

SLR Changes For 2008

SUMMARY OF MULTNOMAH COUNTY SLR CHANGES Effective February 1, 2008

1.025 APPLICATION TO CIRCUIT COURT AND DEPARTMENTS [; APPLICATION TO CRIMINAL CASES]

[(1)] These rules apply to matters within the jurisdiction of the Circuit Court for Multnomah County and all departments of the Circuit Court.

[(2)] *The following Supplementary Local Rules apply to criminal as well as other cases: 2.015, 5.045, 6.015, 6.045, 6.055, 6.145, 7.035, 7.045, 7.055, and 7.065. All other Supplementary Local Rules apply to criminal matters only if specifically referenced within the text of the chapter or rule.*

Explanation: Removes specific designation of rules applicable to criminal cases. Takes the approach in the UTCRs that the rule applies based on the chapter's context, the specific language of the rule or the process in question.

2.025 FEE DEFERRALS OR WAIVERS IN CIVIL ACTIONS

Fee deferral or waiver applications [*requests*] in civil actions [, *small claims and FED cases*] shall be submitted to the Presiding Judge or designee.

Explanation: Aligns rule with SB 271. Under that act, there will be standards promulgated by the Chief Justice which provide a statewide basis for granting both waivers and deferrals.

3.181 PUBLIC ACCESS COVERAGE IN AREAS OUTSIDE OF COURTROOMS

In facilities occupied by the court, public access coverage in areas outside of courtrooms, other than the Jury Assembly Room when jurors are in attendance and the Juvenile Justice Center, is permitted only with the prior approval of the Presiding Judge. Requests to conduct public access coverage in such areas may be made to the Office of the Presiding Judge at any time during the business day. Public access coverage is not permitted in the court's Jury Assembly Room when jurors are in attendance or at any time in the Juvenile Justice Center in areas outside of the courtrooms.

Explanation: Provides that public access coverage is never permitted in the public areas of the Juvenile Justice Center.

3.182

USE OF CELL PHONES AND OTHER PERSONAL DATA AND COMMUNICATION DEVICES WHICH HAVE AUDIO RECORDING, PHOTOGRAPHIC OR ANY OTHER VISUAL OR IMAGE RECORDING OR REPRODUCTION CAPABILITY

(1) Cell phones and other personal data or communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability:

(A) constitute public access coverage equipment as defined in UTCR 3.180;

(B) such devices may be used in a facility occupied by the court only as provided by UTCR 3.180, SLR 3.181, and this rule;

(C) must be turned off when entering any courtroom in any facility occupied by the court as provided by SLR 6.027, and must not be turned on for any use in a courtroom without complying with SLR 6.027, UTCR 3.180 and this rule.

(2) Cell phones or other telecommunication devices may be used in areas outside of a courtroom, as defined in UTCR 3.180 and SLR 3.181, in a facility occupied by the court without violating this rule or SLR 3.181, provided that such use is restricted to the transmission of the user's oral communication only and does not involve any operation or use of the device's audio recording, photographic or any other visual or image recording or reproduction capability.

(3) In addition to any other consequence permitted under law or court rules, violators of this rule are subject to being ordered by the court to delete from the device any audio recording, photographic or any other visual or image recording or reproduction made in a court facility.

Explanation: In the last two years the use by spectators of camera phones in court proceedings to photograph witnesses during testimony, without complying with UTCR 3.180, has been identified as a problem. This rule addresses the issue by expressly requiring owners of camera phones and personal recording devices to comply with UTCR 3.180 and SLR 3.181. The rule permits use within the established structure for public access coverage.

CHAPTER 4
[OFFENSES] PROCEEDINGS IN CRIMINAL CASES

[In addition to the rules in this chapter, see SLR 1.025 (2) for other SLR applicable to criminal offenses.]

Explanation: Conforms the chapter heading to match the UTCR heading and deletes the reference to deleted SLR 1.025 (2).

