

**AMENDMENTS TO
OREGON RULES OF CIVIL PROCEDURE
PROMULGATED BY
COUNCIL ON COURT PROCEDURES
December 1, 2012
and
Effective January 1, 2014**

**SIGNING OF PLEADINGS, MOTIONS
AND OTHER PAPERS; SANCTIONS
RULE 17 A**

A Signing by party or attorney; certificate. Every pleading, motion, and other document of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the address of the party. **The signature for filings may be in the form approved for electronic filing in accordance with these rules or any other rule of court.** Pleadings need not be verified or accompanied by an affidavit or declaration.

**RESPONSIVE PLEADINGS
RULE 19 A**

A Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of *[it]* **the allegation** as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all **of** the allegations of the preceding pleading, the denials may be made as specific denials of designated allegations or paragraphs, or the pleader may generally deny all **of** the allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading subject to the obligations set forth in Rule 17.

RULE 19 B

B Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively: accord and satisfaction[,]; arbitration and award[,]; assumption of risk[,]; **claim preclusion**; comparative or contributory negligence[,]; discharge in bankruptcy[,]; duress[,]; estoppel[,]; failure of consideration[,]; fraud[,]; illegality[,]; injury by fellow servant[,]; **issue preclusion**; laches[,]; license[,]; payment[,]; release[,]; *res judicata*,[.] statute of frauds[,]; statute of limitations[,]; unconstitutionality[,]; waiver[,]; and any other

matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

RULE 19 C

C Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted [*shall be*] **are** taken as denied or avoided.

DEPOSITIONS UPON ORAL EXAMINATION RULE 39 C

C Notice of examination.

C(1) General requirements. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which such person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

C(2) Special notice. Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before the expiration of the period of time specified in Rule 7 to appear and answer after service of summons on any defendant, and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and such signature constitutes a certification by the attorney that to the best of such attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when served with notice under this subsection, the party was unable through the exercise of diligence to obtain counsel to represent such party at the taking of the deposition, the deposition may not be used against such party.

C(3) Shorter or longer time. The court may for cause shown enlarge or shorten the time for taking the deposition.

C(4) Non-stenographic recording. The notice of deposition required under subsection (1) of this section may provide that the testimony **will** be recorded by other than stenographic means, in which event the notice shall designate the manner of recording and preserving the deposition. A court may require that the deposition be taken by stenographic means if necessary to assure that the recording be accurate.

C(5) Production of documents and things. The notice to a party deponent may be accompanied by a request made in compliance with Rule 43 for the production of documents and tangible things at the taking of the deposition. The [*procedure*] **procedures** of Rule 43 shall apply to the request.

C(6) Deposition of organization. A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or

governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall [*designate*] **provide notice of no fewer than three (3) days before the scheduled deposition, absent good cause or agreement of the parties and the deponent, designating the name(s) of one or more officers, directors, managing agents, or other persons who consent to testify on its behalf[, and shall set] and setting** forth, for each person designated, the matters on which such person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

C(7) Deposition by telephone. Parties may agree by stipulation or the court may order that testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone pursuant to court order, the order shall designate the conditions of taking testimony, the manner of recording the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than pursuant to court order or stipulation made a part of the record, then objections as to the taking of testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording the deposition are waived unless seasonable objection thereto is made at the taking of the deposition. The oath or affirmation may be administered to the deponent, either in the presence of the person administering the oath or over the telephone, at the election of the party taking the deposition.

SUBPOENA RULE 55 H

H Individually identifiable health information.

H(1) Definitions. As used in this rule, the terms “individually identifiable health information” and “qualified protective order” are defined as follows:

H(1)(a) “Individually identifiable health information” means information which identifies an individual or which could be used to identify an individual; which has been collected from an individual and created or received by a health care provider, health plan, employer, or health care clearinghouse; and which relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

H(1)(b) “Qualified protective order” means an order of the court, by stipulation of the parties to the litigation, or otherwise[,] that prohibits the parties from using or disclosing individually identifiable health information for any purpose other than the litigation for which such information was requested and which requires the return to the original custodian of such information or **the** destruction of the individually identifiable health information (including all copies made) at the end of the litigation.

