may be needed.

Judge Raschio stated that the OJD has been dealing with confidentiality issues in a couple of its other programs and has also been encountering questions with blue sky laws. He suggested that this may be a larger issue than just the ORCP. He agreed with Mr. Goehler that it may be too late in the biennium to take any action and suggested setting it over to the agenda for the first meeting of the next biennium. Mr. Goehler observed that there are also stakeholders outside of the civil litigation world, so the Council would be wise to study the matter carefully.

Judge Peterson asked whether one or two Council members might be willing to take a preliminary look to at least determine whether the statute means that a private litigant in a case cannot serve the defendant at their home address, or whether it means that the court has to redact that information in the public record. His first impression was that the statute does not appear to be directed toward private litigants, but agreed that the court is an agency of the state. If the Council were able to at least determine whether the statute applies to service in civil litigation, it could respond to the person who made the suggestion and let them know that the Council will look further into the issue next biennium or, alternately, point them in the appropriate direction.

Mr. Goehler noted that one pragmatic way to resolve the problem for a person in the

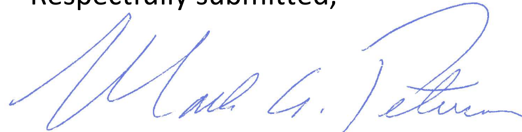
ACP might be to obtain a protective order to protect their address. He asked whether there were any volunteers to do some initial research into the issue and report back to the Council. Ms. Wilson volunteered. Judge Raschio suggested that Ms. Wilson reach out to Jackson County's Victims Assistance Program. She stated that she works in that office, so that will be convenient. Mr. Shields stated that, while he is not a member of the Council, he might look into the issue a bit as well.

Judge McIver noted that there has been a significant increase of Artificial Intelligence-generated civil lawsuits involving parties with domestic relations issues and restraining orders, and that this may be an interesting question to tackle more thoroughly in the future. Mr. Goehler agreed that this is an interesting issue. Judge Peterson noted that this has been an issue in the Court of Appeals.

VI. Adjournment

Mr. Goehler adjourned the meeting at 10:52 a.m.

Respectfully submitted,



Hon. Mark A. Peterson
Executive Director

GENERAL PROVISIONS

GOVERNING DISCOVERY

RULE 36

A Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions on oral examination or written questions; production of documents or things or permission to enter land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

B Scope of discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

B(1) **In general**. For all forms of discovery, parties may inquire regarding any matter, not privileged, that is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

B(2) **Insurance agreements or policies**.

B(2)(a) **Requirement to disclose**. A party, on the request of an adverse party, [*shall*] **<u>must</u>** disclose:

B(2)(a)(i) the existence and contents of any insurance agreement or policy under which a person transacting insurance may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

B(2)(a)(ii) the existence of any coverage denial or reservation of rights, and identify the provisions in any insurance agreement or policy on which such coverage denial or reservation of rights is based.

1 B(2)(b) **Procedure for disclosure**. The obligation to disclose under this subsection [*shall*] **<u>must</u>** be performed as soon as practicable following the filing of the complaint and the request to disclose. The court may supervise the exercise of disclosure to the extent necessary to ensure that it proceeds properly and expeditiously. However, the court may limit the extent of disclosure under this subsection as provided in section C of this rule.

B(2)(c) **Admissibility; applications for insurance**. Information concerning the insurance agreement or policy is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance [*shall not be*] **<u>is not</u>** treated as part of an insurance agreement or policy.

B(2)(d) **Definition**. As used in this subsection, "disclose" means to afford the adverse party an opportunity to inspect or copy the insurance agreement or policy.

B(3) **Trial preparation materials**.

B(3)(a) **Materials subject to a showing of substantial need**. Subject to the provisions of Rule 44, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection B(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court [*shall*] **<u>will</u>** protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

B(3)(b) **Prior statements**. A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. On request, a person who is not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the

1 person or party requesting the statement may move for a court order. The provisions of Rule
2 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this
3 subsection, a statement previously made is either: a written statement signed or otherwise
4 adopted or approved by the person making it; or a stenographic, mechanical, electrical, or
5 other [*recording,*] **recording;** or a transcription that is a substantially verbatim recital of an oral
6 statement by the person making it and contemporaneously recorded.

7 **B(4) Discovery to enforce judgment. A judgment creditor, or a successor in interest**
8 **whose interest appears of record, may issue a subpoena as provided in Rule 55 and may**
9 **obtain discovery as provided in these rules or by applicable statute from any person,**
10 **including the judgment debtor, for the purpose of collection or enforcement of a judgment.**
11 **However, if the court has stayed enforcement of a judgment as a result of a satisfactory**
12 **undertaking securing the judgment on the part of any judgment debtor, or for any other**
13 **reason, authority to issue a subpoena or to obtain discovery is only available pursuant to**
14 **court order.**

15 **C Court order limiting extent of disclosure**.

16 C(1) **Relief available; grounds for limitation**. On motion by a party or by the person from
17 whom discovery is sought, and for good cause shown, the court in which the action is pending
18 may make any order that justice requires to protect a party or person from annoyance,
19 embarrassment, oppression, or undue burden or expense, including one or more of the
20 following: that the discovery not be had; that the discovery may be had only on specified terms
21 and conditions, including a designation of the time or place; that the discovery may be had
22 only by a method of discovery other than that selected by the party seeking discovery; that
23 certain matters not be inquired into, or that the scope of the discovery be limited to certain
24 matters; that discovery be conducted with no one present except persons designated by the
25 court; that a deposition after being sealed be opened only by order of the court; that a trade
26 secret or other confidential research, development, or commercial information not be

disclosed or be disclosed only in a designated way; that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or that to prevent hardship the party requesting discovery pay to the other party reasonable expenses incurred in attending the deposition or otherwise responding to the request for discovery.

C(2) **Denial of motion**. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the motion.

1 **SUBPOENA**

2 **RULE 55**

3 **A Generally: form and contents; originating court; who may issue; who may serve;**
4 **proof of service.** Provisions of this section apply to all subpoenas, except as expressly
5 indicated.

6 A(1) **Form and contents.**

7 A(1)(a) **General requirements.** A subpoena is a writ or order that must:

8 A(1)(a)(i) originate in the court where the action [*is pending,*] **was commenced,** except as
9 provided in Rule 38 C;

10 A(1)(a)(ii) state the name of the court where the action [*is pending;*] **was commenced;**

11 A(1)(a)(iii) state the title of the action and the case number;

12 A(1)(a)(iv) command the person to whom the subpoena is directed to do one or more of
13 the following things at a specified time and place:

14 A(1)(a)(iv)(A) appear and testify in a deposition, hearing, trial, or administrative or other
15 out-of-court proceeding as provided in section B of this rule;

16 A(1)(a)(iv)(B) produce items for inspection and copying, such as specified books,
17 documents, electronically stored information, or tangible things in the person's possession,
18 custody, or control as provided in section C of this rule, except confidential health information
19 as defined in subsection D(1) of this rule; or

20 A(1)(a)(iv)(C) produce records of confidential health information for inspection and
21 copying as provided in section D of this rule;

22 A(1)(a)(v) alert the person to whom the subpoena is directed of the entitlement to fees
23 and mileage under paragraph A(6)(b), B(2)(a), B(2)(b), B(2)(d), B(3)(a), or B(3)(b), or part
24 B(2)(c)(i)(E) of this rule; and

25 A(1)(a)(vi) state the following in substantively similar terms:

26 A(1)(a)(vi)(A) that all subpoenas must be obeyed unless a judge orders otherwise; and

1 A(1)(a)(vi)(B) that disobedience of a subpoena is punishable by a fine or jail time.

2 A(2) **Originating court.** A subpoena must issue from the court where the action [*is*
3 *pending.*] **was commenced.** If the action arises under Rule 38 C, a subpoena may be issued by
4 the court in the county in which the witness is to be examined.

5 A(3) **Who may issue.**

6 A(3)(a) **Attorney of record.** An attorney of record for a party to the action may issue a
7 subpoena requiring a witness to appear on behalf of that party.

8 A(3)(b) **Clerk of court.** The clerk of the court in which the action [*is pending*] **was**
9 **commenced,** may issue a subpoena to a party on request. Blank subpoenas must be completed
10 by the requesting party before being served. Subpoenas to attend a deposition may be issued
11 by the clerk only if the requesting party has served a notice of deposition as provided in Rule
12 39 C or Rule 40 A; has served a notice of subpoena for production of books, documents,
13 electronically stored information, or tangible things; or certifies that such a notice will be
14 served contemporaneously with service of the subpoena.

15 A(3)(c) **Clerk of court for foreign depositions.** A subpoena to appear and testify in a
16 foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of the court in the
17 county in which the witness is to be examined.

18 A(3)(d) **Judge, justice, or other authorized officer.**

19 A(3)(d)(i) When there is no clerk of the court, a judge or justice of the court may issue a
20 subpoena.

21 A(3)(d)(ii) A judge, a justice, or an authorized officer presiding over an administrative or
22 out-of-court proceeding may issue a subpoena to appear and testify in that proceeding.

23 A(4) **Who may serve.** A subpoena may be served by a party, the party's attorney, or any
24 other person who is 18 years of age or older.

25 A(5) **Proof of service.** Proving service of a subpoena is done in the same way as provided
26 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow

being a party in the action; an attorney for a party; or an officer, director, or employee of a party.

A(6) **Recipient obligations.**

A(6)(a) **Length of witness attendance.** A command in a subpoena to appear and testify requires that the witness remain for as many hours or days as are necessary to conclude the testimony, unless the witness is sooner discharged.

A(6)(b) **Witness appearance contingent on fee payment.** Unless a witness expressly declines payment of fees and mileage, the witness's obligation to appear is contingent on payment of fees and mileage when the subpoena is served. At the end of each day's attendance, a witness may demand payment of legal witness fees and mileage for the next day. If the fees and mileage are not paid on demand, the witness is not obligated to return.

