

AMENDMENTS
TO THE
OREGON RULES OF CIVIL PROCEDURE
promulgated by the
COUNCIL ON COURT PROCEDURES
December 8, 2018

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INTRODUCTION

The following amendments to the Oregon Rules of Civil Procedure have been promulgated by the Council on Court Procedures for submission to the 2019 Legislative Assembly. Pursuant to ORS 1.735, they will become effective January 1, 2020, unless the Legislative Assembly by statute modifies the action of the Council.

The amended rules are set out with both the current and amended language. New language is shown in boldface with underlining, and language to be deleted is italicized and bracketed.

Please note that, during its December 8, 2018, meeting, the Council made changes to the previously published versions of ORCP 7, ORCP 22, and ORCP 55 for the following reasons:

- ORCP 7: Changes were made to subsection D(6) regarding alternative service for the purpose of making sentences parallel and using non-passive language. These changes did not vary significantly from the published rule.
- ORCP 22: The Council did not achieve the super majority required to promulgate the published change to subsection C(1), eliminating the requirement to obtain agreement of parties who have appeared as well as leave of court to add a third-party defendant more than 90 days after service. However, the Council felt that all of the other published changes were appropriate and voted to promulgate the rule as shown here.
- ORCP 55: The Council made changes to subsection D(3) to more accurately reflect the language in the existing rule with regard to obedience to subpoenas for medical records. A change was made to paragraph D(6)(b) regarding inspection of confidential health information for the same reason. Subsection D(11) regarding scope of discovery was moved and renumbered as subsection A(8) to more accurately reflect that the subsection applies to all subpoenas and not just to subpoenas under section D.

The Council held the following public meetings during the 2017-2019 biennium, all of which took place at the Oregon State Bar Center in Tigard, Oregon:

September 9, 2017	January 13, 2018	May 12, 2018
October 14, 2017	February 10, 2018	June 9, 2018
November 11, 2017	March 10, 2018	September 8, 2018
December 9, 2017	April 14, 2018	December 8, 2018

The Council expresses its appreciation to the bench and the bar for the comments and suggestions it has received.

**2018 PROMULGATED AMENDMENTS TO
THE OREGON RULES OF CIVIL PROCEDURE**

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*Note: Rule 55 was substantially reorganized. A cross-reference chart to the current rule is available on the Council's website.

1 **SUMMONS**

2 **RULE 7**

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

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

11 **C Contents, time for response, and required notices**

12 **C(1) Contents.** The summons shall contain:

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

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

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

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

1 the court a legal document called a "motion," a "reply" to a counterclaim, or an "answer" to a
2 cross-claim. The "motion," "reply," or "answer" must be given to the court clerk or
3 administrator within 30 days along with the required filing fee. It must be in proper form and
4 have proof of service on the defendant's attorney or, if the defendant does not have an
5 attorney, proof of service on the defendant.

6 If you have questions, you should see an attorney immediately. If you need help in finding
7 an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at
8 www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or
9 toll-free elsewhere in Oregon at (800) 452-7636.

11 **C(3)(c) Service on persons liable for attorney fees.** A summons to join a party pursuant
12 to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type that may
13 be substantially in the following form:

15 NOTICE TO DEFENDANT:

16 READ THESE PAPERS

17 CAREFULLY!

18 You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a
19 judgment for reasonable attorney fees may be entered against you, as provided by the
20 agreement to which defendant alleges you are a party.

21 You must "appear" to protect your rights in this matter. To "appear" you must file with
22 the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given
23 to the court clerk or administrator within 30 days along with the required filing fee. It must be
24 in proper form and have proof of service on the defendant's attorney or, if the defendant does
25 not have an attorney, proof of service on the defendant.

26 If you have questions, you should see an attorney immediately. If you need help in finding

1 an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at
2 www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or
3 toll-free elsewhere in Oregon at (800) 452-7636.

4
5 **D Manner of service.**

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

18 **D(2) Service methods.**

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

21 **D(2)(b) Substituted service.** Substituted service may be made by delivering true copies of
22 the summons and the complaint at the dwelling house or usual place of abode of the person to
23 be served to any person 14 years of age or older residing in the dwelling house or usual place of
24 abode of the person to be served. Where substituted service is used, the plaintiff, as soon as
25 reasonably possible, shall cause to be mailed by first class mail true copies of the summons and
26 the complaint to the defendant at defendant's dwelling house or usual place of abode, together

1 with a statement of the date, time, and place at which substituted service was made. For the
2 purpose of computing any period of time prescribed or allowed by these rules or by statute,
3 substituted service shall be complete upon the mailing.

4 D(2)(c) **Office service.** If the person to be served maintains an office for the conduct of
5 business, office service may be made by leaving true copies of the summons and the complaint
6 at that office during normal working hours with the person who is apparently in charge. Where
7 office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed by
8 first class mail true copies of the summons and the complaint to the defendant at defendant's
9 dwelling house or usual place of abode or defendant's place of business or any other place
10 under the circumstances that is most reasonably calculated to apprise the defendant of the
11 existence and pendency of the action, together with a statement of the date, time, and place at
12 which office service was made. For the purpose of computing any period of time prescribed or
13 allowed by these rules or by statute, office service shall be complete upon the mailing.

14 D(2)(d) **Service by mail.**

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

22 D(2)(d)(ii) **Calculation of time.** For the purpose of computing any period of time provided
23 by these rules or by statute, service by mail, except as otherwise provided, shall be complete on
24 the day the defendant, or other person authorized by appointment or law, signs a receipt for
25 the mailing, or [three] 3 days after the mailing if mailed to an address within the state, or
26 [seven] 7 days after the mailing if mailed to an address outside the state, whichever first occurs.

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

2 D(3)(a) **Individuals.**

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

12 D(3)(a)(ii) **Minors.** Upon a minor under 14 years of age, by service in the manner specified
13 in subparagraph D(3)(a)(i) of this rule upon the minor; and additionally upon the minor's father,
14 mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any
15 person having the care or control of the minor, or with whom the minor resides, or in whose
16 service the minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 B.

17 D(3)(a)(iii) **Incapacitated persons.** Upon a person who is incapacitated or is financially
18 incapable, as both terms are defined by ORS 125.005, by service in the manner specified in
19 subparagraph D(3)(a)(i) of this rule upon the person and, also, upon the conservator of the
20 person's estate or guardian or, if there be none, upon a guardian ad litem appointed pursuant
21 to Rule 27 B.