H(2) Mode of Compliance. Individually identifiable health information may be obtained by subpoena only as provided in this section. However, if disclosure of any requested records is restricted or otherwise limited by state or federal law, then the protected records shall not be disclosed in response to the subpoena unless the requesting party has complied with the applicable law.

H(2)(a) The attorney for the party issuing a subpoena requesting production of

individually identifiable health information must serve the custodian or other keeper of such information either with a qualified protective order or with an affidavit or declaration together with attached supporting documentation demonstrating that:

[(i)] **H(2)(a)(i)** the party has made a good faith attempt to provide written notice to the individual or the individual's attorney that the individual or the attorney had 14 days from the date of the notice to object;

[(ii)] **H(2)(a)(ii)** the notice included the proposed subpoena and sufficient information about the litigation in which the individually identifiable health information was being requested to permit the individual or the individual's attorney to object; **and**

[(iii)] **H(2)(a)(iii)** the individual did not object within the 14 days or, if objections were made, they were resolved and the information being sought is consistent with such resolution. The party issuing a subpoena must also certify that he or she will, promptly upon request, permit the patient or the patient's representative to inspect and copy the records received.

H(2)(b) Within 14 days from the date of a notice requesting individually identifiable health information, the individual or the individual's attorney objecting to the subpoena shall respond in writing to the party issuing the notice, stating the reason for each objection.

[H(2)(b)] **H(2)(c)** Except as provided in subsection (4) of this section, when a subpoena is served upon a custodian of individually identifiable health information in an action in which the entity or person is not a party, and the subpoena requires the production of all or part of the records of the entity or person relating to the care or treatment of an individual, it is sufficient compliance therewith if a custodian delivers by mail or otherwise a true and correct copy of all **of** the records responsive to the subpoena within five days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as described in subsection (3) of this section.

[H(2)(c)] **H(2)(d)** The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: [(i)] if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; [(ii)] if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; [(iii)] in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; [(iv)] if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records [*in accordance with subparagraph H(2)(c)(iv)*] **to the attorney or party issuing the subpoena**, then a copy of the proposed subpoena shall be served on the person whose records are sought, and on all other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity or person. Any party to the proceeding may inspect the records provided and/or request a complete copy of the records. Upon request, the records must be promptly provided by the party who issued the subpoena at the requesting party's expense.

[H(2)(d)] **H(2)(e)** After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or **by** the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing[,] at the direction of the judge, officer, or body

conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the custodian *[of hospital records who submitted]* **who produced** them.

[H(2)(e)] **H(2)(f)** For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of subsection (3) of section D.

H(3) Affidavit or declaration of custodian of records.

H(3)(a) The records described in subsection (2) of this section shall be accompanied by the affidavit or declaration of a custodian of the records, stating in substance each of the following:

[(i)] **H(3)(a)(i)** that the affiant or declarant is a duly authorized custodian of the records and has authority to certify records;

[(ii)] **H(3)(a)(ii)** that the copy is a true copy of all the records responsive to the subpoena; **and**

[(iii)] **H(3)(a)(iii)** that the records were prepared by the personnel of the entity or person acting under the control of either, in the ordinary course of the entity's or person's business, at or near the time of the act, condition, or event described or referred to therein.

H(3)(b) If the entity or person has none of the records described in the subpoena, or only a part thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those records of which the affiant or declarant has custody.

H(3)(c) When more than one person has knowledge of the facts required to be stated in the affidavit or declaration, more than one affidavit or declaration may be used.

H(4) Personal attendance of custodian of records may be required.

H(4)(a) The personal attendance of a custodian of records and the production of original records is required if the subpoena duces tecum contains the following statement:

The personal attendance of a custodian of records and the production of original records is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

H(4)(b) If more than one subpoena duces tecum is served on a custodian of records and personal attendance is required under each pursuant to paragraph (a) of this subsection, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H(5) Tender and payment of fees. Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

H(6) Scope of discovery. Notwithstanding any other provision, this rule does not expand the scope of discovery beyond that provided in Rule 36 or Rule 44.

**JURORS
RULE 57 A**

A Challenging compliance with selection procedures.

A(1) Motion. Within 7 days after the moving party discovered, or by the exercise of

diligence could have discovered, the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief[,] on the ground of substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury.