A(6)(c) **Deposition subpoena; place where witness can be required to attend or to produce things.**

A(6)(c)(i) **Oregon residents.** A resident of this state who is not a party to the action is required to attend a deposition or to produce things only in the county where the person resides, is employed, or transacts business in person, or at another convenient place as ordered by the court.

A(6)(c)(ii) **Nonresidents.** A nonresident of this state who is not a party to the action is required to attend a deposition or to produce things only in the county where the person is served with the subpoena, or at another convenient place as ordered by the court.

A(6)(d) **Obedience to subpoena.** A witness must obey a subpoena. Disobedience or a refusal to be sworn or to answer as a witness may be punished as contempt by the [*court or*] **court,** [*by*] the judge who issued the [*subpoena or*] **subpoena, the judge** before whom the action is [*pending*] **pending, or the judge who entered the judgment.** At a hearing or trial, if a witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a witness, that party's complaint, answer, or other pleading may be stricken.

1 A(7) **Motion to quash or modify.** A party or person that is subpoenaed may move to
2 quash or move to modify the subpoena. A motion to quash or to modify must be filed with the
3 court and served on the party that issued the subpoena before the date set for the recipient to
4 appear or produce, but not more than 14 days after the date that the subpoena was served.
5 The court may quash or modify the subpoena if the subpoena is unreasonable and oppressive,
6 or may require that the party that served the subpoena pay the reasonable costs of
7 compliance.
8 A(8) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand
9 the scope of discovery beyond that provided in Rule 36 or Rule 44.
10 **B Subpoenas requiring appearance and testimony by individuals, organizations, law**
11 **enforcement agencies or officers, prisoners, and parties.**
12 B(1) **Permissible purposes of subpoena.** A subpoena may require appearance in court or
13 out of court, including:
14 B(1)(a) **Civil actions.** A subpoena may be issued to require attendance before a court, [*or*]
15 at the trial of an issue therein, [*or on*] **at** the taking of a deposition in an action pending
16 [*therein;*] **therein, or at a proceeding to enforce a judgment entered therein.**
17 B(1)(b) **Foreign depositions.** Any foreign deposition under Rule 38 C presided over by any
18 person authorized by Rule 38 C to take witness testimony, or by any officer empowered by the
19 laws of the United States to take testimony; or
20 B(1)(c) **Administrative and other proceedings.** Any administrative or other proceeding
21 presided over by a judge, justice, or other officer authorized to administer oaths or to take
22 testimony in any matter under the laws of this state.
23 B(2) **Service of subpoenas requiring the appearance or testimony of nonparty**
24 **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,
25 a copy of the subpoena must be served sufficiently in advance to allow the witness a
26 reasonable time for preparation and travel to the place specified in the subpoena.

1 B(2)(a) **Service on an individual 14 years of age or older.** If the witness is 14 years of age
2 or older, the subpoena must be personally delivered to the witness, along with fees for one
3 day's attendance and the mileage as allowed by law unless the witness expressly declines
4 payment, whether personal attendance is required or not.
5 B(2)(b) **Service on an individual under 14 years of age.** If the witness is under 14 years of
6 age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian
7 ad litem, along with fees for one day's attendance and the mileage as allowed by law unless
8 the witness expressly declines payment, whether personal attendance is required or not.
9 B(2)(c) **Service on individuals waiving personal service.** If the witness waives personal
10 service, the subpoena may be mailed or transmitted electronically to the witness, but such
11 service is valid only if all of the following circumstances exist:
12 B(2)(c)(i) **Witness agreement.** Contemporaneous with the return of service, the party's
13 attorney or attorney's agent certifies that:
14 B(2)(c)(i)(A) the witness agreed to appear and testify if subpoenaed by a specified date
15 using mail or electronic transmission to a designated e-mail, text message, facsimile, or other
16 electronic account that the witness confirmed is accurate;
17 B(2)(c)(i)(B) the specific date, time, and place for the witness to appear and testify was
18 coordinated with the witness and agreed on;
19 B(2)(c)(i)(C) the mail or electronic account used to deliver the subpoena contained no
20 typographical or other errors that would affect delivery, and a copy of the electronic
21 transmission is attached to the certification document;
22 B(2)(c)(i)(D) the mail or transmission was sent by the specific date agreed on;
23 B(2)(c)(i)(E) satisfactory arrangements were made with the witness to ensure the
24 payment of fees for one day's attendance and the mileage as allowed by law, or the witness
25 expressly declined payment; and
26 B(2)(c)(i)(F) the party has written, recorded, or electronic confirmation from the witness

1 that the witness received the subpoena.

2 B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule 39
3 C(6). A subpoena naming a nonparty organization as a deponent must be delivered, along with
4 fees for one day's attendance and the mileage as allowed by law, in the same manner as
5 provided for service of summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7 D(3)(d)(i), Rule 7
6 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

7 B(3) **Service of a subpoena requiring appearance of a peace officer in a professional**
8 **capacity.**

9 B(3)(a) **Personal service on a peace officer.** A subpoena directed to a peace officer in a
10 professional capacity may be served by personal service of a copy, along with fees for one day's
11 attendance and the mileage as allowed by law, unless the peace officer expressly declines
12 payment.

13 B(3)(b) **Substitute service on a law enforcement agency.** A subpoena directed to a peace
14 officer in a professional capacity may be served by substitute service of a copy, along with fees
15 for one day's attendance and the mileage as allowed by law, on an individual designated by the
16 law enforcement agency that employs the peace officer or, if a designated individual is not
17 available, then on the person in charge at least 10 days before the date the peace officer is
18 required to attend, provided that the peace officer is currently employed by the law
19 enforcement agency and is present in this state at the time the agency is served.

20 B(3)(b)(i) **"Law enforcement agency" defined.** For purposes of this subsection, a law
21 enforcement agency means the Oregon State Police, a county sheriff's department, a city
22 police department, a municipal police department, the Marshal's Office of the Judicial
23 Department, an authorized tribal police department, a police department established by a
24 university pursuant to statute, the Criminal Justice Division of the Department of Justice, the
25 investigative office of a district attorney's office, or the investigative office of a humane society.

26 B(3)(b)(ii) **Law enforcement agency obligations.**

B(3)(b)(ii)(A) **Designating representative.** All law enforcement agencies must designate one or more individuals to be available during normal business hours to receive service of subpoenas.

B(3)(b)(ii)(B) **Ensuring actual notice or reporting otherwise.** When a peace officer is subpoenaed by substitute service under paragraph B(3)(b) of this rule, the agency must make a good faith effort to give the peace officer actual notice of the time, date, and location specified in the subpoena for the appearance. If the law enforcement agency is unable to notify the peace officer, then the agency must promptly report this inability to the court. The court may postpone the matter to allow the peace officer to be personally served.

B(4) **Service of subpoena requiring the appearance and testimony of prisoner.** All of the following are required to secure a prisoner's appearance and testimony:

B(4)(a) **Court preauthorization.** Leave of the court must be obtained before serving a subpoena on a prisoner, and the court may prescribe terms and conditions when compelling a prisoner's attendance;

B(4)(b) **Court determines location.** The court may order temporary removal and production of the prisoner to a requested location, or may require that testimony be taken by deposition at, or by remote location testimony from, the place of confinement; and

B(4)(c) **Whom to serve.** The subpoena and court order must be served on the custodian of the prisoner.

B(5) **Service of subpoenas requiring the appearance or testimony of individuals who are parties to the case or party organizations.** A subpoena directed to a party that has appeared in the case, including an officer, director, or member of a party organization, may be served as provided in Rule 9 B, without any payment of fees and mileage otherwise required by this rule.

C **Subpoenas requiring production of documents or things other than confidential health information as defined in subsection D(1) of this rule.**

C(1) **Combining subpoena for production with subpoena to appear and testify.** A

subpoena for production may be joined with a subpoena to appear and testify or may be issued separately.

C(2) **When mail service allowed.** A copy of a subpoena for production that does not contain a command to appear and testify may be served by mail.

C(3) **Subpoenas to command inspection prior to deposition, hearing, or trial.** A copy of a subpoena issued solely to command production or inspection prior to a deposition, hearing, or trial must comply with the following:

C(3)(a) **Advance notice to parties.** The subpoena must be served on all parties to the action that are not in default at least 7 days before service of the subpoena on the person or organization's representative who is commanded to produce and permit inspection, unless the court orders less time;

C(3)(b) **Time for production.** The subpoena must allow at least 14 days for production of the required documents or things, unless the court orders less time; and

C(3)(c) **Originals or true copies.** The subpoena must specify whether originals or true copies will satisfy the subpoena.

D Subpoenas for documents and things containing confidential health information ("CHI").

D(1) **Application of this section; "confidential health information" defined.** This section creates protections for production of CHI, which includes both individually identifiable health information as defined in ORS 192.556 (8) and protected health information as defined in ORS 192.556 (11)(a). For purposes of this section, CHI means information collected from a person by a health care provider, health care facility, state health plan, health care clearinghouse, health insurer, employer, or school or university that identifies the person or could be used to identify the person and that includes records that:

D(1)(a) relate to the person's physical or mental health or condition; or

D(1)(b) relate to the cost or description of any health care services provided to the

person.

D(2) **Qualified protective orders.** A qualified protective order means a court order that prohibits the parties from using or disclosing CHI for any purpose other than the litigation for which the information is produced, and that, at the end of the litigation, requires the return of all CHI to the original custodian, including all copies made, or the destruction of all CHI.

D(3) **Compliance with state and federal law.** A subpoena to command production of CHI must comply with the requirements of this section, as well as with all other restrictions or limitations imposed by state or federal law. If a subpoena does not comply, then the protected CHI may not be disclosed in response to the subpoena until the requesting party has complied with the appropriate law.