22 D(3)(a)(iv) **Tenant of a mail agent.** Upon an individual defendant who is a "tenant" of a
23 "mail agent" within the meaning of ORS 646A.340, by delivering true copies of the summons
24 and the complaint to any person apparently in charge of the place where the mail agent
25 receives mail for the tenant, provided that:

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

1 D(3)(a)(iv)(B) the plaintiff, as soon as reasonably possible after delivery, causes true
2 copies of the summons and the complaint to be mailed by first class mail to the defendant at
3 the address at which the mail agent receives mail for the defendant and to any other mailing
4 address of the defendant then known to the plaintiff, together with a statement of the date,
5 time, and place at which the plaintiff delivered the copies of the summons and the complaint.

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

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

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

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

19 D(3)(b)(ii) **Alternatives.** If a registered agent, officer, or director cannot be found in the
20 county where the action is filed, true copies of the summons and the complaint may be served:

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

22 D(3)(b)(ii)(B) by personal service on any clerk or agent of the corporation who may be
23 found in the county where the action is filed;

24 D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
25 copies of the summons and the complaint to: the office of the registered agent or to the last
26 registered office of the corporation, if any, as shown by the records on file in the office of the

1 Secretary of State; or, if the corporation is not authorized to transact business in this state at
2 the time of the transaction, event, or occurrence upon which the action is based occurred, to
3 the principal office or place of business of the corporation; and, in any case, to any address the
4 use of which the plaintiff knows or has reason to believe is most likely to result in actual notice;
5 or

6 D(3)(b)(ii)(D) upon the Secretary of State in the manner provided in ORS 60.121 or
7 60.731.

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

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

13 D(3)(c)(ii) **Alternatives.** If a registered agent, manager, or (for a member-managed limited
14 liability company) member of a limited liability company cannot be found in the county where
15 the action is filed, true copies of the summons and the complaint may be served:

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

18 D(3)(c)(ii)(B) by personal service on any clerk or agent of the limited liability company
19 who may be found in the county where the action is filed;

20 D(3)(c)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true
21 copies of the summons and the complaint to: the office of the registered agent or to the last
22 registered office of the limited liability company, as shown by the records on file in the office of
23 the Secretary of State; or, if the limited liability company is not authorized to transact business
24 in this state at the time of the transaction, event, or occurrence upon which the action is based
25 occurred, to the principal office or place of business of the limited liability company; and, in any
26 case, to any address the use of which the plaintiff knows or has reason to believe is most likely

1 to result in actual notice; or

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

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

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

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

10 D(3)(d)(ii)(A) by substituted service upon the registered agent or general partner of a
11 limited partnership;

12 D(3)(d)(ii)(B) by personal service on any clerk or agent of the limited partnership who
13 may be found in the county where the action is filed;

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

22 D(3)(d)(ii)(D) upon the Secretary of State in the manner provided in ORS 70.040 or
23 70.045.

24 D(3)(e) **General partnerships and limited liability partnerships.** Upon any general
25 partnership or limited liability partnership by personal service upon a partner or any agent
26 authorized by appointment or law to receive service of summons for the partnership or limited

1 liability partnership.

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

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

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

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

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

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

20 D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to
21 liability in which a motor vehicle may be involved while being operated upon the roads,
22 highways, streets, or premises open to the public as defined by law of this state if the plaintiff
23 makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it
24 to be operated on the defendant's behalf, by a method authorized by subsection D(3) of this
25 rule except service by mail pursuant to subparagraph D(3)(a)(i) of this rule and, as shown by its
26 return, did not effect service, the plaintiff may then serve that defendant by mailings made in

1 accordance with paragraph D(2)(d) of this rule addressed to that defendant at:

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

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

6 D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of
7 making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably
8 might result in actual notice to that defendant. **Sufficient service pursuant to this**
9 **subparagraph may be shown if the proof of service includes a true copy of the envelope in**
10 **which each of the certified, registered, or express mailings required by parts D(4)(a)(i)(A),**
11 **D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as**
12 **undeliverable or that the defendant did not sign the receipt. For the purpose of computing**
13 **any period of time prescribed or allowed by these rules or by statute, service under this**
14 **subparagraph shall be complete on the latest date on which any of the mailings required by**
15 **parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule is made. If the mailing required**
16 **by part D(4)(a)(i)(C) of this rule is omitted because the plaintiff did not know of any address**
17 **other than those specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of**
18 **service shall so certify.**

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

1 | *know of any address other than those specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this*
2 | *rule, the proof of service shall so certify.]*

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

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

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

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

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

20 | ***D(6)(a) Court order for service by other method.*** *On motion upon a showing by affidavit*
21 | *or declaration that service cannot be made by any method otherwise specified in these rules or*
22 | *other rule or statute, the court, at its discretion, may order service by any method or*
23 | *combination of methods that under the circumstances is most reasonably calculated to apprise*
24 | *the defendant of the existence and pendency of the action, including but not limited to:*
25 | *publication of summons; mailing without publication to a specified post office address of the*
26 | *defendant by first class mail and any of the following: certified, registered, or express mail,*

1 | *return receipt requested; or posting at specified locations. If service is ordered by any manner*
2 | *other than publication, the court may order a time for response.*

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

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

19 | ***D(6)(d) Mailing summons and complaint.*** *If the court orders service by publication and*
20 | *the plaintiff knows or with reasonable diligence can ascertain the defendant's current address,*
21 | *the plaintiff shall mail true copies of the summons and the complaint to the defendant at that*
22 | *address by first class mail and any of the following: certified, registered, or express mail, return*
23 | *receipt requested. If the plaintiff does not know and cannot ascertain upon diligent inquiry the*
24 | *current address of any defendant, true copies of the summons and the complaint shall be*
25 | *mailed by the methods specified above to the defendant at the defendant's last known address.*
26 | *If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's*

1 *current and last known addresses, a mailing of copies of the summons and the complaint is not*
2 *required.]*

3 **D(6) Court order for service by other method. When it appears that service is not**
4 **possible under any method otherwise specified in these rules or other rule or statute, then a**
5 **motion supported by affidavit or declaration may be filed to request a discretionary court**
6 **order to allow alternative service by any method or combination of methods that, under the**
7 **circumstances, is most reasonably calculated to apprise the defendant of the existence and**
8 **pendency of the action. If the court orders alternative service and the plaintiff knows or with**
9 **reasonable diligence can ascertain the defendant's current address, the plaintiff must mail**
10 **true copies of the summons and the complaint to the defendant at that address by first class**
11 **mail and any of the following: certified, registered, or express mail, return receipt requested.**
12 **If the plaintiff does not know, and with reasonable diligence cannot ascertain, the current**
13 **address of any defendant, the plaintiff must mail true copies of the summons and the**
14 **complaint by the methods specified above to the defendant at the defendant's last known**
15 **address. If the plaintiff does not know, and with reasonable diligence cannot ascertain, the**
16 **defendant's current and last known addresses, a mailing of copies of the summons and the**
17 **complaint is not required.**

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

23 **D(6)(a)(i) Alternative service by publication. In addition to the contents of a summons**
24 **as described in section C of this rule, a published summons must also contain a summary**
25 **statement of the object of the complaint and the demand for relief, and the notice required**
26 **in subsection C(3) of this rule must state: "The motion or answer or reply must be given to the**

1 court clerk or administrator within 30 days of the date of first publication specified herein
2 along with the required filing fee." The published summons must also contain the date of the
3 first publication of the summons.

