

MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES
 Saturday, June 6, 2026, 9:30 a.m.
 Zoom Meeting Platform

ATTENDANCE

Members Present:

Hon. Benjamin M. Bloom
 Nadia Dahab
 Hon. Andrew Erwin
 Hon. Christopher L. Garrett
 Barry J. Goehler
 Hon. Jonathan R. Hill
 Melissa Hopkins
 Ryan Jennings
 YoungWoo Joh
 Lara Johnson
 Derek Larwick
 Julian Marrs
 Hon. Thomas A. McHill
 Hon. Michelle McIver
 Hon. Melvin Oden-Orr
 Michael Shin
 Tom Spooner
 Alicia Wilson

Members Absent:

Eric Kekel
 Bryce Whitman Passadoré
 Hon. Robert Raschio
 Hon. Scott Shorr
 Hon. Todd Van Rysselberghe

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 10 • ORCP 17 • ORCP 22 • ORCP 24 • ORCP 36 • ORCP 37 • ORCP 38 • ORCP 47 • ORCP 55 • ORCP 67	• 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 May 9, 2026, Minutes

Mr. Goehler called the Council's attention to the draft minutes from the May 9, 2026, meeting (Appendix A) and asked whether there were any suggestions for corrections. Hearing none, he asked for a motion to approve the minutes. Ms. Dahab made such a motion, Judge Bloom seconded, and the motion was approved by voice vote.

III. Administrative Matters

A. Staff Comments

This topic was carried over to the September agenda.

B. Council Budget Issues

Judge Peterson reported that he has posted a position for a summer research assistant position with Lewis & Clark Law School. His intention is to have this hire check through the Council's website's materials to see if there are items missing from those that were published. He noted that the Rule 22 committee had encountered a missing page during research earlier in the biennium. He asked Council members to let him know if there are any other tasks they can think of for a research assistant to work on.

IV. Old Business

A. Committee Reports

1. Declaration of Expert Opinion/Rule 47 E

Mr. Joh reminded the Council that discussion regarding Rule 47 had been rolled over for the last two meetings. He noted that, when the committee had last met in March, the discussion focused on whether to recommend that the Council dissolve the committee. Ultimately, a majority of the members present at the committee meeting had voted to recommend dissolving the committee. There was a robust discussion during the April Council meeting, after which the Council decided to allow members more time to think over the matter before making a final decision.

Mr. Joh stated that he had recently learned that there is a group lobbying the Attorney General (AG) to take a particular position on this matter. From his understanding, this group conveyed to the AG that the Council is considering expanding expert discovery, which is certainly not his understanding of the

purpose of the committee. Mr. Joh stated that he does not have any details about this group. He also reiterated that, while he is an attorney for the Department of Justice (DOJ), he is a Council member in a personal capacity and he does not speak for the DOJ or the AG.

Mr. Goehler pointed out that one of the nice things about the Council having public meetings with minutes is that there should not be any confusion about the Council's discussions or intent. He noted that the public can speculate about anything, but the transparency of the Council's process speaks for itself. The discussions the Council has had regarding Rule 47 have been comprehensive and there is a good record. Mr. Goehler opined that, since the Council will not have any draft to publish this biennium, there is probably not a need to formally dissolve the committee. He stated that the issue will likely be carried over or brought up again next biennium, and that it will be good to have the backdrop of this biennium's discussion to color how the issues are presented and perhaps streamline some of that discussion.

Judge Peterson noted that the lack of progress on Rule 47 is somewhat disturbing to him, whether or not the suggestion made by Judge Eric Dahlin has merit. He compared the work of the Rule 47 committee with that of the Rule 22 committee and noted the obvious difference. He stated that, a number of times during his time with the Council, ideas have come up that seemed very good to some people. These ideas were roundly discussed, proposals were put forward, and in some cases published, and then the ideas were beaten into submission and not been raised with the Council again. With the current Rule 47 suggestion, whether it is a good one or a bad one, the Council has not come up with a particular proposal to consider on its merits. At one point during the Council's discussion, it was suggested that Rule 47 G takes care of the problem because it includes sanctions; however, for the many cases that are settled, Rule 47 G does not provide a solution. It was also suggested that adding a requirement to deliver a sealed document regarding an expert witness to the court would be offensive to Oregon's notions of legal professionalism. While Judge Peterson thinks that is a perfectly valid position to take, he also felt that the position had not been fully discussed. He stated that he suspects that Rule 47 will be back on next biennium's agenda, because the question has not been fully answered.

Mr. Goehler disagreed with Judge Peterson. He stated that his perception is that the issue was roundly debated with a good number of people saying that the system is fine the way it is. For the cases that settle, they are being settled on all issues. If someone has an issue with a bogus expert declaration but decides to settle, they are agreeing to live with that. Mr. Goehler stated that he feels the issue has been pretty well explored, but agreed that there is always room for more debate. It is important to remember that, just because this group of Council members thinks a certain way, the composition of the Council will change and next biennium's Council may want to revisit Rule 47. Judge Hill noted

that Rule 35 took two biennia to work out, so this issue may be similar.

Mr. Goehler thanked the committee members for their work.

2. Post-Judgment Subpoenas/Rule 55, Rule 36

Judge Peterson directed the Council's attention to the committee's materials (Appendix B). He stated that his recollection from the last Council meeting is that the changes to Rule 36, which specifically mention Rule 55, are adequate. However, he wanted the Council to take one last look at a potential change to Rule 55 to ensure that it is not needed. He noted that a potential problem with Rule 55 is that it has been argued that the phrase "while the action is pending" means that subpoenas cannot be issued after a general judgment has been entered in an action. He recalled that the consensus of the Council seemed to be that the action is still pending for purposes of collection regardless of the entry of a general judgment. Judge Peterson stated that his suggestion to the Council would be to stick to the proposed draft amendment of Rule 36 and to not proceed with the draft of Rule 55, unless any Council member feels strongly otherwise. The Council agreed.

Judge Peterson then moved on to the proposed draft amendment to Rule 36. He pointed out that a change had previously been made in new section B(4) to simplify the language regarding when a subpoena to enforce a judgment is available after enforcement of a judgment has been stayed. Mr. Larwick stated that he thinks that the new language is an improvement and is less awkward than the previous version. Judge Peterson wanted to clarify that, when an undertaking that has been filed, occasionally the undertaking may seem to be dissolving. The current language does not specifically address an undertaking but, rather, simply states that one must talk to a judge if there has been a stay. The language is all-encompassing but, if an undertaking seems to be disappearing, that would be a reason to go talk to the judge. He stated that he did not imagine that getting an order for further discovery would be difficult. Mr. Larwick also pointed out that, if there is a stay issued for one defendant but not for another defendant, that is also something that could be sorted out with a court order.

Judge Hill made a motion to approve the draft amendment of Rule 36 for the September publication agenda. Judge Erwin seconded the motion, which was approved by voice vote.

3. Service/Rules 7, 9, & 10

Judge Peterson called the Council's attention to the committee's materials (Appendix C). He noted that the most visible proposed change to Rule 7 will probably be Judge Hill's suggestion to increase the minimum type size of the

summons form. He stated that Council staff had made just a few minor changes to the last version of the draft that the Council had seen. Those changes are minor adjustments to the language of the various summons forms in the rule. Judge Peterson reminded the Council that the original suggestion in the biennial survey pointed out that there are petitioners and respondents in addition to plaintiffs and defendants. Accordingly, the language in each summons form has been changed to be more all-encompassing. The "Notice to Defendant" language at the top of each summons form has also been changed, since summonses are not always issued to defendants.

Mr. Goehler asked whether this new version was ready for consideration by the Council. Judge Peterson stated that it was. Mr. Goehler asked if any Council members had comments or concerns about the draft. Judge Hill stated that the committee has done a lot of work on the rule, and moved to place the draft on the publication docket at the September meeting. Ms. Dahab seconded the motion, which was approved by voice vote.

Judge Peterson then referenced the draft amendment to Rule 9. He noted that part of the genesis for looking at the service rules came from suggestions from attorneys who do not like the 3-day mail rule in ORCP 10 C. He stated, while that the committee decided not to change the 3-day rule, it had looked at other ways to respond to those who had requested the change. Judge Peterson stated that he had made a suggestion to allow requests for production of documents to be filed. That suggestion did not gain traction; however, in looking at it, he realized that the lead line for Rule 9 D, "When filing not required," is not quite accurate. Judge Peterson pointed out that, unlike statutes, the lead lines in the ORCP are to be read as a part of the rule. That lead line has accordingly been changed to more accurately read, "Documents not to be filed." Mr. Goehler agreed that the current lead line might lead one to believe that, while filing the documents is not required, a party could still load the court with those documents if they so choose. He thought that the change would make it a little more clear that the documents are not to be filed. Judge Peterson agreed that this is the idea behind the change: to point out that the documents are not supposed to be filed, with an exception for offers of judgment, which remains clear in the rule.

Judge Bloom stated that he appreciates the language correction, but noted that court clerks currently accept anything that is filed, including letters or any other document. He stated that he does not think that this should be changed just because a document is not supposed to be filed. Mr. Spooner agreed that there could be confusion caused with court staff on when to accept a filing or not, particularly in the case of motions to compel concerning discovery requests. He observed that it is pretty commonplace to include a notice of deposition and request for production along with exhibits, and worried that court staff may interpret that as being part of a filing and refuse to accept it. Mr. Goehler agreed and expressed concern as to whether the language "will not accept" would mean

that the clerks would be making judgments about what type of documents were being presented for filing. Ms. Nilsson asked whether the proposed language in Draft 2, where the words “shall not be” are changed to “are not to be” would be more acceptable. Judge Hill stated that, as a presiding judge, he thinks that this is a training issue that can be overcome, although it may be an extra workload issue, particularly since the courts are required to accept civil documents within a certain time frame. Mr. Joh wondered whether it is necessary to have a rule stating that documents should not be filed. He stated that his understanding is that there is not really a problem in current practice, and everyone more or less understands that there is no need to file these documents. He stated that perhaps the lead line could stay as it is and the language in the text could be changed to “the parties need not file notices of deposition” or something along those lines. He did think it would be good to change the language “answers and responses thereto” to “answers and responses to those requests.”

Judge Peterson stated that he understands the pushback on the suggested changes to section D. He did point out that other staff changes are included in the rule to make it read more clearly, but not to affect the rule’s operation. Judge Hill made a motion to approve the draft amendment of Rule 9 for the September publication agenda, with the removal of changes made to section D except for the change of the word “shall” in the second sentence to “does.” Judge Oden-Orr seconded the motion, which was approved by voice vote.

4. Third Party Practice/Rule 22

Ms. Dahab reminded the Council that, at the May Council meeting, the committee had provided to the Council for review a summary of the history of Rule 22 as well as suggestions for several different options for ways of changing, or not changing, Rule 22. During that May meeting, the Council requested that the committee reconvene and narrow down the proposals for the Council. She referred the Council to Appendix D, the committee’s revised report with narrowed down options for the Council to consider. The first option is to make no changes to the rule. The second is “consent with judicial override,” to provide a mechanism for the court, in limited circumstances, to override the absence of consent to add a third-party defendant. The third option would eliminate entirely the third-party consent requirement that is currently in Rule 22.

