

CCP Amendments to ORCP

**Council on Court Procedures
Amendments to ORCP
Promulgated December 13, 2008,
and effective January 1, 2010**

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thus adopted and any amendments which may be adopted from time to time, together with a list of statutory sections superseded thereby, shall be submitted to the Legislative Assembly at the beginning of each regular session and shall go into effect on January 1 following the close of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 13, 2008. These changes take effect January 1, 2010.

Other amendments to the Oregon Rules of Civil Procedure passed by the Seventy-fifth Legislative Assembly at its 2009 regular session can be found by using the table entitled "Oregon Rules of Civil Procedure (ORCP) Amended, Repealed or 'Added to.'"

SCOPE; CONSTRUCTION; APPLICATION; RULE; CITATION
RULE 1

D “Rule” defined and local rules. References to “these rules” shall include Oregon Rules of Civil Procedure numbered 1 through 85. General references to “rule” or “rules” shall mean only rule or rules of pleading, practice, and procedure established by ORS 1.745, or promulgated under ORS 1.006, 1.735, 2.130, and 305.425, unless otherwise defined or limited. These rules do not preclude a court in which they apply from regulating pleading, practice, and procedure in any manner not inconsistent with these rules.

E Use of declaration under penalty of perjury in lieu of affidavit; “declaration” defined. A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant, and must include the following sentence in prominent letters immediately above the signature of the declarant: “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.” As used in these rules, “declaration” means a declaration under penalty of perjury.

F Electronic filing. Any reference in these rules to any document, except a summons, which is exchanged, served, entered, or filed during the course of civil litigation shall be construed to include electronic images or other digital information in addition to printed versions of such items, as may be permitted by rules of the court in which the action is pending.

[F] G Citation. These rules may be referred to as ORCP and may be cited, for example, by citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph [(i)] **(iv), part (A)**, as ORCP 7 [D(3)(a)(i)] **D(3)(a)(iv)(A)**.

SUMMONS
RULE 7

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 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 true 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, true 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 true 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, true copies of the summons and the complaint to the defendant at 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 true copies of the summons and the complaint to the defendant by first class mail and by any of the following: certified, registered, or express mail with return receipt requested. For purposes of this section, "first class mail" does not include certified, 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 true 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 true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

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

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

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

D(3)(b) Corporations including, but not limited to, professional corporations and cooperatives [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, **or** 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, **or** 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:

(A) by substituted service upon such registered agent, officer, **or** director;[, *general partner, or managing agent; or*]

(B) 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*]

(C) by mailing **in the manner specified in paragraph (2)(d) of this section** 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; **or**[.]

(D) **upon the Secretary of State in the manner provided in ORS 60.121 or 60.731.**

D(3)(c) Limited liability companies. Upon a limited liability company:

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

D(3)(c)(ii) Alternatives. If a registered agent, manager, **or** (for a member-managed limited liability company) member of a limited liability company cannot be found in the

county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company;

(B) by personal service on any clerk or agent of the limited liability company who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited liability company, as shown by the records on file in the office of the Secretary of State or, if the limited liability company 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 limited liability company, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 63.121.

D(3)(d) Limited partnerships. Upon a domestic or foreign limited partnership:

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

D(3)(d)(ii) Alternatives. If a registered agent or a general partner of a limited partnership cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent or general partner of a limited partnership;

(B) by personal service on any clerk or agent of the limited partnership who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited partnership, as shown by the records on file in the office of the Secretary of State or, if the 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 limited partnership, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 70.040 or 70.045.

D(3)(e) General partnerships and limited liability partnerships. Upon any general partnership or limited liability partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership or limited liability 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)(c)] D(3)(g) State. Upon the state, by personal service upon the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

[D(3)(d)] **D(3)(h) 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 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)] **D(3)(i) 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 any of the following: certified, registered, or express mail, return receipt requested; 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 true copies of the summons and the complaint to the defendant at such address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, 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 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 (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 (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.

DISMISSAL OF ACTIONS; [COMPROMISE] OFFER TO ALLOW JUDGMENT RULE 54

E [Compromise] Offer to allow judgment; effect of acceptance or rejection.

E(1) Except as provided in ORS 17.065 through 17.085, the party against whom a claim is asserted may, at any time up to 10 days prior to trial, serve upon the party asserting the claim an offer to allow judgment to be given against the party making the offer for the sum, or the property, or to the effect therein specified. **The offer shall not be filed with the court clerk or provided to any assigned judge, except as set forth in subsections E(2) and E(3) below.**

E(2) If the party asserting the claim accepts the offer, the party asserting the claim or such party's attorney shall endorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon such party asserting the claim; and thereupon judgment shall be given accordingly, as a stipulated judgment. If the offer does not state that it includes costs and disbursements or attorney fees, the party asserting the claim shall submit any claim for costs and disbursements or attorney fees to the court as provided in Rule 68.

