

CCP Amendments to ORCP

**Council on Court Procedures
Amendments to ORCP
promulgated December 9, 2006,
and effective January 1, 2008**

NOTE

ORS 1.735 (1) provides:

The Council on Court Procedures shall promulgate rules governing pleading, practice and procedure, including rules governing form and service of summons and process and personal and in rem jurisdiction, in all civil proceedings in all courts of the state which shall not abridge, enlarge or modify the substantive rights of any litigant. The rules authorized by this section do not include rules of evidence and rules of appellate procedure. The rules thus adopted and any amendments which may be adopted from time to time, together with a list of statutory sections superseded thereby, shall be submitted to the Legislative Assembly at the beginning of each regular session and shall go into effect on January 1 following the close of that session unless the Legislative Assembly shall provide an earlier effective date. The Legislative Assembly may, by statute, amend, repeal or supplement any of the rules.

The following materials reflect the changes to the Oregon Rules of Civil Procedure promulgated by the Council on Court Procedures on December 9, 2006. These changes take effect January 1, 2008.

Other amendments to the Oregon Rules of Civil Procedure passed by the Seventy-fourth Legislative Assembly at its 2007 regular session can be found by using the table entitled "Oregon Rules of Civil Procedure (ORCP) Amended, Repealed or 'Added to.'"

SUMMONS RULE 7

A Definitions. For purposes of this rule, “plaintiff” shall include any party issuing summons and “defendant” shall include any party upon whom service of summons is sought. For purposes of this rule, a “true copy” of a summons and complaint means an exact and complete copy of the original summons and complaint [*with a certificate upon the copy signed by an attorney of record, or if there is no attorney, by a party, which indicates that the copy is exact and complete*].

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

D Manner of service.

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

D(2) **Service methods.**

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

D(2)(b) **Substituted service.** Substituted service may be made by delivering [*a*] true [*copy*] **copies** of the summons and the complaint at the dwelling house or usual place of abode of the person to be served, to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, [*a*] true [*copy*] **copies** of the summons and the complaint to the defendant at defendant’s dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service shall be complete upon such mailing.

D(2)(c) **Office service.** If the person to be served maintains an office for the conduct of business, office service may be made by leaving [*a*] true [*copy*] **copies** of the summons and the complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, [*a*] true [*copy*] **copies** of the summons and the complaint to the defendant at [*the*] defendant’s dwelling house or usual place of abode or defendant’s place of

business or such other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service shall be complete upon such mailing.

D(2)(d) Service by mail.

D(2)(d)(i) **Generally.** When required or allowed by this rule or by statute, except as otherwise permitted, service by mail shall be made by mailing [a] true [copy] **copies** of the summons and the complaint to the defendant by first class mail and by any of the following: certified, [or] registered, **or express mail**[,] **with** return receipt requested[, or *express mail*]. For purposes of this section, “first class mail” does not include certified, [or] registered, **or express mail, return receipt requested**, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

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

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

D(3)(a) Individuals.

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

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

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

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

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

(B) the plaintiff, as soon as reasonably possible after delivery, causes [a] true [copy] **copies** of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and

place at which the plaintiff delivered the [copy] **copies** of the summons and the complaint.

Service shall be complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) **Corporations and limited partnerships.** Upon a domestic or foreign corporation or limited partnership:

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

D(3)(b)(ii) **Alternatives.** If a registered agent, officer, director, general partner, or managing agent cannot be found in the county where the action is filed, **true copies of the summons and the complaint** may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or by personal service on any clerk or agent of the corporation or limited partnership who may be found in the county where the action is filed; or by mailing [a copy] **true copies** of the summons and **the** complaint to the office of the registered agent or to the last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Secretary of State; or, if the corporation or limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation or limited partnership, and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

D(3)(c) **State.** Upon the state, by personal service upon the Attorney General or by leaving [a copy] **true copies** of the summons and **the** complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(d) **Public bodies.** Upon any county;[,] incorporated city;[,] school district;[,] or other public corporation, commission, board, or agency[,] by personal service or office service upon an officer, director, managing agent, or attorney thereof.