A(2) Stay of proceedings. Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury, the moving party is entitled to present in support of the motion: the testimony of the clerk or court administrator[,] any relevant records and papers not public or otherwise available used by the clerk or court administrator[,] and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply with the applicable provisions of ORS chapter 10, the court shall stay the proceedings pending the selection of [the] a jury in conformity with the applicable provisions of ORS chapter 10, or grant other appropriate relief.

A(3) Exclusive means of challenge. The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the applicable provisions of ORS chapter 10.

RULE 57 B

B Jury; how drawn. When the action is called for trial, the clerk shall draw names at random from the names of jurors in attendance upon the court until the jury is completed or the names of jurors in attendance are exhausted. If the names of jurors in attendance become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or **from** the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders, or **from** the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall draw names at random from the list until the jury is completed.

RULE 57 D

D Challenges.

D(1) Challenges for cause; grounds. Challenges for cause may be taken on any one or more of the following grounds:

D(1)(a) The want of any [qualifications] **qualification** prescribed by ORS 10.030 for a person eligible to act as a juror.

D(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D(1)(c) Consanguinity or affinity within the fourth degree to any party.

D(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor[,] to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of[,] the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D(1)(e) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same

facts or transaction.

D(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D(1)(g) Actual bias on the part of a juror. Actual bias is the existence of a state of mind on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging the juror. Actual bias may be in reference to: [(i)] the action; [(ii)] either party to the action; [(iii)] the sex of the party, the party's attorney, a victim, or a witness; or [(iv)] a racial or ethnic group [*that*] **of which** the party, the party's attorney, a victim, or a witness is a member [*of*], or is perceived to be a member [*of*]. A challenge for actual bias may be taken for the cause mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all **of** the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

D(2) Peremptory challenges; number. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party is entitled to no more than three peremptory challenges if the jury consists of more than six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to the number of peremptory challenges specified in this subsection[,] except the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

D(3) Conduct of peremptory challenges. After the full number of jurors [*have*] **has** been passed for cause, peremptory challenges shall be conducted by written ballot or outside **of** the presence of the jury as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors [*are*] **is** in the jury box at the time. The refusal to challenge by either party in the order of alternation shall not defeat the adverse party of such adverse party's full number of challenges, and such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the jurors once accepted by that party[,] and, if that party's right of peremptory challenge [*be*] **is** not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken **as** to any juror before the jury is completed and sworn, notwithstanding **that** the juror challenged may have been [*theretofore*] **previously** accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.

D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity, or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but the presumption may be rebutted in the manner provided by this section.

D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge

on a basis prohibited under paragraph (a) of this subsection, the party may object to the exercise of the challenge. The objection must be made before the court excuses the juror. The objection must be made outside of the presence of *[potential]* **the** jurors. The party making the objection has the burden of establishing a prima facie case that the adverse party challenged the *[potential]* juror on the basis of race, ethnicity, or sex.

D(4)(c) If the court finds that the party making the objection has established a prima facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity, or sex, the burden shifts to the adverse party to show that the peremptory challenge was not exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of justification as to the questioned challenge, the presumption that the challenge does not violate paragraph (a) of this subsection is rebutted.

D(4)(d) If the court finds that the adverse party challenged a prospective juror on the basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

RULE 57 F

[F Alternate jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retired to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged as the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by these rules or other rule or statute if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules or other rule or statute shall not be used against an alternate juror.]

F Alternate jurors.

F(1) Definition. Alternate jurors are prospective replacement jurors empanelled at the court's discretion to serve in the event that the number of jurors required under Rule 56 is decreased by illness, incapacitation, or disqualification of one or more jurors selected.

F(2) Decision to allow alternate jurors. The court has discretion over whether alternate jurors may be empanelled. If the court allows, not more than six alternate jurors may be empanelled.

F(3) Peremptory challenges; number. In addition to challenges otherwise allowed by these rules or any other rule or statute, each party is entitled to: (a) one peremptory challenge if one or two alternate jurors are to be empanelled; (b) two peremptory challenges if three or four alternate jurors are to be empanelled; and (c) three peremptory challenges if five or six alternate jurors are to be empanelled. The court shall have discretion as to when and how additional peremptory challenges may be used and when and how alternate jurors are selected.