D(4) **Conditions on service of subpoena.**

D(4)(a) **Qualified protective order; declaration or affidavit; contents.** The party serving a subpoena for CHI must serve the custodian or other record keeper with either a qualified protective order or a declaration or affidavit together with supporting documentation that demonstrates:

D(4)(a)(i) **Written notice.** The party made a good faith attempt to provide the person whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the date of the notice to object;

D(4)(a)(ii) **Sufficiency.** The written notice included the subpoena and sufficient information about the litigation underlying the subpoena to enable the person or the person's attorney to meaningfully object;

D(4)(a)(iii) **Information regarding objections.** The party must certify that either no written objection was made within 14 days, or objections made were resolved and the command in the subpoena is consistent with that resolution; and

D(4)(a)(iv) **Inspection requests.** The party must certify that the person or the person's representative was or will be permitted, promptly on request, to inspect and copy any CHI

received.

D(4)(b) **Objections.** Within 14 days from the date of a notice requesting CHI, the person whose CHI is being sought, or the person's attorney objecting to the subpoena, must respond in writing to the party issuing the notice, and state the reasons for each objection.

D(4)(c) **Statement to secure personal attendance and production.** The personal attendance of a custodian of records and the production of original CHI is required if the subpoena contains the following statement:

____

This subpoena requires a custodian of confidential health information to personally attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of Civil Procedure 55 D(8) is insufficient for this subpoena.

____

D(5) **Mandatory privacy procedures for all records produced.**

D(5)(a) **Enclosure in a sealed inner envelope; labeling.** The copy of the records must be separately enclosed in a sealed envelope or wrapper on which the name of the court, case name and number of the action, name of the witness, and date of the subpoena are clearly inscribed.

D(5)(b) **Enclosure in a sealed outer envelope; properly addressed.** The sealed envelope or wrapper must be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper must be addressed as follows:

D(5)(b)(i) **Court.** If the subpoena directs attendance in court, to the clerk of the court, or to a judge;

D(5)(b)(ii) **Deposition or similar hearing.** If the subpoena directs attendance at a deposition or similar hearing, to the officer administering the oath for the deposition at the place designated in the subpoena for the taking of the deposition or at the officer's place of business;

D(5)(b)(iii) **Other hearings or miscellaneous proceedings.** If the subpoena directs attendance at another hearing or another miscellaneous proceeding, to the officer or body conducting the hearing or proceeding at the officer's or body's official place of business; or

D(5)(b)(iv) **If no hearing is scheduled.** If no hearing is scheduled, to the attorney or party issuing the subpoena.

D(6) **Additional responsibilities of attorney or party receiving delivery of CHI.**

D(6)(a) **Service of a copy of subpoena on patient and all parties to the litigation.** If the subpoena directs delivery of CHI to the attorney or party that issued the subpoena, then a copy of the subpoena must be served on the person whose CHI is sought, and on all other parties to the litigation that are not in default, not less than 14 days prior to service of the subpoena on the custodian or keeper of the records.

D(6)(b) **Parties' right to inspect or obtain a copy of the CHI at own expense.** Any party to the proceeding may inspect the CHI provided and may request a complete copy of the information. On request, the CHI must be promptly provided by the party that served the subpoena at the expense of the party that requested the copies.

D(7) **Inspection of CHI delivered to court or other proceeding.** After filing and after giving reasonable notice in writing to all parties that have appeared of the time and place of inspection, the copy of the CHI may be inspected by any party or by the attorney of record of a party in the presence of the custodian of the court files, but otherwise the copy must remain sealed and must be opened only at the time of trial, deposition, or other hearing at the direction of the judge, officer, or body conducting the proceeding. The CHI must be opened in the presence of all parties that have appeared in person or by counsel at the trial, deposition, or hearing. CHI that is not introduced in evidence or required as part of the record must be returned to the custodian who produced it.

D(8) **Compliance by delivery only when no personal attendance is required.**

D(8)(a) **Mail or delivery by a nonparty, along with declaration.** A custodian of CHI who is

not a party to the litigation connected to the subpoena, and who is not required to attend and testify, may comply by mailing or otherwise delivering a true and correct copy of all CHI subpoenaed within five days after the subpoena is received, along with a declaration that complies with paragraph D(8)(b) of this rule.

D(8)(b) **Declaration of custodian of records when CHI produced.** CHI that is produced when personal attendance of the custodian is not required must be accompanied by a declaration of the custodian that certifies all of the following:

D(8)(b)(i) **Authority of declarant.** The declarant is a duly authorized custodian of the records and has authority to certify records;

D(8)(b)(ii) **True and complete copy.** The copy produced is a true copy of all of the CHI responsive to the subpoena; and

D(8)(b)(iii) **Proper preparation practices.** Preparation of the copy of the CHI being produced was done:

D(8)(b)(iii)(A) by the declarant, or by qualified personnel acting under the control of the entity subpoenaed or the declarant;

D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred to in the CHI.

D(8)(c) **Declaration of custodian of records when not all CHI produced.** When the custodian of records produces no CHI, or less information than requested, the custodian of records must specify this in the declaration. The custodian may only send CHI within the custodian's custody.

D(8)(d) **Multiple declarations allowed when necessary.** When more than one person has knowledge of the facts required to be stated in the declaration, more than one declaration may be used.

D(9) **Designation of responsible party when multiple parties subpoena CHI.** If more than

one party subpoenas a custodian of records to personally attend under paragraph D(4)(c) of this rule, the custodian of records will be deemed to be the witness of the party that first served such a subpoena.

D(10) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness fee and mileage for one day unless there has been agreement to the contrary.

1 **SUMMONS**

2 **RULE 7**

3 **A Definitions**. For purposes of this rule, "plaintiff" [*shall include*] **includes** any party
4 issuing **a** summons and "defendant" [*shall include*] **includes** any party on whom service of **a**
5 summons is sought. For purposes of this rule, a "true copy" of a summons and complaint
6 means an exact and complete copy of the original summons and complaint.

7 **B Issuance**. Any time after the action is commenced, **the** plaintiff or **the** plaintiff's
8 attorney may issue as many original summonses as either may elect and deliver such
9 summonses to a person authorized to serve summonses under section E of this rule. A
10 summons is issued when subscribed by **the** plaintiff or an active licensee of the Oregon State
11 Bar.

12 **C Contents, time for response, and required notices.**

13 C(1) **Contents**. The summons [*shall*] **must** contain:

14 C(1)(a) **Title**. The title of the cause, specifying the name of the court in which the
15 complaint is filed and the names of the parties to the action.

16 C(1)(b) **Direction to defendant**. A direction to the defendant requiring **the** defendant to
17 appear and defend within the time required by subsection C(2) of this rule and a notification to
18 **the** defendant that, in case of failure to do so, the plaintiff will apply to the court for the relief
19 demanded in the complaint.

20 C(1)(c) **Subscription; post office address**. A subscription by the plaintiff or by an active
21 licensee of the Oregon State Bar, with the addition of the post office address at which papers
22 in the action may be served by mail.

23 C(2) **Time for response**. If the summons is served by any manner other than publication,
24 the defendant [*shall*] **must** appear and defend within 30 days from the date of service. If the
25 summons is served by publication pursuant to subparagraph D(6)(a)(i) of this rule, the
26 defendant [*shall*] **must** appear and defend within 30 days from the date stated in the

1 summons. The date so stated in the summons [*shall be*] **is** the date of the first publication.

2 C(3) **Notice to party served**.

3 C(3)(a) In general. All summonses, other than a summons referred to in paragraph

4 C(3)(b) or C(3)(c) of this rule, [*shall*] **must** contain a notice printed in type size equal to at least

5 [*8-point type*] **12-point type** that may be substantially in the following form:

6 ____

7 [***NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!***]

8 **NOTICE: READ THESE PAPERS CAREFULLY!**

9 You must "appear" in this case or the [*other side*] **plaintiff or petitioner** will win

10 automatically. To [*"appear you must file with the court"*] **appear you must, within 30 days of**

11 **the date you receive this summons file with the court** a legal document called a [*"motion" or*

12 *"answer."*] **"motion," "answer," or "response."** [*The "motion" or "answer" must be given to*

13 *the court clerk or administrator within 30 days along with the required filing fee.*] **To file, you**

14 **must give your legal document to the clerk of the court that appears at the top of this**

15 **summons. You may need to pay a filing fee.** [*It must be in proper form and have proof of*

16 *service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service*

17 *on the plaintiff.*] **Your legal document must be in proper form as required by the Oregon Rules**

18 **of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal**

19 **document, as required by ORCP 7 D, on the attorney for the plaintiff or petitioner, or on the**

20 **plaintiff or petitioner if they do not have an attorney. You must also file "proof of service."**

21 **Proof of service is a signed statement describing when and how your legal document was**

22 **served.**

23 If you have questions, [*you should see*] **contact** an attorney immediately. If you need

24 help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service*

25 *online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan*

26 *area) or toll-free elsewhere in Oregon at (800) 452-7636.*] **Service:**

1 **www.oregonstatebar.org / (800) 452-7636**

2 **For more information you may find helpful in understanding this case, visit:**

3 **courts.oregon.gov OR www.oregonlawhelp.org**

4 ____

5 C(3)(b) **Service for counterclaim or cross-claim**. A summons to join a party to respond to 6 a counterclaim or a cross-claim pursuant to Rule 22 D(1) [*shall*] **must** contain a notice printed in 7 type size equal to at least [*8-point type*] **12-point type** that may be substantially in the 8 following form:

9 ____

10 [***NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!***]

