

**2020 PROPOSED AMENDMENTS TO
OREGON RULES OF CIVIL PROCEDURE**

The Council on Court Procedures is considering whether or not to promulgate the following proposed amendments to the Oregon Rules of Civil Procedure. Boldface with underlining denotes new language; italicized language within brackets indicates language to be deleted.

To receive full consideration by the Council, written comments regarding the proposed amendments to the Oregon Rules of Civil Procedure should be received by the Council no later than the close of business on December 7, 2020. Written comments may be sent by mail or by e-mail to:

Mark A. Peterson
Executive Director

Shari C. Nilsson
Executive Assistant

Council on Court Procedures
c/o Lewis and Clark Law School
10101 S. Terwilliger Blvd
Portland, OR 97219
ccp@lclark.edu
www.counciloncourtprocedures.org

The Council meeting at which the Council will receive oral comments from the public relating to the proposed amendments will be held commencing at 9:30 a.m. on the following date and in the following place:

December 12, 2020

WEBEX MEETING:

<https://counciloncourtprocedures.my.webex.com/counciloncourtprocedures.my/j.php?MTID=m0e84afabf8f3002095c6f0515a794557>

Meeting number: 126 613 8973

Password: dQ92pS2dePP

Join by phone

+1-408-418-9388 United States Toll

Access code: 126 613 8973

Password: 37927723

The Council will take final action on the proposed amendments at its December 12, 2020, meeting.

**2020 PROPOSED AMENDMENTS TO
THE OREGON RULES OF CIVIL PROCEDURE**

Table of Contents

TIME FOR FILING PLEADINGS OR MOTIONS
RULE 15

DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION;
MOTION FOR JUDGMENT ON THE PLEADINGS
RULE 21

[*MINOR*] **UNEMANCIPATED MINORS** OR INCAPACITATED PARTIES
RULE 27

INTERPLEADER
RULE 31

SUBPOENA
RULE 55

1 **TIME FOR FILING PLEADINGS OR MOTIONS**

2 **RULE 15**

3 **A Time for filing motions and pleadings.** An answer to a complaint or to a third-party
4 complaint, or a motion responsive to either pleading, must be filed with the clerk within the
5 time required by Rule 7 C(2) to appear and defend. If the summons is served by publication,
6 the defendant must appear and defend within 30 days of the date of first publication. A reply
7 to a counterclaim, a reply to assert affirmative allegations in avoidance of defenses alleged in
8 an answer, or a motion responsive to either of those pleadings must be filed within 30 days
9 from the date of service of the counterclaim or answer. An answer to a cross-claim or a motion
10 responsive to a cross-claim must be filed within 30 days from the date of service of the
11 cross-claim.

12 **B Pleading after motion.**

13 B(1) If the court denies a motion, any responsive pleading required must be filed within
14 10 days after service of the order, unless the order otherwise directs.

15 B(2) If the court grants a motion and an amended pleading is allowed or required, that
16 pleading must be filed within 10 days after service of the order, unless the order otherwise
17 directs.

18 **C Responding to amended pleading.** A party must respond to an amended pleading
19 within the time remaining for response to the original pleading or within 10 days after service
20 of the amended pleading, whichever period may be the longer, unless the court otherwise
21 directs.

22 **D Enlarging time to [plead or do other act.] file and serve pleadings and motions.** [The]
23 **Except as otherwise prohibited by law, the** court may, in its discretion, and upon any terms as
24 may be just, allow [an answer or reply] **any pleading** to be made, or allow any [other pleading
25 or] motion, **or response or reply to a motion,** after the time limited by the procedural rules, or
26 by an order enlarge [such time] **the time limited by the procedural rules.**