F(4) Duties and responsibilities. Alternate jurors shall be drawn in the same

manner; shall have the same qualifications; shall be subject to the same examination and challenge rules; shall take the same oath; and shall have the same functions, powers, facilities, and privileges as the jurors throughout the trial, until the case is submitted for deliberations. An alternate juror who does not replace a juror shall not attend or otherwise participate in deliberations.

F(5) Installation and discharge. Alternate jurors shall be installed to replace any jurors who become unable to perform their duties or are found to be disqualified before the jury begins deliberations. Alternate jurors who do not replace jurors before the beginning of deliberations and who have not been discharged may be installed to replace jurors who become ill or otherwise are unable to complete deliberations. If an alternate juror replaces a juror after deliberations have begun, the jury shall be instructed to begin deliberations anew.

**INSTRUCTIONS TO JURY
AND DELIBERATION
RULE 59 H**

H Necessity of noting exception on error in statement of issues or instructions given or refused.

H(1) Statement of issues or instructions given or refused. A party may not obtain **appellate** review [*on appeal*] of an asserted error by a trial court in submitting or refusing to submit a statement of issues to a jury pursuant to subsection C(2) of this rule or in giving or refusing to give an instruction to a jury unless the party [*who seeks to appeal*] **seeking review** identified the asserted error to the trial court and made a notation of exception immediately after the court instructed the jury **or at such other time as the trial court directed. The requirements of this rule do not preclude an appellate court from reviewing asserted errors in jury statements or instructions for legal errors that are apparent on the record.**

[H(2) *Exceptions must be specific and on the record. A party shall state with particularity any point of exception to the trial judge. A party shall make a notation of exception either orally on the record or in a writing filed with the court.*]

H(2) Exceptions must be specific and on the record. The notation of exception required by subsection (1) of this section must be made orally on the record or in a writing filed with the court and must identify with particularity the points on which the exception is based. In noting an exception, a party may incorporate by reference the points that the party previously made with particularity on the record regarding the statement or instruction to which the exception applies.

**ALLOWANCE AND TAXATION
OF ATTORNEY FEES AND COSTS
AND DISBURSEMENTS
RULE 68 A**

A Definitions. As used in this rule:

A(1) Attorney fees. “Attorney fees” are the reasonable value of legal services related to

the prosecution or defense of an action.

A(2) Costs and disbursements. “Costs and disbursements” are reasonable and necessary expenses incurred in the prosecution or defense of an action, other than for legal services, and include the fees of officers and witnesses; the expense of publication of summonses or notices, and the postage where the same are served by mail; any fee charged by the Department of Transportation for providing address information concerning a party served with summons pursuant to subparagraph D(4)(a)(i) of Rule 7; the compensation of referees; the expense of copying of any public record, book, or document admitted into evidence at trial; recordation of any document where recordation is required to give notice of the creation, modification, or termination of an interest in real property; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by **any** other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

RULE 68 B

B Allowance of costs and disbursements. In any action, costs and disbursements shall be allowed to the prevailing party[,] unless these rules or **any** other rule or statute direct that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court otherwise directs. If, under a special provision of these rules or any other rule or statute, a party has a right to recover costs, such party shall also have a right to recover disbursements.

RULE 68 C

C Award of and entry of judgment for attorney fees and costs and disbursements.

C(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A and the procedure provided in any rule or statute permitting recovery of attorney fees in a particular case, this section governs the pleading, proof, and award of attorney fees in all cases, regardless of the source of the right to [recovery of] **recover** such fees, except when:

C(1)(a) Such items are claimed as damages arising prior to the action; [or]

C(1)(b) Such items are granted by order, rather than entered as part of a judgment[.];

or

C(1)(c) A statute that refers to this rule but provides for a procedure that varies from the procedure specified in this rule.

C(2)(a) Alleging right to attorney fees. A party seeking attorney fees shall allege the facts, statute, or rule that provides a basis for the award of such fees in a pleading filed by that party. Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to recover such fee is alleged as provided in this subsection **or in paragraph C(2)(b) of this rule.**

C(2)(b) If a party does not file a pleading [*and seeks judgment or dismissal by motion*] **but instead files a motion or a response to a motion**, a right to attorney fees shall be alleged in such motion **or response**, in similar form to the allegations required in a pleading.

C(2)(c) A party shall not be required to allege a right to a specific amount of attorney

fees. An allegation that a party is entitled to “reasonable attorney fees” is sufficient.