Ms. Dahab noted that the committee still has not reached a consensus on what, if anything, to recommend to the Council on what to do with Rule 22. Some committee members believe that the rule should remain as is and others would adopt one of the two versions that are included in the committee’s new report. In light of the absence of a recommendation, the issue is before the Council for discussion. The committee envisioned this decision to be made in two steps. First would be a Council determination on whether to make a change or not. If the answer to that question is yes, the second question would be how to make a

change given the recommendations of the committee. Judge Bloom noted that, with regard to voting to make a change, at this point it would be voting on whether to put a draft amendment on the publication agenda.

Judge Hill asked whether it would make sense to conduct a poll to see if there is consensus on any of the three options presented by the committee and proceed from there. Judge Bloom suggested voting on whether a change is desired first, then proceeding to vote on the two options for change if that vote is positive. Judge Hill appreciated that position, but suggested that he would prefer not to just vote for making a change without knowing what that change would be. Mr. Goehler suggested discussing the two potential changes before conducting an up or down vote. He summarized the two options as follows. The first option removes the consent requirement by removing seven words from the current rule and leaves it up to the judge's discretion to make the decision after being briefed by the parties. The second option adds a standard and guidelines that judges must consider before granting leave to add a new third-party defendant. The main question seems to be whether the Council would like the judicial standard expressed that way, or whether it should be left to the parties and the bench.

Mr. Joh stated that, if there is going to be a change, it seems to him that the standards approach does the least harm. It acknowledges the policy reasons for not wanting a change in previous considerations and acknowledges the disruption to the plaintiff's case by a late impleader, and also takes defendants to task when they do not make reasonable efforts to discover potential third-party defendants earlier in the litigation. He stated that he also thinks that the standards approach reduces the likelihood of cases getting remanded and having to do everything all over again. This is certainly not guaranteed, but his sense is that it would be a practical effect of the standards approach over pure discretion. Ms. Dahab clarified that by "standards approach," Mr. Joh meant the first option listed in the committee report that adds the ability of the court to override the absence of consent by the parties. Mr. Joh agreed.

Ms. Johnson stated that she is not in support of a change. She pointed out that the third-party consent requirement has been a longstanding part of Rule 22 that she thinks works well. There is already a workaround, which is a motion for consolidation, when appropriate. As far as the two options for change to be considered, she agreed with Mr. Joh. She noted that there are cases where someone may try to add a third party late, say 6 months or a year into a case, and that could very well divert or derail the discovery process, making the case much more expensive and resulting in a delay of trial. She stated that she thinks that the factors listed are really important in terms of the efficient administration of justice and making sure that claims are brought in a timely manner so that there are no unjust surprises. Having these kind of standards would bring the rule in line with the standards that are set in case law for

consolidation. A judge may not allow consolidation if it brings unfair prejudice to the existing parties or causes unreasonable delay of trial. However, Ms. Johnson re-emphasized that she does not believe that there needs to be a change to Rule 22 and that, if a change is made, there will be a substantial increase in motion practice and an increase in costs to the parties.

Mr. Shin noted that he has previously spoken in favor of a change to Rule 22. He stated that he does not have strong views about the difference between the two options presented for change. He did say that he thinks that, in practice, they will probably amount to about the same result. He does not think that being explicit about the standards and the considerations is harmful, but he does not think it is necessary. He thinks that people have experience with leave to amend pleadings, which is typically freely given unless certain factors are present. Even without that kind of language in Rule 22, courts will necessarily consider things like timeliness and due diligence in a late third-party complaint. He thinks that one option is simpler, but he does not have concerns about the other that lists standards.

Judge Bloom opined that any change to Rule 22 should mirror the federal rule with just the removal of the consent of the other party, because adding explicit factors for the court to consider seems unnecessary and inappropriate. He presented a hypothetical situation where a defendant served with a complaint on the 59th day after filing by the plaintiff fails to bring in a third party within the 31 days remaining in the 90-day “matter of right” period. If Rule 22 were changed to include explicit factors, the defendant would be out of luck based on a strict reading of those factors because they may have known about the potential third-party defendant on day 29. Judge Bloom agreed with Ms. Johnson’s comments about the likely increase in motion practice, particularly when the consolidation workaround exists, but pointed out that consolidation is cumbersome. He stated that he would opt to leave out the factors and let the decision be made at the court’s discretion, similarly to how a consolidation matter is now decided. He worried that prescribing strict criteria that are to be considered without considering anything else risks an evidentiary hearing rather than a just resolution. He noted that the court is already considering many factors if a party files their complaint a year or two after the commencement of the case for which consolidation is sought, when they should have known they had a claim, and not allowing consolidation when it is too prejudicial to the plaintiff’s position. Finally, he pointed out that there is no similar rule in any other jurisdiction with regard to third-party complaints, and this is why he feels strongly about it.

Mr. Goehler agreed with Judge Bloom. He stated that everyone knows what “leave of court” means and knows what an abuse of discretion standard is. If the Council creates a new set of standards, it may create appellate issues. Judge Hill agreed emphatically with Judge Bloom and with Mr. Goehler. He opined that

choosing the option with judicial standards could create issues.

Mr. Jennings stated that he is not in favor of a change to Rule 22, as he thinks that it is a solution in search of a problem, at least in his practice. He expressed concern about an increase in defense tactics as an unintended consequence. While he did not mean to imply that all defense lawyers are looking to delay trials and prolong litigation and increase motion practice, it would seem to be an inevitable consequence of opening the door and making it even a little bit easier to do so. Mr. Jennings stated however, that if a change were to be made, it would be important to lay out the guardrails, because that is what the law is on the subject.

Ms. Johnson noted that it is a bit difficult for lawyers to predict how different judges will rule. Judges run their courtrooms differently and some judges may be inclined to potentially allow a third party on the eve of trial just to allow for economy of scale, while some may expect that defendants will know who their third parties are very early in the case and act accordingly. As a lawyer advising her client about the risks and costs of litigation, if there are no guardrails and no standards, she would be put in a difficult position. Ms. Johnson also stated that, when she drafts complaints and decides who to name, her general rule of thumb is to name the most culpable defendants and not to name parties who are only nominally responsible. She does not believe that it serves the interests of justice in the long term for lawyers to begin to consider naming people with just nominal responsibility in order to avoid defendants engaging in late third-party practice. While she would, of course, never file a frivolous lawsuit or name someone who is not responsible in some part, she always tries to focus her attention on the defendants who are most clearly responsible. She opined that, if a change is made to Rule 22, there will be a larger number of defendants named in plaintiffs' complaints, which she does not think is consistent with the way most Oregon plaintiffs' attorneys currently practice law.

Judge Bloom recognized Ms. Johnson's concern, but pointed out there is currently the possibility that a separate action could be filed and that the court may consolidate it. The issue is just whether it would be unfairly prejudicial, and that is also discretionary. He proposed that it would make sense to make Rule 22 parallel with the consolidation rule and eliminate a provision, unique to Oregon, that allows any party to veto proposed third-party practice. This would allow the court to consider factors that prejudice the plaintiff. Judge Bloom acknowledged Ms. Johnson's observation that judges do different things and are hard to predict. However, he pointed out that a change to Rule 22 that creates a judicial override and tempers it with considerations would be problematic, since the only standard for consolidation is prejudice.

Mr. Jennings observed that Rule 22 currently states that “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 can be added as a third-party defendant.” He noted that means that a defendant could be interjecting a contract claim, an indemnity claim, or a contribution claim into his case against a defendant for all or part of what that defendant may be liable for to his plaintiff, before he wins or loses the case. That does not make sense to him, because there is no contribution or indemnity if he loses, yet it introduces into his case against the defendant that defendant's ability to collect money from others to satisfy a claim that has yet to become a judgment. Mr. Larwick agreed and pointed out that this results in multiple lawyers deposing the plaintiff over and over. Mr. Jennings stated that, instead of his client being deposed by the defendant that he chose to sue, they could now find themselves being deposed by a third-party defendant. Mr. Larwick agreed that this happens sometimes in cases against the city of Eugene or Lane County, where they will often bring in the contractors for contribution under a contract-based theory. This leads to him dealing with three law firms on everything, which is kind of an objection to third-party practice generally, but it does spill over into this discussion.

Judge Erwin stated that it has been very helpful to him to have all of the history that was put together by the committee so that he could be aware of what past Councils have considered. He stated that he thinks that it is extraordinarily important to have that history and a good process of consideration, because he is sure that this issue will come up again.

Ms. Nilsson created a series of non-binding poll questions to gauge the Council's general temperature on Rule 22. After some discussion about the proper format of the questions, the questions were narrowed down as follows:

- Would you vote to make any change to Rule 22?
 - Yes: 9 votes (50%)
 - No: 9 votes (50%)
- If you would vote for a change, for which option would you vote?
 - Abstain: 6 votes (33%)
 - Remove Consent Requirement: 6 votes (33%)
 - Judicial Override: 6 votes (33%)

Judge Peterson noted that he does not have a vote, but stated that sometimes publishing a draft rule and receiving feedback from the bench and bar is useful. He did not suggest publishing a rule simply to get a quantity of negative feedback. However, if the vote is fairly close, additional feedback could be helpful. Mr. Goehler agreed that such feedback could be helpful when there is a slight majority in favor of a change, but perhaps not when there is an even split in the Council's opinion. Judge Peterson opined that It may be worthwhile to have a recorded vote in September on whether to publish to make a more clear

legislative history. Ms. Nilsson wondered which version should be chosen for the September publication agenda in that case.

Judge Bloom agreed with Judge Peterson that the matter should be moved to the publication agenda in September and narrowed down to one version for publication, or a decision should be made to not publish anything. He stated that he thinks it is bad form for the Council to publish multiple versions of a rule.

Ms. Nilsson pointed out that there are quite a few suggested staff changes in Rule 22 that are made just for clarity and conformity with Council drafting standards. She asked that Council members take a careful look at those changes as well. She suggested that, if the Council decides to do nothing with the substantive changes, it could also decide to just adopt the staff changes. She suggested including three draft versions in the September publication agenda. Ms. Johnson asked for clarification on one of the staff changes to ensure that they are not substantive changes to the rule. Ms. Nilsson clarified that the removal of the words “any party” at the end of new subsection C(3) was simply because a new lead line had been inserted directly afterwards. She pointed out that the same words had been re-inserted after the new lead line of new subsection C(4). Ms. Johnson thanked Ms. Nilsson for the clarification.

Mr. Joh stated that, given the Council’s discussion, he was not sure that there was a need for a separate vote for a change or no change, as that will be implicit with the votes up or down on particular proposals. First, judicial override with standards; second, removal of consent requirement; and third, staff changes only. It seemed to him that the Council can move for each of those and vote on each to create a record. After some discussion among Council members on the best way to proceed, Mr. Joh made a motion to put the three draft amendments on the September publication agenda. Judge Bloom seconded the motion, which passed by voice vote.

