

FREQUENTLY ASKED QUESTIONS

RE UTCR 5.100

IN MULTNOMAH COUNTY FAMILY COURT

1. What does the rule require?

The rule requires that in most situations, you provide notice to the other party before submitting a proposed order or judgment for signature. If the other party is self-represented, you must also include notice of the timeframe that that party has to object. If you received objections, the rule details your obligation to try to resolve them. Finally, the rule requires that *every** proposed order and judgment contain a Certificate of Readiness telling the Judge why the document is ready for judicial signature and setting out the status of any objections received.

* Exception: The only exception for the Certificate is a proposed order presented in open court with the parties present. UTCR 5.100(4).

2. Why do we need this rule?

Three reasons prompted the rule in 2015 and underlie its revisions since then.

A. Separate routing -- Under the court's electronic case management system, proposed orders and judgments must be submitted separately from any other case filings. UTCR 21.040(2)(a). This segregation is necessary so that documents requiring judicial signatures can be routed promptly and directly to electronic queues developed for this purpose. This segregation means that the Judge does not have ready access in that queue to the supporting documentation (motions, declarations, correspondence, etc.) relevant to the proposed order/judgment. The Judge does have the ability to access the supporting documents, but that step requires more electronic maneuvering and time. Having all the "readiness" information in one place is efficient for the court and expedites the fastest signing, routing, and entry of orders and judgments. Moreover, even though the rule is based in part on eCourt needs, the UTCR 5.100 revisions apply as well to *paper* documents needing judicial signatures, for convenience and for the reasons expressed below.

B. No ability to "hold" documents -- The Court cannot "hold" documents electronically, waiting for required time periods to pass before the Judge can sign the document. The Court's queues do not have the functionality to "tickle" cases for specific reasons or timeframes. Court staff also cannot assume the responsibility for holding *paper* orders submitted simultaneously with service on the other party. Documents requiring court signatures should not be submitted until they are ready for judicial signature.

C. Notice needed for Self-Represented Litigants -- No UTCR has required that self-represented litigants (SRLs) be given notice of the opportunity or timeframe for objecting to proposed orders and judgments, although certain statutes and rules have required specific notice in some situations and ORCP 7 has controlled notice regarding summons. The 2016 rule revisions make sure that no document is sent to an SRL without that recipient knowing what action was needed, by when, if a dispute existed.

3. What is the notice period for proposed orders and judgments under this rule?

When the other side is represented, the drafter must wait 3 days, plus an additional 3, before submitting the document to court. (Exception: no notice period is necessary when the proposed order or judgment reflects the stipulation of each counsel. UTCR 5.100(1)(b)) When the other side is self-represented, the drafter must wait 7 days, plus an additional 3. The “3 extra days” requirement derives from ORCP 10B, which was modified by the 2015 Oregon Legislature to apply the 3-day extension to service by email, fax, and electronic service instead of just posted mail. UTCR 1.130 applies ORCP 10 to time periods set by the UTCRs. The August 2016 commentary to UTCR 5.100 reminds practitioners of ORCP 10’s applicability.

4. Aren’t there situations in which I shouldn’t have to give notice to the other party that I am submitting a proposed order or judgment?

Yes. The rule does not require advance notice in some situations. Subsection (3) of the rule sets out these circumstances:

- (a) the document is presented in open court with the parties present,
- (b) a statute, rule, or other circumstance authorizes submission of the document for signature without notice (*see Question #5*),
- (c) the judgment resolves the review of a final DMV order,
- (d) the document involves an uncontested probate or protective proceeding, or
- (e) the proposed order addresses certain issues filed by the Oregon Child Support Program (CSP). All of the CSP issues involve situations in which the court is required to hold a hearing on the issue the CSP has certified to the court. Those issues include: what amount of past support should be ordered, contested issues of paternity, contested name change issues, and objections to the CSP’s decision resolving a “multiple order” conflict.

The August 2016 revisions to the rule delete specific reference to default orders and judgments being submitted simultaneously with default orders. The UTCR Committee felt that subsection (b) above adequately addressed this circumstance .

5. What are the situations where “a statute or rule authorizes submission [of a proposed order] without notice”?

ORS, UTCRs, and SLRs provide these answers. In the Family Law arena, *ex parte* orders are permissible in some situations under the Family Abuse Prevention Act, the Elderly Persons and Persons with Disabilities Prevention Act, Stalking Protective Order legislation, and the Sexual Abuse Protective Order Act. In addition, pre-judgment immediate danger orders are authorized as an *ex parte* matter under ORS 107.097. And pre-judgment Temporary Protective Orders of Restraint may be obtained *ex parte* in our county as long as the petition has not been served. *See* SLR 8.018. Moreover, under ORCP 79, certain restraints against person, assets, or property can be obtained without notice if the requisite showing is met. Post-judgment, an immediate danger order requires a good faith attempt to confer, so this is not strictly a permissible *ex parte* appearance. Claims for attorney fees need not be submitted to a party already found in default. OCRP 68C(4)(a)(ii). It has also been the practice of the court to allow Orders to Show Cause to be signed without notice, since that action is administrative rather than merit-focused (although from a professionalism standpoint, notice to the other side when a matter is pending should be considered). Orders for mediation and for statutory financial restraint probably fall in this category as well since they simply implement rules mandating the particular relief sought.

6. Can I combine my Certificate of Readiness with a Certificate of Service?

Yes. In fact, UTCR 5.100(2) specifically states that the Certificate must detail the “manner of compliance with any applicable service requirement under this rule” as well as set out the circumstances of readiness. Just make sure the Certificate is part of your proposed order/judgment and not a separate document. In e-filing terms, this means it must be part of the same PDF. See answer to Question #7, below. You can label the section as “Certificate of Service and Readiness” or even just “Certificate of Readiness” but be sure to include your service information. See answer to Question #10, below, re including address.

