

2026 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.

Staff notes are included to help the reader understand where changes have been made for purposes of clarity and consistency that do not affect the meaning or operation of the rule, as opposed to where the Council intended to change the procedures that the rule dictates.

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 4, 2026. Written comments may be sent by mail or by e-mail to:

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The Council meeting at which the Council will consider written comments and 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, 2026

ZOOM MEETING:

<https://us06web.zoom.us/j/82377203749?pwd=NrzKPpbkaJvbos2b8xcEqAF0BkarQa.1>
Teleconference option: 1-253-215-8782
Meeting ID: 823 7720 3749 / Passcode: 193329

The Council will take final action on the proposed amendments at its December 12, 2026, meeting.

**2026 PROPOSED AMENDMENTS TO
THE OREGON RULES OF CIVIL PROCEDURE**

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**STAFF NOTES FOR 2025-2027 PUBLICATION
OF PROPOSED AMENDMENTS TO THE ORCP**

These notes are not the official, and more detailed, staff comments that will follow the rules that are ultimately promulgated during the 2025-2027 biennium. Rather, they are a guide to persons reviewing the published draft amendments to the ORCP as to the intent of the proposed changes and, importantly, to point out proposed changes of a more technical variety that are not intended to affect the use and operation of the rules.

ORCP 7. The part of the proposed amendment to Rule 7 that would impact users involves changes to the summons form that are found in paragraph C(3). Rule 7 provides for three different summons forms for specific applications, and all three forms are the subject of changes. First, and most visibly, the minimum font size is increased from 8-point type to 12-point type to improve readability. Second, the wording is changed to be more specific and more comprehensible. Since Rule 7, governing the form of summons, is applicable to cases in equity as well as in law, “defendant” is omitted, “petitioner” is included along with “plaintiff,” and “response” is added to “answer” as an appropriate responsive pleading. The proposed form of summons provides information to the recipient that is improved in terms of readability and accuracy and provides current contacts for assistance including the Oregon Law Help resource.

The remainder of the proposed changes are to make Rule 7 consistent with the other rules, primarily replacing the word “shall” with more precise verbs such as “must” or “will.” There are also corrections to internal references within the rule and replacing the word “transmission” in paragraph D(6)(b) to be consistent with Rule 9. The proposed amendments other than to the form of the summons are not intended to affect the use or operation of the rule.

ORCP 9. The Council was considering changes to Rule 9 on service of documents and, while no changes were ultimately made that would affect the use or operation of the rule, a number of technical changes are proposed in the published amendment, primarily to replace indefinite pronouns with the intended noun to improve readability for a reader attempting to decipher the requirements specified in the rule. Again, the overused word “shall” is replaced with more precise verbs.

ORCP 22. The proposed amendments to section C of Rule 22 relating to impleader are the only proposed changes that would affect practice. Oregon currently does not permit impleader to add a new third-party defendant more than 90 days after a defendant has been served with the summons and complaint unless all parties and the court agree. The

published amendment would remove the automatic veto that any party that has appeared may exercise to deny the late addition and leave it to the court in its discretion to decide whether the proposed third-party defendant may be added to the litigation.

The proposed amendment also contains technical changes that are not intended to affect the use or operation of the rule. These proposed changes are primarily the addition of leadlines for each subsection to make the rule more readable. Section C is reconfigured from three subsections to five with added leadlines to improve readability and ease of citation, again with no intent to change the use or operation of the rule.

ORCP 24. Rule 24 on joinder has not been amended since its initial promulgation. However, Section B relating to eviction actions is imprecise in characterizing claims as being for possession or for rent. Especially after enactment of HB 2001(2023), defining nonpayment rather specifically and providing different procedures for eviction claims based on alleged nonpayment as opposed to claims based on other “for cause” allegations, the Council decided that an update to Rule 24 is in order. Although the proposed amendment removes the limiting term “rent,” the use and operation of the rule would be the same. If a claim is merely for possession, the summary eviction procedures in chapter 105 of the Oregon Revised Statutes are applicable. If the claim for possession is joined with any other claim, legal or equitable, the action does not qualify for the summary proceedings and proceeds as any other civil action.

ORCP 36. The main proposed amendment to the general discovery rule concerns discovery to enforce or collect a judgment. Apparently, it has been argued that paragraph B(1)’s language, “relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party” means that post-judgment discovery is not authorized. Such is not the intent of the rule or the practice in this state. Indeed, certain statutes authorize discovery to enforce or collect an existing judgment. To make clear that the discovery rules do not become non-functional once the judgment has been entered, subsection B(4) is proposed. Consistent with practice, the proposed new language does require a court order to pursue discovery if the court has issued a stay of execution on the judgment.

Other proposed amendments to Rule 36 include punctuation improvements and replacing the word “shall” with more precise language, consistent with the other rules. These are not intended to affect the use or operation of Rule 36.