B. Rule 37

Judge Peterson reminded the Council that the draft of Rule 37 (Appendix E) had already been approved for the September publication agenda, but that it was on today’s agenda just to make sure that the Council did not see any issues with it. He reiterated that the changes to Rule 37 had arisen when the post-judgment discovery committee had considered whether Rule 36 or Rule 37 was the better place to insert new language. The committee ultimately decided that the post-judgment discovery language was better placed in Rule 36 but, during that process, it was noticed by staff that Rule 37 had not been changed since it was originally promulgated and that it could use some cleanup. The main changes are within subsection A(1) and subsection A(4), where divisions within those subsections do not currently conform with Council drafting standards. Staff attempted to use more plain language and to include lead lines without changing the meaning or operation of the rule. Since the last Council meeting, an additional change

was made in section B at the suggestion of Mr. Goehler to improve the clarity of the text.

Judge Hill made a motion to put the draft of Rule 37 on the September publication agenda. Judge Oden-Orr seconded the motion, which passed by voice vote.

C. Address Confidentiality Program and Service

Ms. Wilson referred the Council to Appendix F, a memorandum she prepared regarding the address confidentiality program and service. She reminded the Council that she had been asked to do some initial investigation with the thought that the issue can be carried over to next biennium's agenda. She stated that the address confidentiality program (ACP) may have a potential impact on the ORCP in a way that is not necessarily obvious and that it may be a good idea to have a committee look at this issue next biennium.

Ms. Wilson explained that the ACP is about public records and whether a public body can disclose information, such as the address of a victim, or whether the public body is required to substitute the victim's address in the public record going forward. There are some exceptions, like the voter rolls, and the actual address of the person may be disclosed by the Attorney General or the Department of Justice upon court order for good cause shown. A judge would need to do an analysis as to the risks of disclosure versus the need for the information. The application for confidentiality is processed through the AG's office. If a person qualifies, they become a participant in the program and receive a substituted address so that they do not have to use their actual address when dealing with the government for various things, like service of process for legal and administrative proceedings. Issues could arise if a litigant is a participant in the program and they give their substituted address to the court. The participant's actual address would not be known. There is a provision in the statute that provides that, if a person is a participant of the program and any deadline in the ORCP provides fewer than 10 days to respond, an additional five days should be allowed. Ms. Wilson stated that she was unsure of whether that would be in addition to the additional 3 days required by Rule 10 B. There is also the question of how a litigant or the court would know that a person is a participant in the program and that they are supposed to be allowed five extra days.

Ms. Wilson also noted that, if someone's address is in a police report, that is already a public record that would not be changed based on their participation in the program, unless they gave the police their substituted address. She stated that the Jackson County District Attorney, Patrick Green, has determined that the criminal statutes on discovery, to the extent that the defendant needs constitutional discovery, would override the protected status in any case. She stated that the DOJ suggests to people who want to participate in ACP that they are probably going to have to move so that nobody knows their address. There is nothing that prohibits another litigant from contacting a participant in the ACP at their actual address if they figure out what that

address is. Ms. Wilson noted that one challenge would be if a litigant is having trouble with personal service because of the substituted address. However, a summons or other document could hypothetically be served through the substituted address.

Mr. Goehler thanked Ms. Wilson for her report, and agreed that this is probably an issue that a committee should take a closer look at next biennium. Judge Hill pointed out that some of this may not be within the Council's purview. When an address is filed with the courts, the Odyssey filing system automatically, essentially, makes the address confidential, but he noted that there is no actual basis for protecting the address if someone requests it under a public records request. The court must disclose it. In many cases, if it is a public record, it is a public record, just like D.A. Green suggested. While the Council can discuss the issue next biennium, there may not be a lot that falls under civil procedure as much as falls under public records law.

Judge Peterson also thanked Ms. Wilson for her research and report. He stated that the report will be helpful for the Council next biennium in deciding whether to look into the issue further as well as to respond to the person who brought the issue to the Council's attention.

D. Review of Draft Amendments Previously Approved for Publication Agenda

1. ORCP 24

Judge Peterson reported that the draft amendment of ORCP 24 that the Council had previously reviewed included a reference to the entirety of Chapter 105 relating to evictions (ORS 105.100 et seq.). Upon further reflection, he decided to refine the reference to the particular provision that makes residential evictions different from all other civil actions. The change to that reference appears at the end of section B of the draft before the Council (Appendix G) and now refers specifically to ORS 105.137. Judge Peterson stated that he would like to further reflect and may choose to also include ORS 105.135 in the draft that appears on the September publication agenda. He stated that he would provide the final draft to the Council well before the September meeting. The Council agreed that this new draft could replace the version previously approved for the September publication agenda.

2. ORCP 38

Judge Peterson stated that the draft of Rule 38 now before the Council (Appendix H) is unchanged from the prior version that the Council approved for inclusion on the September publication agenda. Ms. Nilsson noted that the draft is included just to refresh the Council's recollection and ensure that the Council did not see any issues with the draft. The Council did not remark on any problems.

3. ORCP 67

Judge Peterson stated that the draft of Rule 67 now before the Council (Appendix I) is also unchanged from the prior version that the Council approved for inclusion on the September publication agenda. The Council did not remark on any problems. Mr. Goehler asked Council members to make sure to closely re-read each of these drafts and to let staff know of any issues they might see.

V. New Business

A. Suggestion to Add Language to ORCP 7 Summons Form re: ORS 9.320 Requirement

Judge Peterson referred the Council to Appendix J, a suggestion for improvement to Rule 7 from a non-lawyer. The suggestion is to add more language to the summons form to tell a defendant that, if they are a business entity, they need to be represented by an attorney. He opined that the Council may not want to include that information in a summons form, and noted that there are at least a few instances where a business entity can represent itself despite the prohibition otherwise in ORS 9.320. Mr. Goehler stated that he suspects that inclusion of such language would almost be like substantive legal advice. He agreed with Judge Peterson that there are exceptions. Judge Hill agreed. The Council did, however, agree to put the suggestion on the agenda for next biennium.

B. Suggestion to Modify ORCP 47 re: Requiring a Party to Cite Specifically to the Record in Supporting or Opposing Summary Judgment

Mr. Goehler explained that the Council had also received a suggestion from Justice Lynn Nakamoto (Appendix K) to require citation to the record in support or opposition of a motion for summary judgment, basically the way local rules and federal practice require. He noted that best practice and good advocacy would dictate citing to the record anyway, but observed that requiring it in a rule would possibly make things easier for the court. He suggested putting the issue on the agenda for next biennium.

Mr. Spooner stated that his initial reaction was that he did not realize that this is a problem. However, he admitted that he is not a judge who sees a lot of different filings from many different people. He agreed with Mr. Goehler's assessment that best practice would dictate citing to what you are relying on and directing the court to it to make it easy on the judge. He noted that this is already partially touched on in a general sense in UTCR 5.020 in terms of citing to authorities in any motions, although it is not as specific as the federal rule.

Ms. Wilson observed that adding such a requirement might make it more challenging for self-represented litigants to file and respond to motions for summary judgment. Judge Peterson agreed that Ms. Wilson is likely correct; however, the phrase he heard

from Justice Nakamoto, who has covered a lot of summary judgment practice as a senior judge, was “document dump,” which causes her to either ignore it or to greatly prolong the process of figuring out whether the summary judgment should or should not be granted.

The Council agreed to put this issue on the agenda for next biennium.

C. Possible Amendment to Rule 17 Regarding Certifications Specifically Addressing Misuse of Artificial Intelligence

Mr. Goehler directed the Council’s attention to Appendix L, a suggestion for an amendment to Rule 17 adding a certification addressing the misuse of artificial intelligence (AI) and requiring a certification that a case actually is a case. He noted that this is a problem that has been seen in the news and in the courts, and that the problem has resulted in sanctions. This type of certification is not currently a part of the certification process in Oregon, but it does come up in the context of the ethical duties of candor to the court. He noted that specific language had been suggested, but that the Council may want to consider broadening or changing that language. He suggested that this is an issue for next biennium’s Council.

Ms. Johnson stated that she is not privy to what the courts are seeing, and would not want to make assumptions about why cases are misquoted or are represented to stand for a proposition that may be 180 degrees from what the case actually held. She stated that what has been seen in the media is incredible, particularly where cases cited to the court do not actually exist and have been made up out of whole cloth. She suggested perhaps that the paragraph might be limited to “submissions of fabricated authority produced by artificial intelligence,” because that would be an additional layer of consideration the court has to make as to whether something was generated by AI or whether it was just a flat-out human error or misrepresentation. She stated that the courts deserve to have accurate case citations and accurate quotations, so she is in favor of the Council looking at this issue next biennium. Mr. Goehler noted that, beyond just the AI world, there may be a certification that would work for other situations as well.

Mr. Spooner brought to the Council’s attention that Marion County has already started to address this issue. There was a presentation not too long ago with the presiding judge, some other circuit court judges, and local attorneys giving a briefing and a summary of what they are proposing to roll out. He was not able to attend, but his law partner stated that it was a very lively and healthy discussion, with the court trying to be clear with everyone about what constitutes AI. The example was raised of an attorney using Westlaw or Lexis to key cite cases. In the truest definition of AI, that likely falls under the definition, but in that case the attorney would not be using AI to draft language. The horrible examples that have come up over the last few years have caused different counties to bring up the issue with their own Supplemental Local Rules, so

approaching it from a statewide perspective is probably warranted.

Judge Hill agreed that the presiding judges and trial court administrators have been discussing this issue. As Mr. Spooner indicated, Judge James Edmonds in Marion County is drafting a presiding judge order. A lot of what the courts are seeing are “hallucinated” cases from AI, many of which come from self-represented litigants. Judge Hill stated that he also heard that the Uniform Trial Court Rules Committee may be looking at the issue as well. He thinks it will be important for the Council to have a discussion about it, as it is a very fast-evolving issue.

Mr. Joh asked whether this is just a temperature check for what is going to be discussed in the next biennium. Mr. Goehler pointed out that the Council receives input all year round. If this suggestion had been received earlier in the biennium, there probably would have been time to form a committee. However, this is not an issue to rush into and it seems that it would be prudent to carry the issue over to next biennium. Mr. Joh commented that the suggestion in the email seems to not really do much more than is already encompassed in Rule 17. He opined that different language that provides for specific remedies or authorities of the court to address them would be something worth looking into.

Ms. Hopkins stated that she had recently encountered this issue with some recent admittees to the bar with regard to not only citations, but to entire portions of motions. It was such bizarre language that she put the language into an AI checker, which returned a 70% probability that the language was AI-generated. She stated that she had to spend an inordinate amount of time responding to assertions that were not backed by citations. Ms. Hopkins pointed out that this was not an error, because she has had this firm on the opposite side in multiple cases and they have done this multiple times. She expressed concern that this is becoming a problematic pattern. She noted that law schools have begun to require students to certify that they are not using AI when drafting law school materials, and suggested that the Council might want to take a look at the language of those certifications.