1 **DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION;**

2 **MOTION FOR JUDGMENT ON THE PLEADINGS**

3 **RULE 21**

4 **[A How presented.** *Every defense, in law or fact, to a claim for relief in any pleading,*
5 *whether a complaint, counterclaim, cross-claim or third party claim, shall be asserted in the*
6 *responsive pleading thereto, except that the following defenses may at the option of the pleader*
7 *be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of*
8 *jurisdiction over the person, (3) that there is another action pending between the same parties*
9 *for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of*
10 *summons or process or insufficiency of service of summons or process, (6) that the party*
11 *asserting the claim is not the real party in interest, (7) failure to join a party under Rule 29, (8)*
12 *failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows*
13 *that the action has not been commenced within the time limited by statute. A motion to dismiss*
14 *making any of these defenses shall be made before pleading if a further pleading is permitted.*
15 *The grounds upon which any of the enumerated defenses are based shall be stated specifically*
16 *and with particularity in the responsive pleading or motion. No defense or objection is waived by*
17 *being joined with one or more other defenses or objections in a responsive pleading or motion.*
18 *If, on a motion to dismiss asserting defenses (1) through (7), the facts constituting such defenses*
19 *do not appear on the face of the pleading and matters outside the pleading, including affidavits,*
20 *declarations and other evidence, are presented to the court, all parties shall be given a*
21 *reasonable opportunity to present affidavits, declarations and other evidence, and the court*
22 *may determine the existence or nonexistence of the facts supporting such defense or may defer*
23 *such determination until further discovery or until trial on the merits. If the court grants a*
24 *motion to dismiss, the court may enter judgment in favor of the moving party or grant leave to*
25 *file an amended complaint. If the court grants the motion to dismiss on the basis of defense (3),*
26 *the court may enter judgment in favor of the moving party, stay the proceeding, or defer entry*

1 *of judgment.]*

2 **A Defenses. Every defense, in law or fact, to a claim for relief in any pleading, whether**
3 **a complaint, counterclaim, cross-claim, or third party claim must be asserted in the**
4 **responsive pleading thereto, with the exception of the defenses enumerated in paragraph**
5 **A(1)(a) through paragraph A(1)(i) of this rule.**

6 **A(1) The following defenses may, at the option of the pleader, be made by motion to**
7 **dismiss:**

8 **A(1)(a) lack of jurisdiction over the subject matter;**

9 **A(1)(b) lack of jurisdiction over the person;**

10 **A(1)(c) that there is another action pending between the same parties for the same**
11 **cause;**

12 **A(1)(d) that plaintiff has not the legal capacity to sue;**

13 **A(1)(e) insufficiency of summons or process or insufficiency of service of summons or**
14 **process;**

15 **A(1)(f) that the party asserting the claim is not the real party in interest;**

16 **A(1)(g) failure to join a party under Rule 29;**

17 **A(1)(h) failure to state ultimate facts sufficient to constitute a claim; and**

18 **A(1)(i) that the pleading shows that the action has not been commenced within the**
19 **time limited by statute.**

20 **A(2) How presented.**

21 **A(2)(a) Generally. A motion to dismiss asserting any of the defenses enumerated in**
22 **paragraph A(1)(a) through paragraph A(1)(i) of this rule must be filed before pleading if a**
23 **further pleading is permitted. No defense or objection is waived by being joined with one or**
24 **more other defenses or objections in a responsive pleading or motion.**

25 **A(2)(b) Factual basis. The grounds on which any of the enumerated defenses are based**
26 **must be stated specifically and with particularity in the responsive pleading or motion. If, on**

1 a motion to dismiss asserting the defenses enumerated in paragraph A(1)(a) through
2 paragraph A(1)(g) of this rule, the facts constituting the asserted defenses do not appear on
3 the face of the pleading and matters outside the pleading (including affidavits, declarations,
4 and other evidence} are presented to the court, all parties will be given a reasonable
5 opportunity to present affidavits, declarations, and other evidence, and the court may
6 determine the existence or nonexistence of the facts supporting the asserted defenses or
7 may defer any determination until further discovery or until trial on the merits.

8 A(2)(c) Remedies available. If the court grants a motion to dismiss, the court may enter
9 judgment in favor of the moving party or grant leave to file an amended complaint. If the
10 court grants the motion to dismiss on the basis of a defense described in paragraph A(1)(c) of
11 this rule, the court may enter judgment in favor of the moving party, stay the proceeding, or
12 defer entry of judgment.

13 **B Motion for judgment on the pleadings.** After the pleadings are closed, but within such
14 time as not to delay the trial, any party may move for judgment on the pleadings.

15 **C Preliminary hearings.** The defenses specifically [*denominated (1) through (9) in section*
16 *A of this rule,*] enumerated in paragraph A(1)(a) through paragraph A(1)(i) of this rule,
17 whether made in a pleading or by motion, and the motion for judgment on the pleadings
18 mentioned in section B of this rule [*shall*] **must** be heard and determined before trial on
19 [*application*] **the motion** of any party, unless the court orders that the hearing and
20 determination thereof be deferred until the trial.

