

Changes in Supplementary Local Rules Effective February 1, 2010 Circuit Court of the State of Oregon for Multnomah County

4.111 Deleted

[4.111 **DEFENSE NOTICE OF SCHEDULING OR RE-SCHEDULING OF A CRITICAL-STAGE HEARING IN CASES SUBJECT TO UTCR 4.100 TO 4.120**

(1) *Whenever a defendant in a criminal action subject to UTCR 4.100 to 4.120 determines that it is necessary to schedule or to change a date or time for any scheduled hearing which is defined as a critical-stage hearing under UTCR 4.100 (1), the defendant must provide notice of this intent and of the proposed date and time for the setting or re-setting of the event to the prosecuting attorney. Except for good cause shown, such notice should be provided at least 4 judicial days in advance of the request being made to the court to schedule or re-schedule the event. Notice for purposes of this rule may be provided by writing delivered to the office of the district attorney or by conferring with the prosecuting attorney or the prosecuting attorney's designee within the district attorney's office and providing the information.*

(2) *The duty to provide notice under this rule does not apply in any case where, for every person determined to be a victim by the prosecuting attorney or the court, either:*

(a) *the victim's rights have been suspended as provided by UTCR 4.110 (3), or*

(b) *the prosecuting attorney has filed a certification under UTCR 4.120 (1) that reflects either:*

(i) *the victim waived their right to be informed in advance of any critical stage of the proceeding; or,*

(ii) *the victim cannot be informed in advance of any critical stage of the proceeding because the prosecuting attorney has no contact information for the victim.]*

Change: This rule was deleted; the rule was based on UTCRs which are superseded in procedural substance by chapter 178 Oregon Laws 2009.

8.012 Rule is amended as follows:

8.012 DOCKETING

(1) Assignment of trials and motions shall be handled by the Chief Family Law Judge or designee.

(2) All contested matters not set before the Judge of the Case as described in SLR 8.015(4) or specially set under 8.015(5) shall be scheduled either on the [Call] **Trial Assignment** Docket or the Rotation Docket of the Family Court.

(a) The [Call] **Trial Assignment** Docket consists of all matters scheduled for judicial hearing that have not been retained for hearing by the Judge of the Case, specially assigned to an individual judge by the Chief Family Law Judge, or set on the Family Law Rotation Docket. The Family Law Clerks (currently in Room 211) place cases on this docket when the pleadings indicate the case is at issue. Parties requesting judicial time for contested matters may contact the Family Law Clerks to obtain available dates. Procedures for the [Call] **Trial Assignment** Docket are set out in SLR 8.015.

(b) The Family Law Rotation Docket consists of multiple matters set for the same start time and expected to last only 30 minutes or less. On Monday and Thursdays, these matters are abuse prevention restraining order hearings; on Tuesdays, the matters are State-initiated child support cases. Early Thursday morning, name change requests are also heard on this docket. The Family Law Rotation does not handle short matters other than these proceedings.

(i) When an individual matter set on the Rotation Docket is expected to last more than 30 minutes, a party shall contact the Family Law Clerk to request that the case be transferred to the [Call] **Trial Assignment** Docket, after notice to the other party. This transfer will be granted but the case will be placed on the [Call] **Trial Assignment** Docket for hearing the same day as the matter would have been heard on the Rotation Docket, unless the parties agree otherwise. The party requesting the transfer must provide written notice of [Call] **Trial Assignment** Docket procedures to the other party and certify this action in writing.