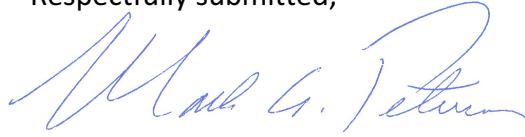
Judge Peterson suggested that one could certainly argue that there is no need to change Rule 17 C(3), as those certifications ought to cover the problem, but he agreed that this is a new area that is ripe for examination. He also appreciated the suggestion that any new language probably should not be limited specifically to AI, but the advantage of putting it in Rule 17 is that Rule 17 has sanctions already written in.

The Council agreed to put this item on the agenda for next biennium.

VI. Adjournment

Mr. Goehler adjourned the meeting at 11:21 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark A. Peterson". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Hon. Mark A. Peterson
Executive Director

DRAFT 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 litigants 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.

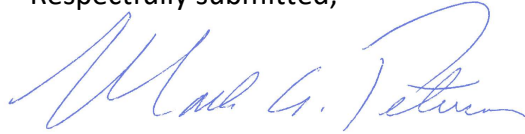
V. New Business

No new business was raised.

VI. Adjournment

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark A. Peterson". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Hon. Mark A. Peterson
Executive Director

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

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

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

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

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

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

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

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

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

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

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

26 A(5) **Proof of service.** Proving service of a subpoena is done in the same way as provided

1 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow
2 being a party in the action; an attorney for a party; or an officer, director, or employee of a
3 party.

4 **A(6) Recipient obligations.**

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

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

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

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

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

22 **A(6)(d) Obedience to subpoena.** A witness must obey a subpoena. Disobedience or a
23 refusal to be sworn or to answer as a witness may be punished as contempt by the [court or]
24 **court**, by the judge who issued the [subpoena or] **subpoena, or by the judge** before whom the
25 action is [pending] **pending, or where a judgment has been entered**. At a hearing or trial, if a
26 witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a witness,

1 that party's complaint, answer, or other pleading may be stricken.

2 **A(7) Motion to quash or modify.** A party or person that is subpoenaed may move to
3 quash or move to modify the subpoena. A motion to quash or to modify must be filed with the
4 court and served on the party that issued the subpoena before the date set for the recipient to
5 appear or produce, but not more than 14 days after the date that the subpoena was served.
6 The court may quash or modify the subpoena if the subpoena is unreasonable and oppressive,
7 or may require that the party that served the subpoena pay the reasonable costs of
8 compliance.

9 **A(8) Scope of discovery.** Notwithstanding any other provision, this rule does not expand
10 the scope of discovery beyond that provided in Rule 36 or Rule 44.

11 **B Subpoenas requiring appearance and testimony by individuals, organizations, law**
12 **enforcement agencies or officers, prisoners, and parties.**

13 **B(1) Permissible purposes of subpoena.** A subpoena may require appearance in court or
14 out of court, including:

15 **B(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, [or]
16 at the trial of an issue therein, [or on] at the taking of a deposition in an action pending
17 [therein;] therein, or at a proceeding to enforce a judgment entered therein.

18 **B(1)(b) Foreign depositions.** Any foreign deposition under Rule 38 C presided over by any
19 person authorized by Rule 38 C to take witness testimony, or by any officer empowered by the
20 laws of the United States to take testimony; or

21 **B(1)(c) Administrative and other proceedings.** Any administrative or other proceeding
22 presided over by a judge, justice, or other officer authorized to administer oaths or to take
23 testimony in any matter under the laws of this state.

24 **B(2) Service of subpoenas requiring the appearance or testimony of nonparty**
25 **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,
26 a copy of the subpoena must be served sufficiently in advance to allow the witness a

1 reasonable time for preparation and travel to the place specified in the subpoena.

2 B(2)(a) **Service on an individual 14 years of age or older.** If the witness is 14 years of age
3 or older, the subpoena must be personally delivered to the witness, along with fees for one
4 day's attendance and the mileage as allowed by law unless the witness expressly declines
5 payment, whether personal attendance is required or not.

6 B(2)(b) **Service on an individual under 14 years of age.** If the witness is under 14 years of
7 age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian
8 ad litem, along with fees for one day's attendance and the mileage as allowed by law unless
9 the witness expressly declines payment, whether personal attendance is required or not.

10 B(2)(c) **Service on individuals waiving personal service.** If the witness waives personal
11 service, the subpoena may be mailed or transmitted electronically to the witness, but such
12 service is valid only if all of the following circumstances exist:

13 B(2)(c)(i) **Witness agreement.** Contemporaneous with the return of service, the party's
14 attorney or attorney's agent certifies that:

15 B(2)(c)(i)(A) the witness agreed to appear and testify if subpoenaed by a specified date
16 using mail or electronic transmission to a designated e-mail, text message, facsimile, or other
17 electronic account that the witness confirmed is accurate;

18 B(2)(c)(i)(B) the specific date, time, and place for the witness to appear and testify was
19 coordinated with the witness and agreed on;

20 B(2)(c)(i)(C) the mail or electronic account used to deliver the subpoena contained no
21 typographical or other errors that would affect delivery, and a copy of the electronic
22 transmission is attached to the certification document;

23 B(2)(c)(i)(D) the mail or transmission was sent by the specific date agreed on;

24 B(2)(c)(i)(E) satisfactory arrangements were made with the witness to ensure the
25 payment of fees for one day's attendance and the mileage as allowed by law, or the witness
26 expressly declined payment; and

1 B(2)(c)(i)(F) the party has written, recorded, or electronic confirmation from the witness
2 that the witness received the subpoena.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **C(1) Combining subpoena for production with subpoena to appear and testify.** A
2 subpoena for production may be joined with a subpoena to appear and testify or may be
3 issued separately.

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

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

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

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

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

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

19 **D(1) Application of this section; "confidential health information" defined.** This section
20 creates protections for production of CHI, which includes both individually identifiable health
21 information as defined in ORS 192.556 (8) and protected health information as defined in ORS
22 192.556 (11)(a). For purposes of this section, CHI means information collected from a person
23 by a health care provider, health care facility, state health plan, health care clearinghouse,
24 health insurer, employer, or school or university that identifies the person or could be used to
25 identify the person and that includes records that:

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

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

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

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

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

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

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

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

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

26 D(4)(a)(iv) **Inspection requests.** The party must certify that the person or the person's

1 representative was or will be permitted, promptly on request, to inspect and copy any CHI
2 received.

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

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

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

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

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

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

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

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

1 business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **D(9) Designation of responsible party when multiple parties subpoena CHI.** If more than
2 one party subpoenas a custodian of records to personally attend under paragraph D(4)(c) of
3 this rule, the custodian of records will be deemed to be the witness of the party that first
4 served such a subpoena.

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

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

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, authority to issue a subpoena**
12 **or to obtain discovery is only available pursuant to court order.**

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

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

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

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

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

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

23 B(3)(b) **Prior statements.** A party may obtain, without the required showing, a statement
24 concerning the action or its subject matter previously made by that party. On request, a person
25 who is not a party may obtain, without the required showing, a statement concerning the
26 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, authority to issue a subpoena**
12 **or to obtain discovery is only available pursuant to court order.**

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

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

1 or that to prevent hardship the party requesting discovery pay to the other party reasonable
2 expenses incurred in attending the deposition or otherwise responding to the request for
3 discovery.

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

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)(a)
 DOUG DEFENDANT,)
)
 Defendant.)

To: Doug Defendant
123 SE Smith Lane
Portland OR 97204

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SUMMONS

RULE 7

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

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

C Contents, time for response, and required notices.

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

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

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

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

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

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

C(3) Notice to party served.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph C(3)(b) or C(3)(c) of this rule, *[shall]* **must** contain a notice printed in type size equal to at least *[8-point type]* **12-point type** that may be substantially in the following form:

[NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!]

NOTICE: READ THESE PAPERS CAREFULLY!

You must “appear” in this case or the *[other side]* **plaintiff or petitioner** will win automatically. To *[“appear you must file with the court”]* **appear you must file** a legal document called a *[“motion” or “answer.”]* **“motion,” “answer,” or “response” within 30 days of the date you receive this summons.** *[The “motion” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee.]* **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.** *[It must be in proper form and have proof of service on the plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.]* **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, *[you should see]* **contact** an attorney immediately. *[If you need]* **For** help *[in]* finding an attorney, you may contact the Oregon State Bar’s Lawyer Referral *[Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.]* **Service:**

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

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

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

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

8
9 **[NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!]**

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

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

24 If you have questions, [*you should see*] **contact** an attorney immediately. [*If you need*]
25 **For** help [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral
26 [*Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland*

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

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

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C(3)(c) **Service on persons liable for attorney fees.** A summons to join a party pursuant to Rule 22 D(2) [*shall*] **must** contain a notice printed in type size equal to at least [*8-point type*] **12-point type** that may be substantially in the following form:

[NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!]

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"*] **appear you must** file with the court a legal document called a "motion" or [*reply*]. **reply within 30 days of the date you receive this summons.** [*The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee.*] **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.** [*It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.*]

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.

1 If you have questions, [you should see] **contact** an attorney immediately. [If you need]
2 **For** help [in] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral
3 [Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland
4 metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.] **Service:**
5 **www.oregonstatebar.org / (800) 452-7636**

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

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

8
9 **D Manner of service.**

10 D(1) **Notice required.** Summons [shall] **must** be served, either within or without this
11 state, in any manner reasonably calculated, under all the circumstances, to apprise the
12 defendant of the existence and pendency of the action and to afford a reasonable opportunity
13 to appear and defend. Summons may be served in a manner specified in this rule or by any
14 other rule or statute on the defendant or on an agent authorized by appointment or law to
15 accept service of summons for the defendant. Service may be made, subject to the restrictions
16 and requirements of this rule, by the following methods: personal service of true copies of the
17 summons and the complaint on defendant or an agent of defendant authorized to receive
18 process; substituted service by leaving true copies of the summons and the complaint at a
19 person's dwelling house or usual place of abode; office service by leaving true copies of the
20 summons and the complaint with a person who is apparently in charge of an office; service by
21 mail; or service by publication.

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

23 D(2)(a) **Personal service.** Personal service may be made by delivery of a true copy of the
24 summons and a true copy of the complaint to the person to be served.

25 D(2)(b) **Substituted service.** Substituted service may be made by delivering true copies of
26 the summons and the complaint at the dwelling house or usual place of abode of the person to

1 be served to any person 14 years of age or older residing in the dwelling house or usual place
2 of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as
3 reasonably possible, [shall] **must** cause to be mailed by first class mail true copies of the
4 summons and the complaint to the defendant at defendant's dwelling house or usual place of
5 abode, together with a statement of the date, time, and place at which substituted service was
6 made. For the purpose of computing any period of time prescribed or allowed by these rules or
7 by statute, substituted service [shall be] **is** complete on the mailing.