7. Is the Certificate of Readiness filed as a separate document, or somehow incorporated into my proposed order of judgment?

A Certificate of Readiness must be “included in” the proposed order or judgment, according to UTCR 5.100(2)(leading sentence, revised August 2016). The required placement is “following the space for judicial signature.” *Same cite*. Think of the Certificate as part of the proposed order or judgment and not an independently filed document. When e-filed, the Certificate must be part of the same PDF as the order/judgment or it will not end up in the Judge’s queue along with the document needing judicial signature. Even if your proposed order or judgment is submitted in paper, the Certificate of Readiness must be part of the underlying order.

8. Where in the proposed order or judgment should I insert the Certificate of Readiness?

The rule states that placement should be “following the space for judicial signature.” UTCR 5.100(2)(leading sentence, revised August 2016). Best practice is to insert the Certificate of Service & Readiness immediately below the judge’s signature line, and before any other stipulating or submitting signatures.

9. Do I have to set out the entire UTCR template as my Certificate of Readiness, or may I just insert the sentence that applies to my situation?

The rule does not explicitly answer this. But the words “identifying the reason” were added to subsection (2)(b) in August 2016 precisely to highlight the importance of asserting the applicable readiness ground as opposed to inapplicable reasons. Some attorneys prefer to include the entire template, and just “X” the applicable sentence/s. Others prefer to list only the specific reason applicable. From a judge’s standpoint, what is critical is that (1) the section be labeled “Certificate of Readiness” or “Certificate of Service & Readiness” so we can find it easily below our signature area and (2) you set out the service proof and ground for readiness either in the UTCR-formatted words or “other” clear language.

10. Does my Certificate of Readiness have to set out the address at which I served the other party with the copy of the proposed order/judgment?

This rule does not explicitly require the address but UTCR 21.100(6) (amended August 2016) requires that *electronically* filed documents contain a certificate of service with the manner of service detailed in some specificity. [UTCR 21.100(6) requires that if electronically served, the certificate of service must state that service was accomplished at the email address recorded in the e-filing system; if served by email or facsimile, the email address or telephone number; or otherwise at the postal address of service.] Since UTCR 5.100 also requires that the “manner of compliance” be set out, interpreting that phrase consistently with UTCR

21.100(6)'s specifics re the “manner of service” seems appropriate. The bottom line is that having the certificate state not just the date and method of service (in person delivery, mail, fax, email, or electronic service) but also, as applicable, the address of delivery best ensures a record should any dispute arise about whether appropriate notice was given. And this rationale applies not just to electronically-filed documents where UTCR 2.100(6) requires the address but to paper-filed documents as well.

11. Do I have to provide a Certificate of Readiness on every proposed Order or Judgment?

Yes, with just one exception -- one submitted in open court with the parties present. UTCR 5.100(4). The exceptions in the rule (UTCR 5.100(3)) are for the notice requirement, not for the Certificate requirement.

12. Does this rule apply in Criminal case?

No. This uniform rule is set out in Chapter 5, which addresses civil cases. Moreover, the UTCR Reporter’s note to the August 1, 2016, revisions explicitly states its inapplicability to criminal cases. However, in Multnomah County, we have a specific Supplemental Local Rule that applies UTCR 5.100 to “matters under this chapter [8]” and SLR 8.011 lists the wide variety of matters handled by the Family Court. Because contempt matters seeking remedial sanctions are legally part of the underlying case, ORS 33.055(3), a Certificate of Readiness is needed in our remedial contempt orders and judgments.

13. Does this rule apply in a Juvenile case?

Yes – but only in Multnomah County so far. The UTCR Reporter’s note to the August 1, 2016, revisions explicitly states its inapplicability to juvenile cases but Multnomah County has a local SLR that explicitly applies UTCR 5.100 to Juvenile proceedings. SLR 11.046. Effective in February 2017, it is expected that the SLR will clarify that it applies only in juvenile dependency proceedings. Whether UTCR 5.100 should apply statewide to dependencies is under discussion but there will be an opportunity for comment if that proposal is made.

14. Does this rule apply to Notices of Withdrawal?

No. Only a proposed Order to withdraw (i.e., a document requiring judicial signature) triggers application of this rule.

15. Does this rule apply to Motions to Postpone?

UTCR 6.030(6) states that UTCR Chapter 5 (with exceptions not relevant here) does not apply to Motions for Postponement, so it is hard to argue that UTCR 5.100 applies to postponement orders. However, if a Motion to Postpone is served on the other side without notice of what that other party should do or by when, you will very likely encounter Family Court Judges who delay consideration of such a motion or require other steps. The best practice would be to apply UTCR 5.100 to Motions to Postpone but we realize that emergent circumstances can affect how much advance notice to the other side is reasonable regarding a postponement request. Remember that our SLR 8.041(3) requires 2 business days’ notice to the other side on matters presented at ex parte time where no statute or rule authorizes an unnoticed (a true *ex parte*) appearance. So please consider applying UTCR 5.100 to Motions to Postpone if the motion isn't time-sensitive. And remember that under SLR 2.501(3), motions to postpone must be submitted conventionally (in paper).

16. Will the Court accept judgments and orders that do not comply with UTCR 5.100?

As of May 2, 2016, court staff in both the Family Law and Civil Departments in Multnomah County Circuit Court have been instructed to not accept proposed judgments and order that are non-compliant with UTCR 5.100. Individual judges could, of course, waive application of the rule in a particular case if necessary to prevent hardship or injustice. UTCR 1.100.

McKnight, 11/4/16