ORCP 37. Rule 37 on perpetuating testimony was looked at as a possible location for the amendment that ultimately was included in Rule 36 B(4). In looking at Rule 37, it was observed that the rule had inconsistent internal references in sections A and B, letters in

the former and numbers in the latter, and that the rule contained overlong sentences and would benefit from some clarifying verbiage and a re-formatting to break it into paragraphs and include leadlines. The proposed changes are for the purpose of making Rule 37 more readable and citable without intent to affect the use or operation of the rule.

ORCP 38. It came to the Council's attention that paragraph C(1)(b) of Rule 38 concerning depositions does not say what it means and can cause confusion as to when the provisions of the Uniform Interstate Depositions and Discovery Act may be used and when somewhat more involved procedures apply. The clarifying change is in paragraph C(1)(b) defining "state." What the rule means when it reads "state" is a state that has enacted the Uniform Interstate Depositions and Discovery Act. As of the time of the Council's deliberations, two states had not enacted the UIDDA. The proposed amendment clarifies that "state" means a state that has adopted the UIDDA.

The remaining proposed amendments to Rule 38, primarily replacing "shall" with more accurate verbs and clarifying some indefinite pronouns are not intended to affect the use or operation of the rule.

ORCP 67. In Rule 67, on judgments, the proposed amendment is to add a new section C. Judgments are limited, general, or supplemental. The drafter is currently, by statute, required to indicate which form of judgment is submitted. However, particularly in multi-claim and multi-party actions, there may be a number of limited judgments dispensing with some claims or some parties. The proposed new section C provides that the first paragraph of a proposed judgment must recite any previous judgment entered in the case and the date of entry. The drafter, by reviewing previous judgments, will be cognizant as to whether any claims or any parties have not been addressed in a proposed general judgment. In a routine civil action between a plaintiff and a defendant, the requirement will be straightforward. As supplemental judgments do not present the issue of unaddressed claims or parties and are frequently for an award of attorney fees, supplemental judgments need only recite the date of the general judgment.

The remaining proposed amendments to Rule 67, primarily replacing "shall" with more precise verbs and readability improvements, are not intended to affect the use or operation of the rule.

1 **SUMMONS**

2 **RULE 7**

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

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

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

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

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

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

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

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

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

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

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

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

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

9 You must “appear” in this case or the [*other side*] **plaintiff or petitioner** will win
10 automatically. To [*“appear” you must file with the court*] **appear, you must file** a legal
11 document called a [*“motion” or “answer.”*] **“motion,” “answer,” or “response” within 30 days**
12 **of the date you receive this summons.** [*The “motion” or “answer” must be given to the court*
13 *clerk or administrator within 30 days along with the required filing fee.*] **To file, you must give**
14 **your legal document to the clerk of the court that appears at the top of this summons. You**
15 **may need to pay a filing fee.** [*It must be in proper form and have proof of service on the*
16 *plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.*]
17 **Your legal document must be in proper form as required by the Oregon Rules of Civil**
18 **Procedure (ORCP) and the Uniform Trial Court Rules. You must serve your legal document, as**
19 **required by ORCP 7 D, on the attorney for the plaintiff or petitioner, or on the plaintiff or**
20 **petitioner if they do not have an attorney. You must also file “proof of service.” Proof of**
21 **service is a signed statement describing when and how your legal document was served.**

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

26 **www.oregonstatebar.org OR (800) 452-7636**

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

2 **www.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 following
7 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*] **For**
25 **help** [*in*] finding an attorney, you may contact the Oregon State Bar's Lawyer Referral [*Service*
26 *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 OR (800) 452-7636

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

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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 OR (800) 452-7636**

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

7 **www.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 of
2 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 defendant
16 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 in
18 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 person
20 having the care or control of the minor, or with whom the minor resides, or in whose service
21 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 B.

26 D(3)(a)(iv) **Tenant of a mail agent.** On an individual defendant who is a "tenant" of a

1 "mail agent" within the meaning of ORS 646A.340, by delivering true copies of the summons
2 and the complaint to any person apparently in charge of the place where the mail agent
3 receives mail for the tenant, provided that:

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

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

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

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

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

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

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

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

1 principal office or place of business of the corporation; and, in any case, to any address the use
2 of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

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

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

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

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

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

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

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

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

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

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

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

26 D(3)(d)(ii)(A) by substituted service on the registered agent or general partner of a

1 limited partnership;

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

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

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

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

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

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

25 D(3)(i) **Vessel owners and charterers.** On any foreign steamship owner or steamship
26 charterer by personal service on a vessel master in the owner's or charterer's employment or