11 **NOTICE: READ THESE PAPERS CAREFULLY!**

12 You must "appear" to protect your rights in this matter. To [*"appear you must"*] **appear** 13 **you must, within 30 days of the date you receive this summons,** file with the court a legal 14 document called a "motion," a "reply" to a counterclaim, or an "answer" to a cross-claim. [*The* 15 *"motion," "reply," or "answer" must be given to the court clerk or administrator within 30 days* 16 *along with the required filing fee.*] **To file, you must give your legal document to the clerk of** 17 **the court that appears at the top of this summons. You may need to pay a filing fee.** [*It must* 18 *be in proper form and have proof of service on the defendant's attorney or, if the defendant* 19 *does not have an attorney, proof of service on the defendant.*] **Your legal document must be in** 20 **proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial** 21 **Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney** 22 **for the party that signed this summons, or on that party if they do not have an attorney. You** 23 **must also file "proof of service." Proof of service is a signed statement describing when and** 24 **how your legal document was served.**

25 If you have questions, [*you should see*] **contact** an attorney immediately. If you need help 26 [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service online*

1 *at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or*
2 *toll-free elsewhere in Oregon at (800) 452-7636.*] **Service:**
3 **www.oregonstatebar.org / (800) 452-7636**
4 **For more information you may find helpful in understanding this case, visit:**
5 **courts.oregon.gov OR www.oregonlawhelp.org**
6 ____
7 C(3)(c) **Service on persons liable for attorney fees**. A summons to join a party pursuant
8 to Rule 22 D(2) [*shall*] **must** contain a notice printed in type size equal to at least [*8-point type*]
9 **12-point type** that may be substantially in the following form:
10 ____
11 [***NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!***]
12 **NOTICE: READ THESE PAPERS CAREFULLY!**
13 You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a
14 judgment for reasonable attorney fees may be entered against you, as provided by the
15 agreement to which defendant alleges you are a party.
16 You must "appear" to protect your rights in this matter. To [*"appear you must"*] **appear**
17 **you must, within 30 days of the date you receive this summons,** file with the court a legal
18 document called a "motion" or "reply." [*The "motion" or "reply" must be given to the court*
19 *clerk or administrator within 30 days along with the required filing fee.*] **To file, you must give**
20 **your legal document to the clerk of the court that appears at the top of this summons. You**
21 **may need to pay a filing fee.** [*It must be in proper form and have proof of service on the*
22 *defendant's attorney or, if the defendant does not have an attorney, proof of service on the*
23 *defendant.*] **Your legal document must be in proper form as required by the Oregon Rules of**
24 **Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal**
25 **document, as required by ORCP 7 D, on the attorney for the party that signed this summons,**
26 **or on that party if they do not have an attorney. You must also file "proof of service." Proof**

1 **of service is a signed statement describing when and how your legal document was served.**

2 If you have questions, [*you should see*] **contact** an attorney immediately. If you need

3 help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service*

4 *online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan*

5 *area) or toll-free elsewhere in Oregon at (800) 452-7636.*] **Service:**

6 **www.oregonstatebar.org / (800) 452-7636**

7 **For more information you may find helpful in understanding this case, visit:**

8 **courts.oregon.gov OR www.oregonlawhelp.org**

9 ____

10 **D Manner of service.**

11 D(1) **Notice required**. Summons [*shall*] **must** be served, either within or without this

12 state, in any manner reasonably calculated, under all the circumstances, to apprise the

13 defendant of the existence and pendency of the action and to afford a reasonable opportunity

14 to appear and defend. Summons may be served in a manner specified in this rule or by any

15 other rule or statute on the defendant or on an agent authorized by appointment or law to

16 accept service of summons for the defendant. Service may be made, subject to the restrictions

17 and requirements of this rule, by the following methods: personal service of true copies of the

18 summons and the complaint on defendant or an agent of defendant authorized to receive

19 process; substituted service by leaving true copies of the summons and the complaint at a

20 person's dwelling house or usual place of abode; office service by leaving true copies of the

21 summons and the complaint with a person who is apparently in charge of an office; service by

22 mail; or service by publication.

23 D(2) **Service methods**.

24 D(2)(a) **Personal service**. Personal service may be made by delivery of a true copy of the

25 summons and a true copy of the complaint to the person to be served.

26 D(2)(b) **Substituted service**. Substituted service may be made by delivering true copies of

1 the summons and the complaint at the dwelling house or usual place of abode of the person to
2 be served to any person 14 years of age or older residing in the dwelling house or usual place
3 of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as
4 reasonably possible, [*shall*] **must** cause to be mailed by first class mail true copies of the
5 summons and the complaint to the defendant at defendant's dwelling house or usual place of
6 abode, together with a statement of the date, time, and place at which substituted service was
7 made. For the purpose of computing any period of time prescribed or allowed by these rules or
8 by statute, substituted service [*shall be*] **is** complete on the mailing.
9 D(2)(c) **Office service**. If the person to be served maintains an office for the conduct of
10 business, office service may be made by leaving true copies of the summons and the complaint
11 at that office during normal working hours with the person who is apparently in charge. Where
12 office service is used, the plaintiff, as soon as reasonably possible, [*shall*] **must** cause to be
13 mailed by first class mail true copies of the summons and the complaint to the defendant at
14 defendant's dwelling house or usual place of abode or defendant's place of business or any
15 other place under the circumstances that is most reasonably calculated to apprise the
16 defendant of the existence and pendency of the action, together with a statement of the date,
17 time, and place at which office service was made. For the purpose of computing any period of
18 time prescribed or allowed by these rules or by statute, office service [*shall be*] **is** complete on
19 the mailing.
20 D(2)(d) **Service by mail**.
21 D(2)(d)(i) **Generally**. When service by mail is required or allowed by this rule or by
22 statute, except as otherwise permitted, service by mail [*shall*] **must** be made by mailing true
23 copies of the summons and the complaint to the defendant by first class mail [*and*] **as well as**
24 by any of the following: certified, registered, or express mail with return receipt requested. For
25 purposes of this paragraph, "first class mail" does not include certified, registered, or express
26 mail, return receipt requested, or any other form of mail that may delay or hinder actual

1 delivery of mail to the addressee.

2 D(2)(d)(ii) **Calculation of time**. For the purpose of computing any period of time provided

3 by these rules or by statute, service by mail, except as otherwise provided, [*shall be*] **is**

4 complete on the day the defendant, or other person authorized by appointment or law, signs a

5 receipt for the mailing, or 3 days after the mailing if mailed to an address within the state, or 7

6 days after the mailing if mailed to an address outside the state, whichever first occurs.

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

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

9 D(3)(a)(i) **Generally**. On an individual defendant, by personal delivery of true copies of

10 the summons and the complaint to the defendant or other person authorized by appointment

11 or law to receive service of summons on behalf of the defendant, by substituted service, or by

12 office service. Service may also be made on an individual defendant or other person authorized

13 to receive service to whom neither subparagraph D(3)(a)(ii) nor D(3)(a)(iii) of this rule applies

14 by a mailing made in accordance with paragraph D(2)(d) of this rule provided the defendant or

15 other person authorized to receive service signs a receipt for the certified, registered, or

16 express mailing, in which case service [*shall be*] **is** complete on the date on which the

17 defendant signs a receipt for the mailing.

18 D(3)(a)(ii) **Minors**. On a minor under 14 years of age, by service in the manner specified

19 in subparagraph D(3)(a)(i) of this rule on the minor; and additionally on the minor's father,

20 mother, conservator of the minor's estate, or guardian, or, if there be none, then on any

21 person having the care or control of the minor, or with whom the minor resides, or in whose

22 service the minor is employed, or on a guardian ad litem appointed pursuant to Rule 27 B.

23 D(3)(a)(iii) **Incapacitated persons**. On a person who is incapacitated or is financially

24 incapable, as both terms are defined by ORS 125.005, by service in the manner specified in

25 subparagraph D(3)(a)(i) of this rule on the person and, also, on the conservator of the person's

26 estate or guardian or, if there be none, on a guardian ad litem appointed pursuant to Rule 27

B.

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

D(3)(a)(iv)(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

D(3)(a)(iv)(B) the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint. Service [*shall be*] **is** complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) **Corporations including, but not limited to, professional corporations and cooperatives**. On a domestic or foreign corporation:

D(3)(b)(i) **Primary service method**. By personal service or office service on a registered agent, officer, or director of the corporation; or by personal service on any clerk on duty in the office of a registered agent.

D(3)(b)(ii) **Alternatives**. True copies of the summons and the complaint may be served:

D(3)(b)(ii)(A) by substituted service on the registered agent, officer, or director;

D(3)(b)(ii)(B) by personal service on any clerk or agent of the corporation;

D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the corporation, if any, as shown by the records on file in the office of the

1 Secretary of State; or, if the corporation is not authorized to transact business in this state at
2 the time of the transaction, event, or occurrence on which the action is based occurred, to the
3 principal office or place of business of the corporation; and, in any case, to any address the use
4 of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or
5 D(3)(b)(ii)(D) on the Secretary of State in the manner provided in ORS 60.121 or 60.731.
6 D(3)(c) **Limited liability companies**. On a limited liability company:
7 D(3)(c)(i) **Primary service method**. By personal service or office service on a registered
8 agent, manager, or (for a member-managed limited liability company) member of a limited
9 liability company; or by personal service on any clerk on duty in the office of a registered agent.
10 D(3)(c)(ii) **Alternatives**. True copies of the summons and the complaint may be served:
11 D(3)(c)(ii)(A) by substituted service on the registered agent, manager, or (for a
12 member-managed limited liability company) member of a limited liability company;
13 D(3)(c)(ii)(B) by personal service on any clerk or agent of the limited liability company;
14 D(3)(c)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
15 copies of the summons and the complaint to: the office of the registered agent or to the last
16 registered office of the limited liability company, if any, as shown by the records on file in the
17 office of the Secretary of State; or, if the limited liability company is not authorized to transact
18 business in this state at the time of the transaction, event, or occurrence on which the action is
19 based occurred, to the principal office or place of business of the limited liability company;
20 and, in any case, to any address the use of which the plaintiff knows or has reason to believe is
21 most likely to result in actual notice; or
22 D(3)(c)(ii)(D) on the Secretary of State in the manner provided in ORS 63.121.
23 D(3)(d) **Limited partnerships**. On a domestic or foreign limited partnership:
24 D(3)(d)(i) Primary service **method**. By personal service or office service on a registered
25 agent or a general partner of a limited partnership; or by personal service on any clerk on duty
26 in the office of a registered agent.

