

# NOTICE SEEKING PUBLIC COMMENT ON PROPOSED OUT-OF-CYCLE AMENDMENTS TO UTCR 21.040, 21.070, 21.080, AND 21.120, AND ADOPTION OF NEW UTCR 21.140

## I. INTRODUCTION

We are seeking comment on the following proposed out-of-cycle changes to the Uniform Trial Court Rules (UTCR):

1. Amend 21.040 – FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY
2. Amend 21.070 – SPECIAL FILING REQUIREMENTS
3. Amend 21.080 – ELECTRONIC FILING DEADLINES
4. Amend 21.120 – RETENTION OF DOCUMENTS BY FILERS
5. Adopt new 21.140 – MANDATORY ELECTRONIC FILING

## II. HOW TO SUBMIT COMMENTS

You may submit your comments by:

- web site (<http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx>) – click on the button next to the proposed amendment
- email ([utcr@ojd.state.or.us](mailto:utcr@ojd.state.or.us))
- traditional mail (UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, Oregon, 97301-2563)

Please submit your comments so that we receive them by 5:00 p.m., on September 22, 2014.

## III. PROPOSED AMENDMENTS AND NEW RULE

For amended rules, proposed deletions are in [*brackets and italics*], and proposed additions are in {**braces, underline, and bold**}.

### 1. 21.040

#### EXPLANATION

This proposal was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on August 20, 2014. It is in response to feedback from the courts and members of the Bar.

The proposed amendments to subsection (2) change the current process for eFiling attachments. With narrow exceptions, under this proposal, a document with attachments must be eFiled as a single pdf document, instead of as a lead document with separately eFiled attachments. The proposal also adds a new subsection (3) to specify requirements for a blank space and line for affixing dates and signatures on eFiled documents that require court signature.

## PROPOSED AMENDMENT

### 21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

- (1) A document submitted electronically to the court must be in the form of a text-searchable Portable Document Format (PDF) or a text-searchable Portable Document Format/A (PDF/A) file that does not exceed 25 megabytes. A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. A filer submitting separate files under this section must include in the [e]Filing Comment{s} field for each submission a description that clearly identifies the part of the document that the file represents, for example, "Motion for Summary Judgment, part 1 of 2."
- (2) Except as provided in subsections (a) through {c}[d] of this section, when a document to be electronically filed includes one or more attachments, including but not limited to a documentary exhibit, an affidavit, or a declaration, **the electronic filing must be submitted as a unified single PDF file, rather than as separate electronically filed documents, to the extent practicable***[each attachment must be submitted through the electronic filing system as a separate electronically filed document. A filer submitting separate documents under this section must include in the eFiling Comment field for each submission a description that clearly identifies the filing, for example, "Affidavit of Jane Smith (Attachment to motion for summary judgment)."]* **An electronic filing submitted under this subsection***[An attachment file]* that exceeds 25 megabytes must comply with **sub**section (1) of this rule.
  - (a) **If an electronic filing consists of a motion or similar document and a corresponding proposed order, judgment, or any other document that requires court signature, the filer must submit the document requiring court signature through the electronic filing system as a separate electronically filed document from the motion. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Summary Judgment" and "Proposed Order Granting Motion for Summary Judgment."***[An attachment to a motion to strike filed under UTCR 5.020(2) must be submitted together with the motion as a single, unified PDF or PDF/A file.]*
  - (b) **If an electronic filing is not confidential but includes an attachment that is confidential or otherwise exempt from disclosure, the filer must submit the attachment through the electronic filing system as a separate electronically filed document. A filer submitting a confidential document under this subsection must select the confidential check box after attaching the confidential document. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Stay" and "Confidential Attachment to Motion for Stay."***[An attachment to a motion for leave to amend a pleading filed under UTCR 5.070 must be submitted together with the motion as a single, unified PDF or PDF/A file.]*
  - (c) **The reference in subsection (2) to an affidavit and a declaration applies to only an affidavit or a declaration that is an attachment to another document.***[Attachments to a petition for post-conviction relief filed under ORS 138.580 must be submitted together as a single, unified PDF or PDF/A*

file. The attachment file must be submitted separately from the petition document.]

[(d) Attachments to a Uniform Support Declaration filed under UTCR 8.010(4) must be submitted together with the declaration as a single, unified PDF or PDF/A file.]