8 D(2)(c) **Office service.** If the person to be served maintains an office for the conduct of
9 business, office service may be made by leaving true copies of the summons and the complaint
10 at that office during normal working hours with the person who is apparently in charge. Where
11 office service is used, the plaintiff, as soon as reasonably possible, [shall] **must** cause to be
12 mailed by first class mail true copies of the summons and the complaint to the defendant at
13 defendant's dwelling house or usual place of abode or defendant's place of business or any
14 other place under the circumstances that is most reasonably calculated to apprise the
15 defendant of the existence and pendency of the action, together with a statement of the date,
16 time, and place at which office service was made. For the purpose of computing any period of
17 time prescribed or allowed by these rules or by statute, office service [shall be] **is** complete on
18 the mailing.

19 D(2)(d) **Service by mail.**

20 D(2)(d)(i) **Generally.** When service by mail is required or allowed by this rule or by
21 statute, except as otherwise permitted, service by mail [shall] **must** be made by mailing true
22 copies of the summons and the complaint to the defendant by first class mail [and] **as well as**
23 by any of the following: certified, registered, or express mail with return receipt requested. For
24 purposes of this paragraph, "first class mail" does not include certified, registered, or express
25 mail, return receipt requested, or any other form of mail that may delay or hinder actual
26 delivery of mail to the addressee.

1 D(2)(d)(ii) **Calculation of time.** For the purpose of computing any period of time provided
2 by these rules or by statute, service by mail, except as otherwise provided, [*shall be*] **is**
3 complete on the day the defendant, or other person authorized by appointment or law, signs a
4 receipt for the mailing, or 3 days after the mailing if mailed to an address within the state, or 7
5 days after the mailing if mailed to an address outside the state, whichever first occurs.

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

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

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

17 D(3)(a)(ii) **Minors.** On a minor under 14 years of age, by service in the manner specified
18 in subparagraph D(3)(a)(i) of this rule on the minor; and additionally on the minor's father,
19 mother, conservator of the minor's estate, or guardian, or, if there be none, then on any
20 person having the care or control of the minor, or with whom the minor resides, or in whose
21 service the minor is employed, or on a guardian ad litem appointed pursuant to Rule 27 B.

22 D(3)(a)(iii) **Incapacitated persons.** On a person who is incapacitated or is financially
23 incapable, as both terms are defined by ORS 125.005, by service in the manner specified in
24 subparagraph D(3)(a)(i) of this rule on the person and, also, on the conservator of the person's
25 estate or guardian or, if there be none, on a guardian ad litem appointed pursuant to Rule 27
26 B.

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

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

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

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

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

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

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

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

23 D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
24 copies of the summons and the complaint to: the office of the registered agent or to the last
25 registered office of the corporation, if any, as shown by the records on file in the office of the
26 Secretary of State; or, if the corporation is not authorized to transact business in this state at

1 the time of the transaction, event, or occurrence on which the action is based occurred, to the
2 principal office or place of business of the corporation; and, in any case, to any address the use
3 of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

4 D(3)(b)(ii)(D) on the Secretary of State in the manner provided in ORS 60.121 or 60.731.

5 D(3)(c) **Limited liability companies.** On a limited liability company:

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

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

10 D(3)(c)(ii)(A) by substituted service on the registered agent, manager, or (for a
11 member-managed limited liability company) member of a limited liability company;

12 D(3)(c)(ii)(B) by personal service on any clerk or agent of the limited liability company;

13 D(3)(c)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
14 copies of the summons and the complaint to: the office of the registered agent or to the last
15 registered office of the limited liability company, if any, as shown by the records on file in the
16 office of the Secretary of State; or, if the limited liability company is not authorized to transact
17 business in this state at the time of the transaction, event, or occurrence on which the action is
18 based occurred, to the principal office or place of business of the limited liability company;
19 and, in any case, to any address the use of which the plaintiff knows or has reason to believe is
20 most likely to result in actual notice; or

21 D(3)(c)(ii)(D) on the Secretary of State in the manner provided in ORS 63.121.

22 D(3)(d) **Limited partnerships.** On a domestic or foreign limited partnership:

23 D(3)(d)(i) **Primary service method.** By personal service or office service on a registered
24 agent or a general partner of a limited partnership; or by personal service on any clerk on duty
25 in the office of a registered agent.

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

1 D(3)(d)(ii)(A) by substituted service on the registered agent or general partner of a
2 limited partnership;

3 D(3)(d)(ii)(B) by mailing in the manner specified in paragraph D(2)(d) of this rule true
4 copies of the summons and the complaint to: the office of the registered agent or to the last
5 registered office of the limited partnership, if any, as shown by the records on file in the office
6 of the Secretary of State; or, if the limited partnership is not authorized to transact business in
7 this state at the time of the transaction, event, or occurrence on which the action is based
8 occurred, to the principal office or place of business of the limited partnership; and, in any
9 case, to any address the use of which the plaintiff knows or has reason to believe is most likely
10 to result in actual notice; or

11 D(3)(d)(ii)(C) on the Secretary of State in the manner provided in ORS 70.040 or 70.045.

12 D(3)(e) **General partnerships and limited liability partnerships.** On any general
13 partnership or limited liability partnership by personal service on a partner or any agent
14 authorized by appointment or law to receive service of summons for the partnership or limited
15 liability partnership.

16 D(3)(f) **Other unincorporated associations subject to suit under a common name.** On
17 any other unincorporated association subject to suit under a common name by personal
18 service on an officer, managing agent, or agent authorized by appointment or law to receive
19 service of summons for the unincorporated association.

20 D(3)(g) **State.** On the state, by personal service on the Attorney General or by leaving
21 true copies of the summons and the complaint at the Attorney General's office with a deputy,
22 assistant, or clerk.

23 D(3)(h) **Public bodies.** On any county; incorporated city; school district; or other public
24 corporation, commission, board, or agency by personal service or office service on an officer,
25 director, managing agent, or attorney thereof.

26 D(3)(i) **Vessel owners and charterers.** On any foreign steamship owner or steamship

1 charterer by personal service on a vessel master in the owner's or charterer's employment or
2 any agent authorized by the owner or charterer to provide services to a vessel calling at a port
3 in the State of Oregon, or a port in the State of Washington on that portion of the Columbia
4 River forming a common boundary with Oregon.

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

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

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

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

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

20 D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of
21 making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably
22 might result in actual notice to that defendant. Sufficient service pursuant to this subparagraph
23 may be shown if the proof of service includes a true copy of the envelope in which each of the
24 certified, registered, or express mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and
25 D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as undeliverable or
26 that the defendant did not sign the receipt. For the purpose of computing any period of time

1 | prescribed or allowed by these rules or by statute, service under this subparagraph [*shall be*] **is**
2 | complete on the latest date on which any of the mailings required by parts D(4)(a)(i)(A),
3 | 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
4 | this rule is omitted because the plaintiff did not know of any address other than those
5 | specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of service [*shall*] **must** so
6 | certify.

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

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

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

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

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

1 | circumstances, is most reasonably calculated to apprise the defendant of the existence and
2 | pendency of the action. If the court orders alternative service and the plaintiff knows or with
3 | reasonable diligence can ascertain the defendant's current address, the plaintiff must mail true
4 | copies of the summons and the complaint to the defendant at that address by first class mail
5 | and any of the following: certified, registered, or express mail, return receipt requested. If the
6 | plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of
7 | any defendant, the plaintiff must mail true copies of the summons and the complaint by the
8 | methods specified above to the defendant at the defendant's last known address. If the
9 | plaintiff does not know, and with reasonable diligence cannot ascertain, the defendant's
10 | current and last known addresses, a mailing of copies of the summons and the complaint is not
11 | required.

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

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

24 | D(6)(a)(i)(A) **Where published.** An order for publication must direct publication to be
25 | made in a newspaper of general circulation in the county where the action is commenced or, if
26 | there is no such newspaper, then in a newspaper to be designated as most likely to give notice

1 to the person to be served. The summons must be published four times in successive calendar
2 weeks. If the plaintiff knows of a specific location other than the county in which the action is
3 commenced where publication might reasonably result in actual notice to the defendant, the
4 plaintiff must so state in the affidavit or declaration required by paragraph D(6) of this rule,
5 and the court may order publication in a comparable manner at that location in addition to, or
6 in lieu of, publication in the county in which the action is commenced.

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

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

24 D(6)(b)(i) **Content of electronic transmissions.** If the court allows service by a specific
25 electronic method, the case name, case number, and name of the court in which the action is
26 pending must be prominently positioned where it is most likely to be read first. For e-mail

1 service, those details must appear in the subject line. For text message service, they must
2 appear in the first line of the first text. For facsimile service, they must appear at the top of the
3 first page. For posting to a social media account, they must appear in the top lines of the
4 posting.

5 D(6)(b)(ii) **Format of electronic transmissions.** If the court allows alternative service by
6 an electronic method, the summons, complaint, and any other documents must be attached in
7 a file format that is capable of showing a true copy of the original document. When an
8 electronic method is incapable of transferring transmissions that exceed a certain size, the
9 plaintiff must not exceed those express size limitations. If the size of the attachments exceeds
10 the limitations of any electronic method allowed, then multiple sequential transmissions may
11 be sent immediately after the initial transmission to complete service.

12 D(6)(c) **Unknown heirs or persons.** If service cannot be made by another method
13 described in this section because defendants are unknown heirs or persons as described in
14 Rule 20 I and J, the action will proceed against the unknown heirs or persons in the same
15 manner as against named defendants served by publication and with like effect; and any
16 unknown heirs or persons who have or claim any right, estate, lien, or interest in the property
17 in controversy at the time of the commencement of the action, and who are served by
18 publication, will be bound and concluded by the judgment in the action, if the same is in favor
19 of the plaintiff, as effectively as if the action had been brought against those defendants by
20 name.

21 D(6)(d) **Defending before or after judgment.** A defendant against whom service pursuant
22 to this subsection is ordered or that defendant's representatives, on application and sufficient
23 cause shown, at any time before judgment will be allowed to defend the action. A defendant
24 against whom service pursuant to this subsection is ordered or that defendant's
25 representatives may, on good cause shown and on any terms that may be proper, be allowed
26 to defend after judgment and within one year after entry of judgment. If the defense is

1 successful, and the judgment or any part thereof has been collected or otherwise enforced,
2 restitution may be ordered by the court, but the title to property sold on execution issued on
3 that judgment, to a purchaser in good faith, will not be affected thereby.

4 **D(6)(e) Defendant who cannot be served.** Within the meaning of this subsection, a
5 defendant cannot be served with summons by any method authorized by subsection D(3) of
6 this rule if service pursuant to subparagraph D(4)(a)(i) of this rule is not applicable, the plaintiff
7 attempted service of summons by all of the methods authorized by subsection D(3) of this rule,
8 and the plaintiff was unable to complete service; or if the plaintiff knew that service by these
9 methods could not be accomplished.