1 D(3)(d)(ii) **Alternatives**. True copies of the summons and the complaint may be served:
2 D(3)(d)(ii)(A) by substituted service on the registered agent or general partner of a
3 limited partnership;
4 D(3)(d)(ii)(B) by mailing in the manner specified in paragraph D(2)(d) of this rule true
5 copies of the summons and the complaint to: the office of the registered agent or to the last
6 registered office of the limited partnership, if any, as shown by the records on file in the office
7 of the Secretary of State; or, if the limited partnership is not authorized to transact business in
8 this state at the time of the transaction, event, or occurrence on which the action is based
9 occurred, to the principal office or place of business of the limited partnership; and, in any
10 case, to any address the use of which the plaintiff knows or has reason to believe is most likely
11 to result in actual notice; or
12 D(3)(d)(ii)(C) on the Secretary of State in the manner provided in ORS 70.040 or 70.045.
13 D(3)(e) **General partnerships and limited liability partnerships**. On any general
14 partnership or limited liability partnership by personal service on a partner or any agent
15 authorized by appointment or law to receive service of summons for the partnership or limited
16 liability partnership.
17 D(3)(f) **Other unincorporated associations subject to suit under a common name**. On
18 any other unincorporated association subject to suit under a common name by personal
19 service on an officer, managing agent, or agent authorized by appointment or law to receive
20 service of summons for the unincorporated association.
21 D(3)(g) **State**. On the state, by personal service on the Attorney General or by leaving
22 true copies of the summons and the complaint at the Attorney General's office with a deputy,
23 assistant, or clerk.
24 D(3)(h) **Public bodies**. On any county; incorporated city; school district; or other public
25 corporation, commission, board, or agency by personal service or office service on an officer,
26 director, managing agent, or attorney thereof.

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

D(4) **Particular actions involving motor vehicles**.

D(4)(a) **Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.**

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated on the roads, highways, streets, or premises open to the public as defined by law of this state if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection D(3) of this rule except service by mail pursuant to subparagraph D(3)(a)(i) of this rule and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph D(2)(d) of this rule addressed to that defendant at:

D(4)(a)(i)(A) any residence address provided by that defendant at the scene of the accident;

D(4)(a)(i)(B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably might result in actual notice to that defendant. Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered, or express mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as undeliverable or

that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph [*shall be*] **is** complete on the latest date on which any of the mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule is made. If the mailing required by part D(4)(a)(i)(C) of this rule is omitted because the plaintiff did not know of any address other than those specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of service [*shall*] **must** so certify.

D(4)(a)(ii) Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph D(4)(a)(i) of this rule may be recovered as provided in Rule 68.

D(4)(a)(iii) The requirements for obtaining an order of default against a defendant served pursuant to subparagraph D(4)(a)(i) of this rule are as provided in Rule 69 E.

D(4)(b) **Notification of change of address**. Any person who; while operating a motor vehicle on the roads, highways, streets, or premises open to the public as defined by law of this state; is involved in any accident, collision, or other event giving rise to liability [*shall*] **must** forthwith notify the Department of Transportation of any change of the person's address occurring within 3 years after the accident, collision, or event.

D(5) **Service in foreign country**. When service is to be effected on a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases service [*shall*] **must** be reasonably calculated to give actual notice.

D(6) **Court order for service by other method**. When it appears that service is not possible under any method otherwise specified in these rules or other rule or statute, then a motion supported by affidavit or declaration may be filed to request a discretionary court

order to allow alternative service by any method or combination of methods that, under the circumstances, is most reasonably calculated to apprise the defendant of the existence and pendency of the action. If the court orders alternative service and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff must mail true copies of the summons and the complaint to the defendant at that address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of any defendant, the plaintiff must mail true copies of the summons and the complaint by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and with reasonable diligence cannot ascertain, the defendant's current and last known addresses, a mailing of copies of the summons and the complaint is not required.

D(6)(a) **Non-electronic alternative service**. Non-electronic forms of alternative service may include, but are not limited to, publication of summons; mailing without publication to a specified post office address of the defendant by first class mail as well as either by certified, registered, or express mail with return receipt requested; or posting at specified locations. The court may specify a response time in accordance with subsection C(2) of this rule.

D(6)(a)(i) **Alternative service by publication**. In addition to the contents of a summons as described in section C of this rule, a published summons must also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C(3) of this rule must state: "The motion or answer or reply must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons must also contain the date of the first publication of the summons.

D(6)(a)(i)(A) **Where published**. An order for publication must direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if

there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. The summons must be published four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county in which the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff must so state in the affidavit or declaration required by paragraph D(6) of this rule, and the court may order publication in a comparable manner at that location in addition to, or in lieu of, publication in the county in which the action is commenced.

D(6)(a)(ii) **Alternative service by posting**. The court may order service by posting true copies of the summons and complaint at a designated location in the courthouse where the action is commenced and at any other location that the affidavit or declaration required by subsection D(6) of this rule indicates that the posting might reasonably result in actual notice to the defendant.

D(6)(b) **Electronic alternative service**. Electronic forms of alternative service may include, but are not limited to: e-mail; text message; facsimile transmission as defined in Rule 9 F; or posting to a social media account. The affidavit or declaration filed with a motion for electronic alternative service must include: verification that diligent inquiry revealed that the defendant's residence address, mailing address, and place of employment are unlikely to accomplish service; the reason that plaintiff believes the defendant has recently sent and received transmissions from the specific e-mail address or telephone or facsimile number, or maintains an active social media account on the specific platform the plaintiff asks to use; and facts that indicate the intended recipient is likely to personally receive the electronic transmission. The certificate of service must verify compliance with subparagraph D(6)(b)(i) and subparagraph D(6)(b)(ii) of this rule. An amended certificate of service must be filed if it later becomes evident that the intended recipient did not personally receive the electronic transmission.

D(6)(b)(i) **Content of electronic transmissions**. If the court allows service by a specific electronic method, the case name, case number, and name of the court in which the action is

1 pending must be prominently positioned where it is most likely to be read first. For e-mail
2 service, those details must appear in the subject line. For text message service, they must
3 appear in the first line of the first text. For facsimile service, they must appear at the top of the
4 first page. For posting to a social media account, they must appear in the top lines of the
5 posting.
6 D(6)(b)(ii) **Format of electronic transmissions**. If the court allows alternative service by
7 an electronic method, the summons, complaint, and any other documents must be attached in
8 a file format that is capable of showing a true copy of the original document. When an
9 electronic method is incapable of transferring transmissions that exceed a certain size, the
10 plaintiff must not exceed those express size limitations. If the size of the attachments exceeds
11 the limitations of any electronic method allowed, then multiple sequential transmissions may
12 be sent immediately after the initial transmission to complete service.
13 D(6)(c) **Unknown heirs or persons**. If service cannot be made by another method
14 described in this section because defendants are unknown heirs or persons as described in
15 Rule 20 I and J, the action will proceed against the unknown heirs or persons in the same
16 manner as against named defendants served by publication and with like effect; and any
17 unknown heirs or persons who have or claim any right, estate, lien, or interest in the property
18 in controversy at the time of the commencement of the action, and who are served by
19 publication, will be bound and concluded by the judgment in the action, if the same is in favor
20 of the plaintiff, as effectively as if the action had been brought against those defendants by
21 name.
22 D(6)(d) **Defending before or after judgment**. A defendant against whom service pursuant
23 to this subsection is ordered or that defendant's representatives, on application and sufficient
24 cause shown, at any time before judgment will be allowed to defend the action. A defendant
25 against whom service pursuant to this subsection is ordered or that defendant's
26 representatives may, on good cause shown and on any terms that may be proper, be allowed

1 to defend after judgment and within one year after entry of judgment. If the defense is
2 successful, and the judgment or any part thereof has been collected or otherwise enforced,
3 restitution may be ordered by the court, but the title to property sold on execution issued on
4 that judgment, to a purchaser in good faith, will not be affected thereby.
5 D(6)(e) **Defendant who cannot be served**. Within the meaning of this subsection, a
6 defendant cannot be served with summons by any method authorized by subsection D(3) of
7 this rule if service pursuant to subparagraph D(4)(a)(i) of this rule is not applicable, the plaintiff
8 attempted service of summons by all of the methods authorized by subsection D(3) of this rule,
9 and the plaintiff was unable to complete service; or if the plaintiff knew that service by these
10 methods could not be accomplished.
11 E **By whom served; compensation**. A summons may be served by any competent person
12 18 years of age or older who is a resident of the state where service is made or of this state and
13 is neither a party to the action, corporate or otherwise, nor any party's officer, director,
14 employee, or attorney, except as provided in ORS 180.260. However, service pursuant to
15 subparagraph D(2)(d)(i), as well as the mailings specified in paragraphs D(2)(b) and D(2)(c) and
16 part D(3)(a)(iv)(B) of this rule, may be made by an attorney for any party. Compensation to a
17 sheriff or a sheriff's deputy in this state who serves a summons [*shall be*] **is** prescribed by
18 statute or rule. If any other person serves the summons, a reasonable fee may be paid for
19 service. This compensation [*shall be*] **is** part of disbursements and [*shall be*] **is** recovered as
20 provided in Rule 68.
21 F **Return; proof of service**.
22 F(1) **Return of summons**. The summons [*shall*] **must** be promptly returned to the clerk
23 with whom the complaint is filed with proof of service or mailing, or that defendant cannot be
24 found. The summons may be returned by first class mail.
25 F(2) **Proof of service**. Proof of service of summons or mailing may be made as follows:
26 F(2)(a) **Service other than publication**. Service other than publication [*shall*] **must** be

1 proved by:

2 F(2)(a)(i) **Certificate of service when summons not served by sheriff or deputy**. If the

3 summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating:

4 the specific documents that were served; the time, place, and manner of service; that the

5 server is a competent person 18 years of age or older and a resident of the state of service or

6 this state and is not a party to nor an officer, director, or employee of, nor attorney for any

7 party, corporate or otherwise; and that the server knew that the person, firm, or corporation

8 served is the identical one named in the action. If the defendant is not personally served, the

9 server [*shall*] **must** state in the certificate when, where, and with whom true copies of the

10 summons and the complaint were left or describe in detail the manner and circumstances of

11 service. If true copies of the summons and the complaint were mailed, the certificate may be

12 made by the person completing the mailing or the attorney for any party and [*shall*] **must** state

13 the circumstances of mailing and the return receipt, if any, [*shall*] **must** be attached.