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

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

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

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

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

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

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

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

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

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

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

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

21 D(6) **Court order for service by other method.** When it appears that service is not
22 possible under any method otherwise specified in these rules or other rule or statute, then a
23 motion supported by affidavit or declaration may be filed to request a discretionary court order
24 to allow alternative service by any method or combination of methods that, under the
25 circumstances, is most reasonably calculated to apprise the defendant of the existence and
26 pendency of the action. If the court orders alternative service and the plaintiff knows or with

1 reasonable diligence can ascertain the defendant's current address, the plaintiff must mail true
2 copies of the summons and the complaint to the defendant at that address by first class mail
3 and any of the following: certified, registered, or express mail, return receipt requested. If the
4 plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of
5 any defendant, the plaintiff must mail true copies of the summons and the complaint by the
6 methods specified above to the defendant at the defendant's last known address. If the plaintiff
7 does not know, and with reasonable diligence cannot ascertain, the defendant's current and
8 last known addresses, a mailing of copies of the summons and the complaint is not required.

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

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

21 D(6)(a)(i)(A) **Where published.** An order for publication must direct publication to be
22 made in a newspaper of general circulation in the county where the action is commenced or, if
23 there is no such newspaper, then in a newspaper to be designated as most likely to give notice
24 to the person to be served. The summons must be published four times in successive calendar
25 weeks. If the plaintiff knows of a specific location other than the county in which the action is
26 commenced where publication might reasonably result in actual notice to the defendant, the

1 plaintiff must so state in the affidavit or declaration required by [paragraph D(6) of this rule,
2 **this subsection**, and the court may order publication in a comparable manner at that location in
3 addition to, or in lieu of, publication in the county in which the action is commenced.

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

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

22 D(6)(b)(i) **Content of electronic transmissions**. If the court allows service by a specific
23 electronic method, the case name, case number, and name of the court in which the action is
24 pending must be prominently positioned where it is most likely to be read first. For e-mail
25 service, those details must appear in the subject line. For text message service, they must
26 appear in the first line of the first text. For facsimile service, they must appear at the top of the

1 first page. For posting to a social media account, they must appear in the top lines of the
2 posting.

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

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

19 D(6)(d) **Defending before or after judgment.** A defendant against whom service pursuant
20 to this subsection is ordered or that defendant's representatives, on application and sufficient
21 cause shown, at any time before judgment will be allowed to defend the action. A defendant
22 against whom service pursuant to this subsection is ordered or that defendant's
23 representatives may, on good cause shown and on any terms that may be proper, be allowed
24 to defend after judgment and within one year after entry of judgment. If the defense is
25 successful, and the judgment or any part thereof has been collected or otherwise enforced,
26 restitution may be ordered by the court, but the title to property sold on execution issued on

1 that judgment, to a purchaser in good faith, will not be affected thereby.

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

8 **E By whom served; compensation.** A summons may be served by any competent person
9 18 years of age or older who is a resident of the state where service is made or of this state and
10 is neither a party to the action, corporate or otherwise, nor any party's officer, director,
11 employee, or attorney, except as provided in ORS 180.260. However, service pursuant to
12 subparagraph [D(2)(d)(i),] **D(2)(d)(i) of this rule**, as well as the mailings specified in paragraphs
13 D(2)(b) and D(2)(c) and part D(3)(a)(iv)(B) of this rule, may be made by an attorney for any
14 party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons [*shall*
15 *be*] **is** prescribed by statute or rule. If any other person serves the summons, a reasonable fee
16 may be paid for service. This compensation [*shall be*] **is** part of disbursements and [*shall be*] **is**
17 recovered as provided in Rule 68.

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

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

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

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

25 **F(2)(a)(i) Certificate of service when summons not served by sheriff or deputy.** If the
26 summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating:

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

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

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

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

21 _____
22 **Affidavit of Publication**

23 State of Oregon)

24) ss.

25 County of)

26 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).

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

1 | perjury.

2 | _____
3 | ____ day of ____, 2____
4 | _____

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

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

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

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

19 | **G Disregard of error; actual notice.** Failure to comply with provisions of this rule relating
20 | to the form of a summons, issuance of a summons, or who may serve a summons [*shall*] **does**
21 | not affect the validity of service of that summons or the existence of jurisdiction over the
22 | person if the court determines that the defendant received actual notice of the substance and
23 | pendency of the action. The court may allow amendment to a summons, affidavit, declaration,
24 | or certificate of service of summons. The court [*shall*] **will** disregard any error in the content of
25 | a summons that does not materially prejudice the substantive rights of the party against whom
26 | the summons was issued. If service is made in any manner complying with subsection D(1) of

1 | this rule, the court [*shall*] **will** also disregard any error in the service of a summons that does
2 | not violate the due process rights of the party against whom the summons was issued.
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1 **SERVICE AND FILING OF PLEADINGS**

2 **AND OTHER DOCUMENTS**

3 **RULE 9**

4 **A Service; when required.** Except as otherwise provided in these rules, every order; every
5 pleading subsequent to the original complaint; every written motion other than one that may
6 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 summons
11 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**, unless
15 otherwise ordered by the court. Service on the attorney or on a party [shall] **must** be made by
16 delivering a copy to that attorney or party; by mailing [it] **the copy** to the attorney's or party's
17 last known address; by e-mail as provided in section G of this rule; by electronic service as
18 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 by
4 declaration of the person filing the document, or by certificate of an attorney, that service by
5 filing as provided in section B of this rule is appropriate.