21 **D Motion to make more definite and certain.** [*Upon*] **On** motion made by a party before
22 responding to a pleading[,] or, if no responsive pleading is permitted by these rules, [*upon*] **on**
23 motion by a party within 10 days after service of the pleading, or [*upon*] **on** the court's own
24 initiative at any time, the court may require the pleading to be made definite and certain by
25 amendment when the allegations of a pleading are so indefinite or uncertain that the precise
26 nature of the [*charge*] **claim**, defense, or reply is not apparent. If the motion is granted and the

1 | order of the court is not obeyed within 10 days after service of the order, or within such other
2 | time as the court may fix, the court may strike the pleading to which the motion was directed
3 | or make [such] **any** order [as] it deems just.

4 | **E Motion to strike.** [Upon] **On** motion made by a party before responding to a pleading
5 | or, if no responsive pleading is permitted by these rules, [upon] **on** motion made by a party
6 | within 10 days after the service of the pleading [upon] **on** such party or [upon] **on** the court's
7 | own initiative at any time, the court may order stricken: [(1) *any sham, frivolous, or irrelevant*
8 | *pleading or defense or any pleading containing more than one claim or defense not separately*
9 | *stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter*
10 | *inserted in a pleading.*]

11 | **E(1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing**
12 | **more than one claim or defense not separately stated;**

13 | **E(2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter**
14 | **inserted in a pleading; or**

15 | **E(3) any response to an amended pleading, or part thereof, that raises new issues,**
16 | **when justice so requires.**

17 | **F Consolidation of defenses in motion.** A party who makes a motion under this rule may
18 | join with it any other motions herein provided for and then available to the party. If a party
19 | makes a motion under this rule, except a motion to dismiss for lack of jurisdiction over the
20 | person or insufficiency of summons or process or insufficiency of service of summons or
21 | process, but omits therefrom any defense or objection then available to the party [which] **that**
22 | this rule permits to be raised by motion, the party [shall not] **cannot** thereafter make a motion
23 | based on the defense or objection so omitted, except a motion as provided in subsection G(3)
24 | of this rule on any of the grounds there stated. A party may make one motion to dismiss for
25 | lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of
26 | service of summons or process without consolidation of defenses required by this section.

1 **G Waiver or preservation of certain defenses.**

2 G(1) A defense of lack of jurisdiction over the person, that there is another action
3 pending between the same parties for the same cause, insufficiency of summons or process, or
4 insufficiency of service of summons or process, is waived under either of the following
5 *[circumstances: (a) if the defense is omitted from a motion in the circumstances described in*
6 *section F of this rule, or (b) if the defense is neither made by motion under this rule nor included*
7 *in a responsive pleading. The defenses referred to in this subsection shall not be raised by*
8 *amendment.] **circumstances, and cannot be raised by amendment:***

9 **G(1)(a) if the defense is omitted from a motion in the circumstances described in**
10 **section F of this rule; or**

11 **G(1)(b) if the defense is neither made by motion under this rule nor included in a**
12 **responsive pleading.**

13 G(2) A defense that a plaintiff has not the legal capacity to sue, that the party asserting
14 the claim is not the real party in interest, or that the action has not been commenced within
15 the time limited by statute, is waived if it is neither made by motion under this rule nor
16 included in a responsive pleading or an amendment thereof. Leave of court to amend a
17 pleading to assert the defenses referred to in this subsection *[shall] **will** only be granted [upon]*
18 **on** a showing by the party seeking to amend that *[such] **the*** party did not know and reasonably
19 could not have known of the existence of the defense, or that other circumstances make denial
20 of leave to amend unjust.

21 G(3) A defense of failure to state ultimate facts constituting a claim, a defense of failure
22 to join a party indispensable under Rule 29, and an objection of failure to state a legal defense
23 to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any
24 pleading permitted or ordered under Rule 13 B, *[or]* by motion for judgment on the pleadings,
25 or at the trial on the merits. The objection or defense, if made at trial, *[shall] **will*** be disposed
26 of as provided in Rule 23 B in light of any evidence that may have been received.