10 **E By whom served; compensation.** A summons may be served by any competent person
11 18 years of age or older who is a resident of the state where service is made or of this state and
12 is neither a party to the action, corporate or otherwise, nor any party's officer, director,
13 employee, or attorney, except as provided in ORS 180.260. However, service pursuant to
14 subparagraph D(2)(d)(i), as well as the mailings specified in paragraphs D(2)(b) and D(2)(c) and
15 part D(3)(a)(iv)(B) of this rule, may be made by an attorney for any party. Compensation to a
16 sheriff or a sheriff's deputy in this state who serves a summons [*shall be*] **is** prescribed by
17 statute or rule. If any other person serves the summons, a reasonable fee may be paid for
18 service. This compensation [*shall be*] **is** part of disbursements and [*shall be*] **is** recovered as
19 provided in Rule 68.

20 **F Return; proof of service.**

21 **F(1) Return of summons.** The summons [*shall*] **must** be promptly returned to the clerk
22 with whom the complaint is filed with proof of service or mailing, or that defendant cannot be
23 found. The summons may be returned by first class mail.

24 **F(2) Proof of service.** Proof of service of summons or mailing may be made as follows:

25 **F(2)(a) Service other than publication.** Service other than publication [*shall*] **must** be
26 proved by:

1 F(2)(a)(i) **Certificate of service when summons not served by sheriff or deputy.** If the
2 summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating:
3 the specific documents that were served; the time, place, and manner of service; that the
4 server is a competent person 18 years of age or older and a resident of the state of service or
5 this state and is not a party to nor an officer, director, or employee of, nor attorney for any
6 party, corporate or otherwise; and that the server knew that the person, firm, or corporation
7 served is the identical one named in the action. If the defendant is not personally served, the
8 server [shall] **must** state in the certificate when, where, and with whom true copies of the
9 summons and the complaint were left or describe in detail the manner and circumstances of
10 service. If true copies of the summons and the complaint were mailed, the certificate may be
11 made by the person completing the mailing or the attorney for any party and [shall] **must** state
12 the circumstances of mailing and the return receipt, if any, [shall] **must** be attached.

13 F(2)(a)(ii) **Certificate of service by sheriff or deputy.** If the summons is served by a sheriff
14 or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating: the specific
15 documents that were served; the time, place, and manner of service; and, if defendant is not
16 personally served, when, where, and with whom true copies of the summons and the
17 complaint were left or describing in detail the manner and circumstances of service. If true
18 copies of the summons and the complaint were mailed, the certificate [shall] **must** state the
19 circumstances of mailing and the return receipt, if any, [shall] **must** be attached.

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

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

23 _____
24 **Affidavit of Publication**

25 State of Oregon)

26) ss.

County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

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

Notary Public for Oregon

My commission expires

____ day of _____, 2____.

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

Declaration of Publication

State of Oregon)

) ss.

County of)

I, _____, say that I am the _____ (here set forth the title or job description of the person making the declaration), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

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

4 _____
5 ____ day of ____, 2____
6 _____

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

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

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

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

22 **G Disregard of error; actual notice.** Failure to comply with provisions of this rule relating
23 to the form of a summons, issuance of a summons, or who may serve a summons [*shall*] **does**
24 not affect the validity of service of that summons or the existence of jurisdiction over the
25 person if the court determines that the defendant received actual notice of the substance and
26 pendency of the action. The court may allow amendment to a summons, affidavit, declaration,

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

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

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. Notices] D Documents not to be filed. The court will not**
7 **accept for filing notices** of deposition, requests made pursuant to Rule 43, and answers and
8 responses **thereto.** *[thereto shall not be filed with the court.]* This rule *[shall]* **does** not preclude
9 their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made
10 pursuant to Rule 54 E *[shall not be]* **must not be** filed with the court except as provided in Rule
11 54 E(3).

12 **E Filing with the court defined.** The filing of pleadings and other documents with the
13 court as required by these rules *[shall]* **must** be made by filing them with the clerk of the court
14 or the person exercising the duties of that office. The clerk or the person exercising the duties
15 of that office *[shall]* **will** endorse on the pleading or document the time of day, the day of the
16 month, the month, and the year. The clerk or person exercising the duties of that office is not
17 required to receive for filing any document unless **the document is legible and contains a**
18 **legibly displayed** caption **on the front** that *[includes]* **includes:** the name of the court; the case
19 number of the action, if one has been assigned; the title of the document; and the names of
20 the **parties.** *[parties are legibly displayed on the front of the document, nor unless the contents*
21 *of the document are legible.]* Further, the clerk is not required to receive for filing any
22 document that does not include the name, address, and telephone number of the **filing** party
23 or the attorney for *[the]* **that** party, if the **filing** party is represented.

24 **F Service by facsimile communication.** Whenever under these rules service is required or
25 permitted to be made on a party, and that party is represented by an attorney, the service may
26 be made on the attorney by means of facsimile communication if the attorney has such

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. Notices] D Documents not to be filed. The court will not**
7 **accept for filing notices** of deposition, requests made pursuant to Rule 43, and answers and
8 responses **thereto**. [*thereto shall not be filed with the court.*] This rule [shall] **does** not preclude
9 their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made
10 pursuant to Rule 54 E [shall not be] **must not be** filed with the court except as provided in Rule
11 54 E(3).

12 **E Filing with the court defined.** The filing of pleadings and other documents with the
13 court as required by these rules [shall] **must** be made by filing them with the clerk of the court
14 or the person exercising the duties of that office. The clerk or the person exercising the duties
15 of that office [shall] **will** endorse on the pleading or document the time of day, the day of the
16 month, the month, and the year. The clerk or person exercising the duties of that office is not
17 required to receive for filing any document unless **the document is legible and contains a**
18 **legibly displayed** caption **on the front** that [includes] **includes:** the name of the court; the case
19 number of the action, if one has been assigned; the title of the document; and the names of
20 the **parties**. [*parties are legibly displayed on the front of the document, nor unless the contents*
21 *of the document are legible.*] Further, the clerk is not required to receive for filing any
22 document that does not include the name, address, and telephone number of the **filing** party
23 or the attorney for [the] **that** party, if the **filing** party is represented.

24 **F Service by facsimile communication.** Whenever under these rules service is required or
25 permitted to be made on a party, and that party is represented by an attorney, the service may
26 be made on the attorney by means of facsimile communication if the attorney has such

1 technology available and said technology is operating at the time service is made. Service in
2 this manner [shall be] is subject to Rule 10 B. Facsimile communication includes: a telephonic
3 facsimile communication device; a facsimile server or other computerized system capable of
4 receiving and storing incoming facsimile communications electronically and then routing them
5 to users on paper or via e-mail; or an internet facsimile service that allows users to send and
6 receive facsimiles from their personal computers using an existing e-mail account.

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

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

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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.**

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.

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY CLAIMS**

RULE 22

A Counterclaims.

A(1) **Number.** Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

A(2) **Generally.** A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

B Cross-claim against codefendant.

B(1) **Generally.** In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action, and must be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) **Subject matter.** A cross-claim may include a claim that the defendant against whom [it] **the cross-claim** is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) **On whom served.** An answer containing a cross-claim must be served on any party against whom relief is sought in the cross-claim and on all other parties who have appeared.

C Third-party practice.

C(1) **Generally.** 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

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

4 **C(2) Objection to the addition of a third party. If a party objects to service of a**
5 **summons and complaint on any person not a party to the action, the court may nonetheless**
6 **grant leave to serve such a summons and complaint on an express finding that:**

7 **C(2)(a) the basis for the third-party claim could not have been discovered through**
8 **reasonable diligence within the 90-day period;**

9 **C(2)(b) the motion was filed promptly after the basis for the claim was or should have**
10 **been discovered; and**

11 **C(2)(c) granting leave will not prejudice any appearing party or unreasonably delay the**
12 **trial.**

13 **C(3) Response by the third-party defendant.** The person served with the summons and
14 third-party complaint, hereinafter called the third-party defendant, must assert any defenses
15 to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against
16 the third-party plaintiff and cross-claims against other third-party defendants as provided in
17 this rule. The third-party defendant may assert against the plaintiff any defenses that the
18 third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any
19 claim against the plaintiff arising out of the transaction or occurrence that is the subject matter
20 of the plaintiff's claim against the third-party plaintiff. **[Any party]**

21 **C(4) Claims that may be asserted; responses; motions to strike or to sever. Any party**
22 may assert any claim against a third-party defendant arising out of the transaction or
23 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,
24 and the third-party defendant thereupon must assert the third-party defendant's defenses as
25 provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
26 as provided in this rule. Any party may move to strike the third-party claim, or for its severance

1 or separate trial. **[A third-party]**

2 **C(5) Third-party defendant claims against non-parties. A third-party** defendant may
3 proceed under this section against any person not a party to the action who is or may be liable
4 to the third-party defendant for all or part of the claim made in the action against the
5 third-party defendant.

6 **[C(2)] C(6) Plaintiffs' equivalent right regarding counterclaims.** A plaintiff against whom
7 a counterclaim has been asserted may cause a third-party defendant to be brought in under
8 circumstances that would entitle a defendant to do so under subsection C(1) of this section.

9 **D Joinder of additional parties.**

10 D(1) **Generally.** Persons other than those made parties to the original action may be
11 made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and
12 Rule 29.

13 D(2) **In contract actions.** A defendant may, in an action on a contract brought by an
14 assignee of rights under that contract, join as parties to that action all or any persons liable for
15 attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument
16 or document evidencing a debt.

17 D(3) **Service of summons and time to answer.** In any action against a party joined under
18 this section of this rule, the party joined will be treated as a defendant for purposes of service
19 of summons and time to answer under Rule 7.

20 **E Separate trial.** On the motion of any party or on the court's own initiative, the court
21 may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
22 do so would be more convenient, avoid prejudice, or be more economical and expedite the
23 matter.

**COUNTERCLAIMS, CROSS-CLAIMS,
AND THIRD-PARTY CLAIMS**

RULE 22

A Counterclaims.

A(1) **Number.** Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

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B Cross-claim against codefendant.

B(1) **Generally.** In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be had in the action, and must be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) **Subject matter.** A cross-claim may include a claim that the defendant against whom [it] **the cross-claim** is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) **On whom served.** An answer containing a cross-claim must be served on any party against whom relief is sought in the cross-claim and on all other parties who have appeared.

C Third-party practice.

C(1) **Generally.** 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

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

4 **C(2) Response by the third-party defendant.** The person served with the summons and
5 third-party complaint, hereinafter called the third-party defendant, must assert any defenses
6 to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against
7 the third-party plaintiff and cross-claims against other third-party defendants as provided in
8 this rule. The third-party defendant may assert against the plaintiff any defenses that the
9 third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any
10 claim against the plaintiff arising out of the transaction or occurrence that is the subject matter
11 of the plaintiff's claim against the third-party plaintiff. *[Any party]*

12 **C(3) Claims that may be asserted; responses; motions to strike or to sever. Any party**
13 may assert any claim against a third-party defendant arising out of the transaction or
14 occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff,
15 and the third-party defendant thereupon must assert the third-party defendant's defenses as
16 provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
17 as provided in this rule. Any party may move to strike the third-party claim, or for its severance
18 or separate trial. *[A third-party]*

19 **C(4) Third-party defendant claims against non-parties. A third-party** defendant may
20 proceed under this section against any person not a party to the action who is or may be liable
21 to the third-party defendant for all or part of the claim made in the action against the
22 third-party defendant.