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

10 **E Filing with the court defined.** The filing of pleadings and other documents with the
11 court as required by these rules [shall] **must** be made by filing them with the clerk of the court
12 or the person exercising the duties of that office. The clerk or the person exercising the duties
13 of that office [shall] **will** endorse on the pleading or document the time of day, the day of the
14 month, the month, and the year. The clerk or person exercising the duties of that office is not
15 required to receive for filing any document unless **the document is legible and contains a**
16 **legibly displayed** caption **on the front** that [includes] **includes:** the name of the court; the case
17 number of the action, if one has been assigned; the title of the document; and the names of the
18 **parties.** [*parties are legibly displayed on the front of the document, nor unless the contents of*
19 *the document are legible.*] Further, the clerk is not required to receive for filing any document
20 that does not include the name, address, and telephone number of the **filing** party or the
21 attorney for [the] **that** 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 this
26 manner [shall be] **is** subject to Rule 10 B. Facsimile communication includes: a telephonic

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

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

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

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**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 the parties who have appeared and leave of court. **If the parties do**
4 **not agree, the third-party plaintiff may seek leave of court as provided in subsection C(2) of**
5 **this rule.**

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

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

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

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

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

23 **C(4) Claims that may be asserted; responses; motions to strike or to sever. Any party**
24 **may assert any claim against a third-party defendant arising out of the transaction or**
25 **occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and**
26 **the third-party defendant thereupon must assert the third-party defendant's defenses as**

provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims as provided in this rule. Any party may move to strike the third-party claim, or for its severance or separate trial. [A *third-party*]

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

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

D Joinder of additional parties.

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

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

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

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

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
8 legal or equitable relief, the defendant [*shall*] will have the same time to appear as is provided
9 by 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 105.135 or 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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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 46
2 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this
3 [subsection,] **paragraph**, a statement previously made is [either:] **one of the following**: a
4 written statement signed or otherwise adopted or approved by the person making it; [or] a
5 stenographic, mechanical, electrical, or other [recording,] **recording**; or a transcription that is a
6 substantially verbatim recital of an oral statement by the person making it and
7 contemporaneously recorded.

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

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

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

1 information enclosed in sealed envelopes to be opened as directed by the court; or that to
2 prevent hardship the party requesting discovery pay to the other party reasonable expenses
3 incurred in attending the deposition or otherwise responding to the request for 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.

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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 the petitioner's interest therein
8 and 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 the petitioner desires to establish by the proposed testimony or
12 other discovery and the petitioner's reasons for desiring to perpetuate;

13 A(1)(d) the names or a description of the persons the 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 discovery
16 is sought and the substance of the testimony or other discovery that the petitioner expects to
17 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. [Discovery may
25 then be had in accordance with these rules.]

26 A(4) Applicable discovery rules. For the purpose of applying these rules to discovery

1 before action, each reference therein to the court in which the action is pending [*shall*] **will** be
2 deemed to refer to the court in which the petition for such discovery was filed.

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

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

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

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

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

1 **actions pending in the circuit court.**

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

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

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1 the reason that it is not a verbatim transcript or that the testimony was not taken under oath or
2 for any similar departure from the requirements for depositions taken within the United States
3 under these rules.

4 **C Foreign depositions and subpoenas.**

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

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

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

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

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

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

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

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

26 C(2)(c)(ii) Contain or be accompanied by the names, addresses, and telephone numbers

1 of all counsel of record in the proceeding to which the subpoena relates and of any party not
2 represented by counsel.

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

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

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

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

1 JUDGMENTS

2 RULE 67

3 **A Definitions.** "Judgment" as used in these rules has the meaning given that term in ORS
4 18.005. "Order" as used in these rules means any other determination by a court or judge that
5 is intermediate in nature.

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

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

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

20 **[D Judgment in action for recovery of personal property.] E Judgment in action for**
21 **recovery of personal property.** In an action to recover the possession of personal property,
22 judgment for the plaintiff may be for the possession of the property, or for the value of the
23 property in case a delivery cannot be had, and for damages for the detention of the property. If
24 the property has been delivered to the plaintiff and the defendant claims a return of the
25 property, judgment for the defendant may be for a return of the property, or **for** the value of
26 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 jointly***
3 ***indebted.] F Judgment in action against partnership, unincorporated association, or parties***
4 ***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 for
21 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.