C(2)(d) Any allegation of a right to attorney fees in a pleading, [or] motion, **or response** shall be deemed denied and no responsive pleading shall be necessary. The opposing party may make a motion to strike the allegation or to make the allegation more definite and certain. Any [objections] **objection** to the form or specificity of **the** allegation of the facts, statute, or rule that provides a basis for the award of fees shall be waived if not alleged prior to trial or hearing.

C(3) **Proof.** The items of attorney fees and costs and disbursements shall be submitted in the manner provided by subsection (4) of this section, without proof being offered during the trial.

C(4) **Procedure for seeking attorney fees or costs and disbursements.** The procedure for seeking attorney fees or costs and disbursements shall be as follows:

C(4)(a) **Filing and serving statement of attorney fees and costs and disbursements.** A party seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of judgment pursuant to Rule 67:

C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees or costs and disbursements **that explains the application of any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements**, together with proof of service, if any, in accordance with Rule 9 C; and

C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are not in default for failure to appear.

C(4)(b) **Objections.** A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by **a** written [objections] **objection** to the statement. The [objections] **objection and supporting documents, if any**, shall be served within 14 days after service on the objecting party of a copy of the statement. The [objections] **objection** shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading. [*Statements and objections may be amended in accordance with Rule 23.*] **The objecting party may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.**

C(4)(c) **Response to objections.** The party seeking an award of attorney fees may file a response to an objection filed pursuant to paragraph C(4)(b) of this rule. The response and supporting documents, if any, shall be served within seven days after service of the objection. The response shall be specific and may address issues of law or fact. The party seeking attorney fees may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

C(4)(d) **Amendments.** Statements, objections, and responses may be amended or supplemented in accordance with Rule 23.

[C(4)(c)] C(4)(e) **Hearing on objections.** No hearing shall be held and the court may rule on the request for attorney fees based upon the statement, objection, response, and any accompanying affidavits or declarations unless a party has requested a hearing in the caption of the objection or response or unless the

court sets a hearing on its own motion.

[C(4)(c)(i)] **C(4)(e)(i)** *[If objections are filed in accordance with paragraph C(4)(b) of this rule,]* **If a hearing is requested** the court, without a jury, shall hear and determine all issues of law and fact raised by the **objection**. *[statement of attorney fees or costs and disbursements and by the objections. The parties shall be given a reasonable opportunity to present affidavits, declarations and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.]*

[C(4)(c)(ii)] **C(4)(e)(ii)** The court shall deny or award in whole or in part the amounts sought as attorney fees or costs and disbursements.

[C(4)(d)] **C(4)(f) No timely objections.** If objections are not timely filed, the court may award attorney fees or costs and disbursements sought in the statement.

[C(4)(e)] **C(4)(g) Findings and conclusions.** On the request of a party, the court shall make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party *[shall]* **must** make a request pursuant to this paragraph by including a request for findings and conclusions in the title of the statement of attorney fees or costs and disbursements, **objection, or response** *[or objections]* filed pursuant to paragraph *[(a) or (b)]* **(a), (b), or (c)** of this subsection. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

C(5) **Judgment concerning attorney fees or costs and disbursements.**

C(5)(a) **As part of judgment.** If all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment pursuant to Rule 67, the court shall include any award or denial of attorney fees or costs and disbursements in that judgment.

C(5)(b) **By supplemental judgment; notice.** If any issue regarding attorney fees or costs and disbursements is not decided before entry of a general judgment, any award or denial of attorney fees or costs and disbursements shall be made by supplemental judgment.

C(6) **Avoidance of multiple collection of attorney fees and costs and disbursements.**

C(6)(a) **Separate judgments for separate claims.** If more than one judgment is entered in an action, the court shall take such steps as necessary to avoid the multiple taxation of the same attorney fees and costs and disbursements in those judgments.

C(6)(b) **Separate judgments for the same claim.** If more than one judgment is entered for the same claim (when separate actions are brought for the same claim against several parties who might have been joined as parties in the same action[,] or, when pursuant to Rule 67 B, separate limited judgments are entered against several parties for the same claim), attorney fees and costs and disbursements may be entered in each judgment as provided in this rule, but satisfaction of one judgment bars recovery of attorney fees or costs and disbursements included in all other judgments.