4 D(6)(a)(i)(A) Where published. An order for publication must direct publication to be
5 made in a newspaper of general circulation in the county where the action is commenced or,
6 if there is no such newspaper, then in a newspaper to be designated as most likely to give
7 notice to the person to be served. The summons must be published four times in successive
8 calendar weeks. If the plaintiff knows of a specific location other than the county in which the
9 action is commenced where publication might reasonably result in actual notice to the
10 defendant, the plaintiff must so state in the affidavit or declaration required by paragraph
11 D(6) of this rule, and the court may order publication in a comparable manner at that location
12 in addition to, or in lieu of, publication in the county in which the action is commenced.

13 D(6)(a)(ii) Alternative service by posting. The court may order service by posting true
14 copies of the summons and complaint at a designated location in the courthouse where the
15 action is commenced and at any other location that the affidavit or declaration required by
16 subsection D(6) of this rule indicates that the posting might reasonably result in actual notice
17 to the defendant.

18 D(6)(b) Electronic alternative service. Electronic forms of alternative service may
19 include, but are not limited to: e-mail; text message; facsimile transmission as defined in Rule
20 9 F; or posting to a social media account. The affidavit or declaration filed with a motion for
21 electronic alternative service must include: verification that diligent inquiry revealed that the
22 defendant's residence address, mailing address, and place of employment are unlikely to
23 accomplish service; the reason that plaintiff believes the defendant has recently sent and
24 received transmissions from the specific e-mail address or telephone or facsimile number, or
25 maintains an active social media account on the specific platform the plaintiff asks to use;
26 and facts that indicate the intended recipient is likely to personally receive the electronic

1 transmission. The certificate of service must verify compliance with subparagraph D(6)(b)(i)
2 and subparagraph D(6)(b)(ii) of this rule. An amended certificate of service must be filed if it
3 later becomes evident that the intended recipient did not personally receive the electronic
4 transmission.

5 D(6)(b)(i) Content of electronic transmissions. If the court allows service by a specific
6 electronic method, the case name, case number, and name of the court in which the action is
7 pending must be prominently positioned where it is most likely to be read first. For e-mail
8 service, those details must appear in the subject line. For text message service, they must
9 appear in the first line of the first text. For facsimile service, they must appear at the top of
10 the first page. For posting to a social media account, they must appear in the top lines of the
11 posting.

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

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

1 against those defendants by name.

2 [D(6)(f) *Defending before or after judgment.*] D(6)(d) Defending before or after
3 judgment. A defendant against whom [*publication*] service pursuant to this subsection is
4 ordered or that defendant's representatives, on application and sufficient cause shown, at any
5 time before judgment [*shall*] will be allowed to defend the action. A defendant against whom
6 [*publication*] service pursuant to this subsection is ordered or that defendant's representatives
7 may, upon good cause shown and upon any terms that may be proper, be allowed to defend
8 after judgment and within one year after entry of judgment. If the defense is successful, and
9 the judgment or any part thereof has been collected or otherwise enforced, restitution may be
10 ordered by the court, but the title to property sold upon execution issued on that judgment, to
11 a purchaser in good faith, [*shall not be*] will not be affected thereby.

12 [D(6)(g) *Defendant who cannot be served.*] D(6)(e) Defendant who cannot be served.
13 Within the meaning of this subsection, a defendant cannot be served with summons by any
14 method authorized by subsection D(3) of this rule if[:] service pursuant to subparagraph
15 D(4)(a)(i) of this rule is not [*authorized*] applicable, [*and*] the plaintiff attempted service of
16 summons by all of the methods authorized by subsection D(3) of this rule, and the plaintiff was
17 unable to complete service; or if the plaintiff knew that service by these methods could not be
18 accomplished.

19 **E By whom served; compensation.** A summons may be served by any competent person
20 18 years of age or older who is a resident of the state where service is made or of this state and
21 [*is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or*
22 *employee of, nor attorney for, any party, corporate or otherwise.*] is neither a party to the
23 action, corporate or otherwise, nor any party's officer, director, employee, or attorney,
24 except as provided in ORS 180.260. However, service pursuant to subparagraph D(2)(d)(i), as
25 well as the mailings specified in paragraphs D(2)(b), D(2)(c), and part D(3)(a)(iv)(B) of this rule,
26 may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in

1 | this state who serves a summons shall be prescribed by statute or rule. If any other person
2 | serves the summons, a reasonable fee may be paid for service. This compensation shall be part
3 | of disbursements and shall be recovered as provided in Rule 68.

4 | **F Return; proof of service.**

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

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

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

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

22 | F(2)(a)(ii) **Certificate of service by sheriff or deputy.** If the summons is served by a sheriff
23 | or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating: the specific
24 | documents that were served; the time, place, and manner of service; and, if defendant is not
25 | personally served, when, where, and with whom true copies of the summons and the complaint
26 | were left or describing in detail the manner and circumstances of service. If true copies of the

1 summons and the complaint were mailed, the certificate shall state the circumstances of
2 mailing and the return receipt, if any, shall be attached.

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

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

6 _____

7 Affidavit of Publication

8

9 State of Oregon)
10 County of) ss.

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

17

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

19

20 _____
21 Notary Public for Oregon
22 My commission expires
_____ day of _____, 2____

23 _____

24 F(2)(b)(ii) A publication by declaration shall be in substantially the following form:

25

26 _____

1 Declaration of Publication

2 State of Oregon)
3 County of) ss.

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

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

13 _____
14 _____
15 ____ day of _____, 2____
16 _____
17 _____

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

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

1 attached to the summons.

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

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

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

1 | pleading or motion after the time limited by the procedural rules, or by an order enlarge such
2 | time.

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1 **FORM OF PLEADINGS**

2 **RULE 16**

3 **A Captions; names of parties.** Every pleading [shall] **must** contain a caption setting forth the
4 name of the court, the title of the action, the register number of the cause, and a designation in
5 accordance with Rule 13 B. In the complaint the title of the action [shall] **must** include the names of
6 all the parties, but in other pleadings it is sufficient to state the name of the first party on each side
7 with an appropriate indication of other parties.