- (3) **{A proposed order or judgment, or any other document that requires court signature that is submitted electronically, must include, for the purpose of affixing a signature and signature date, a blank space of not less than 1.5 inches and a blank line following the last line of text.**

**Example:**

**Petitioner's motion for a stay is granted. The proceedings in this action are held in abeyance pending further notification from petitioner of completion of the conditions set out in this order.**

**(at least 1.5 inches of blank space following last line of text)**

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- {4}[3] When viewed in an electronic format and when printed, a submitted document must comply with the requirements of ORCP 9 E and UTCR 2.010 except as to any requirement that a document bear a physical signature when filed.
- {5}[4] When submitting an electronic filing that creates a new case or adds a party to an existing case,
- (a) A filer must enter into the "Add Party" screen the names of all known parties or all parties being added; and
  - (b) A filer must enter party names in proper case, for example, "John Doe" and not "JOHN DOE."}
- {6}[5] The court may reject submitted documents that do not comply with these provisions as provided in UTCR 21.080(5).

## 2. 21.070

### EXPLANATION

This proposal was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on August 20, 2014. It is a conforming amendment that is proposed in conjunction with proposed new UTCR 21.140.

The proposed amendment to subsection (3) requires that a motion or petition for waiver of the mandatory eFiling rule -- as permitted under proposed new UTCR 21.140(3) -- be conventionally filed, instead of eFiled.

PROPOSED AMENDMENT

21.070 SPECIAL FILING REQUIREMENTS

(1) \* \* \*

\* \* \* \* \*

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) \* \* \*

\* \* \* \* \*

**{(m) A petition or motion for waiver of the mandatory eFiling requirement, as set out in UTCR 21.140(3).}**

(4) \* \* \*

\* \* \* \* \*

**3. 21.080**

EXPLANATION

This proposal was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on August 20, 2014. It is in response to feedback from the Professional Liability Fund.

The proposed amendment to UTCR 21.080 would adopt a new subsection (6) to address errors in transmission or technical problems that prevent the eFiling system from receiving a document or if the eFiling system is temporarily unavailable. This addition is similar to current subsection (5) regarding rejected eFilings.

PROPOSED AMENDMENT

21.080 **{ELECTRONIC FILING AND}** ELECTRONIC FILING DEADLINES

- (1) A filer may use the electronic filing system at any time, except when the electronic filing system is temporarily unavailable.
- (2) The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone where the court is located on the day the document must be filed.
- (3) The court considers a document submitted for an electronic filing when the electronic filing system receives the document. The electronic filing system will send an email to the filer that includes the date and time of receipt, unless the filer has elected through system settings not to receive the email.
- (4) If the court accepts the document for filing, the date and time of filing entered in the register relate back to the date and time the electronic filing system received the document. When the court accepts the document, the electronic filing system will affix the date and time of submission on the document, thereby indicating the date and time of filing of the document. When the court accepts a document for

filing, the electronic filing system sends an email to the filer, unless the filer has elected through system settings not to receive the email.

- (a) The provisions of this subsection do not apply to a proposed order or judgment, or to any other document that requires court signature, that is electronically filed.
  - (b) When the court accepts a proposed order or judgment or any other document that requires court signature through the electronic filing system, the document is deemed submitted for judge review.
- (5) If the court rejects a document submitted electronically for filing, the electronic filing system will send an email to the filer that explains why the court rejected the document, unless the filer has elected through system settings not to receive the email. The email will include a hyperlink to the document.
- (a) A filer who resubmits a document within 3 days of the date of rejection under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements. If the third day following rejection is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day. For purposes of this subsection, resubmission means submission of the document through the electronic filing system under section (3) of this rule or physical delivery of the document to the court. A filer who resubmits a document under this subsection must include:
    - (i) a cover letter that sets out the date of the original submission and the date of rejection and that explains the reason for requesting that the date of filing relate back to the original submission, with the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the subject line of the cover letter; and
    - (ii) if an electronic resubmission, the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the Filing Comments **{f}**[F]ield.
  - (b) A responding party may object to a request under subsection (a) of this section within the time limits as provided by law for the type of document being filed. For the purpose of calculating the time for objection provided by law under this subsection, if applicable, the date of filing is the date that the document was resubmitted to the court under subsection (a) of this section.