D(3)(e) **General partnerships.** Upon any general [partnerships] **partnership** by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership.

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

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

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

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

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to

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

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

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

(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by (A) and (B) that reasonably might result in actual notice to that defendant.

Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered, or express mailings required by (A), (B), and (C) above was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph shall be complete on the latest date on which any of the mailings required by (A), (B), and (C) above is made. If the mailing required by (C) is omitted because the plaintiff did not know of any address other than those specified in (A) and (B) above, the proof of service shall so certify.

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

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

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

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

D(6) **Court order for service; service by publication.**

D(6)(a) **Court order for service by other method.** On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and [by] any of the following: certified, [or] registered, **or express** mail, return receipt requested[, or express mail]; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

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

D(6)(c) **Where published.** An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph (a) of this subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

D(6)(d) **Mailing summons and complaint.** If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant’s current address, the plaintiff shall mail [*a copy*] **true copies** of the summons and the complaint to the defendant at such address by first class mail and [*by*] any of the following: certified, [*or*] registered, **or express** mail, return receipt requested[, *or express mail*]. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, [*a copy*] **true copies** of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant’s last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant’s current and last known addresses, a mailing of [*a copy*] **copies** of the summons and the complaint is not required.

D(6)(e) **Unknown heirs or persons.** If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I and J of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D(6)(f) **Defending before or after judgment.** A defendant against whom publication is ordered or such defendant’s representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant’s representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D(6)(g) **Defendant who cannot be served.** Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection [*D(3)*] **(3)** of this section if: (i) service pursuant to subparagraph (4)(a)(i) of this section is not authorized, and

the plaintiff attempted service of summons by all of the methods authorized by subsection [D(3)] (3) of this section and was unable to complete service, or (ii) if the plaintiff knew that service by such methods could not be accomplished.

F Return; proof of service.

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

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

F(2)(a) **Service other than publication.** Service other than publication shall be proved by:

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

F(2)(a)(ii) **Certificate of service by sheriff or deputy.** If the summons is served by a sheriff or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom [*the copy*] **true copies** of the summons and **the** complaint [*was*] **were** left or describing in detail the manner and circumstances of service. If **true copies of** the summons and **the** complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt shall be attached.

F(2)(b) **Publication.** Service by publication shall be proved by an affidavit or by a declaration.

F(2)(b)(i) A publication by affidavit shall be in substantially the following form:

Affidavit of Publication

State of Oregon)
) ss.
County of)

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

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

Notary Public for Oregon
My commission expires
___ day of ____, 2__.

F(2)(b)(ii) A publication by declaration shall 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 perjury.

___ day of ____, 2__.

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

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

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

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

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

[H Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.]

PROCESS RULE 8

A Process. All process authorized to be issued by any court or officer thereof shall run in the name of the State of Oregon and be signed by the officer issuing the same, and if such process is issued by a clerk of court, the seal of office of such clerk shall be affixed to such process. Summonses and subpoenas are not process and are covered by [Rules] **Rule 7** and **Rule 55**, respectively.

[D Telegraphic transmission of writ, order, or paper, for service; procedure. Any writ or order in any civil action, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy as defined in ORS 165.840, of such writ, order, or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by such officer or person if any return be requisite, in the same manner and with the same force and effect in all respects as the original might be if delivered to such officer or person. The officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the copy were the original. The original, if a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or a certified copy may be used by the operator for that purpose.]

[E] D Proof of service or execution. Proof of service or execution of process shall be made as provided in Rule 7 F.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS RULE 9

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

B Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party, by mailing it to such attorney's or party's last known address or, if the party is represented by an attorney, by telephonic facsimile communication device **or e-mail** as provided in [section F] **sections F or G** of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by placing a copy of the pleading or other papers in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

C Filing; proof of service. Except as provided by section D of this rule, all papers required to be served upon a party by section A of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in [Rules] **Rule 7** and **Rule 8**, proof of service of all papers 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. Such proof of service may be made upon the papers served or as a separate document attached to the papers. Where service is made by telephonic facsimile communication device **or e-mail**, proof of service shall be made by affidavit or declaration of the person making service, or by certificate of an attorney. Attached to such affidavit, declaration, or certificate shall be the printed confirmation of receipt of the message generated by the transmitting machine, **if facsimile communication is used. If service is made by e-mail under section G of this rule, the person making service must certify that he or she received confirmation that the message was received, either by return e-mail, automatically generated message, telephonic facsimile, or orally.**

E Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or paper the time of day, the day of the month, **the** month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any paper unless the name of the court, the title of the cause and the paper, [and] the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

G. Service by e-mail. Service by e-mail is prohibited unless attorneys agree in writing to e-mail service. This agreement must provide the names and e-mail addresses of all attorneys and the attorneys' designees, if any, to be served. Any attorney may withdraw his or her agreement at any time, upon proper notice via e-mail and any one of the other methods authorized by this rule. Service is effective under this method when the sender has received confirmation that the attachment has been received by the designated recipient. Confirmation of receipt does not include an automatically generated message that the recipient is out of the office or otherwise unavailable.

CLASS ACTIONS RULE 32

F Notice and exclusion.

F(1) When ordering that an action be maintained as a class action under this rule, the court shall direct that notice be given to some or all members of the class under subsection E(2) of this rule, shall determine when and how this notice should be given and shall determine whether, when, how, and under what conditions putative members may elect to be excluded from the class. The matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and the relief sought; (b) the extent and nature of any member's injury or liability; (c) the interest of the party opposing the class in securing a final resolution of the matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible prejudice to members to whom notice is not directed. When appropriate, exclusion may be conditioned on a prohibition against institution or maintenance of a separate action on some or all of the matters in controversy in the class action or a prohibition against use in a separately maintained action of any judgment rendered in favor of the class from which exclusion is sought.

F(2)(i) Prior to the entry of a judgment against a defendant the court shall request members of the class who may be entitled to individual monetary recovery to submit a statement in a form prescribed by the court requesting affirmative relief which may also, where appropriate, require information regarding the nature of the loss, injury, claim, transactional relationship, or damage.

F(2)(ii) The **form of the statement** shall be designed to meet the ends of justice. In determining the **language and form of the [statement] documents to be sent class members under subsection F(2)(i) or (iii)**, the court shall consider **at least: (a) the nature of the acts of the defendant;[,] (b) the amount of knowledge a class member would have about the extent of such member's damages;[,] (c) the nature of the class including the probable degree of sophistication of its members and any special needs created by class members' disabilities; (d) whether it is appropriate for the statement to be prepared in alternative formats, such as large type, Braille, or in languages in addition to English;[,] and (e) the availability of relevant information from sources other than the individual class members.**

F(2)(iii) **When the names and addresses of the class members can reasonably be determined from the defendant's business records and individual monetary recoveries are capable of calculation without the need for individualized adjudications, the court, instead of requiring the statement referred to in subsection F(2)(i), may direct the defendant to send each class member notice of (a) the amount of the monetary recovery that has been calculated for that person and (b) that person's right to request exclusion from the class.**

All class members who do not request exclusion within the time specified by the court shall be deemed to have requested affirmative relief in the calculated amount.

F(2)(iv) The amount of damages assessed against the defendant shall not exceed the total amount of damages determined to be allowable by the court for *[each]* **all** individual class *[member]* **members** who *[has]* **have** filed *[a]* **the** statement required by the court **under subsection F(2)(i) or who are deemed to have requested affirmative relief under subsection F(2)(iii)**, assessable court costs, and an award of attorney fees, if any, as determined by the court.

F(2)(v) If the parties agree and the court approves, any of the procedures set forth in subsection F(2)(i) to subsection F(2)(iv) may be waived in a particular case.

F(3) *[Failure of]* If a class member fails to file *[a]* the statement required by the court *[will be grounds for entry of judgment dismissing such class member's claim for individual monetary recovery]* under subsection F(2)(i) or if a class member requests exclusion under subsection F(2)(iii) within the time specified by the court, that person's claim for monetary recovery shall be dismissed without prejudice to the right to maintain an individual, but not a class, action for such claim.

F(4) Nothing in subsections F(2) of F(3) is intended to allow the court to award any monetary recovery that is not claimed either because a class member failed to file the statement required by the court under subsection F(2)(i), or because a class member requested exclusion under subsection F(2)(iii) within the time specified by the court.