(3) Matters on the [Call] **Trial Assignment** Docket may be reset twice **in the “regular course”** by agreement of all parties through the Calendar Unit of the Family Law Clerks. **“Regular course” is a one-month postponement.** Other requests to reset a hearing on the [Call] **Trial Assignment** Docket must be made by motion to the Chief Family Law Judge or designee at ex parte, after notice to the other party. If the motion to reset is made at ex parte time, the party requesting the re-set must comply with SLR 8.041(3). Set-over requests of motions assigned to the Judge of the Case shall be heard by that Judge or the Judge’s designee. Motions not settled or reset within 5 months of filing will be automatically dismissed without notice to the parties **unless before the end of this 5 month period a judgment is signed or an order extending the dismissal date is signed.**

(4) Motions to postpone docketed hearings on abuse prevention restraining orders must be in writing and presented to a Family Law Judge. If the motion to reset is made at ex parte time, the party requesting the re-set must comply with SLR 8.041(3). Subsection (2) of this rule applies to requests to transfer an abuse prevention restraining order case from the Rotation Docket to the [Call] **Trial Assignment** Docket.

(5) Motions to modify judgments require written responses from opposing parties within 30 days from the date of service if the motion is contested. If a written response is filed, the Family Law Clerks will set the motion on the [Call] **Trial Assignment** Docket for assignment for hearing and will send notice to all parties of the date set for [Call] **Trial Assignment** for assignment of the motion. If the motion to modify a judgment is filed on a case that has been retained by a specific judge, then the Family Law Clerks will notify the judge. The judge’s staff will set the motion to modify the judgment for hearing and will notify the parties of the date and time of the event; all scheduling issues must be submitted to the judge who retained the case.

Change: First, this rule was amended by the judges of the Family Court to change the name of the master calendar assignment proceeding from “Call” to “Trial Assignment.” The name of the proceeding, “Call,” was believed to be confusing to self-represented litigants.

Second, the rule provides for the automatic dismissal of motions after 5 months unless settled or re-set; this is set out in SLR 8.012 (3). The amendment provides in paragraph (3) that the automatic dismissal can be avoided by obtaining a signed order extending the five month limit.

8.013 Rule is amended as follows:

8.013 IN CAMERA REVIEWS

(2) The motion will be placed on the [Call] **Trial Assignment** Docket to be assigned for hearing. If the motion is stipulated, the parties will report to the Family Law Clerks that fact and the estimated amount of time needed for the review when the case is assigned. The Judge receiving the assignment from the [Call] **Trial Assignment** Docket will conduct the in camera review if the motion is granted or stipulated. If the case has an assigned Judge of the Case, the party requesting the review must contact that trial department to schedule a hearing on the motion. The Judge of the Case will make arrangements for another judicial officer to conduct the review, if the motion for review is granted.

Change: Makes the change to implement the “Trial Assignment” terminology.

8.015 Rule is amended as follows:

8.015 CASE ASSIGNMENT

Case Assignment for Family Law from the [Call] **Trial Assignment** Docket

(1) *[Changes to the Case Assignment system involving the Call Docket are under review.]* **An explanation and suggested language for the Family Court’s Trial Assignment procedures are** *[This rule applies until notice of a new system is]* posted on the Multnomah County Circuit Court’s public website at <http://courts.oregon.gov/Multnomah>.

(2) In all cases set on the [Call] **Trial Assignment** Docket, the parties must report **in person at the designated courtroom** *[to the Family Law Clerks (currently in Room 211) two (2) working days prior to the Hearing/Trial Date, by telephone, and no later than 4:00 pm.]* **at 9:00 a.m. on the court business day prior to the date of the hearing or trial.** The parties shall report at that time the settlement or the time needed for hearing or trial of the case. **A party may report information for another party only with the agreement of both parties. The courtroom designated for Trial Assignment is listed daily on the Domestic Relations bulletin board in Room 210. When assignment to a specific judicial officer is made at the time of Trial Assignment, a party desiring a change of judge must inform the judge presiding at Trial Assignment that a Motion to Change Judge will be filed.**

[Failure to report by both parties will result in Dismissal of the pending matter. If one party reports and the other does not, the case may be dismissed if the moving party did not report. Otherwise, the case will be assigned to a judge for a prima facie hearing for 15 minutes. If the non-reporting party then appears at the time set for a prima facie, the trial judge will determine how and when the matter will be resolved.]