E(3) If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence [*on the trial; and*] **at trial and may be filed with the court only after the case has been adjudicated on the merits and only** if the party asserting the claim fails to obtain a **judgment** more favorable **than the offer to allow judgment.** **In such a case,** the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer, but the party against whom the claim was asserted shall recover of the party asserting the claim costs and disbursements, not including prevailing party fees, from the time of the service of the offer.

SUBPOENA
RULE 55

D Service; service on law enforcement agency; service by mail; proof of service.

D(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and, whether or not personal attendance is required, one day's attendance fees. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), **D(3)(c)(i)**, D(3)(d)(i), D(3)(e), [*or*] D(3)(f), **or D(3)(h)**. Copies of each subpoena commanding production of books, papers, documents or tangible things and inspection thereof before trial, not accompanied by command to appear at trial or hearing or at deposition, whether the subpoena is served personally or by mail, shall be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

D(2) Service on law enforcement agency.

D(2)(a) Every law enforcement agency shall designate individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

D(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency which employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

D(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

D(3) Service by mail.

Under the following circumstances, service of a subpoena to a witness by mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

D(3)(a) The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

D(3)(b) The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D(3)(c) The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, and the attorney received a return receipt signed by the witness more than three days prior to trial.

D(4) Service by mail; exception. Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.

D(5) Proof of service. Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server need not certify that the server is not a party in the action, an attorney for a party in the action or an officer, director or employee of a party in the action.

INSTRUCTIONS TO JURY AND DELIBERATION RULE 59

B Charging the jury. In charging the jury, the court shall state to *[them]* **the jury** all matters of law necessary for *[their]* **its** information in giving *[their]* **its** verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such knowledge to the jury, *[who are]* **which is** bound to accept it as conclusive. The court shall reduce, or require a party to reduce, the *[charge]* **instructions** to writing. *[However, if the preparation of written instructions is not feasible, the court may record the instructions electronically during the charging of the jury.]* The jury shall take *[such]* **the court's** written instructions *[or recording]* with it while deliberating upon the verdict *[and then return the written instructions or recording to the clerk immediately upon conclusion of its deliberations]*. The clerk shall file **a copy of** the written instructions **given to the jury** *[or recording]* in the court file of the case.

DEFAULT ORDERS AND JUDGMENTS RULE 69

A Entry of order of default.

A(1) In general. When a party against whom a judgment for affirmative relief is sought has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of the court and has failed to plead or otherwise defend as provided in these rules, the party seeking affirmative relief may apply for an order of default. If the party against whom an order of default is sought has filed an appearance in the action, or has provided written notice of intent to file an appearance to the party seeking an order of default, *[then]* **notice, in the form prescribed by Uniform Trial Court Rule 2.010, of the intent to apply for an order of default must be filed and served upon** the party against whom an order of default is sought *[shall be served with written notice of the application for an order of default]* at least 10 days, unless shortened by the court, prior to entry of the order of default. These facts, along with the fact that the party against whom the order of default is sought has failed to plead or otherwise defend as provided in these rules, shall be made to appear by affidavit, declaration, or otherwise[,] and, upon such a showing, the clerk or the court shall enter the order of default.

A(2) Certain motor vehicle cases. Notwithstanding subsection A(1) of this section, no default shall be entered against a defendant served with summons pursuant to [subparagraph D(4)(a)(i) of] Rule 7 **D(4)(a)(i)** unless the plaintiff submits an affidavit or a declaration showing:

A(2)(a) that the plaintiff has complied with [subparagraph D(4)(a)(i) of] Rule 7 **D(4)(a)(i)**; and

A(2)(b) either, if the identity of the defendant's insurance carrier is known to the plaintiff or could be determined from any records of the Department of Transportation accessible to the plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy of the summons and the complaint, together with notice of intent to apply for an order of default, to the insurance carrier by first class mail and by any of the following: certified, [or] registered, **or express** mail[,] **with** return receipt requested[, or *express mail*]; or that the identity of the defendant's insurance carrier is unknown to the plaintiff.

B Entry of [default] judgment by default.

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)] **B(4)** 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)(c)(i), 7 D(3)(d)(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 entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the defendant is or is not a person in the military 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) Effective date of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order of the court in accordance with that Act.