23 **[C(2)] C(5) Plaintiffs' equivalent right regarding counterclaims.** A plaintiff against whom
24 a counterclaim has been asserted may cause a third-party defendant to be brought in under
25 circumstances that would entitle a defendant to do so under subsection C(1) of this section.

26 **D Joinder of additional parties.**

1 D(1) **Generally.** Persons other than those made parties to the original action may be
2 made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and
3 Rule 29.

4 D(2) **In contract actions.** A defendant may, in an action on a contract brought by an
5 assignee of rights under that contract, join as parties to that action all or any persons liable for
6 attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument
7 or document evidencing a debt.

8 D(3) **Service of summons and time to answer.** In any action against a party joined under
9 this section of this rule, the party joined will be treated as a defendant for purposes of service
10 of summons and time to answer under Rule 7.

11 **E Separate trial.** On the motion of any party or on the court's own initiative, the court
12 may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to
13 do so would be more convenient, avoid prejudice, or be more economical and expedite the
14 matter.

1 without the state in the manner provided for service of summons in Rule 7, [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** 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] **otherwise. The court must** appoint, for persons not served with summons in the manner
5 provided in Rule 7, an attorney [who shall] **to** represent [them and] **them**, whose services
6 [shall] **must** be paid for by petitioner in an amount fixed by the court, [and, in case they are not
7 otherwise represented, shall] **to** cross examine the deponent. Testimony and evidence
8 perpetuated under this rule [shall] **will** 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] **discovery may be had in accordance with**
14 **these rules on the court's order, which must:**

15 **A(3)(a) designate or describe** the persons whose depositions may be taken and
16 [specifying] **specify** the subject matter of the examination and whether the depositions [shall]
17 **will** be taken [upon] **on** oral examination or written questions; or [shall make an order
18 designating or describing]

19 **A(3)(b) designate or describe** the persons from whom discovery may be sought under
20 Rule [43] **43**, specifying the objects of such discovery; or [shall make an order]

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

22 **A(4) Applicable discovery rules.** 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] **will** 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 without the state in the manner provided for service of summons in Rule 7, [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** any expected adverse party named in the
3 petition, the court may make such order as is just for service by **publication or otherwise. The**
4 **court must appoint an attorney to represent persons not served in the manner provided in**
5 **Rule 7 and, if the unserved person is not otherwise represented, to cross examine the**
6 **deponent. The services of any appointed attorney must be paid for by the petitioner in an**
7 **amount fixed by the court.** [publication or otherwise, and shall appoint, for persons not served
8 with summons in the manner provided in Rule 7, an attorney who shall represent them and
9 whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they
10 are not otherwise represented, shall cross examine the deponent.] Testimony and evidence
11 perpetuated under this rule [shall] **will** be admissible against expected adverse parties not
12 served with notice only in accordance with the applicable rules of evidence. If any expected
13 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

14 **A(3) Order and examination.** If the court is satisfied that the perpetuation of the
15 testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice,
16 [it shall make an order designating or describing] **discovery may be had in accordance with**
17 **these rules on the court's order, which must:**

18 **A(3)(a) designate or describe** the persons whose depositions may be taken and
19 [specifying] **specify** the subject matter of the examination and whether the depositions [shall]
20 **will** be taken [upon] **on** oral examination or written questions; or [shall make an order
21 designating or describing]

22 **A(3)(b) designate or describe** the persons from whom discovery may be sought under
23 Rule [43] **43**, specifying the objects of such discovery; or [shall make an order]

24 **A(3)(c) set** [for] a physical or mental examination as provided in Rule 44.

25 **A(4) Applicable discovery rules.** For the purpose of applying these rules to discovery
26 before action, each reference therein to the court in which the action is pending [shall] **will** be

1 **PERPETUATION OF TESTIMONY OR EVIDENCE**

2 **BEFORE ACTION OR PENDING APPEAL**

3 **RULE 37**

4 **[A Before action.**

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

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

1 and must show:

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

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

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

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

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

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

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

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

23 A(2) **Notice and service.** The petitioner [shall] **must** thereafter serve a notice [upon] **on**
24 each person named in the petition as an expected adverse party, together with a copy of the
25 petition, stating that the petitioner will apply to the court at a time and place named therein,
26 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 7. [7, but if] **if** such
2 service cannot with due diligence be made [upon] **on** any expected adverse party named in the
3 petition, the court may make such order as is just for service by **publication or otherwise. The**
4 **court must appoint an attorney to represent persons not served in the manner provided in**
5 **Rule 7 and, if the unserved person is not otherwise represented, to cross examine the**
6 **deponent. The services of any appointed attorney must be paid for by the petitioner in an**
7 **amount fixed by the court.** [publication or otherwise, and shall appoint, for persons not served
8 with summons in the manner provided in Rule 7, an attorney who shall represent them and
9 whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they
10 are not otherwise represented, shall cross examine the deponent.] Testimony and evidence
11 perpetuated under this rule [shall] **will** be admissible against expected adverse parties not
12 served with notice only in accordance with the applicable rules of evidence. If any expected
13 adverse party is a minor or incompetent, the provisions of Rule 27 apply.

14 **A(3) Order and examination.** If the court is satisfied that the perpetuation of the
15 testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice,
16 [it shall make an order designating or describing] **discovery may be had in accordance with**
17 **these rules on the court's order, which must:**

18 **A(3)(a) designate or describe** the persons whose depositions may be taken and
19 [specifying] **specify** the subject matter of the examination and whether the depositions [shall]
20 **will** be taken [upon] **on** oral examination or written questions; or [shall make an order
21 designating or describing]

22 **A(3)(b) designate or describe** the persons from whom discovery may be sought under
23 Rule [43] **43**, specifying the objects of such discovery; or [shall make an order]

24 **A(3)(c) set** [for] a physical or mental examination as provided in Rule 44.

25 **A(4) Applicable discovery rules.** For the purpose of applying these rules to discovery
26 before action, each reference therein to the court in which the action is pending [shall] **will** be

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

2 **B Pending appeal.** If an appeal has been taken from a judgment of a court to which these
3 rules apply or before the taking of an appeal if the time therefor has not expired, the court in
4 which the judgment was rendered may allow the taking of the depositions of witnesses to
5 perpetuate their testimony or may allow discovery under Rule 43 or Rule 44 for use in the
6 event of further proceedings in such court. In such case the party who desires to perpetuate
7 the testimony or obtain the discovery may make a motion in the court therefor [*upon*] **on** the
8 same notice and service thereof as if the action was pending in the circuit court. [*The motion*
9 *shall show: (1) the names and addresses of the persons to be examined or from whom other*
10 *discovery is sought and the substance of the testimony or other discovery which the party*
11 *expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such*
12 *other discovery. If the court finds that the perpetuation of the testimony or other discovery is*
13 *proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3)*
14 *of section A of this rule and thereupon discovery may be had and used in the same manner and*
15 *under the same conditions as are prescribed in these rules for discovery in actions pending in the*
16 *circuit court.*]

17 **B(1) Contents of motion. The motion must show:**

18 **B(1)(a) the names and addresses of the persons to be examined or from whom other**
19 **discovery is sought and the substance of the testimony or other discovery which the party**
20 **expects to elicit from each; and**

21 **B(1)(b) the reasons for perpetuating their testimony or seeking such other discovery.**

22 **B(2) Order of the court. If the court finds that the perpetuation of the testimony or**
23 **other discovery is proper to avoid a failure or delay of justice, it may make an order as**
24 **provided in subsection A(3) of this rule. Thereupon, discovery may be had and used in the**
25 **same manner and under the same conditions as are prescribed in these rules for discovery in**
26 **actions pending in the circuit court.**

1 **C Perpetuation by action.** This rule does not limit the power of a court to entertain an
2 action to perpetuate testimony.

3 **D Filing of depositions.** Depositions taken under this rule [*shall*] **must** be filed with the
4 court in which the petition is filed or the motion is made.

MEMORANDUM

TO: Council on Court Procedures

FROM: Alicia Wilson

DATE: 6/6/2026

RE: Address Confidentiality Program (“ACP”)

A new business question to the Council relates to the Address Confidentiality Program (“ACP”) and to what extent it would apply/affect the Oregon Rules of Civil Procedure including service of Complaints and other documents, especially with concern for *Pro Se* litigants.

Address Confidentiality Program

ORS 192.820 to 192.868 establishes the Address Confidentiality Program which allows victims/survivors of domestic violence, sexual assault, stalking, human trafficking or bias incidents to use a substituted address through the Oregon Department of Justice when interacting with public bodies. Examples of where program participants can use a substituted address include (1) delivery of first class, certified and registered mail, (2) obtaining an Oregon Driver’s license or ID card, (3) receiving child support, (4) applying for a marriage license and (5) enrolling dependents in public school. <https://www.doj.state.or.us/crime-victims/victims-services/address-confidentiality-program-acp/>

The Oregon Department of Justice has promulgated additional rules found at OAR 137-079-0110 through OAR 137-079-0210.

Application of Program Pertains to Public Records

The Address Confidentiality Program statute is located in the public records section of the ORS and prohibits the disclosure of an actual address and requires use of a substituted address upon request of the program participant as to public bodies. ORS 192.836(1)(a). Pursuant to ORS 192.820(6) “public body” has the same meaning as ORS 174.109 which means, “state government bodies, local government bodies and special government bodies.” A participant in the program must apply pursuant to the program rules and be accepted and then request each relevant public body use the substituted address going

forward. Public bodies are not required to alter or modify prior public records¹ but would be required to substitute the address going forward except for statutory exceptions found in ORS 192.842 or pursuant to court order under ORS 192.848.

Rules of Civil Procedure Application

The ACP does affect the Rules of Civil Procedure as it relates to timelines. ORS 192.856 provides, “Notwithstanding any other law and the Oregon Rules of Civil Procedure, whenever a program participant has the right or is required to do some act or take some proceedings within a prescribed period of 10 days or less after the service of a notice or other paper upon the program participant and the notice or paper is served by mail pursuant to ORS 192.820 to 192.868, five days shall be added to the prescribed period.” Accordingly, if a program participant is a litigant and the address being used for court process is the substituted address, all deadlines would be extended by five days. This would not affect service of a Complaint or Summons which is not a deadline of 10 days or less.

¹ See *a/so* the Frequently Asked Questions on the Department of Justice Website.

Question: Does the ACP remove or delete information about me that already exists in public records? **Answer:** No. As a program participant, you may use an assigned substitute address for creating a new public record. The ACP cannot remove or delete information that already exists in public record. This is one of the reasons why an applicant must move (or be moving) to a location unknown to their abuser or any government agency to apply to the program. <https://www.doj.state.or.us/crime-victims/victims-services/address-confidentiality-program-acp/frequently-asked-questions/>

1 JOINDER OF CLAIMS

2 RULE 24

3 **A Permissive joinder.** A plaintiff may join in a complaint, either as independent or as
4 alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing
5 party.