4.012 SCHEDULING MOTIONS IN FELONY AND MISDEMEANOR CRIMINAL ACTIONS

- (1) Scheduling Motions Filed Prior to Trial or the Court’s Acceptance of a Plea of Guilty on a Charge:

Except for cases specially assigned to a specific [*trial*] judge **for all purposes**, or for motions to be heard on the day of trial by the [*assigned trial*] judge **assigned for trial from a Call or Criminal Procedure Court calendar**, to schedule a pretrial motion for hearing, in addition to any other requirements set by law or rule, the moving party must contact the Criminal Calendaring Section (Room 106 of the main courthouse or call 503.988.3235), and request a date, time and location for the hearing. Motions in cases assigned to a specific judge may be scheduled by contacting that judge.

Explanation: Language changes to clarify when a motion needs to be set by calling the Criminal Calendaring Section and requesting a date, time and location for the hearing.

4.017 WAIVER BACK TO JUVENILE COURT FOR CRIMINAL ACTION WAIVED TO CRIMINAL COURT UNDER ORS 419C.370 (1)

(1) To waive back to the juvenile court a youth waived from juvenile court under ORS 419C.370, a written motion, supported by an affidavit setting out the basis for the request, must be filed in the criminal action within 60 days of arraignment in the action. The motion must be served on the Office of the District Attorney, and a courtesy copy delivered to the Chief Family Court Judge. The Chief Family Court Judge will set the motion for hearing. The hearing may be at the Courthouse or the Juvenile Justice Center, and may be assigned to be heard by other judges of the Family Court.

(2) Only a judge of the juvenile court may make a determination regarding the requested waiver of a youth from criminal court.

Explanation: Adds to the rules a process for waiver back to the juvenile court cases waived to the (adult) circuit court under ORS 419C.370.

4.085 DUII DIVERSION

- (4) The court will arraign the defendant at first appearance. If the district attorney has determined that the defendant is eligible to enter DUII Diversion, then the case will be continue

for the defendant to file the diversion petition and to appear to enter a plea of guilty. (See Forms 08-27, 08-20, 08-09, and 08-06 Pages 103-110, Appendix of Forms.) If the state is not able to determine if the incident or the defendant are diversion eligible at the time of arraignment or determines that the defendant is not eligible to enter diversion and files objections, then the case will be set for jury trial in the normal course with leave to the defendant **to file a petition, if timely, and** to set a hearing for the court to make a final determination on this issue.

Explanation: Makes clear that the defendant may file the petition, if timely, to enter the diversion program even though there may be a hearing following the arraignment to make a determination of eligibility to enter diversion.

4.095 PAYMENT OF SECURITY DEPOSITS; PAYMENTS OF OTHER COURT ORDERED OBLIGATIONS

(1) For cases within the scope of this chapter, the form of payment accepted and the location and method for depositing security are as follows:

(A) If a defendant is in the custody of the Multnomah County Sheriff's Office or any other agency on a warrant issued by the Multnomah County Court, security amounts for the release of the defendant are collected by the Sheriff's Office and processed pursuant to the cooperative agreement between that agency and **the court** [*Multnomah County Courts*].

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(D) If a defendant is out of custody and a warrant has been issued, a court appearance is required prior to clearing an outstanding warrant, unless otherwise ordered by the court. **If a court orders that the court appearance to withdraw the warrant is waived and the warrant is to be recalled from the Sheriff upon payment of the security deposit set, then the defendant or the defendant's surety may pay the security to the cashiers in Room 106 of the courthouse or at the Gresham court facility if the warrant arises in a criminal action filed in that court location. Payment must be in the medium allowed by this rule.**

Explanation: In (1) (A), the language changes the reference to the court. In (1) (D), the rule is amended to direct the payment of the security amount, if the court permits the warrant to be withdrawn without a court appearance.

CHAPTER 5

[*MOTIONS AND JUDGMENTS IN CIVIL ACTIONS*] **PROCEEDINGS IN CIVIL CASES**

Explanation: Conforms the chapter heading to the UTCR chapter heading.