14 F(2)(a)(ii) **Certificate of service by sheriff or deputy**. If the summons is served by a sheriff

15 or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating: the specific

16 documents that were served; the time, place, and manner of service; and, if defendant is not

17 personally served, when, where, and with whom true copies of the summons and the

18 complaint were left or describing in detail the manner and circumstances of service. If true

19 copies of the summons and the complaint were mailed, the certificate [*shall*] **must** state the

20 circumstances of mailing and the return receipt, if any, [*shall*] **must** be attached.

21 F(2)(b) **Publication**. Service by publication [*shall*] **must** be proved by an affidavit or by a

22 declaration.

23 F(2)(b)(i) A publication by affidavit [*shall*] **must** be in substantially the following form:

24 ____

25 **Affidavit of Publication**

26 State of Oregon)

1) ss.

2 County of)

3 I, ______, being first duly sworn, depose and say that I am the ______ (here set forth the

4 title or job description of the person making the affidavit), of the ______, a newspaper of

5 general circulation published at ______ in the aforesaid county and state; that I know from my

6 personal knowledge that the ______, a printed copy of which is hereto annexed, was published

7 in the entire issue of said newspaper four times in the following issues: (here set forth dates of

8 issues in which the same was published).

9 Subscribed and sworn to before me this ______ day of _____, 2______.

10

11 ________________________

12 Notary Public for Oregon

13 My commission expires

14 ____ day of ____, 2____.

15 ____

16 F(2)(b)(ii) A publication by declaration [*shall*] **must** be in substantially the following form:

17 ____

18 **Declaration of Publication**

19 State of Oregon)

20) ss.

21 County of)

22 I, ______, say that I am the ______ (here set forth the title or job description of the

23 person making the declaration), of the ______, a newspaper of general circulation published at

24 ______ in the aforesaid county and state; that I know from my personal knowledge that the

25 ______, a printed copy of which is hereto annexed, was published in the entire issue of said

26 newspaper four times in the following issues: (here set forth dates of issues in which the same

was published).

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

____

___ day of _____, 2____

____

F(2)(c) **Making and certifying affidavit**. The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting in that capacity by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of that person [*shall*] **must** be affixed to the affidavit. The signature of the notary or other official, when so attested by the affixing of the official seal, if any, of that person, [*shall be*] **is** prima facie evidence of authority to make and certify the affidavit.

F(2)(d) **Form of certificate, affidavit, or declaration**. A certificate, affidavit, or declaration containing proof of service may be made on the summons or as a separate document attached to the summons.

F(3) **Written admission**. In any case proof may be made by written admission of the defendant.

F(4) **Failure to make proof; validity of service**. If summons has been properly served, failure to make or file a proper proof of service [*shall*] **does** not affect the validity of the service.

G **Disregard of error; actual notice**. Failure to comply with provisions of this rule relating to the form of a summons, issuance of a summons, or who may serve a summons [*shall*] **does** not affect the validity of service of that summons or the existence of jurisdiction over the person if the court determines that the defendant received actual notice of the substance and

pendency of the action. The court may allow amendment to a summons, affidavit, declaration, or certificate of service of summons. The court [*shall*] **will** disregard any error in the content of a summons that does not materially prejudice the substantive rights of the party against whom the summons was issued. If service is made in any manner complying with subsection D(1) of this rule, the court [*shall*] **will** also disregard any error in the service of a summons that does not violate the due process rights of the party against whom the summons was issued.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(a)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Doug Defendant
123 SE Smith Lane
Portland OR 97204

NOTICE: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the plaintiff or petitioner will win automatically. To appear you must, within 30 days of the date you receive this summons, file a legal document called a "motion," "answer," or "response." To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the plaintiff or petitioner, or on the plaintiff or petitioner if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.

If you have questions, contact an attorney immediately. If you need help finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service:

www.oregonstatebar.org / (800) 452-7636

For more information you may find helpful in understanding this case, visit:

courts.oregon.gov *OR* **www.oregonlawhelp.org**

____

Larry Lawyer, OSB No. 99xxxx
620 SW 5th Ave, Suite 1225
Portland OR 97204
(503) 999-9999
larry@lawyer.com

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(b)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Josh Wilson
123 SE Peters Lane
Portland OR 97212

NOTICE: READ THESE PAPERS CAREFULLY!

You must "appear" to protect your rights in this matter. To appear you must, within 30 days of the date you receive this summons, file with the court a legal document called a "motion," a "reply" to a counterclaim, or an "answer" to a cross-claim. To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed this summons, or on that party if they do not have an attorney. You must also file "proof of service." Proof of service is a signed statement describing when and how your legal document was served.

If you have questions, contact an attorney immediately. If you need help finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service:

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____

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PATTY PLAINTIFF,	)	
	)	
Plaintiff,	)	CASE NO 123-4567
	)	
v.	)	SUMMONS
	)	**C(3)(c)**
DOUG DEFENDANT,	)	
	)	
Defendant.	)	

To: Josh Wilson
123 SE Peters Lane
Portland OR 97212

NOTICE: READ THESE PAPERS CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees may be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To appear you must, within 30 days of the date you receive this summons, file with the court a legal document called a "motion" or "reply." To file, you must give your legal document to the clerk of the court that appears at the top of this summons. You may need to pay a filing fee. Your legal document must be in proper form as required by the Oregon Rules of Civil Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as required by ORCP 7 D, on the attorney for the party that signed this summons, or on that party if they do not have an attorney. You must also file “proof of service.” Proof of service is a signed statement describing when and how your legal document was served.

If you have questions, contact an attorney immediately. If you need help finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral Service:

www.oregonstatebar.org / (800) 452-7636

For more information you may find helpful in understanding this case, visit:

courts.oregon.gov *OR* **www.oregonlawhelp.org**

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1 **SERVICE AND FILING OF PLEADINGS**

2 **AND OTHER DOCUMENTS**

3 **RULE 9**

4 **A Service; when required.** Except as otherwise provided in these rules, every order;
5 every pleading subsequent to the original complaint; every written motion other than one that
6 may be heard ex parte; and every written request, notice, appearance, demand, offer to allow
7 judgment, designation of record on appeal, and similar document [*shall*] **must** be served on
8 each of the parties. No service need be made on parties in default for failure to appear except
9 that pleadings asserting new or additional claims for relief against [*them shall*] **parties in**
10 **default must** be served on [*them*] **those parties** in the manner provided for service of
11 summons in Rule 7.

12 **B Service; how made.** Except as otherwise provided in Rule 7 or Rule 8, whenever under
13 these rules service is required or permitted to be made on a party, and that party is
14 represented by an attorney, the service [*shall*] **must** be made on the [*attorney*] **attorney,**
15 unless otherwise ordered by the court. Service on the attorney or on a party [*shall*] **must** be
16 made by delivering a copy to that attorney or party; by mailing [*it*] **the copy** to the attorney's or
17 party's last known address; by e-mail as provided in section G of this rule; by electronic service
18 as provided in section H of this rule; or, if the party is represented by an attorney, by facsimile
19 communication as provided in section F of this rule. Delivery of a copy within this rule means:
20 handing [*it*] **the copy** to the person to be served; or leaving [*it*] **the copy** at the person's office
21 with the person who is apparently in charge; or, if there is no one in charge, leaving the copy in
22 a conspicuous place therein; or, if the office is closed or the person to be served has no office,
23 leaving the copy at the person's dwelling house or usual place of abode with some person 14
24 years of age or older then residing therein. A party who has appeared without providing an
25 appropriate address for service may be served by filing the pleading or other document with
26 the court. Service by mail is complete on mailing. Service of any notice or other document to

bring a party into contempt [*may be only on that party personally.*] **must be by personal service on that party.**

C Filing; proof of service.

C(1) **Generally**. Except as provided by section D of this rule, all documents required to be served on a party by section A of this rule [*shall*] **must** be filed with the court within a reasonable time after service. Except as otherwise provided in Rule 7 [*and*] **or** Rule 8, proof of service of all documents required or permitted to be served may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by certificate of an attorney. Proof of service may be made on the document served or as a separate document attached thereto.

C(2) **Proof of service by facsimile communication**. If service is made by facsimile communication under section F of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an [*attorney*] **attorney,** and the person making service [*shall*] **must** attach to the affidavit, declaration, or certificate printed confirmation of receipt of the message generated by the transmitting technology.

C(3) **Proof of service by e-mail**. If service is made by e-mail under section G of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an attorney, stating either that the other party has consented to service by e-mail or that [*he or she*] **the sender** received confirmation that the message and **any** attachment were received by the designated recipient and specifying the method by which the sender received confirmation. An automatically generated message indicating that the recipient is out of the office or is otherwise unavailable cannot support the required certification, nor can an automatically generated e-mail delivery status notification.

C(4) **Proof of service by electronic service**. If service is made by electronic service under section H of this rule, proof of service [*shall*] **must** be made by affidavit or by declaration of the person making service, or by certificate of an attorney, specifying that service was completed

1 by electronic service.