6 **B Forcible entry and detainer [*and rental due.*] actions.** If a plaintiff joins a claim of
7 forcible entry and detainer [*and a claim for rental due are joined*] with any other claim for legal
8 or equitable relief, the defendant [*shall*] will have the same time to appear as is provided by
9 rule or statute in civil actions [*for the recovery of rental due.*] and the action will not be
10 governed by the provisions of ORS 105.137.

11 **C Separate statement.** The claims joined must be separately stated and must not require
12 different places of trial.

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Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

C Foreign depositions and subpoenas.

C(1) **Definitions.** For the purpose of this section:

C(1)(a) "Foreign subpoena" means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United [States.] **States that has enacted the Uniform Interstate Depositions and Discovery Act.**

C(2) **Issuance of subpoena.**

C(2)(a) To request issuance of a subpoena under this section, a party or attorney [shall] **must** submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.

C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure and requirements, [shall] **will** assign a case number and promptly issue a subpoena for service [upon] **on** the person to whom the foreign subpoena is directed. If a party to an out-of-state proceeding retains an attorney licensed to practice in this state, that attorney may assist the clerk in drafting the subpoena.

C(2)(c) A subpoena under this subsection [shall:] **must:**

C(2)(c)(i) Conform to the requirements of these Oregon Rules of Civil Procedure, including Rule 55, and conform substantially to the form provided in Rule 55 A(1) but may otherwise incorporate the terms used in the foreign subpoena as long as those terms conform to these rules; and

1 C(2)(c)(ii) Contain or be accompanied by the names, addresses, and telephone numbers
2 of all counsel of record in the proceeding to which the subpoena relates and of any party not
3 represented by counsel.

4 C(3) **Service of subpoena.** A subpoena issued by a clerk of court under subsection (2) of
5 this section [shall] **must** be served in compliance with Rule 55.

6 C(4) **Effects of request for subpoena.** A request for issuance of a subpoena under this
7 section does not constitute an appearance in the court. A request does allow the court to
8 impose sanctions for any action in connection with the subpoena that is a violation of
9 applicable law.

10 C(5) **Motions.** A motion to the court, or a response thereto, for a protective order or to
11 enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this section is an
12 appearance before the court and [shall] **must** comply with the rules and statutes of this state.
13 The motion [shall] **must** be submitted to the court in the county in which discovery is to be
14 conducted.

15 C(6) **Uniformity of application and construction.** In applying and construing this section,
16 consideration [shall] **will** be given to the need to promote the uniformity of the law with
17 respect to its subject matter among states that enact it.

JUDGMENTS

RULE 67

A Definitions. "Judgment" as used in these rules has the meaning given that term in ORS 18.005. "Order" as used in these rules means any other determination by a court or judge that is intermediate in nature.

B Judgment for less than all claims or parties in action. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may render a limited judgment as to one or more but fewer than all of the claims or parties. A judge may render a limited judgment under this section only if the judge determines that there is no just reason for delay.

C Recitation of prior judgments. The first paragraph of any form of judgment submitted by a party must recite the date of entry of any previous judgment entered in the action that has not been vacated. A supplemental judgment must recite only the date of entry of the general judgment and any judgment entered in the action thereafter.

[C Relief granted.] D Relief granted. Every judgment [shall] **will** grant the relief to which the party in whose favor it is rendered is entitled. A judgment for relief different in kind from or exceeding the amount prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

[D Judgment in action for recovery of personal property.] E Judgment in action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession of the property, or for the value of the property in case a delivery cannot be had, and for damages for the detention of the property. If the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for a return of the property, or **for** the value of the property in case a return cannot be had, and **for** damages for taking and withholding the

1 property.

2 ***[E Judgment in action against partnership, unincorporated association, or parties***
3 ***jointly indebted.] F Judgment in action against partnership, unincorporated association, or***
4 ***parties jointly indebted.***

5 ***[E(1) Partnership and unincorporated association.] F(1) Partnership and unincorporated***
6 ***association.*** Judgment in an action against a partnership or unincorporated association that is
7 sued in any name that it has assumed or by which it is known may be entered against that
8 partnership or association and *[shall bind]* ***binds*** the joint property of all of the partners or
9 associates.

10 ***[E(2) Joint obligations; effect of judgment.] F(2) Joint obligations; effect of judgment.*** In
11 any action against parties jointly indebted *[upon]* ***on*** a joint obligation, contract, or liability,
12 judgment may be taken against less than all of those parties and a default, dismissal, or
13 judgment in favor of or against less than all of those parties in an action does not preclude a
14 judgment in the same action in favor of or against the remaining parties.

15 ***[F Judgment by stipulation.] G Judgment by stipulation.***

16 ***[F(1) Availability of judgment by stipulation.] G(1) Availability of judgment by***
17 ***stipulation.*** At any time after commencement of an action, a judgment may be given *[upon]* ***on***
18 ***the*** stipulation that a judgment for a specified amount or for a specific relief may be entered.
19 The stipulation *[shall]* ***must*** be by the party or parties against whom judgment is to be entered
20 and the party or parties in whose favor judgment is to be entered. If the stipulation provides
21 for attorney fees, costs, and disbursements, they may be entered as part of the judgment
22 according to the stipulation.

23 ***[F(2) Filing; assent in open court.] G(2) Filing; assent in open court.*** The stipulation for
24 judgment may be in a writing signed by the parties, their attorneys, or their authorized
25 representatives. That writing *[shall]* ***must*** be filed in accordance with Rule 9. The stipulation
26 may be subjoined or appended to, and part of, a proposed form of judgment. If not in writing,

1 the stipulation [shall] **must** be assented to by all parties thereto in open court.

2 **[G Judgment on portion of claim exceeding counterclaim.] H Judgment on portion of**
3 **claim exceeding counterclaim.** The court may direct entry of a limited judgment as to that
4 portion of any claim that exceeds a counterclaim asserted by the party or parties against whom
5 the judgment is entered, if the party or parties have admitted the claim and asserted a
6 counterclaim amounting to less than the claim.



Shari Nilsson <nilsson@lclark.edu>

Oregon Rules of Civil Procedure Recommendation

Jacob Crosby <jncrosby90@gmail.com>
To: ccp@lclark.edu

Wed, May 20, 2026 at 8:59 PM

Hello,

I hope this email finds you well.

I wanted to suggest an addition/revision to the Oregon Rules of Civil Procedure.

ORCP 7(C) outlines the contents required in a summons.

I wanted to recommend adding a section regarding the requirement of an Oregon business to be represented by counsel, as required under ORS 9.320.

The rule already has proposed language for multiple other scenarios, and this addition would remove any potential delay in the judicial process when a business attempts to represent itself and additional notices are required.

I would be happy to respond to any questions or concerns you may have.

Thank you for your consideration.

Jacob Crosby



Shari Nilsson <nilsson@lclark.edu>

RE:

Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
To: "Leslie G. Bottomly" <Leslie.G.Bottomly@ojd.state.or.us>
Cc: Shari Nilsson <nilsson@lclark.edu>, Mark Peterson <mpeterso@lclark.edu>

Thu, May 21, 2026 at 11:15 PM

Thanks Leslie. This suggestion (requiring a party to cite specifically to the record in supporting or opposing summary judgment) coming from retired Justice Nakamoto at today's civil roundtable meeting will not be added to the ORCP this biennium, if ever, as we are one working meeting before the publication meeting in September. However, if this purely (to me) procedural change would expedite summary judgment rulings and make the orders based on a better record, it would appear to be less contentious than many Rule 47 discussions. I will raise it with the Council, and I assume that the Council will give the proposal full consideration next biennium. It was a good discussion. Thanks again. The Council rarely adopts a rule from another jurisdiction but appreciates reviewing rules that exist in other jurisdictions and, where possible, improving on them.

Mark

From: Leslie G. Bottomly <Leslie.G.Bottomly@ojd.state.or.us>
Sent: Thursday, May 21, 2026 12:38 PM
To: Mark A. Peterson <Mark.A.Peterson@ojd.state.or.us>
Subject: Fw:

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From: Leslie <bottomlyadr@gmail.com>
Sent: Thursday, May 21, 2026 12:37:04 PM
To: Leslie G. Bottomly <leslie.g.bottomly@ojd.state.or.us>
Subject:

WARNING: This email is from outside of the Oregon Judicial Department. If links or files in this email are unexpected, even if from an email address you trust, please call the sender on the phone and verify them before you click.

Council on Court Procedures
June 6, 2026, Meeting
Appendix K-1

3. Each statement of material fact by a movant in a Local Rule 56(a)1 Statement or by an opponent in a Local Rule 56(a)2 Statement, and each denial in an opponent's Local Rule 56(a)2 Statement, must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial. The affidavits, deposition testimony, responses to discovery requests, or other documents containing such evidence shall be filed and served with the Local Rule 56(a)1 and 2 Statements in conformity with Fed. R. Civ. P. 56(e). The "specific citation" obligation of this Local Rule requires counsel and pro se parties to cite to specific paragraphs when citing affidavits or responses to discovery requests and to cite to specific pages when citing to deposition or other transcripts or to documents longer than a single page in length. Counsel and pro se parties are hereby notified that failure to provide specific citations to evidence in the record as required by this Local Rule may result in the Court deeming certain facts that are supported by the evidence admitted in accordance with Rule 56(a)1 or in the Court imposing sanctions, including, when the movant fails to comply, an order denying the motion for summary judgment, and, when the opponent fails to comply, an order granting the motion if the undisputed facts show that the movant is entitled to judgment as a matter of law.



Shari Nilsson <nilsson@lclark.edu>

Proposed Language Addition for ORCP 17

Robert S. Raschio <Robert.S.Raschio@ojd.state.or.us>
To: "Mark A. Peterson" <Mark.A.Peterson@ojd.state.or.us>, Shari Nilsson <nilsson@lclark.edu>
Cc: "Meagan A. Flynn" <Meagan.A.Flynn@ojd.state.or.us>

Thu, May 28, 2026 at 12:23 AM

The attached language is included after a lengthy discussion with the Chief Justice and the Presiding Judges regarding the increasing use of generative artificial intelligence and the lack of proper controls used by litigants.

I hope this will be put on next year's agenda.

Thank you. The Chief has been cc'd on this email.

Robert S. Raschio

24th Judicial District (Grant/Harney)

Presiding Circuit Court Judge

(541)575-1438/(541)573-5207



ORCP 17.proposed revision.docx
14K

Proposed additional language for ORCP 17 for next year's council to consider in response to the current rule of the Oregon Court of Appeals "NOTICE REGARDING COURT IMPOSITION OF SANCTIONS FOR SUBMISSION OF FABRICATED AUTHORITY PRODUCED BY AI":

C(6) The party or attorney certifies that in all pleadings and other documents filed with the court that (1) all court cases cited exist; (2) all quotations attributed to existing court cases are contained therein and properly quoted enclosed in quotation marks if 49 words or less or in block quotations indented right and left if over 50 words, with the case citation and the page number of the quote, are accurately reported; and (3) all paraphrased propositions of law attributed to existing cases are objectively reasonable in light of the language of the case cited to the court.