**5.015 CIVIL ACTION MOTION DOCKET; MOTION PRAECIPE RULE;
AUTOMATIC CONSENT TO HEARING BY NON-APPEARING PARTY**

Method of Setting Motions

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(3) Requests for an expedited setting of a civil motion must be made at **the** ex parte appearance **specifically** for requests to expedite the setting of a motion in a civil action. This proceeding is held once each business day and rotates among the judges. The time and location is available by calling the Presiding Judge’s Office or Civil Calendaring.

Changes: Adds language to clarify the “expedited motion request” ex parte hearing rule.

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Service Period on Court and Opposing Parties, Copy of Motion, Response and Reply to Assigned Judge

(10) Except as provided in section (5) of this rule, the party responsible to deliver the praecipe as provided by this rule shall deliver the praecipe together with the courtesy copy of the motion to the assigned judge and serve the parties on the date the motion is filed with the court; **the motion must be filed without unreasonable delay once a judge, date, and time is assigned for the hearing.** Any party opposing a motion in which a praecipe is required to be delivered under this rule shall submit a courtesy copy of the responding papers to the assigned judge at the same time the response is filed with the court, but in no event less than one judicial day prior to the date of the hearing unless the praecipe delivery time has been shortened by the rule or the Presiding Judge or designee at civil ex parte. Any party filing a reply to a response to a motion, must deliver a copy of the reply document to the assigned judge on the date the reply is filed with the court, but in no event less than one judicial day prior to the date of the hearing.

Explanation: Adds language provide that once a party has obtained a motion hearing time, date and judge, that the motion should be filed and served without delay.

**5.019 PROCEDURE TO OBTAIN ACCESS TO THE AUDIO RECORD WHEN
A HEARING FEE IS REQUIRED BY ORS 21.275 AND IT IS NOT PAID
OR OTHERWISE SATISFIED**

(1) ORS 21.275 provides for a hearing fee to be paid for any hearing to be “reported.” Payment must be made prior to the commencement of hearing. The payment requirement may be satisfied by a fee waiver or deferral, or when the reporting of the hearing is at the request of a party exempt from the fee requirement under ORS 20.140 or other provision of law identified by the requesting party. The ORS 21.275 fee requirement applies even if the oral record of the hearing is being made under ORS 8.340 (7).

(2) Proof of satisfaction of the hearing fee requirement must be provided to the judge's courtroom clerk prior to the commencement of the hearing for the hearing to be reported.

(3) If the hearing fee is not paid for a hearing to be reported, a hearing may be recorded using the court's audio recording equipment for the use of the court. Such a recording of the proceeding for the court's own use does not establish a reported hearing. The audio recording made for the courts use may not be accessed later by any party to an action unless the following steps have been taken by one of the parties:

(A) The party must appear at ex parte before the presiding judge (held each business day at 9:30 AM and 1:30 PM in Courtroom 208) and present a written motion, affidavit, form of order and a duplicate order. The motion must list the hearing dates for which the party is requesting to pay or other wise satisfy the hearing fee requirement and request that the audio record be classified as a reported hearing.

(B) If the motion is granted and the hearing fee requirement is to be satisfied by payment, the party must then pay the fee for each hearing requested in the motion.

(C) The presiding judge's clerk will retain the original motion, affidavit and signed order for filing and will return the conformed copy of the order to the party. The order and proof of satisfaction of payment must be presented to the staff in the circuit court file room in order to request an audio record. The order and proof of satisfaction of payment must be presented to the transcript coordinator if the hearing(s) are designated as a part of the record on appeal.

(4) Nothing in this rule prevents any person from requesting any audio record of a hearing under the provisions of ORS 192.410 to 192.505. Such requests will be determined by the presiding judge if the requested audio record was for a hearing which required a fee to be satisfied under ORS 21.275 to be reported and the fee requirement was not satisfied.