1 G(4) If it appears by motion of the parties or otherwise that the court lacks jurisdiction
2 over the subject matter, the court [*shall*] **must** dismiss the action.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **[MINOR] UNEMANCIPATED MINORS OR INCAPACITATED PARTIES**

2 **RULE 27**

3 **A Appearance of parties by guardian or conservator or guardian ad litem.** [When a
4 person who has a conservator of that person's estate or a guardian is a party to any action, the
5 person shall appear by the conservator or guardian as may be appropriate or, if the court so
6 orders, by a guardian ad litem appointed by the court in which the action is brought.] **In any**
7 **action, a party who has a guardian or a conservator or who is a person described in section B**
8 **of this rule shall appear in that action either through their guardian, through their**
9 **conservator, or through a guardian ad litem (that is, a competent adult who acts in the**
10 **party's interests in and for the purposes of the action) appointed by the court in which that**
11 **action is brought.** The appointment of a guardian ad litem shall be pursuant to this rule unless
12 the appointment is made on the court's motion or a statute provides for a procedure that
13 varies from the procedure specified in this rule.

14 **B [Appointment] Mandatory appointment of guardian ad litem for unemancipated**
15 **minors; incapacitated or financially incapable parties.** When [a] **an unemancipated** minor or a
16 person who is incapacitated or financially incapable, as those terms are defined in ORS
17 125.005, is a party to an action and does not have a guardian or conservator, the person shall
18 appear by a guardian ad litem appointed by the court in which the action is brought and
19 pursuant to this rule, as follows:

20 B(1) when the plaintiff or petitioner is a minor:

21 B(1)(a) if the minor is 14 years of age or older, upon application of the minor; or

22 B(1)(b) if the minor is under 14 years of age, upon application of a relative or friend of
23 the minor, or other interested person;

24 B(2) when the defendant or respondent is a minor:

25 B(2)(a) if the minor is 14 years of age or older, upon application of the minor filed within
26 the period of time specified by these rules or any other rule or statute for appearance and

1 answer after service of a summons; or

2 B(2)(b) if the minor fails so to apply or is under 14 years of age, upon application of any
3 other party or of a relative or friend of the minor, or other interested person;

4 B(3) when the plaintiff or petitioner is a person who is incapacitated or financially
5 incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend
6 of the person, or other interested person; or

7 B(4) when the defendant or respondent is a person who is incapacitated or is financially
8 incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend
9 of the person, or other interested person, filed within the period of time specified by these
10 rules or any other rule or statute for appearance and answer after service of a summons or, if
11 the application is not so filed, upon application of any party other than the person.

12 **C Discretionary appointment of guardian ad litem for a party with a disability.** When a
13 person with a disability, as defined in ORS 124.005, is a party to an action, the person may
14 appear by a guardian ad litem appointed by the court in which the action is brought and
15 pursuant to this rule upon motion and one or more supporting affidavits or declarations
16 establishing that the appointment would assist the person in prosecuting or defending the
17 action.

18 **D Method of seeking appointment of guardian ad litem.** A person seeking appointment
19 of a guardian ad litem shall do so by filing a motion and seeking an order in the proceeding in
20 which the guardian ad litem is sought. The motion shall be supported by one or more affidavits
21 or declarations that contain facts sufficient to prove by a preponderance of the evidence that
22 the party on whose behalf the motion is filed is a minor, is incapacitated or is financially
23 incapable, as those terms are defined in ORS 125.005, or is a person with a disability, as
24 defined in ORS 124.005. The court may appoint a suitable person as a guardian ad litem before
25 notice is given pursuant to section E of this rule; however, the appointment shall be reviewed
26 by the court if an objection is received as specified in subsection F(2) or F(3) of this rule.

1 **E Notice of motion seeking appointment of guardian ad litem.** Unless waived under
2 section H of this rule, no later than 7 days after filing the motion for appointment of a guardian
3 ad litem, the person filing the motion must provide notice as set forth in this section, or as
4 provided in a modification of the notice requirements as set forth in section H of this rule.
5 Notice shall be provided by mailing to the address of each person or entity listed below, by first
6 class mail, a true copy of the motion, any supporting affidavits or declarations, and the form of
7 notice prescribed in section F of this rule.

8 E(1) If the party is a minor, notice shall be provided to the minor if the minor is 14 years
9 of age or older; to the parents of the minor; to the person or persons having custody of the
10 minor; to the person who has exercised principal responsibility for the care and custody of the
11 minor during the 60-day period before the filing of the motion; and, if the minor has no living
12 parents, to any person nominated to act as a fiduciary for the minor in a will or other written
13 instrument prepared by a parent of the minor.