(3) *If upon reporting by the parties, it is determined that the parties disagree regarding readiness for trial or the time needed for hearing or trial, the Family Law Clerks will direct the parties to appear before the Family Law Judge presiding at Multnomah County Courthouse at 8:30 am the day before trial*

for the court to determine what shall occur. Failure to appear at this court appearance may result in dismissal of the matter.

(4) *Family Law Section Clerks will convey the case assignments for hearings and trials assigned from the Call Docket to the parties by telephone in the morning of the day prior to trial. When that call is received from the Family Law Clerks, the party must at that time inform Staff if a Motion to Change Judge will be filed.]*

[(5)] (3) Once a case is assigned to a Family Law Judge and the matter is heard for one hour duration or more, that Judge becomes the Judge of the Case unless the judge expressly states to the contrary. All future hearings will be specially set with that Judge's staff. Once a Response is filed, the setting of trials in dissolution cases, etc. will be effected by the parties through the Judge of the Case's Judicial Assistant.

[(6)] (4) Cases needing status as a "special set" (a case requiring one (1) or more days of judicial time, i.e., six (6) or more hours of court time) will be assigned in advance to an individual judge when a party makes this request to the Chief Family Law Judge or designee.

Advising the Chief Family Law Judge

[(7)] (5) Any party appearing before the Chief Family Law Judge or designee for purposes of assignment must advise that Judge that a particular judge has previously ruled on some contested aspect of the case.

Improper Influencing of Case Assignment

[(8)] (6) Except as provided in 8.015[(6)], (4) above, no attorney, party, or other person may directly or indirectly attempt to influence the Chief Family Law Judge or designee or court staff to assign a case to any particular judge, or to avoid assignment of a case to any particular judge.

Change: Implements "Trial Assignment" terminology. In paragraph (1), the change directs the reader to the court's website for further explanation of the trial assignment rule. In (2), the paragraph is amended to provide additional direction to parties to comply with the "in-person" trial assignment system which replaces the telephone appearances permitted heretofore. Paragraphs (3) and (4) are deleted; these paragraphs related to the former telephonic appearance. The remaining paragraphs are renumbered.

8.061 New section:

8.061 CHILD SUPPORT WORKSHEETS

The child support computation worksheets appended to OAR 137-050-0320 to 137-050-0490 are required whenever a claim for child support has been raised by the pleadings. Even if the parties have agreed to an award of zero support at the time an order or judgment is signed or the court otherwise orders zero support, the worksheets are required to enable the court to make the legally required findings regarding the presumptive amount of support and the reason(s) to rebut that presumptive amount.

Change: Requires submission of the required worksheet beyond those instances listed in UTCR 8.060 in order for the court to make necessary findings.

8.125 The rules is amended at SLR 8.125 (2) (b):

8.125 PARENT EDUCATION PROGRAM

(2) All parents of a child under the age of 18 years involved in a case described under subsection (1), above, shall complete successfully the education for divorcing parents program offered by the Division of Family Court Services or a pre-approved alternate education program.

(b) All parties shall complete the program before *[trial]* **the earlier of any hearing on a custody or parenting time issue** or entry of a judgment. *[or modification unless an earlier time for completion is ordered by the court]* Excepted from this deadline *[rule]* are **hearings regarding emergency orders under ORS 107.097(3) and 107.139 and pre-judgment protective orders of restraint under ORS 107.097(2). In these cases, the class must be completed prior to entry of judgment unless the court orders a earlier completion date. On post-judgment status quo orders under ORS 107.138, the movant must register for the class prior to the hearing, and complete it if possible prior to the hearing, if the movant did not attend the class prior to judgment.**

Change: Revises time for completion of the parent education program, and states exceptions and what must be done in exceptions. Makes taking the Parent Education Program mandatory for a post-judgment status quo order under ORS 107.138, if the moving party did not attend the class prior to the judgment.

9.016 and 12.045 New sections:

9.016 ALTERNATIVE DISPUTE RESOLUTION

Probate proceedings shall be subject to the alternative dispute resolution rules in Chapter 12, Mediation.

12.045 MEDIATION IN PROBATE PROCEEDINGS

(1) Scope and Objectives. Probate proceedings shall be subject to mediation in accordance with these rules.