(5) When a fee is required to be paid for a hearing to be reported under ORS 21.275, and no fee is paid or otherwise satisfied, a party will not be able to obtain a copy of the audio recording of the hearing made for the court's use for purposes of ORS 19.250 and 19.365 without complying with this rule.

Explanation: This is a new rule regarding a practical problem which is created by ORS 21.275, which requires a fee to be paid for a hearing to be reported. As a practical matter, the judges of the court record all hearings, even if the hearing is not requested to be "reported." This "recording" practice of the judges, however, cannot be the basis of an end run around the requirement for the ORS 21.275 fee to be paid.

Recordings made of hearings where the fee is required for a "reported" hearing, but reporting is not requested, or it is requested but the fee is not paid, are restricted to the courts own use. If a party later wants to have a copy of the digital recording of the hearing, the party must make an ex

parte appearance before the presiding judge to secure an order permitting the late payment of the fee to have a hearing reported and to have the record changed from “court use only” to reported.” This process has been in place for several years, and the rule is intended to give notice and direction to parties of the process. The timely payment of the fee to have a hearing reported, avoids the new rule entirely.

5.065 JUDGMENT DEBTOR ORDERS

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[Warrants for Failure to Obey Judgment Debtor Order

(4) Persons requesting warrants to compel the appearance of the judgment-debtor or garnishee shall include physical identifiers and the date of birth of the debtor/garnishee. Failure to provide such information shall be grounds for the refusal of the Sheriff to enter a warrant. Motions for issuance of a bench warrant supported by an affidavit setting out the judgment debtor’s or garnishee’s failure to appear as previously ordered and a form of contempt warrant must be presented at civil ex parte.

Security Deposit Not to Be Applied to Judgment

(5) Security on a civil contempt warrant for arrest of a debtor/ garnishee shall be set at \$2500, unless otherwise ordered by the Presiding Judge.

(6) Except for a security deposit posted in a family law contempt proceeding, a security deposit, posted by a debtor/garnishee in response to a civil contempt bench warrant, may not be applied to the judgment creditor's award without the written consent of the debtor/garnishee.]

Explanation: For the last four years, an ex parte request for a warrant for the arrest of a judgment debtor to compel appearance at a hearing have been denied. In this community, the arrest and jailing never results in the judgment debtor being held for a hearing since these judgment debtors are usually the lowest risk for purposes of classifying inmates for population releases from the jail by the Sheriff. The practical effect of the warrant is a cycle of arrest, jailing and release; and the judgment debtor takes up a jail bed temporarily which might be more appropriate for a criminal offender. This change in the rules removes the provisions from the court’s rules for applying for a warrant to compel the appearance of a judgment debtor through arrest and jailing. This deletion from the rules does not alter the right of a party to enforce the collection of a judgment by any statutory means.

CHAPTER 6

TRIALS [PROCEDURES]

Explanation: Conforms the chapter heading to the UTCR chapter heading.

6.025 PAYMENT OF TRIAL FEES AND HEARING FEES

(1) A fee receipt, fee waiver, or fee deferral must be presented to the courtroom clerk prior to commencement of a trial or hearing where a fee is required to be paid under ORS 21.114, 21.270, 21.275, 21.310 [, 46.570] or 105.130.

Explanation: Removes reference to small claims section; there is no trial or hearing fee in a small claim; the defendant's demand for hearing is an appearance fee which must be satisfied on filing.

6.027 PERSONAL COMMUNICATION DEVICES IN JURY ROOMS DURING DELIBERATIONS AND IN COURTROOMS DURING PROCEEDINGS

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(4) See SLR 3.182 regarding the operation of cell phones and other personal data and communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability.

Explanation: Creates a reference in this rule to new SLR 3.182.

7.061 NOTICE TO THE COURT FOR SPECIAL ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

(1) For purposes of complying with UTCR 7.060, if a special accommodation is needed under UTCR 7.060, prior to each proceeding in the action in which an special accommodation is needed, the party needing the accommodation for the individual must contact the Trial Court Administrator's Office. The Trial Court Administrator's Office makes arrangements for special accommodations under the ADA upon notification required by UTCR 7.060.