8 **B Pseudonyms. Each party must be identified by the party's name except that a party may**
9 **seek a court order permitting use of a pseudonym when otherwise permitted by law.**

10 **[B] C Concise and direct statement; paragraphs; separate statement of claims or defenses.**
11 Every pleading [shall] **must** consist of plain and concise statements in paragraphs consecutively
12 numbered throughout the pleading with Arabic numerals, the contents of which [shall] **must** be
13 limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be
14 referred to by number in all succeeding pleadings. Each separate claim or defense [shall] **must** be
15 separately stated. Within each claim alternative theories of recovery [shall] **must** be identified as
16 separate counts.

17 **[C] D Consistency in pleading alternative statements.** Inconsistent claims or defenses are not
18 objectionable[,] and, when a party is in doubt as to which of two or more statements of fact is true,
19 the party may allege them in the alternative. A party may also state as many separate claims or
20 defenses as the party has, regardless of consistency and whether based [upon] **on** legal or equitable
21 grounds or [upon] both. All statements [shall] **must** be made subject to the obligation set forth in
22 Rule 17.

23 **[D] E Adoption by reference.** Statements in a pleading may be adopted by reference in a
24 different part of the same pleading.
25
26

1 | may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the
2 | third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's
3 | summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain
4 | agreement of parties who have appeared and leave of court. The person served with the
5 | summons and third-party complaint, hereinafter called the third-party defendant, [shall] **must**
6 | assert any defenses to the third-party plaintiff's claim as provided in Rule 21 and may assert
7 | counterclaims against the third-party plaintiff and cross-claims against other third-party
8 | defendants as provided in this rule. The third-party defendant may assert against the plaintiff
9 | any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant
10 | may also assert any claim against the plaintiff arising out of the transaction or occurrence that
11 | is the subject matter of the plaintiff's claim against the third-party plaintiff. Any party may
12 | assert any claim against a third-party defendant arising out of the transaction or occurrence
13 | that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the
14 | third-party defendant thereupon [shall] **must** assert the third-party defendant's defenses as
15 | provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims
16 | as provided in this rule. Any party may move to strike the third-party claim, or for its severance
17 | or separate trial. A third-party defendant may proceed under this section against any person
18 | not a party to the action who is or may be liable to the third-party defendant for all or part of
19 | the claim made in the action against the third-party defendant.

20 | C(2) A plaintiff against whom a counterclaim has been asserted may cause a third-party
21 | defendant to be brought in under circumstances that would entitle a defendant to do so under
22 | subsection C(1) of this section.

23 | **D Joinder of additional parties.**

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

26 | D(2) A defendant may, in an action on a contract brought by an assignee of rights under

1 | that contract, join as parties to that action all or any persons liable for attorney fees under ORS
2 | 20.097. As used in this subsection “contract” includes any instrument or document evidencing a
3 | debt.

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

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

1 **PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS;**

2 **FOREIGN DEPOSITIONS**

3 **RULE 38**

4 **A Within Oregon.**

5 A(1) Within this state, depositions shall be preceded by an oath or affirmation
6 administered to the deponent by an officer authorized to administer oaths by the laws of this
7 state or by a person specially appointed by the court in which the action is pending. A person so
8 appointed has the power to administer oaths for the purpose of the deposition. A(2) For
9 purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken within this state if
10 either the deponent or the person administering the oath is located in this state.

11 **B Outside the state.** Within another state, or within a territory or insular possession
12 subject to the dominion of the United States, or in a foreign country, depositions may be taken:
13 [(1)]

14 **B(1)** on notice before a person authorized to administer oaths in the place in which the
15 examination is held, either by the law thereof or by the law of the United States; [(2)]

16 **B(2)** before a person appointed or commissioned by the court in which the action is
17 pending, and such a person shall have the power by virtue of such person’s appointment or
18 commission to administer any necessary oath and take testimony; or [(3)]

19 **B(3)** pursuant to a letter rogatory. A commission or letter rogatory shall be issued on
20 application and notice and on terms that are just and appropriate. It is not requisite to the
21 issuance of a commission or a letter rogatory that the taking of the deposition in any other
22 manner is impracticable or inconvenient; and both a commission and a letter rogatory may be
23 issued in proper cases. A notice or commission may designate the person before whom the
24 deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed
25 “To the Appropriate Authority in (here name the state, territory, or country).” Evidence
26 obtained in a foreign country in response to a letter rogatory need not be excluded merely for

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

4 **C Foreign depositions and subpoenas.**

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

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

8 C(1)(b) “State” means a state of the United States, the District of Columbia, Puerto Rico,
9 the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
10 possession subject to the jurisdiction of the United States.

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

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

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

20 C(2)(c) A subpoena under this subsection shall:

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

25 [(ii)] **C(2)(c)(ii)** Contain or be accompanied by the names, addresses, and telephone
26 numbers of all counsel of record in the proceeding to which the subpoena relates and of any

1 party not represented by counsel.

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

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

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

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

1 **PRODUCTION OF DOCUMENTS AND THINGS AND ENTERING PROPERTY**

2 **FOR INSPECTION AND OTHER PURPOSES**

3 **RULE 43**

4 **A Scope.** *[Any party may serve on any other party any of the following requests:]*

5 A(1) **Documents or things.** Any party may serve on any other party a [A] request to
6 produce and permit the party making the request, or someone acting on behalf of the party
7 making the request, to inspect and copy any designated documents (including electronically
8 stored information, writings, drawings, graphs, charts, photographs, sound recordings, images,
9 and other data or data compilations from which information can be obtained and translated, if
10 necessary, by the respondent through detection devices or software into reasonably usable
11 form) or to inspect and copy, test, or sample any tangible things that constitute or contain
12 matters within the scope of Rule 36 B and that are in the possession, custody, or control of the
13 party on whom the request is served[;].

14 A(2) **Entering property.** Any party may serve on any other party a [A] request to enter
15 land or other property in the possession or control of the party on whom the request is served
16 for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the
17 property or any designated object or operation thereon, within the scope of Rule 36 B.

18 **B Procedure.**

19 B(1) **Generally.** A party may serve a request on the plaintiff after commencement of the
20 action and on any other party with or after service of the summons on that party. The request
21 *[shall]* **must** identify any items requested for inspection, copying, or related acts by individual
22 item or by category described with reasonable particularity, designate any land or other
23 property on which entry is requested, and *[shall]* **must** specify a reasonable place and manner
24 for the inspection, copying, entry, and related acts.