2 C(5) **Proof of service on a party without a service address**. Service on a party who has

3 appeared without providing an appropriate address for service [*shall*] **must** be by affidavit or

4 by declaration of the person filing the document, or by certificate of an attorney, that service

5 by filing as provided in section B of this rule is appropriate.

6 **[*D When filing not required.*]** **D Documents not to be filed.** Notices of deposition,

7 requests made pursuant to Rule 43, and answers and responses thereto [*shall not be*] **are not**

8 **to be** filed with the court. This rule [*shall*] **does** not preclude their use as exhibits or as

9 evidence on a motion or at trial. Offers to allow judgment made pursuant to Rule 54 E [*shall*

10 *not be*] **are not to be** filed with the court except as provided in Rule 54 E(3).

11 **E Filing with the court defined**. The filing of pleadings and other documents with the

12 court as required by these rules [*shall*] **must** be made by filing them with the clerk of the court

13 or the person exercising the duties of that office. The clerk or the person exercising the duties

14 of that office [*shall*] **will** endorse on the pleading or document the time of day, the day of the

15 month, the month, and the year. The clerk or person exercising the duties of that office is not

16 required to receive for filing any document unless a caption that includes the name of the

17 court; the case number of the action, if one has been assigned; the title of the document; and

18 the names of the parties [*are*] **is** legibly displayed on the front of the document, nor unless the

19 contents of the document are legible. Further, the clerk is not required to receive for filing any

20 document that does not include the name, address, and telephone number of the **filing** party

21 or the attorney for the party, if the **filing** party is represented.

22 **F Service by facsimile communication**. Whenever under these rules service is required or

23 permitted to be made on a party, and that party is represented by an attorney, the service may

24 be made on the attorney by means of facsimile communication if the attorney has such

25 technology available and said technology is operating at the time service is made. Service in

26 this manner [*shall be*] **is** subject to Rule 10 B. Facsimile communication includes: a telephonic

facsimile communication device; a facsimile server or other computerized system capable of receiving and storing incoming facsimile communications electronically and then routing them to users on paper or via e-mail; or an internet facsimile service that allows users to send and receive facsimiles from their personal computers using an existing e-mail account.

G Service by e-mail. Whenever under these rules service is required or permitted to be made on a party, unless the party or the party's attorney is exempted from service by e-mail by an order of the court, the service may be made by means of e-mail. Service is complete under this rule on confirmation of receipt of the e-mail or, if the receiving party has consented to service by e-mail, on transmission of the e-mail. Any party or any party's attorney must provide the name and e-mail address of that party or that attorney and that attorney's designee, if any, on any document served by e-mail. Any party or attorney who has communicated by e-mail or by electronic service must notify the other parties in writing of any changes to that party's or that attorney's e-mail address. Service in this manner [*shall be*] **is** subject to Rule 10 B.

H Service by electronic service. As used in these rules, "electronic service" means using an electronic filing system provided by the Oregon Judicial Department and in the manner prescribed in rules adopted by the Chief Justice of the Oregon Supreme Court.

ORCP Rule 22 — Third-Party Practice – Summary of COCP History

Subcommittee members:
Lara Johnson
Nadia Dahab
Eric Kekel
Mike Shin
Hon. Benjamin Bloom

Oregon Rule of Civil Procedure 22 governs counterclaims, cross-claims, and third-party practice. Subsection C specifically addresses when and how a defending party may bring an additional party into an action—the process known as impleader or "third-party practice." The history of ORCP 22C reflects a persistent tension between two competing ideas: protecting plaintiffs and existing parties from prejudicial delay, on one hand, and ensuring that defendants have a fair opportunity to implead parties who may share liability, on the other. That tension has never been fully resolved, and the consent-of-parties requirement at the heart of the rule has ultimately survived several efforts to eliminate it.

Pre-1982: ORCP 22 Origins

ORCP 22 C and its predecessor statute, ORS 16.315, were modeled after Federal Rule of Civil Procedure 14(a). Third-party practice has been available in Oregon since 1975. Under the original rule, a defending party had ten (10) days after service of its original answer to file a third-party complaint as a matter of right, without obtaining leave of court. If that window closed, the defendant had to seek leave of court, with notice to all parties.

By the early 1980s, significant controversy had developed over whether third-party practice should be retained at all. Judges responding to a bar committee questionnaire were overwhelmingly in favor of abolishing it, citing delays, increased motion practice, discovery complications, and jury confusion. The practicing bar, by contrast, generally viewed it as an effective procedural device that facilitated settlement and avoided multiple trials. In 1981, the Council voted to abolish third-party practice entirely (a decision it later rescinded).

1982 Amendment

In May 1982, a deadlocked ORCP 22 C subcommittee referred the matter to the full Council, attaching a proposal from the OSB's Procedure and Practice Committee. That proposal recommended amending ORCP 22 C to address judicial concerns while preserving the mechanism. The key proposed changes included: requiring the third-party plaintiff to demonstrate "due diligence" in seeking late impleader; authorizing the court to refuse leave if the filing would substantially prejudice existing parties or unreasonably delay the trial; and allowing the court to impose terms and conditions on any leave granted.

At the Council's December 4, 1982 meeting, the Council adopted an amended version of Rule 22 C. Most significantly, the 10-day right-of-service window was replaced with a 90-day period running from service of the plaintiff's summons and complaint on the defending party. After 90 days, the rule required both (1) agreement of the parties who have appeared, and (2) leave of court. The version passed unanimously. A contemporaneous comment to the rule provided that within the 90-day window, third parties may be brought in as a matter of right; after 90 days, they may only be added by agreement of parties who have appeared and leave of court. This consent-plus-leave structure became the defining feature of ORCP 22 C(1) going forward.

1992 Challenge to Consent Requirement
The Council considered changes to ORCP 22 C in the 1991–1993 biennium, including whether to strike the consent-of-parties language added in 1982. The proposal was rejected. This was the first of a series of unsuccessful efforts to remove the consent requirement from the rule.

1993–1995 Challenge to Consent Requirement
At the May 14, 1994 meeting, the Council took up a proposal by member Rudy Lachenmeier to amend ORCP 22 C(1). His motion would have retained the leave-of-court requirement for post-90-day impleader but deleted the additional requirement of obtaining "agreement of parties who have appeared." A competing proposal discussed by the subcommittee would have eliminated both requirements and instead required only leave of court. After extensive debate, the Council voted on the motion to delete the agreement-of-parties requirement. The motion failed to carry.

The issue did not rest there within that biennium. Member John Hart later re-presented the same proposed amendment at the Council's December 10, 1994 meeting, with Executive Director Maury Holland also pressing for the change. No vote appears to have been taken at that meeting, and the amendment did not advance.

2000 Subcommittee Review of Consent Requirement
In the 1999–2000 biennium, the Council assigned a subcommittee (Judge Richard Barron, (now Judge) Benjamin Bloom, and Bill Gaylord) to revisit ORCP 22 C(1). Three issues were before the subcommittee: (1) whether the 90-day period should be shortened; (2) whether the conjunctive agreement-of-parties-plus-leave-of-court requirement should be changed; and (3) whether the rule should be clarified to allow impleading a party liable to the plaintiff but not to the defendant.

The subcommittee did not recommend changing the 90-day period. On the consent issue, its consensus was that the requirement that a defendant obtain both agreement of the parties who have appeared and leave of court should not be changed—specifically, that the court should not be able to allow the filing of a third-party complaint if the plaintiff opposed it after the 90-day window had run. Bill Gaylord, in a written submission, argued for retaining the consent structure on the grounds that when all existing parties agree to a late joinder, there is no need to burden the court with a leave motion at all. The Council took no final action to change the rule at this time.

2018 Review – Published Amendment; Fails Supermajority
The 2017–2019 biennium saw the most sustained challenge to the consent requirement. At that time, the Council published a proposed amendment to ORCP 22 C(1) that would have eliminated the requirement that all parties who have appeared consent to a post-90-day third-party filing. Under the published amendment, a defendant would need only leave of court, not the agreement of existing parties, to bring in a third-party defendant after 90 days.

Proponents argued that the existing consent requirement gives the plaintiff a unilateral veto over a legitimate procedural motion—something that does not exist anywhere else in the ORCPs—and that it improperly restricts the trial court's discretion. Defense-side members noted that, as a practical matter, it is often impossible to identify all relevant parties within 90 days, particularly in medical malpractice and complex multi-party cases. They further argued that changes to Oregon's tort law (including the elimination of joint and several liability under ORS 31.600) had fundamentally altered the strategic context since 1982.

Opponents countered that the rule reflects a deliberate historical compromise between the plaintiffs' bar and the defense bar—the defense secured an extended 90-day window in exchange for the consent requirement thereafter. They emphasized that late joinder prejudices plaintiffs by diluting verdict forms, complicating discovery, and threatening case timelines. They also noted that two prior attempts to remove the consent requirement (in 1992 and 1999) had failed.

At the December 8, 2018 meeting, the Council voted on whether to promulgate the published amendment. The motion received 11 votes in favor and 9 votes opposed. Because the Council requires a supermajority of affirmative votes to promulgate, the motion failed. The consent-of-parties requirement was retained.

Oregon Rule of Civil Procedure 22C(1). Third-party practice.

1. **No Change**

Change: None. The rule is retained as currently written.

Impact: The 90-day as-of-right window is preserved, and after that period a third-party plaintiff must obtain both the agreement of all appearing parties and leave of court. Plaintiffs retain an absolute veto over late third-party complaints.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court.

2. **Consent with Judicial Override**

Change: Retains the current conjunctive requirement of party agreement and court leave after the 90-day window, but adds an explicit judicial override. The court may grant leave over a party's objection only upon express findings on all three prongs: late discovery of the claim despite reasonable diligence, prompt filing after discovery, and no substantial prejudice to any appearing party or unreasonable delay to trial.