(2) The Trial Court Administrator's Office Multnomah County may be contacted by calling (503) 988-3957. The Trial Court Administrator's Office is open to take calls under this rule each business day from 8AM to 5PM.

Explanation: Establishes in rule the process to comply with UTCR 7.060.

7.071 SCHEDULING FOREIGN LANGUAGE INTERPRETERS UNDER UTCR 7.070

(1) For purposes of complying with UTCR 7.070, if a foreign language interpreter is needed, the party in need of an interpreter, prior to each proceeding in the action in which an interpreter is needed, must contact the Court Interpreter Services Office in Multnomah County as provided in UTCR 7.070. Court Interpreter Services schedules interpreters

upon receiving the notification required by UTCR 7.070.

(2) The Court Interpreter Services Office in Multnomah County may be contacted by calling (503) 988-3515. The Interpreter Services Office is open to take calls each business day from 8AM to Noon and from 1PM to 5PM.

Explanation: Establishes in rule the process to comply with UTCR 7.070.

CHAPTER 8

[FAMILY LAW,] DOMESTIC RELATIONS, CIVIL COMMITMENT AND NAME CHANGES

Explanation: Conforms the chapter heading to the UTCR chapter heading

9.055 SETTLEMENT OF PERSONAL INJURY OR WRONGFUL DEATH CLAIMS: REQUIREMENTS WHEN MINOR CHILD OR INCAPACITATED PERSON APPEARS BY GUARDIAN AD LITEM

(1) **Except as permitted by chapter 874 Oregon Laws 2007 for a minor child**, a petition for approval of a settlement of a personal injury or wrongful death claim on behalf of a minor child, incapacitated person or decedent shall be accompanied by an affidavit which sets forth the following:

- (A) A description of the incident causing the injury or death;
- (B) A description of the injuries;
- (C) The amount of the prayer and settlement. (If a structured settlement is requested, the present value of the future payments should be indicated);
- (D) The amount of the attorney fees and costs;
- (E) The proposed disposition of the settlement proceeds;
- (F) A concise statement explaining the reasons for the settlement and the efforts to maximize recovery;
- (G) A statement explaining that the attorney has independently evaluated the interests of the injured party;
- (H) A statement explaining that the attorney has examined every medical record; and
- (I) A statement explaining why it is necessary and proper to settle the case at

the present time.

(2) If a civil action has been filed in this circuit court on behalf of a minor child, incapacitated person or decedent for the loss, injury or death which is the basis of the proposed settlement, the original petition and affidavit must be filed in the civil action. A copy of the petition with a form of proposed order for approval of the settlement shall be delivered to the Probate Section to be forwarded to the probate judge for action.

(3) A conservatorship on behalf of the minor child or incapacitated person generally will be required for any case where personal injury or wrongful death settlement proceeds are at issue.

(A) Bond and standard annual accounting requirements may be waived if the funds are restricted until the minor attains the age of majority. In lieu of such accountings the court will require copies of the first and last bank statements for each standard accounting period to be filed with the court.

(B) Restricted accounts on behalf of a minor child or incapacitated person must be confirmed by a signed acknowledgment from the bank or brokerage firm which discloses the account number, type and account balance as required by UTCR 9.050 and 9.080. Exceptions for diminutive amounts may be requested.

(C) Approval of damage settlement amounts for the benefit of a minor child or incapacitated person appearing by a guardian ad litem in a lawsuit, except those cases assigned for trial to a trial department, are a basic responsibility of the Probate Court. The allocation of funds and the structuring of such funds is likewise the Court's responsibility. Minors and incapacitated persons should be provided with independent counsel for such issues and most commonly when a minor's funds are proposed to be withheld from them after age 18.