25 B(2) **Time for response.** A request *[shall]* **may** not require a defendant to produce or
26 allow inspection, copying, entry, or other related acts before the expiration of 45 days after

1 service of summons, unless the court specifies a shorter time. Otherwise, within 30 days after
2 service of a request in accordance with subsection B(1) of this rule, or such other time as the
3 court may order or to which the parties may agree in writing, a party [*shall*] **must** serve a
4 response that includes the following:

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

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

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

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

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

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

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

26 **C Writing called for need not be offered.** Though a writing called for by one party is

1 produced by the other, and is inspected by the party calling for it, the party requesting
2 production is not obliged to offer it in evidence.

3 **D Persons not parties.** A person not a party to the action may be compelled to produce
4 books, papers, documents, or tangible things and to submit to an inspection thereof as
5 provided in Rule 55. This rule does not preclude an independent action against a person not a
6 party for permission to enter land.

7 **E Electronically stored information (“ESI”).**

8 **E(1) Form in which ESI is to be produced.** A request for ESI may specify the form in which
9 the information is to be produced by the responding party but, if no such specification is made,
10 the responding party must produce the information in either the form in which it is ordinarily
11 maintained or in a reasonably useful form.

12 **E(2) Meetings to resolve issues regarding ESI production; relevance to discovery**
13 **motions.** In any action in which a request for production of ESI is anticipated, any party may
14 request one or more meetings to confer about ESI production in that action. No meeting may
15 be requested until all of the parties have appeared or have provided written notice of intent to
16 file an appearance pursuant to Rule 69 B(1). The court may also require that the parties meet to
17 confer about ESI production. Within 21 days of the request for a meeting, the parties must
18 meet and confer about the scope of the production of ESI; data sources of the requested ESI;
19 form of the production of ESI; cost of producing ESI; search terms relevant to identifying
20 responsive ESI; preservation of ESI; issues of privilege pertaining to ESI; issues pertaining to
21 metadata; and any other issue a requesting or producing party deems relevant to the request
22 for ESI. Failure to comply in good faith with this subsection [*shall*] **will** be considered by a court
23 when ruling on any motion to compel or motion for a protective order related to ESI. The
24 requirements in this subsection are in addition to any other duty to confer created by any other
25 rule.
26

1 claimant shall deliver to the requesting party a copy of all written reports and existing notations
2 of any examinations relating to injuries for which recovery is sought unless the claimant shows
3 inability to comply.

4 **D Report; effect of failure to comply.**

5 **D(1) Preparation of written report.** If an obligation to furnish a report arises under
6 sections B or C of this rule and the examining physician or psychologist has not made a written
7 report, the party who is obliged to furnish the report shall request that the examining physician
8 or psychologist prepare a written report of the examination, and the party requesting such
9 report shall pay the reasonable costs and expenses, including the examiner's fee, necessary to
10 prepare such a report.

11 **D(2) Failure to comply or make report or request report.** If a party fails to comply with
12 sections B and C of this rule, or if a physician or psychologist fails or refuses to make a detailed
13 report within a reasonable time, or if a party fails to request that the examining physician or
14 psychologist prepare a written report within a reasonable time, the court may require the
15 physician or psychologist to appear for a deposition or may exclude the physician's or
16 psychologist's testimony if offered at the trial.

17 **E Access to *[individually identifiable]* confidential health information.** Any party against
18 whom a civil action is filed for compensation or damages for injuries may obtain copies of
19 *[individually identifiable]* confidential health information as defined in *[Rule 55 H]* **Rule 55 D**
20 within the scope of discovery under Rule 36 B. *[Individually identifiable]* Confidential health
21 information may be obtained by written patient authorization, by an order of the court, or by
22 subpoena in accordance with *[Rule 55 H]* **Rule 55 D**.

1 | order at any time to compel production. In any case, where a subpoena commands production
2 | of books, papers, documents, or tangible things the court, upon motion made promptly and, in
3 | any event, at or before the time specified in the subpoena for compliance therewith, may quash
4 | or modify the subpoena if it is unreasonable and oppressive or condition denial of the motion
5 | upon the advancement by the person in whose behalf the subpoena is issued of the reasonable
6 | cost of producing the books, papers, documents, or tangible things.

7 | **C Purpose; issuance.**

8 | **C(1) Purpose.**

9 | **C(1)(a) Civil actions.** A subpoena may be issued to require attendance before a court, or
10 | at the trial of an issue therein, or upon the taking of a deposition in an action pending therein
11 | or, if separate from a subpoena commanding the attendance of a person, to produce books,
12 | papers, documents, or tangible things and to permit inspection thereof.

13 | **C(1)(b) Foreign depositions.** A subpoena may be issued to require attendance before any
14 | person authorized to take the testimony of a witness in this state under Rule 38 C, or before any
15 | officer empowered by the laws of the United States to take testimony.

16 | **C(1)(c) Other uses.** A subpoena may be issued to require attendance out of court in cases
17 | not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other
18 | officer authorized to administer oaths or to take testimony in any matter under the laws of this
19 | state.

20 | **C(2) By whom issued.**

21 | **C(2)(a) By the clerk of the court, or a judge or justice of the court for civil actions.** A
22 | subpoena may be issued in blank by the clerk of the court in which the action is pending or, if
23 | there is no clerk, by a judge or justice of that court.

24 | **C(2)(a)(i) Requirements for subpoenas issued in blank.** Upon request of a party or
25 | attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to
26 | the party or attorney requesting it, who shall before service include on the subpoena the name

1 of the person commanded to appear; or the books, papers, documents, or tangible things to be
2 produced or inspected; and the particular time and location for the attendance of the person or
3 the production or the inspection, as applicable.

4 **C(2)(b) By the clerk of the court for foreign depositions.** A subpoena for a foreign
5 deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county
6 in which the witness is to be examined.

7 **C(2)(c) By a judge, justice, or other officer.** A subpoena to require attendance out of court
8 in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge,
9 justice, or other officer before whom the attendance is required.

10 **C(2)(d) By an attorney.** A subpoena may be issued by an attorney of record of the party to
11 the action on whose behalf the witness is required to appear, subscribed by the attorney.