14 E(2) If the party is 18 years of age or older, notice shall be given:

15 E(2)(a) to the person;

16 E(2)(b) to the spouse, parents, and adult children of the person;

17 E(2)(c) if the person does not have a spouse, parent, or adult child, to the person or
18 persons most closely related to the person;

19 E(2)(d) to any person who is cohabiting with the person and who is interested in the
20 affairs or welfare of the person;

21 E(2)(e) to any person who has been nominated as fiduciary or appointed to act as
22 fiduciary for the person by a court of any state, any trustee for a trust established by or for the
23 person, any person appointed as a health care representative under the provisions of ORS
24 127.505 to 127.660, and any person acting as attorney-in-fact for the person under a power of
25 attorney;

26 E(2)(f) if the person is receiving moneys paid or payable by the United States through the

1 Department of Veterans Affairs, to a representative of the United States Department of
2 Veterans Affairs regional office that has responsibility for the payments to the person;

3 E(2)(g) if the person is receiving moneys paid or payable for public assistance provided
4 under ORS chapter 411 by the State of Oregon through the Department of Human Services, to
5 a representative of the department;

6 E(2)(h) if the person is receiving moneys paid or payable for medical assistance provided
7 under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, to a
8 representative of the authority;

9 E(2)(i) if the person is committed to the legal and physical custody of the Department of
10 Corrections, to the Attorney General and the superintendent or other officer in charge of the
11 facility in which the person is confined;

12 E(2)(j) if the person is a foreign national, to the consulate for the person's country; and

13 E(2)(k) to any other person that the court requires.

14 **F Contents of notice.** The notice shall contain:

15 F(1) the name, address, and telephone number of the person making the motion, and
16 the relationship of the person making the motion to the person for whom a guardian ad litem
17 is sought;

18 F(2) a statement indicating that objections to the appointment of the guardian ad litem
19 must be filed in the proceeding no later than 14 days from the date of the notice; and

20 F(3) a statement indicating that the person for whom the guardian ad litem is sought
21 may object in writing to the clerk of the court in which the matter is pending and stating the
22 desire to object.

23 **G Hearing.** As soon as practicable after any objection is filed, the court shall hold a
24 hearing at which the court will determine the merits of the objection and make any order that
25 is appropriate.

26 **H Waiver or modification of notice.** For good cause shown, the court may waive notice

1 | entirely or make any other order regarding notice that is just and proper in the circumstances.

2 | **I Settlement.** Except as permitted by ORS 126.725, in cases where settlement of the
3 | action will result in the receipt of property or money by a party for whom a guardian ad litem
4 | was appointed under section B of this rule, court approval of any settlement must be sought
5 | and obtained by a conservator unless the court, for good cause shown and on any terms that
6 | the court may require, expressly authorizes the guardian ad litem to enter into a settlement
7 | agreement.

8 |

9 |

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

23 |

24 |

25 |

26 |

1 | **INTERPLEADER**

2 | **RULE 31**

3 | **A Parties.** Persons having claims against the plaintiff may be joined as defendants and
4 | required to interplead when their claims are such that the plaintiff is or may be exposed to
5 | double or multiple liability. It is not a ground for objection to the joinder that the claims of the
6 | several claimants, or the titles on which their claims depend, do not have a common origin or
7 | are not identical but are adverse to and independent of one another, or that the plaintiff
8 | alleges that plaintiff is not liable in whole or in part to any or all of the claimants.] A defendant
9 | exposed to similar liability may obtain [*such*] interpleader by way of cross-claim or
10 | counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of
11 | parties otherwise permitted by rule or statute.

12 | **B Procedure.** Any property or amount involved as to which the plaintiff admits liability
13 | may, upon order of the court, be deposited with the court or otherwise preserved, or secured
14 | by bond in an amount sufficient to assure payment of the liability admitted. The court may
15 | thereafter enjoin all parties before it from commencing or prosecuting any other action
16 | regarding the subject matter of the interpleader action. Upon hearing, the court may order the
17 | plaintiff discharged from liability as to property deposited or secured before determining the
18 | rights of the claimants thereto.