(4) A fiduciary appointed by the Probate Court is required to comply with paragraph (1) of this rule and must file a motion for an order approving a settlement of a personal injury or wrongful death claim on behalf of a protected person. The motion must be supported by an affidavit setting out the required information.

Explanation: Conforms SLR 9.055 to ORS 126.725, enacted in 2007.

12.021 **MEDIATION COMMISSION**

(1) There is established a mediation commission which includes judges and attorneys, some of whom have experience as a mediator, non-attorney mediators, and the presiding judge and the trial court administrator are ex officio members.

(2) All members shall be appointed by, and serve at the pleasure of, the presiding judge for two year terms.

(3) The functions of the mediation commission are to review the qualifications and training of applicants seeking to be identified as court-connected mediators under CJO 05-

028, to make recommendations to the presiding judge or designee on the inclusion of such applicants on court-maintained lists, and to monitor the continuing qualifications of mediators included on such lists.

Explanation: Establishes a “Mediation Commission” which parallels the UTCR established Arbitration Commission.

12.022 COURT-CONNECTED MEDIATOR LISTS ESTABLISHED

There shall be maintained three lists of mediators who have met the qualifications established in the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, adopted by CJO 05-028. Separate lists shall be maintained for general civil mediators, domestic relations custody and parenting mediators, and domestic financial mediators. The lists of mediators will be published on the circuit court’s web site.

Explanation: Provides that the Mediation Commission will maintain lists of mediators who have applied to be on the court’s list.

12.023 APPOINTMENT TO COURT-CONNECTED MEDIATOR LIST

(1) A mediator seeking inclusion on one or more lists must sign and file an application provided by the court for inclusion on the list of court-connected mediators. The presiding judge or the presiding judge’s designee may require substantiation of any information submitted on the application. The commission may contact any program or individual referenced in the application or any other resource necessary to make a recommendation to the commission.

(2) The mediation commission shall review each application and make a recommendation to the presiding judge or designee.

(3) Appointments to any list shall be at the discretion of the presiding judge or designee. Inclusion on the list shall in no way establish any requirements for compensation for mediators, except as provided in SLR 12.025, nor serve as an endorsement or warranty of the mediator by the court.

(4) The presiding judge or designee may remove a mediator from any court-connected mediator list if the mediator is no longer qualified under the Oregon Judicial Department Court-Connected Mediator Rules, upon the recommendation of the mediation commission, or upon the written request of the mediator or agent, if the mediator is unable to make such request.

(5) Qualified court-connected mediators will be identified as such to the public, together

with contact information for such mediators. The initial applications of qualified court-connected mediators, as well as amended or supplemental applications, will be available for review by the public.

Explanation: Establishes the process for applying and being included on the mediation lists maintained by the court.

12.025 ALTERNATE MEDIATION PROCEDURE IN CIVIL AND DOMESTIC RELATIONS ACTIONS SUBJECT TO 36.400 TO 36.425

(2) On the parties' written stipulation, filed with the court at any time prior to the commencement of the arbitration hearing, the parties may elect to mediate (pursuant to ORS 36.185 to 36.238) rather than arbitrate any civil or domestic relations case subject to mandatory arbitration under 36.400 to 36.425. Such mediation shall be accomplished within the same time period required for court-annexed arbitration under these rules. If the parties mediate in good faith, they shall be deemed to have met the requirements for 36.400 to 36.425 and SLR 7.075 whether or not the mediation results in resolution of all claims, and shall not thereafter be required to submit to arbitration. Nothing in this rule, however, precludes the parties from entering into arbitration in the event that mediation is unsuccessful in resolving the controversy. Any such request to arbitration after mediation shall be governed by Chapter 13 of these Supplemental Local Rules.