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

13 **D(1) Service.** Except as provided in subsection D(2) of this rule, a subpoena may be served
14 by the party or any other person 18 years of age or older. The service shall be made by
15 delivering a copy to the witness personally and giving or offering to the witness at the same
16 time the fees to which the witness is entitled for travel to and from the place designated and,
17 whether or not personal attendance is required, one day's attendance fees. If the witness is
18 under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the
19 witness's parent, guardian, or guardian ad litem. The service must be made so as to allow the
20 witness a reasonable time for preparation and travel to the place of attendance. A subpoena for
21 the taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be
22 served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i),
23 D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). A copy of each subpoena commanding production of
24 books, papers, documents, or tangible things and inspection thereof before trial that is not
25 accompanied by a command to appear at trial or hearing or at deposition, whether the
26 subpoena is served personally or by mail, shall be served on each party at least 7 days before

1 | *the subpoena is served on the person required to produce and permit inspection, unless the*
2 | *court orders a shorter period. In addition, a subpoena shall not require production less than 14*
3 | *days from the date of service upon the person required to produce and permit inspection, unless*
4 | *the court orders a shorter period.*

5 | ***D(2) Service on law enforcement agency.***

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

11 | ***D(2)(b) Time limitation.*** *If a peace officer's attendance at trial is required as a result of*
12 | *the officer's employment as a peace officer, a subpoena may be served on the officer by*
13 | *delivering a copy personally to the officer or to one of the individuals designated by the agency*
14 | *that employs the officer. A subpoena may be served by delivery to one of the individuals*
15 | *designated by the agency that employs the officer only if the subpoena is delivered at least 10*
16 | *days before the date the officer's attendance is required, the officer is currently employed as a*
17 | *peace officer by the agency, and the officer is present within the state at the time of service.*

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

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

1 **D(3) Service by mail.** Under the following circumstances, service of a subpoena to a
2 witness by mail shall be of the same legal force and effect as personal service otherwise
3 authorized by this section:

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

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

11 **D(3)(c) Time limitations.** The subpoena was mailed to the witness more than 10 days
12 before trial by certified mail or some other form of mail that provides a receipt for the mail that
13 is signed by the recipient and the attorney received a return receipt signed by the witness more
14 than 3 days prior to trial.

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

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

23 **E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in
24 this state, a subpoena may be served on that person only upon leave of court and attendance of
25 the witness may be compelled only upon the terms that the court prescribes. The court may
26 order temporary removal and production of the prisoner for the purpose of giving testimony or

1 | may order that testimony only be taken upon deposition at the place of confinement. The
2 | subpoena and court order shall be served upon the custodian of the prisoner.

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

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

11 | **F(2) Place of examination.** A resident of this state who is not a party to the action may be
12 | required by subpoena to attend an examination or to produce books, papers, documents, or
13 | tangible things only in the county wherein the person resides, is employed, or transacts business
14 | in person, or at any other convenient place that is fixed by an order of the court. A nonresident
15 | of this state who is not a party to the action may be required by subpoena to attend an
16 | examination or to produce books, papers, documents, or tangible things only in the county
17 | wherein the person is served with a subpoena, or at any other convenient place that is fixed by
18 | an order of the court.

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

1 **G Disobedience of subpoena; refusal to be sworn or to answer as a witness.**

2 *Disobedience to a subpoena or a refusal to be sworn or to answer as a witness may be punished*
3 *as contempt by a court before whom the action is pending or by the judge or justice issuing the*
4 *subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to*
5 *be sworn or to answer as a witness, that party's complaint, answer, or reply may be stricken.*

6 **H Individually identifiable health information.**

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

9 **H(1)(a) "Individually identifiable health information."** *"Individually identifiable health*
10 *information" means information that identifies an individual or that could be used to identify an*
11 *individual; that has been collected from an individual and created or received by a health care*
12 *provider, health plan, employer, or health care clearinghouse; and that relates to the past,*
13 *present, or future physical or mental health or condition of an individual; the provision of health*
14 *care to an individual; or the past, present, or future payment for the provision of health care to*
15 *an individual.*

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

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

26 **H(2)(a) Supporting documentation.** *The attorney for the party issuing a subpoena*

1 | *requesting production of individually identifiable health information must serve the custodian or*
2 | *other keeper of that information either with a qualified protective order or with an affidavit or*
3 | *declaration together with attached supporting documentation demonstrating that:*

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

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

10 | *H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made,*
11 | *they were resolved and the information being sought is consistent with that resolution; and*

12 | *H(2)(a)(iv) the party issuing a subpoena certifies that he or she will, promptly upon*
13 | *request, permit the patient or the patient's representative to inspect and copy the records*
14 | *received.*

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

19 | *H(2)(c) **Time for compliance.** Except as provided in subsection H(4) of this rule, when a*
20 | *subpoena is served upon a custodian of individually identifiable health information in an action*
21 | *in which the entity or person is not a party, and the subpoena requires the production of all or*
22 | *part of the records of the entity or person relating to the care or treatment of an individual, it is*
23 | *sufficient compliance with the subpoena if a custodian delivers by mail or otherwise a true and*
24 | *correct copy of all of the records responsive to the subpoena within 5 days after receipt thereof.*
25 | *Delivery shall be accompanied by an affidavit or a declaration as described in subsection H(3) of*
26 | *this rule.*

1 **H(2)(d) Method of compliance.** *The copy of the records shall be separately enclosed in a*
2 *sealed envelope or wrapper on which the name of the court, case name and number of the*
3 *action, name of the witness, and date of the subpoena are clearly inscribed. The sealed*
4 *envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer*
5 *envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in court,*
6 *to the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs*
7 *attendance at a deposition or other hearing, to the officer administering the oath for the*
8 *deposition at the place designated in the subpoena for the taking of the deposition or at the*
9 *officer's place of business; in other cases involving a hearing, to the officer or body conducting*
10 *the hearing at the official place of business; if no hearing is scheduled, to the attorney or party*
11 *issuing the subpoena. If the subpoena directs delivery of the records to the attorney or party*
12 *issuing the subpoena, then a copy of the proposed subpoena shall be served on the person*
13 *whose records are sought, and on all other parties to the litigation, not less than 14 days prior*
14 *to service of the subpoena on the entity or person. Any party to the proceeding may inspect the*
15 *records provided and/or request a complete copy of the records. Upon request, the records must*
16 *be promptly provided by the party who issued the subpoena at the requesting party's expense.*

17 **H(2)(e) Inspection of records.** *After filing and after giving reasonable notice in writing to*
18 *all parties who have appeared of the time and place of inspection, the copy of the records may*
19 *be inspected by any party or by the attorney of record of a party in the presence of the*
20 *custodian of the court files, but otherwise shall remain sealed and shall be opened only at the*
21 *time of trial, deposition, or other hearing at the direction of the judge, officer, or body*
22 *conducting the proceeding. The records shall be opened in the presence of all parties who have*
23 *appeared in person or by counsel at the trial, deposition, or hearing. Records that are not*
24 *introduced in evidence or required as part of the record shall be returned to the custodian who*
25 *produced them.*

26 **H(2)(f) Service of subpoena.** *For purposes of this section, the subpoena duces tecum to*

1 | the custodian of the records may be served by first class mail. Service of subpoena by mail under
2 | this section shall not be subject to the requirements of subsection D(3) of this rule.