19 | **C Attorney fees.** [*In any suit or action or for any cross-claim or counterclaim in*
20 | *interpleader filed pursuant to this rule by any party other than a party who has been*
21 | *compensated for acting as a surety with respect to the funds or property interpled, the party*
22 | *filing the suit or action in interpleader shall be awarded a reasonable attorney fee in addition to*
23 | *costs and disbursements upon the court ordering that the funds or property interpled be*
24 | *deposited with the court, secured or otherwise preserved and that the party filing the suit or*
25 | *action in interpleader be discharged from liability as to the funds or property. The attorney fees*
26 | *awarded shall be assessed against and paid from the funds or property ordered interpled by the*

1 | *court.]*

2 | **C(1) Generally. In any action or for any cross-claim or counterclaim in interpleader filed**
3 | **pursuant to this rule, the party interpleading funds may be awarded a reasonable attorney**
4 | **fee in addition to costs and disbursements upon the court ordering that the funds or**
5 | **property interpled be deposited with the court, secured, or otherwise preserved. Further,**
6 | **the party interpleading funds will be discharged from liability as to the funds or property.**
7 | **The attorney fees awarded shall be assessed against and paid from the funds or property**
8 | **ordered interpled by the court. In determining whether to deny or to award in whole or in**
9 | **part a requested amount of attorney fees, the court must consider ORS 20.075 and the**
10 | **following additional factors:**

11 | **C(1)(a) whether, as a matter of equity, the party interpleading funds is involved in the**
12 | **dispute in a way that it should not be awarded attorney fees as a result of the dispute;**

13 | **C(1)(b) whether the party interpleading funds was subject to multiple litigation; and**

14 | **C(1)(c) whether the interpleader was in the interests of justice and furthered resolution**
15 | **of the dispute.**

16 | **C(2) Sureties. Section C of this rule does not apply to a party who has been**
17 | **compensated for acting as a surety with respect to the funds or property interpled.**

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

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

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

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

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

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

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

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

21 **A(5) Proof of service.** Proving service of a subpoena is done in the same way as provided
22 in Rule 7 F(2)(a) for proving service of a summons, except that the server need not disavow
23 being a party in the action; an attorney for a party; or an officer, director, or employee of a
24 party.

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

26 **A(6)(a) Length of witness attendance.** A command in a subpoena to appear and testify

1 requires that the witness remain for as many hours or days as are necessary to conclude the
2 testimony, unless the witness is sooner discharged.

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

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

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

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

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

22 **A(7) Recipient's option to object, to move to quash, or to move to modify subpoena
23 [for production].** A person [*who is not subpoenaed to appear, but who is commanded to
24 produce and permit inspection and copying of documents or things, including records of
25 confidential health information as defined in subsection D(1) of this rule,*] **to whom a subpoena
26 is directed** may object, [*or*] move to quash **the subpoena**, or move to modify the subpoena[, *as*

1 | provided] as follows.

2 | **[A(7)(a) Written objection; timing.** *A written objection may be served on the party who*
3 | *issued the subpoena before the deadline set for production, but not later than 14 days after*
4 | *service on the objecting person.]*

5 | **A(7)(a) Written objection to subpoena to appear; timing. A written objection to a**
6 | **subpoena to appear and testify must be served on the party who issued the subpoena and on**
7 | **the clerk of the court in which the subpoena originated not later than 14 days after service of**
8 | **the subpoena, or prior to the time specified in the subpoena to appear and testify, whichever**
9 | **comes first.**

10 | **A(7)(b) Written objection to subpoena for production; timing. A written objection to a**
11 | **subpoena that commands a person to produce and permit inspection and copying of**
12 | **documents or things, including records of confidential health information as defined in**
13 | **subsection D(1) of this rule, must be served on the party who issued the subpoena before the**
14 | **deadline set for production, but not later than 14 days after service on the objecting person.**

15 | **[A(7)(a)(i)] A(7)(b)(i) Scope.** The written objection may be to all or to only part of the
16 | command to produce.

17 | **[A(7)(a)(iii)] A(7)(b)(ii) Objection suspends obligation to produce.** Serving a written
18 | objection suspends the time to produce the documents or things sought to be inspected and
19 | copied. However, the party who served the subpoena may move for a court order to compel
20 | production at any time. A copy of the motion to compel must be served on the objecting
21 | person.

22 | **[A(7)(b)] A(7)(c) Motion to quash or to modify.** A motion to quash or to modify [*the*
23 | *command for production*] **a subpoena** must be served and filed with the court no later than **1**
24 | **judicial day prior to the date specified to appear and testify, or** the deadline set for
25 | production. The court may quash or modify the subpoena if the subpoena is unreasonable and
26 | oppressive or may require that the party who served the subpoena pay the reasonable costs of

1 appearance or production.