**{(6) If the eFiling system is temporarily unavailable or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving a document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document to meet filing requirements. Technical problems with the filer's equipment or attempted transmission within the filer's control will not generally excuse an untimely filing.**

**(a) A filer seeking relation-back of the filing date due to system unavailability or transmission error described in this section must comply with the requirements in subsection (5)(a) of this rule.**

**(i) The cover letter described in subsection (5)(a)(i) must include the date of the original attempted submission and the date that the filer was notified that the submission was not successful, and explain the reason for requesting that the date of filing relate back to the original submission, with the words "RESUBMISSION OF FILING, SUBMISSION UNSUCCESSFUL, RELATION-BACK DATE OF FILING REQUESTED" in the subject line of the cover letter."**

**(ii) The Filing Comment field notification for an electronic resubmission described in subsection (5)(a)(ii) must include the words "RESUBMISSION OF FILING, SUBMISSION UNSUCCESSFUL, RELATION-BACK DATE OF FILING REQUESTED."**

**(iii) The filer may include supporting exhibits that substantiate the system malfunction together with the filer's cover letter.**

**(b) A responding party may object in the same manner and subject to the same time calculations as in subsection (5)(b) of this rule.**

#### 4. 21.120

##### EXPLANATION

This proposal was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on August 20, 2014. It is in response to feedback from the Oregon Judicial Department-Oregon State Bar eCourt Task Force, the Professional Liability Fund, and practicing Bar members.

The proposed amendment to subsection (1) would change the current requirement that a filer must retain for 10 years the original of an eFiled document image containing the signature of another person. Instead, the filer would be required to retain the document for no less than 30 days. The proposed amendment to subsection (2) would eliminate the current requirement that, on reasonable notice, the filer must provide a paper copy for inspection and would add a new requirement that, when a filer electronically files such a document the filer certifies that the signature purporting to be that of the signer is in fact that of the signer.

##### PROPOSED AMENDMENT

#### 21.120 RETENTION OF DOCUMENTS BY FILERS **{AND CERTIFICATION OF ORIGINAL SIGNATURES}**

- (1) Unless the court orders otherwise, if a filer electronically files an image of a document that contains the original signature of a person other than the filer, the filer must retain the document **{in the filer's possession}** in its original paper form for **{no less than 30 days}***[ 10 years]*.
- (2) **{When a filer electronically files a document described in subsection (1) of this section, the filer certifies by filing that, to the best of the filer's knowledge after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer}***[On reasonable notice, the filer must provide a paper copy of the original for inspection by another party, the clerk, or the court]*.

## 5. 21.140

### EXPLANATION

This proposal was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on August 20, 2014. The new rule requires active Oregon State Bar members to file documents by electronic filing, in those Oregon circuit courts that have implemented the new Oregon eCourt system, instead of by conventional filing. This requirement would become effective on December 1, 2014, in the following courts: Benton, Clatsop, Columbia, Crook, Jackson, Jefferson, Linn, Multnomah, Polk, Tillamook, and Yamhill. In those courts that later implement the Oregon eCourt system, electronic filing would be required in 30 days after a court installs the electronic filing (eFiling) system, which is approximately 60 days after the court installs the Oregon eCourt system. The mandatory electronic filing dates for future courts would be posted on the Oregon Judicial Department's (OJD's) website, as set out in the proposed rule.

### PROPOSED NEW RULE

#### 21.140 MANDATORY ELECTRONIC FILING

- (1) An active member of the Oregon State Bar must file a document using the electronic filing system, instead of using conventional filing, if the document is not required to be conventionally filed under UTCR 21.070(3) and if it
  - (a) is filed in any of the following counties: Benton, Clatsop, Columbia, Crook, Jackson, Jefferson, Linn, Multnomah, Polk, Tillamook, or Yamhill; or
  - (b) is filed in a circuit court not listed in subsection (a) of this subsection on or after the mandatory electronic filing date applicable to that court, as set out in subsection (2) of this rule.
- (2) For purposes of subsection (1)(b), the “mandatory electronic filing date” of a circuit court is 30 business days after the date on which the court began using the electronic filing system. The mandatory electronic filing date is available, once the court begins using the electronic filing system, at:  
<http://courts.oregon.gov/Oregonecourt/pages/oregoneCourtMap.aspx>.
- (3) A person may seek a waiver of the requirement in subsection (1) of this rule as follows:
  - (a) A person must file:
    - (i) A petition for waiver in all cases in a specific judicial district for a specific period of time.
    - (ii) A motion in an existing case for waiver in that specific case.
  - (b) A petition or motion must include an explanation describing good cause for the waiver.
  - (c) A separate petition for waiver in all cases for a specific period of time must be filed in each judicial district in which the person desires a waiver.
  - (d) If the court grants the petition or motion, the person obtaining the waiver must

- (i) file a copy of the court's order in each case subject to the waiver; and
- (ii) include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed during the duration of the waiver.

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