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

4 | H(3)(a) **Content.** The records described in subsection H(2) of this rule shall be
5 | accompanied by the affidavit or declaration of a custodian of the records, stating in substance
6 | each of the following:

7 | H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and
8 | has authority to certify records;

9 | H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

10 | H(3)(a)(iii) that the records were: prepared by the personnel of the entity or the person,
11 | acting under the control of either; prepared in the ordinary course of the entity's or the person's
12 | business; and prepared at or near the time of the act, condition, or event described or referred
13 | to therein.

14 | H(3)(b) **When custodian has no records or fewer records than requested.** If the entity or
15 | person has none of the records described in the subpoena, or only a part thereof, the affiant or
16 | declarant shall so state in the affidavit or declaration and shall send only those records of which
17 | the affiant or declarant has custody.

18 | H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of
19 | the facts required to be stated in the affidavit or declaration, more than one affidavit or
20 | declaration may be used.

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

22 | H(4)(a) **Required statement.** The personal attendance of a custodian of records and the
23 | production of original records is required if the subpoena duces tecum contains the following
24 | statement:

25 | _____
26 | The personal attendance of a custodian of records and the production of original records

1 is required by this subpoena. The procedure authorized pursuant to Oregon Rule of Civil
2 Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

3
4 **H(4)(b) Multiple subpoenas.** If more than one subpoena duces tecum is served on a
5 custodian of records and personal attendance is required under each pursuant to paragraph
6 H(4)(a) of this rule, the custodian shall be deemed to be the witness of the party serving the first
7 such subpoena.

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

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

13 **A Generally: form and contents; originating court; who may issue; who may serve;**
14 **proof of service. Provisions of this section apply to all subpoenas except as expressly**
15 **indicated.**

16 **A(1) Form and contents.**

17 **A(1)(a) General requirements. A subpoena is a writ or order that must:**

18 **A(1)(a)(i) originate in the court where the action is pending ,except as provided in Rule**
19 **38 C;**

20 **A(1)(a)(ii) state the name of the court where the action is pending;**

21 **A(1)(a)(iii) state the title of the action and the case number; and**

22 **A(1)(a)(iv) command the person to whom the subpoena is directed to do one or more**
23 **of the following things at a specified time and place:**

24 **A(1)(a)(iv)(A) appear and testify in a deposition, hearing, trial, or administrative or**
25 **other out-of-court proceeding as provided in section B of this rule;**

26 **A(1)(a)(iv)(B) produce items for inspection and copying, such as specified books,**

1 documents, electronically stored information, or tangible things in the person's possession,
2 custody, or control as provided in section C of this rule, except confidential health
3 information as defined in subsection D(1) of this rule; or

4 A(1)(a)(iv)(C) produce records of confidential health information for inspection and
5 copying as provided in section D of this rule.

6 A(2) Originating court. A subpoena must issue from the court where the action is
7 pending. If the action arises under Rule 38 C, a subpoena may be issued by the court in the
8 county in which the witness is to be examined.

9 A(3) Who may issue.

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

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

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

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

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

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

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

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

7 A(6) Recipient obligations.

8 A(6)(a) Length of witness attendance. A command in a subpoena to appear and testify
9 requires that the witness remain for as many hours or days as are necessary to conclude the
10 testimony, unless the witness is sooner discharged.

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

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

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

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

25 A(6)(d) Obedience to subpoena. A witness must obey a subpoena. Disobedience or a
26 refusal to be sworn or to answer as a witness may be punished as contempt by the court or

1 by the judge who issued the subpoena or before whom the action is pending. At a hearing or
2 trial, if a witness who is a party disobeys a subpoena, or refuses to be sworn or to answer as a
3 witness, that party's complaint, answer, or other pleading may be stricken.

4 A(7) Recipient's option to object, to move to quash, or to move to modify subpoena for
5 production. A person who is not subpoenaed to appear, but who is commanded to produce
6 and permit inspection and copying of documents or things, including records of confidential
7 health information as defined in subsection D(1) of this rule, may object, or move to quash or
8 move to modify the subpoena, as provided as follows.

9 A(7)(a) Written objection; timing. A written objection may be served on the party who
10 issued the subpoena before the deadline set for production, but not later than 14 days after
11 service on the objecting person.

12 A(7)(a)(i) Scope. The written objection may be to all or to only part of the command to
13 produce.

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

19 A(7)(b) Motion to quash or to modify. A motion to quash or to modify the command for
20 production must be served and filed with the court no later than the deadline set for
21 production. The court may quash or modify the subpoena if the subpoena is unreasonable
22 and oppressive or may require that the party who served the subpoena pay the reasonable
23 costs of production.

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

26 B Subpoenas requiring appearance and testimony by individuals, organizations, law

1 enforcement agencies or officers, and prisoners.

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

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

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

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

13 B(2) Service of subpoenas requiring the appearance or testimony of individuals or
14 non-party organizations; payment of fees. Unless otherwise provided in this rule, a copy of
15 the subpoena must be served sufficiently in advance to allow the witness a reasonable time
16 for preparation and travel to the place required.

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

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

26 B(2)(c) Service on individuals waiving personal service. If the witness waives personal

1 service, the subpoena may be mailed to the witness, but mail service is valid only if all of the
2 following circumstances exist:

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

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

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

13 B(2)(d) Service of a deposition subpoena on a nonparty organization pursuant to Rule
14 39 C(6). A subpoena naming a nonparty organization as a deponent must be delivered in the
15 same manner as provided for service of summons in Rule 7 D(3)(b)(i), Rule 7 D(3)(c)(i), Rule 7
16 D(3)(d)(i), Rule 7 D(3)(e), Rule 7 D(3)(f), or Rule 7 D(3)(h).

17 B(3) Service of a subpoena requiring appearance of a peace officer in a professional
18 capacity.

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

23 B(3)(b) Substitute service on a law enforcement agency. A subpoena directed to a
24 peace officer in a professional capacity may be served by substitute service of a copy, along
25 with one day's attendance fee and mileage as allowed by law, on an individual designated by
26 the law enforcement agency that employs the peace officer or, if a designated individual is

1 not available, then on the person in charge at least 10 days before the date the peace officer
2 is required to attend, provided that the peace officer is currently employed by the law
3 enforcement agency and is present in this state at the time the agency is served.