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

4 **B Subpoenas requiring appearance and testimony by individuals, organizations, law**
5 **enforcement agencies or officers, [*and prisoners.*] prisoners, and parties.**

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

8 **B(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, or
9 at the trial of an issue therein, or upon the taking of a deposition in an action pending therein.

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

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

16 **B(2) Service of subpoenas requiring the appearance or testimony of nonparty**
17 **individuals or nonparty organizations; payment of fees.** Unless otherwise provided in this rule,
18 a copy of the subpoena must be served sufficiently in advance to allow the witness a
19 reasonable time for preparation and travel to the place [*required.*] specified in the subpoena.

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

24 **B(2)(b) Service on an individual under 14 years of age.** If the witness is under 14 years of
25 age, the subpoena must be personally delivered to the witness's parent, guardian, or guardian
26 ad litem, along with fees for one day's attendance and the mileage allowed by law unless the

1 witness expressly declines payment, whether personal attendance is required or not.

2 **B(2)(c) Service on individuals waiving personal service.** If the witness waives personal
3 service, the subpoena may be mailed to the witness, but mail service is valid only if all of the
4 following circumstances exist:

5 **B(2)(c)(i) Witness agreement.** Contemporaneous with the return of service, the party's
6 attorney or attorney's agent certifies that the witness agreed to appear and testify if
7 subpoenaed;

8 **B(2)(c)(ii) Fee arrangements.** The party's attorney or attorney's agent made satisfactory
9 arrangements with the witness to ensure the payment of fees and mileage, or the witness
10 expressly declined payment; and

11 **B(2)(c)(iii) Signed mail receipt.** The subpoena was mailed more than 10 days before the
12 date to appear and testify in a manner that provided a signed receipt on delivery, and the
13 witness or, if applicable, the witness's parent, guardian, or guardian ad litem, signed the
14 receipt more than 3 days before the date to appear and testify.

15 **B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule**
16 **39 C(6).** A subpoena naming a nonparty organization as a deponent must be [*delivered*]
17 delivered, along with fees for one day's attendance and mileage in the same manner as
18 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
19 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

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

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

26 **B(3)(b) Substitute service on a law enforcement agency.** A subpoena directed to a peace

1 officer in a professional capacity may be served by substitute service of a copy, along with **fees**
2 **for** one day's attendance [*fee*] and mileage as allowed by law, on an individual designated by
3 the law enforcement agency that employs the peace officer or, if a designated individual is not
4 available, then on the person in charge at least 10 days before the date the peace officer is
5 required to attend, provided that the peace officer is currently employed by the law
6 enforcement agency and is present in this state at the time the agency is served.

7 **B(3)(b)(i) "Law enforcement agency" defined.** For purposes of this subsection, a law
8 enforcement agency means the Oregon State Police, a county sheriff's department, a city
9 police department, or a municipal police department.

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

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

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

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

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

25 **B(4)(b) Court determines location.** The court may order temporary removal and
26 production of the prisoner to a requested location, or may require that testimony be taken by

1 deposition at, or by remote location testimony from, the place of confinement; and

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

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

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

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

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

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

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

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

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

1 **D Subpoenas for documents and things containing confidential health information**

2 (**“CHI”**).

3 **D(1) Application of this section; “confidential health information” defined.** This section
4 creates protections for production of CHI, which includes both individually identifiable health
5 information as defined in ORS 192.556 (8) and protected health information as defined in ORS
6 192.556 (11)(a). For purposes of this section, CHI means information collected from a person
7 by a health care provider, health care facility, state health plan, health care clearinghouse,
8 health insurer, employer, or school or university that identifies the person or could be used to
9 identify the person and that includes records that:

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

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

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

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

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

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

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

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

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

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

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

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

19
20 This subpoena requires a custodian of confidential health information to personally
21 attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of
22 Civil Procedure 55 D(8) is insufficient for this subpoena.

23
24 **D(5) Mandatory privacy procedures for all records produced.**

25 **D(5)(a) Enclosure in a sealed inner envelope; labeling.** The copy of the records must be
26 separately enclosed in a sealed envelope or wrapper on which the name of the court, case

1 name and number of the action, name of the witness, and date of the subpoena are clearly
2 inscribed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and
2 D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred to
3 in the CHI.

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

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

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

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