(a) Unless excluded below, all matters in Chapters 125 to 130 of the Oregon Revised Statutes under the jurisdiction of the Circuit Court shall be subject to mediation. These include protective proceedings, gifts, trusts, health care directives, powers of attorney, probate estates and estate matters outside of probate.

(b) The following matters are excluded from mediation: temporary protective proceedings under Chapter 125.

(c) If there is a dispute about whether a specific matter is subject to mediation under these rules, a court shall make the determination and shall rely on the policy to encourage the use of mediators in alternative dispute resolution and to discourage litigation.

(d) Mediation shall occur with the objectives of allowing parties to air their grievances informally, craft personal and creative solutions, forestall future possible disputes, work in an atmosphere that is outside of the formal rules of the courtroom, and to save on the expense of the judicial process.

(2) Presentation for Mediation

(a) Matters may be assigned for mediation by order of the court on its own motion.

(b) Matters may be mediated by agreement of all of the parties or notice by any party as set forth herein. A party may notice mediation without court permission.

(3) Pre-Filing

A matter may be mediated before the filing of a legal proceeding. The mediation shall occur in substantially the same manner as if a legal proceeding had been filed except that the court cannot be used to resolve disputes in the mediation unless a legal proceeding is filed.

(4) Procedure – No Hearing Set

Mediation before a hearing has been set shall proceed as follows:

(a) A party seeking to mediate shall serve a written Notice of Mediation on all other parties stating that the party has elected to mediate the matter pursuant to these rules. The Notice shall include a plain and concise statement of the facts that inform the parties and the court of the questions in dispute, that a party may object to the mediation within twenty-one (21) days from the service of the Notice, and that if there is no objection each party must provide all parties a list of acceptable mediators within twenty-one (21) days from the service of the Notice. The Notice may include the noticing party's list of acceptable mediators. The Notice may be substantially in the form set forth as Appendix to these rules.

(b) A party objecting to mediation shall serve an Objection to Mediation on all other parties stating that the party objects to the mediation. The Objection shall include a plain and concise statement of the facts so as to inform the parties and the court of why the party is objecting. The Objection must be made within twenty-one (21) days of the service of the Notice of Mediation. The Objection may be accompanied with pleadings necessary to set the substantive issues before the court.

(c) The court shall set a hearing on the Objection to Mediation for no later than fourteen (14) days from the filing of the Objection and shall notify all parties.

(d) A court hearing an Objection to Mediation shall order that mediation proceed except for good cause shown. If the court determines that the matter should not be subject to mediation, the court shall set the matter for a hearing on the substantive questions in dispute.

(5) Procedure – Hearing Already Set. Mediation after a hearing has been set and all parties notified of the hearing shall proceed as follows:

(a) A party cannot request mediation fewer than twenty-one (21) days in advance of the day that has been set by the court for a hearing unless all parties are in agreement.

(b) A party seeking to mediate shall follow the requirements of Rule 12.045 (4)(A) except that the Notice shall give seven (7) days from the service of the Notice for a party to object, the date, time, place and length of the hearing to the extent available, and the reason why the party is seeking to mediate after a hearing has been set.

(c) A party objecting to mediation shall follow the requirements of Rule 12.045 (4)(B) except that the Objection shall be made within seven (7) days from the service of the Notice.

(d) The court shall set a hearing on the Objection to Mediation for no later than fourteen (14) days from the filing of the Objection and shall notify all parties.

(e) A court hearing on an Objection to Mediation shall order that mediation proceed except for good cause shown. The court may take into account relevant facts about why the party seeking mediation did not request mediation in advance of the setting of a hearing. If the court determines that the matter should not be subject to mediation, the court shall set the matter for a hearing on the substantive questions in dispute.

(6) Other Procedure

(a) The court may modify the times for notice and objection if a party is unrepresented by legal counsel or for good cause shown. A modification can be retroactive.

(b) The calculation of the timelines under these rules shall be made in accordance with ORCP 7D(2)(d)(ii).