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

7 B(3)(b)(ii) Law enforcement agency obligations.

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

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

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

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

22 B(4)(b) Court determines location. The court may order temporary removal and
23 production of the prisoner to a requested location, or may require that testimony be taken by
24 deposition at, or by remote location testimony from, the place of confinement; and

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

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

3 C(1) Combining subpoena for production with subpoena to appear and testify. A
4 subpoena for production may be joined with a subpoena to appear and testify or may be
5 issued separately.

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

8 C(3) Subpoenas to command inspection prior to deposition, hearing, or trial. A copy of
9 a subpoena issued solely to command production or inspection prior to a deposition, hearing,
10 or trial must do the following:

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

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

17 C(3)(c) Originals or true copies. The subpoena must specify whether originals or true
18 copies will satisfy the subpoena.

19 D Subpoenas for documents and things containing confidential health information
20 ("CHI").

21 D(1) Application of this section; "confidential health information" defined. This section
22 creates protections for production of CHI, which includes both individually identifiable health
23 information as defined in ORS 192.556 (8) and protected health information as defined in ORS
24 192.556 (11)(a). For purposes of this section, CHI means information collected from a person
25 by a health care provider, health care facility, state health plan, health care clearinghouse,
26 health insurer, employer, or school or university that identifies the person or could be used to

1 identify the person and that includes records that:

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

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

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

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

14 D(4) Conditions on service of subpoena.

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

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

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

25 D(4)(a)(iii) Information regarding objections. The party must certify that either no
26 written objection was made within the 14 days, or objections made were resolved and the

1 command in the subpoena is consistent with that resolution; and

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

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

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

11 _____
12 This subpoena requires a custodian of confidential health information to personally
13 attend and produce original records. Lesser compliance otherwise allowed by Oregon Rule of
14 Civil Procedure 55 D(8) is insufficient for this subpoena.

15 _____
16 D(5) Mandatory privacy procedures for all records produced.

17 D(5)(a) Enclosure in a sealed inner envelope; labeling. The copy of the records must be
18 separately enclosed in a sealed envelope or wrapper on which the name of the court, case
19 name and number of the action, name of the witness, and date of the subpoena are clearly
20 inscribed.

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

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

26 D(5)(b)(ii) Deposition or similar hearing. If the subpoena directs attendance at a

1 deposition or similar hearing, to the officer administering the oath for the deposition at the
2 place designated in the subpoena for the taking of the deposition or at the officer's place of
3 business;

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

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

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

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

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

19 D(7) Inspection of CHI delivered to court or other proceeding. After filing and after
20 giving reasonable notice in writing to all parties who have appeared of the time and place of
21 inspection, the copy of the CHI may be inspected by any party or by the attorney of record of
22 a party in the presence of the custodian of the court files, but otherwise the copy must
23 remain sealed and must be opened only at the time of trial, deposition, or other hearing at
24 the direction of the judge, officer, or body conducting the proceeding. The CHI must be
25 opened in the presence of all parties who have appeared in person or by counsel at the trial,
26 deposition, or hearing. CHI that is not introduced in evidence or required as part of the record

1 must be returned to the custodian who produced it.

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

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

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

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

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

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

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

19 D(8)(b)(iii)(B) in the ordinary course of the entity's or the person's business; and

20 D(8)(b)(iii)(C) at or near the time of the act, condition, or event described or referred
21 to in the CHI.

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

26 D(8)(d) Multiple declarations allowed when necessary. When more than one person

1 has knowledge of the facts required to be stated in the declaration, more than one
2 declaration may be used.

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

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

1 production of evidence upon all matters embraced in the reference, including the production of
2 all books, papers, vouchers, documents, and writings applicable thereto. Unless otherwise
3 directed by the order of reference, the referee may rule upon the admissibility of evidence. The
4 referee has the authority to put witnesses on oath and may personally examine such witnesses
5 upon oath.

6 **C(3) Record.** When a party so requests, the referee shall make a record of the evidence
7 offered and excluded in the same manner and subject to the same limitations as a court sitting
8 without a jury.

9 **D Proceedings.**

10 **D(1) Meetings.**

11 D(1)(a) When a reference is made, the clerk or person performing the duties of that
12 office shall forthwith furnish the referee with a copy of the order of reference. Upon receipt
13 thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time
14 and place for the first meeting of the parties or their attorneys to be held within 20 days after
15 the date of the order of reference and shall notify the parties or their attorneys of the meeting
16 date.

17 D(1)(b) It is the duty of the referee to proceed with all reasonable diligence. Any party,
18 after notice to the parties and the referee, may apply to the court for an order requiring the
19 referee to speed the proceedings and to make the report.

20 D(1)(c) If a party fails to appear at the time and place appointed, the referee may
21 proceed ex parte or may adjourn the proceedings to a future day, giving notice to the absent
22 party of the adjournment.

23 **D(2) Witnesses.** The parties may procure the attendance of witnesses before the
24 referee by the issuance and service of subpoenas as provided in Rule 55. If, without adequate
25 excuse, a witness fails to appear or give evidence, that witness may be punished as for a
26 contempt by the court and be subjected to the consequences, penalties, and remedies

1 provided in [Rule 55 G] **Rule 55 A(6)(d)**.

2 **D(3) Accounts.** When matters of accounting are in issue, the referee may prescribe the
3 form in which the accounts shall be submitted and in any proper case may require or receive in
4 evidence a statement by a certified public accountant who is called as a witness. Upon
5 objection of a party to any of the items thus submitted or upon a showing that the form of
6 statement is insufficient, the referee may require a different form of statement to be furnished
7 or the accounts or specific items thereof to be proved by oral examination of the accounting
8 parties or in such other manner as the referee directs.

9 **E Report.**

10 **E(1) Contents.** The referee shall without delay prepare a report upon the matters
11 submitted by the order of reference and, if required to make findings of fact and conclusions of
12 law, the referee shall set them forth in the report.

13 **E(2) Filing.** Unless otherwise directed by the order of reference, the referee shall file the
14 report with the clerk of the court or person performing the duties of that office and shall file a
15 transcript of the proceedings and of the evidence and the original exhibits with the report. The
16 referee shall forthwith mail a copy of the report to all parties.

17 **E(3) Effect.**

18 E(3)(a) Unless the parties stipulate to the contrary, the referee's findings of fact shall
19 have the same effect as a jury verdict. Within 10 days after being served with notice of the filing
20 of the report, any party may serve written objections thereto upon the other parties.

21 Application to the court for action upon the report and upon objections to the report shall be
22 by motion. The court after hearing may affirm or set aside the report, in whole or in part.

23 E(3)(b) In any case, the parties may stipulate that a referee's findings of fact shall be binding or
24 shall be binding unless clearly erroneous.