Impact: Preserves the plaintiff's practical ability to block late impleader in the ordinary case while eliminating the absolute veto that has been the central objection to the current rule. The narrow override addresses the concern — raised in the 2018 debate — that the 90-day window is insufficient in complex cases where the basis for third-party liability does not emerge until later in discovery. Because all three findings are required and must be express, circuit courts have a clear and reviewable standard, resolving the trial court split identified in current practice.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and

complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court. **If a party objects to such service, the court may nonetheless grant leave upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not prejudice any appearing party or unreasonably delay the trial.**

Deleted: **Notwithstanding a party's objection, the court may grant leave only upon an express finding that: (a) the basis for the third-party claim could not have been discovered through reasonable diligence within the 90-day period; (b) the motion was filed promptly after the basis for the claim was or should have been discovered; and (c) granting leave will not substantially prejudice any appearing party or unreasonably delay the trial.**

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3. Eliminate "Agreement of the Parties"

Change: Removes the requirement to obtain party agreement after the 90-day window; court leave alone is sufficient for a late third-party complaint.

Impact: Eliminates the plaintiff's unilateral veto over late impleader and gives courts sole discretion to permit or deny it. Aligns Oregon with the federal rule and most other states, which require only court leave after the initial as-of-right window.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain [*agreement of parties who have appeared and*] leave of court.

4. Either "Agreement" or "Leave of Court"

Change: Replaces the conjunctive requirement of both party agreement and court leave with a disjunctive requirement of either party agreement or court leave after the 90-day window.

Impact: Reduces the burden on the third-party plaintiff — party consent alone suffices (without a court motion), but the court can also override an objecting party.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party

plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared [*and*] **or** leave of court.

5. Similar to the Federal Rule

Change: Shortens the as-of-right window from 90 days to 14 days, and replaces all requirements after that period with a simple court-leave requirement by motion, eliminating party consent entirely.
Impact: Substantial departure from current Oregon practice; aligns the rule with FRCP 14. The shorter window ensures earlier judicial oversight but may disadvantage defendants who do not identify third-party claims within 14 days of answering.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than [*90 days after service of the plaintiff's summons and complaint on the defending party.*] **14 days after serving its original** answer. Otherwise the third-party plaintiff must [*obtain agreement of parties who have appeared and*] **, by motion, obtain leave of court before filing the third-party complaint**.

6. Extended Time Period

Change: Extends the as-of-right window (e.g., from 90 to 180 days) while retaining the current conjunctive requirement of both party agreement and court leave for late impleader.

Impact: Addresses the concern — raised at the 2018 Council meeting — that the 90-day window is insufficient in complex cases such as medical malpractice, while preserving the existing consent structure. Alternatives such as a trial-date-based trigger offer additional flexibility where no trial date has been set.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party

plaintiff as a matter of right not later than [90] **180** days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court.

Possible alternatives:

- Shorter/longer period (e.g., 120/270 days)
- Deadline based on time before trial (e.g., 120 before the date set for trial)
- Matter of right until trial date set (e.g., [not later than 90 days after service of the plaintiff's summons and complaint on the defending party] any time before a trial date has been set)

7. Discovery Rule

Change: Replaces the fixed 90-day clock with a discovery-based trigger: the as-of-right period runs from when the third-party plaintiff discovers or reasonably should have discovered the substantial possibility of the third-party defendant's liability.

Impact: Addresses cases where the basis for third-party practice does not become apparent within 90 days of service. Introduces uncertainty about when the clock starts, which may itself generate litigation. The consent requirement after the discovery-based window is retained.

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after [*service of the plaintiff's summons and complaint on the defending party*] **the third-party plaintiff discovers, or reasonably should have discovered, the substantial possibility of the third-party defendant's liability.** Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court.

Possible alternatives:

- discovers, or in the exercise of reasonable care should have discovered, the substantial possibility of the third-party defendant's liability

- knew, or should have known the substantial possibility of the third-party defendant's liability

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PERPETUATION OF TESTIMONY OR EVIDENCE

BEFORE ACTION OR PENDING APPEAL

RULE 37

[***A Before action.***

A(1) ***Petition****.*] **A Before action.** A person who desires to perpetuate testimony or to obtain discovery to perpetuate evidence under Rule 43 or Rule 44 regarding any matter that may be cognizable in any court of this state may file a petition in the circuit court in the county of such person's residence or the residence of any expected adverse party. [*The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in a court of this state and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, which would be the subject of such action; (b) the subject matter of the expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or which is connected with the subject matter of the expected action; (c) the facts which petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known; and, (e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery which petitioner expects to elicit and obtain from each. The petition shall name persons to be examined and ask for an order authorizing the petitioner to take their depositions for the purpose of perpetuating their testimony, or shall name persons in the petition from whom discovery is sought and shall ask for an order allowing discovery under Rule 43 or Rule 44 from such persons for the purpose of preserving evidence.*]

A(1) Contents of petition. The petition must be entitled in the name of the petitioner

and must show:

A(1)(a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in a court of this state and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, that would be the subject of such action;

A(1)(b) the subject matter of the expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or that is connected with the subject matter of the expected action;

A(1)(c) the facts that petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate;

A(1)(d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known;

A(1)(e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery that petitioner expects to elicit and obtain from each; and,

A(1)(f) a request for an order:

A(1)(f)(i) authorizing the petitioner to take the depositions of the parties to be examined for the purpose of perpetuating their testimony; or

A(1)(f)(ii) allowing discovery under Rule 43 or Rule 44 from the persons from whom discovery is sought for the purpose of preserving evidence.

A(2) **Notice and service**. The petitioner [*shall*] **must** thereafter serve a notice [*upon*] **on** each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein, for the order described in the petition. The notice [*shall*] **must** be served either within or

1 without the state in the manner provided for service of summons in Rule **<u>7.</u>** [*7, but if*] **<u>If</u>** such

2 service cannot with due diligence be made [*upon*] **<u>on</u>** any expected adverse party named in the

3 petition, the court may make such order as is just for service by publication or [*otherwise, and*

4 *shall*] **<u>otherwise. The court must</u>** appoint, for persons not served with summons in the manner

5 provided in Rule 7, an attorney [*who shall*] **<u>to</u>** represent [*them and*] **<u>them,</u>** whose services

6 [*shall*] **<u>must</u>** be paid for by petitioner in an amount fixed by the court, [*and, in case they are not*

7 *otherwise represented, shall*] **<u>to</u>** cross examine the deponent. Testimony and evidence

8 perpetuated under this rule [*shall*] **<u>will</u>** be admissible against expected adverse parties not

9 served with notice only in accordance with the applicable rules of evidence. If any expected

10 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

11 A(3) **Order and examination**. If the court is satisfied that the perpetuation of the

12 testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice,

13 [*it shall make an order designating or describing*] **<u>discovery may be had in accordance with</u>**

14 **<u>these rules on the court's order, which must:</u>**

15 **<u>A(3)(a) designate or describe</u>** the persons whose depositions may be taken and

16 [*specifying*] **<u>specify</u>** the subject matter of the examination and whether the depositions [*shall*]

17 **<u>will</u>** be taken [*upon*] **<u>on</u>** oral examination or written questions; or [*shall make an order*

18 *designating or describing*]

19 **<u>A(3)(b) designate or describe</u>** the persons from whom discovery may be sought under

20 Rule [*43*] **<u>43,</u>** specifying the objects of such discovery; or [*shall make an order*]

21 **<u>A(3)(c) set</u>** [*for*] a physical or mental examination as provided in Rule 44.

22 **<u>A(4) Applicable discovery rules.</u>** For the purpose of applying these rules to discovery

23 before action, each reference therein to the court in which the action is pending [*shall*] **<u>will</u>** be

24 deemed to refer to the court in which the petition for such discovery was filed.

25 B **Pending appeal**. If an appeal has been taken from a judgment of a court to which these

26 rules apply or before the taking of an appeal if the time therefor has not expired, the court in

1 which the judgment was rendered may allow the taking of the depositions of witnesses to
2 perpetuate their testimony or may allow discovery under Rule 43 or Rule 44 for use in the
3 event of further proceedings in such court. In such case the party who desires to perpetuate
4 the testimony or obtain the discovery may make a motion in the court therefor [*upon*] <u>**on**</u> the
5 same notice and service thereof as if the action was pending in the circuit court. [*The motion*
6 *shall show: (1) the names and addresses of the persons to be examined or from whom other*
7 *discovery is sought and the substance of the testimony or other discovery which the party*
8 *expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such*
9 *other discovery. If the court finds that the perpetuation of the testimony or other discovery is*
10 *proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3)*
11 *of section A of this rule and thereupon discovery may be had and used in the same manner and*
12 *under the same conditions as are prescribed in these rules for discovery in actions pending in the*
13 *circuit court.*]
14 <u>**B(1) Contents of motion. The motion must show:**</u>
15 <u>**B(1)(a) the names and addresses of the persons to be examined or from whom other**</u>
16 <u>**discovery is sought and the substance of the testimony or other discovery which the party**</u>
17 <u>**expects to elicit from each; and**</u>
18 <u>**B(1)(b) the reasons for perpetuating their testimony or seeking such other discovery.**</u>
19 <u>**B(2) Order of the court. If the court finds that the perpetuation of the testimony or**</u>
20 <u>**other discovery is proper to avoid a failure or delay of justice, it may make an order as**</u>
21 <u>**provided in subsection A(3) of this rule. Thereupon, discovery may be had and used in the**</u>
22 <u>**same manner and under the same conditions as are prescribed in these rules for discovery in**</u>
23 <u>**actions pending in the circuit court.**</u>
24 **C Perpetuation by action**. This rule does not limit the power of a court to entertain an
25 action to perpetuate testimony.
26 **D Filing of depositions**. Depositions taken under this rule [*shall*] <u>**must**</u> be filed with the

1 court in which the petition is filed or the motion is made.

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