

4.101 POST-CONVICTION RELIEF - PLEADING WHEN COUNSEL IS APPOINTED UPON FILING OF THE PETITION

- (1) Counsel appointed for the petitioner shall have 120 days from the date of appointment to file an amended petition.
- (2) If counsel is unable to plead a viable claim for relief in an amended petition, counsel shall file an affidavit pursuant to ORS 138.590(5).
- (3) The defendant shall not file an answer, motion, or demurrer to the petition until the petitioner has filed a notice that the petitioner will proceed on the original petition, has filed an amended petition, or the 120 days to do so has expired.
- (4) Once counsel for the petitioner files an amended petition or notifies the court in writing that the petitioner will proceed on the original petition, or the 120 days has expired, the defendant shall have 30 days from such filing or notice to file an answer, motion, or demurrer.

4.102 POST-CONVICTION RELIEF - MOTIONS

- (1) The petitioner shall have 30 days to file a response to the defendant's motion or demurrer.
- (2) The defendant shall have 20 days to file a reply to the petitioner's response.
- (3) If the court denies defendant's motion or demurrer, the defendant shall have 20 days to file an answer.
- (4) If the court grants the defendant's motion or demurrer and if it appears to the court that there is a reasonable expectation that the petitioner will be able to cure the defect, the petitioner shall be granted 30 days to file an amended petition. Upon a showing of good cause, the court may, in its discretion, grant the petitioner additional time to file an amended petition.

4.103 POST-CONVICTION RELIEF - EXHIBITS

- (1) Only the portions of the trial transcript, medical records, or other voluminous documents that are directly relevant to plaintiff's claim shall be attached to the petition or amended petition as an exhibit or offered at trial.
- (2) All parties are encouraged to put lengthy transcripts, depositions, or other exhibits on CD or DVD in Word or PDF for filing with the court.

4.104 POST-CONVICTION RELIEF - ADDITIONAL BRIEFING AND EXHIBIT

- (1) The petitioner shall file with the court any legal memoranda and all additional trial exhibits not already attached to the petition or amended petition no later than 30 days before trial.
- (2) The defendant shall file with the court any memorandum of law and all trial exhibits no later than 20 days before trial.
- (3) The petitioner may respond to the defendant's memorandum of law and exhibits with a further memorandum and additional exhibits, which must be filed with the court no later than 10 days before trial.

4.105 POST-CONVICTION RELIEF - FILING OF DOCUMENTS WHEN PETITIONER IS REPRESENTED BY COUNSEL

- (1) Counsel's written notification to the court that the case will proceed on the original petition constitutes counsel's ORCP 17 C certifications of the original petition filed by the petitioner pro se.
- (2) All matters submitted to the court for filing shall be submitted only by counsel and, except for the petition or amended petition and any exhibits, signed exclusively by counsel. The only exception to this requirement is for a *Church v. Gladden*, 244 Or. 308, 417 P. 2d 993 (1966), notice filed by the petitioner.

4.106 POST-CONVICTION RELIEF - HEARINGS ON MOTIONS AND DEMURRERS

- (1) Unless the court orders otherwise, all oral argument will be conducted by telephone.
- (2) If the court grants oral argument for a motion or demurrer and the petitioner is in custody, the petitioner, if represented by counsel, will not be brought before the court, in person, by video or by telephone, unless counsel for the petitioner notifies the court not less than 10 days before the hearing that the issues to be heard involve more than solely issues of law.

4.107 POST-CONVICTION RELIEF - TRIAL

- (1) Unless otherwise ordered by the court, all post-conviction relief trials in which petitioner is in the custody of the Oregon Department of Corrections shall be held by video conference or, if video conference is not available, by telephone conference. The petitioner shall remain in and appear from the correctional facility in which the petitioner is being held.
- (2) Counsel may appear by video conference, by telephone conference, or in person before the trial judge. Counsel for the petitioner may appear apart from the petitioner only if the facility where counsel is located enables the petitioner to consult privately with the petitioner's counsel during the proceeding.

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- (3) Public access and viewing of proceedings shall be provided at the Malheur County Courthouse in Vale, Oregon, and the proceeding shall be deemed to take place at that location. Unless otherwise ordered by the court, all witnesses, except original counsel and law enforcement officers, shall appear at that location.
- (4) All motions, whether written or oral, to continue trial or other hearings shall be submitted to the presiding judge of the Ninth Judicial District, or to another judge of the Ninth Judicial District if the presiding judge is not available.
- (5) Motions to continue shall not be made to the Plan B or pro tem trial judge except in cases of emergency when the presiding judge or other judge of the Ninth Judicial District is not available.
- (6) If the trial of the matter will take longer than the time allotted in the trial notice, or if witnesses other than the petitioner will be called, the parties must make arrangements for additional time through the Malheur County Trial Court Administrator within 15 days of the date of the trial notice.
- (7) If a party requires the services of a court interpreter, the party must make the request to the Malheur County Trial Court Administrator's office no later than 4 judicial days before the date set for trial.