(3) If no arbitrator has been selected or assigned at the time of the filing of the stipulation to mediate, the parties may [:

(A)] select a mediator by stipulation[; or

(B) *Follow the procedures for assignment of an arbitrator pursuant to UTCR 13.080 and SLR 13.055, except that the mediator shall be chosen from among those on the court-maintained list who comply with subsection (4) of this rule. The parties shall notify the arbitration clerk of their choice to select the mediator from the list prior to the issuance of a list of potential arbitrators, if possible.*

(4) *The court will review the qualifications of individuals seeking to be added to the court's list of mediators qualified to mediate civil and or domestic relations controversies.*

(A) *Mediators on the court-maintained list shall have the qualifications of mediators under the Oregon Judicial Department's Court-Connected Mediator Qualification Rules;*

(B) *The mediators on the list may but need not be attorneys;*

(C) *Mediators maintained on the court's list shall comply with Oregon Rules of Professional Conduct Rule 2.4, regardless of whether the mediator is a lawyer].*

([5]4) If an arbitrator has already been assigned at the time of the stipulation to mediate, [the parties may select a mediator through either of the following methods:

(A) Request the arbitrator to serve as a mediator. Execution of the oath of arbitrator shall not preclude the arbitrator from agreeing to act as mediator pursuant to this rule. If the arbitrator agrees so to serve, UTCR 13.130 shall be inapplicable during the course of the mediation.

(B) Stipulate to another mediator. If another mediator is selected,] the arbitrator shall be informed immediately, and shall be compensated, pursuant to UTCR 13.120 and the Supplementary Local Rules, for any time already invested in the case.

([C] 5) If the parties select a mediator who is not qualified under the Oregon Judicial Department’s Court-Connected Mediator Qualification Rules, they shall be deemed to have waived any protections under those rules.

(8) **Within five days of the conclusion of the mediation, the mediator shall file with the court a report, together with proof of service of the report upon each party, stating the status of the action following mediation** [The results of a mediation shall be reported by the mediator to the Court on such forms as the court may direct,] as either “settled” or “not settled.” If settled, the terms of the settlement may be stated [on] **in** the report [form], unless the parties have agreed that the terms shall be kept confidential [and not entered as a judgment]. A written statement of the terms of the settlement signed by the parties and/or their attorneys shall be retained by the mediator. A written settlement agreement or memorandum of agreement shall be admissible to prove the settlement under to ORS 36.220 to 36.238. **If the mediator’s report is “settled” the parties must, within 30 days of the filing of the report being filed, submit to the Presiding Judge a stipulated judgment as the final order in the action. If the mediator’s report is “not settled” the action will be assigned an initial trial date and will proceed on the court’s civil calendar.**

Explanation: Modifies the court’s rule on using the “alternative mediation process” in lieu of arbitration under ORS 36.400 to 36.425. The changes reflect the establishment of the court’s mediation commission and lists of qualified mediators.

13.255 RETURN OF WRITTEN NOTICE OF APPEAL AND REQUEST FOR TRIAL DE NOVO SUBMITTED FOR FILING BEYOND THE TIME PERMITTED

A written notice of appeal and request for a trial de novo received by the trial court administrator for filing beyond the time for filing such a notice under ORS 36.425 and, if applicable, ORCP 10 C, may be returned by the presiding judge, or a designee judge, to the party who submitted the document, with [a letter] **an order**, copied to all parties [and to the case file], **stating the finding** that the document was received beyond the time permitted by law. **A copy of the returned notice of appeal and request for trial de novo will be attached to the filed original of the order as a record of the submitted document, but will not be filed separately**

in the action.

Explanation: Clarifies the process for dealing with an untimely notice of appeal and request for trial de novo from an arbitration award. The changes establish that the late document will be returned by order of the court, with copies to all parties; a copy of the returned document will be preserved in the record of the case as an attachment to the order. Whether the document is returned remains discretionary with the court. This was a new rule in 2007. It addresses the statutory language conflict in ORS 36.425 (2)(a) which imposes a time limit for filing but also requires a trial de novo, without reference to the time limit, if a notice of appeal and request for trial de novo is filed in the action. This rule gives all parties notice that the delivery of the request to the court was late, and there will be no trial de novo.