[F(4)] F(5) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The court may, however, order that defendant bear all or a specified part of the costs of any notice included with a regular mailing by defendant to its current customers or employees. The court may hold a hearing to determine how the costs of such notice shall be apportioned.

[F(5)] F(6) No duty of compliance with due process notice requirements is imposed on a defendant by reason of the defendant including notice with a regular mailing by the defendant to current customers or *[employees]* **employees** of the defendant under this section.

[F(6)] F(7) As used in this section, "customer" includes a person, including but not limited to a student, who has purchased services or goods from a defendant.

N Attorney fees, costs, disbursements, and litigation expenses.

N(1)(a) Attorney fees for representing a class are subject to control of the court.

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

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

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

N(1)(e) In determining the amount of attorney fees for a prevailing class the court shall consider the following factors:

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

N(1)(e)(ii) Results achieved and benefits conferred upon the class;

N(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

N(1)(e)(iv) The contingent nature of success; and

N(1)(e)(v) Appropriate criteria in [DR 2-106 of the Oregon Code of Professional Responsibility] **Rule 1.5 of the Oregon Rules of Professional Conduct.**

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

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

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

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

**PRODUCTION OF
DOCUMENTS AND THINGS
UPON LAND FOR INSPECTION
AND OTHER PURPOSES
RULE 43**

B Procedure.

B(1) A party may serve *[the]* a request on the plaintiff after commencement of the action and on any other party with or after service of the summons on that party. The request shall **identify any items requested for inspection, copying, or related acts by individual item or by category described with reasonable particularity, designate any land or other property upon which entry is requested, and shall specify a reasonable place and manner for the inspection, copying, entry, and related acts.** *[set out the items that the requesting party desires to inspect either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts. A request shall not require a defendant to produce or allow inspection or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time. The party that receives service of a request shall comply with the request unless that party objects to the request, with a statement of reasons for each objection, before the time specified in the request for allowing the inspection and performing the related acts. An objection to part of an item or category of a requested item shall specify the objectionable part. The duty to comply with the request is a continuing duty during the pendency of the action. Notwithstanding any other response or objection, a party that subsequently discovers any document or thing that the request identifies shall produce or allow inspection of the item, or object in the manner described in this paragraph, within a reasonable time after discovering the item. The party submitting the request may move for an order under Rule 46 A with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.]*

B(2) A request shall not require a defendant to produce or allow inspection, copying, entry, or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance with subsection B(1) of this rule, or such other time as the court may order or the parties may agree upon in writing, a party shall serve a response that includes the following:

B(2)(a) a statement that, except as specifically objected to, any requested item within the party's possession or custody is provided, or will be provided or made available within the time allowed and at the place and in the manner specified in the request, which items shall be organized and labeled to correspond with the categories in the request;

B(2)(b) as to any requested item not in the party's possession or custody, a statement that reasonable effort has been made to obtain it, unless specifically objected to, or that no such item is within the party's control;

B(2)(c) as to any land or other property, a statement that entry will be permitted as requested unless specifically objected to; and

B(2)(d) any objection to a request or a part thereof and the reason for each objection.

B(3) Any objection not stated in accordance with subsection B(2) of this rule is waived. Any objection to only a part of a request shall clearly state the part objected to. An objection does not relieve the requested party of the duty to comply with any request or part thereof not specifically objected to.

B(4) A party served in accordance with subsection B(1) of this rule is under a continuing duty during the pendency of the action to produce promptly any item responsive to the request and not objected to which comes into the party's possession, custody, or control.

B(5) A party who moves for an order under Rule 46 A(2) regarding any objection or other failure to respond or to permit inspection, copying, entry, or related acts as requested, shall do so within a reasonable time.

SUBPOENA RULE 55

F Subpoena for taking depositions or requiring production of books, papers, documents, or tangible things; place of production and examination.

F(1) Subpoena for taking deposition. Proof of service of a notice to take a deposition as provided in Rules 39 C and 40 A, or of notice of subpoena to command production of books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a certificate that such notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein.