(c) Service of pleadings shall occur as set forth in Chapters 125 to 130 or shall be governed by the Oregon Rules of Civil Procedure. Proof of service of pleadings required by these rules shall be filed with the court with a copy of the pleading.

(d) In the event the times set forth in these mediation rules prejudice a party's statutory rights, the court shall provide relief for the party if the relief is consistent with the fair adjudication of disputes.

(e) If there is a dispute about whether or not an attorney or other advocate should be present at mediation under these rules, a court shall make the determination and shall rely on the policy to encourage the use of attorneys and advocates.

(7) Choice of Mediator

A mediator shall be chosen by the parties or the court as follows:

(a) By stipulation of the parties.

(b) If mediation is by order of the court or there is no Objection to Mediation, each party shall provide all parties a list of acceptable mediators within twenty-one (21) days of the order or from service of the Notice of Mediation.

(c) If there is an Objection to Mediation and a court determination that mediation shall proceed, each party shall provide all parties a list of acceptable mediators within seven (7) days of the order on the Objection.

(d) The parties shall make a good faith effort to find a mutually agreeable mediator. Once a mediator is chosen by the parties the noticing party shall inform the court of the mediator's name and address.

(e) If the parties cannot agree to a mediator within seven (7) days from the date the list was required to be furnished, a party may file a Motion to Appoint a Mediator. That motion must be served on all parties and any party may file a Response with a list of their choice of mediators and a plain and concise statement of facts about why one of the mediators on their list should be appointed. The court shall appoint a mediator that appears on the list of at least one party and is not required to hold a hearing.

(8) Qualification of Mediator

(a) A mediator qualified for probate mediation must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estates, trusts and protective proceedings, (ii) an individual with special skill or training in the administration of estates, trusts or protective proceedings, or (iii) an individual with special skill or training as a mediator.

(b) A mediator appointed by the court rather than by agreement of the parties shall also (i) comply with the Oregon Judicial Department Court-Connected Mediator Qualification Rules and (ii) have attended the Multnomah County Probate Department mediation training.

(c) The mediator shall not have an interest in any of the issues subject to dispute and shall not be related to a party.

(9) Date for Mediation

Upon the designation of a mediator by the parties or the court appointment of a mediator, the mediator and the parties shall establish a date for the mediation. If a date cannot be agreed upon within fourteen (14) days of the designation or appointment of the mediator, a party may motion the court to set a date for the mediation and the procedure shall be substantively similar to that for the appointment of a mediator in Rule 12.045(7)(E).

(10) Duration of Mediation

Parties to mediation shall mediate in good faith. In all cases the mediation must last at least three (3) hours unless the matter is conclusively resolved in less time or if the mediator concludes that no progress is likely to occur.

(11) Mediation Agreement. A resolution of the matter that is the subject of the mediation shall be memorialized in writing and signed by the mediating parties. Subject to the waiting period set forth below, the agreement shall be binding on all signors.

(a) Each party to the mediation shall have seven (7) days to repudiate the agreement.

(b) After seven (7) days the parties to the agreement shall reduce it to a court order or judgment for approval of the court.

(c) If a party repudiates the agreement, the party shall immediately inform the mediator and all parties and the mediator or any party shall inform the court. The matter shall be

scheduled for hearing by the court in the same course and with the same priority on the docket as though there had been no mediation.

(12) Costs of Mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties unless the parties agree otherwise.

(a) The details of mediation costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter.

(b) Nothing in these rules is intended to affect a party's right to petition for payment or reimbursement of fees and costs pursuant to another rule or statute in the underlying matter.

(c) A party shall not be kept from mediation due to indigency and the court shall establish procedures for mediation when there is an indigent party.

(13) Compliance

If a party does not comply with these rules, any other party may motion the court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with the compliance proceeding unless the court at the hearing determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

Change: These two sections, SLR 9.016 and SLR 12.045, establish a mediation program in the Probate Court for most matters under ORS Chapters 125 to 130.