F(2) Place of examination. A resident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein such person resides, is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein such person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

F(3) **Production without examination or deposition.** A party who issues a subpoena may command the person to whom it is issued[, *other than a hospital,*] to produce books, papers, documents, or tangible things, **other than individually identifiable health information as described in section H**, by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals or a deposition. In such instances, the person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all the items responsive to the subpoena or, if all items are not included, why they are not.

JUDGMENT NOTWITHSTANDING THE VERDICT RULE 63

D(1) Time for motion and ruling. A motion for judgment notwithstanding the verdict shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

D(2) Effect of notice of appeal. A motion for judgment notwithstanding the verdict filed within the time limit prescribed in subsection (1) of this section may be filed notwithstanding that another party has filed notice of appeal in the case and the trial court may decide the motion notwithstanding that notice of appeal has been filed. If a party files a motion for judgment notwithstanding the verdict after notice of appeal has been filed, the moving party shall serve a copy of the motion on the appellate court. If the trial court decides the motion by order, the moving party shall file a copy of the order in the appellate court within seven days of the date of entry of the order. Any necessary modification of the appeal required by the order shall be pursuant to rule of the appellate court.

NEW TRIALS RULE 64

F(1) Time of motion; counteraffidavits or counterdeclarations; hearing and determination. A motion to set aside a judgment and for a new trial, with the affidavits or declarations, if any, in support thereof, shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits or counterdeclarations, such party shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days from the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

F(2) Effect of notice of appeal. A motion for new trial filed within the time limit prescribed in subsection (1) of this section may be filed notwithstanding that another party has filed notice of appeal in the case and the trial court may decide the motion notwithstanding that notice of appeal has been filed. If a party files a motion for new trial after notice of appeal has been filed, the moving party shall serve a copy of the motion on the appellate court. If the trial court decides the motion by order, the moving party shall

file a copy of the order in the appellate court within seven days of the date of entry of the order. Any necessary modification of the appeal required by the order shall be pursuant to rule of the appellate court.

**DEFAULT ORDERS
AND JUDGMENTS
RULE 69**

B Entry of default judgment.

B(1) **By the court or the clerk.** The court or the clerk upon written application of the party seeking judgment shall enter judgment when:

B(1)(a) The action arises upon contract;

B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for a sum which can by computation be made certain;

B(1)(c) The party against whom judgment is sought has been defaulted for failure to appear;

B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to the best knowledge and belief of the party seeking judgment, the party against whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005;

B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount due;

B(1)(f) An affidavit or a declaration pursuant to subsection B(3) of this rule has been submitted; and

B(1)(g) Summons was personally served within the State of Oregon upon the party, or an agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i), 7 D(3)(e), or 7 D(3)(f).

B(2) **By the court.** In cases other than those cases described in subsection (1) of this section, the party seeking judgment must apply to the court for judgment by default. The party seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this section if, to the best knowledge and belief of the party seeking judgment, the party against whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party seeking judgment cannot submit an affidavit or a declaration under this subsection, a default judgment may be entered against the other party only if a guardian ad litem has been appointed or the party is represented by another person as described in Rule 27. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing, or make an order of reference, or order that issues be tried by a jury, as it deems necessary and proper. The court may determine the truth of any matter upon affidavits or declarations.

B(3) **Amount of judgment.** The judgment entered shall be for the amount due as shown by the affidavit or declaration, and may include costs and disbursements and attorney fees entered pursuant to Rule 68.

B(4) **Non-military affidavit or declaration required.** No judgment by default shall be Approved by the Governor entered until the filing of an affidavit or a declaration on behalf of the

plaintiff, showing that [*the affiant or declarant reasonably believes that*] the defendant **is or** is not a person in **the** military Filed in the office of Secretary of State service, **or stating that plaintiff is unable to determine whether or not the defendant is in the military service as required by Section 201(b)(1) of the Servicemembers Civil Relief Effective date Act, 50 App. U.S.C.A. § 521, [as defined in Article 1 of the “Soldiers’ and Sailors’ Civil Relief Act of 1940,”]** as amended, except upon order of the court in accordance with that Act.