

MEMORANDUM

TO: Uniform Trial Court Rules Committee

FROM: Lisa Norris-Lampe, Chair, Oregon eCourt Law & Policy Work Group

RE: Proposed UTCR 5.100 Amendment -- Certificate of Readiness

DATE: March 11, 2015

This memo submits to the UTCR Committee for consideration a proposed amendment to UTCR 5.100. The amendment concerns adding a new certification on proposed orders and judgments submitted for court signature, a "certificate of readiness." The "next steps" section of this memo discusses timeline options for the Committee to consider (proposed as an out-of-cycle amendment).

Background: In working with Odyssey and, particularly, efiled proposed judgments, Multnomah County has been experiencing difficulties with managing electronic "submitted for signature" documents while awaiting assurances from parties that those documents in fact are ready for judge signature. A group in that court worked on a proposed rule that would require parties to submit a "Certificate of Readiness" with a proposed judgment, to assist with the processing. The following goals underlie the proposal:

- Place the burden on attorneys, rather than court staff, to monitor the readiness of documents submitted for judicial signature;
- Encourage parties to resolve issues with the form of the proposed order or judgment before submitting for signature (so as to save judicial time), and require documentation of reasonable efforts to resolve the form of judgment before sending it to court;

- Ensure that self-represented litigants are informed of the time frame and action needed to submit objections to the form of the order/judgment;
- Adopt a consistent and more reasonable timeline for objections, regardless of whether a party is represented; and
- Place the "readiness" information in one easily found location on a document submitted for signature (*i.e.*, the last page of the document or unified pdf that is being efiled, together with the certificate of service).

The Multnomah group originally drafted the proposed rule as possible Multnomah County SLR; they submitted the proposal to the Oregon eCourt Law & Policy Work Group (LPWG) in part for review and approval, and also for consideration for recommendation as a statewide rule, in the form of a UTCR amendment. In considering the concept, the LPWG agreed that such a rule would be useful statewide, both for current paper-based courts and as those courts transition to implementation of Oregon eCourt. The LPWG therefore redrafted the original Multnomah County SLR proposal as an amendment to current UTCR 5.100, and approved it, with amendments, last week.

As drafted -- in addition to adding a new "certificate of readiness" provision to UTCR 5.100 and some other changes -- the proposal breaks current UTCR 5.100 into three sections: (1) service; (2) objection; and (3) submission. The proposal retains current provisions of UTCR 5.100 that would continue to apply (ex: general and special service requirements; certificate of service requirements); however, the rule changes the current time for objection from the current, shorter timelines (3 days for lawyers; 7 days for self-represented parties). In the view of the Multnomah County judge group, the time for objection should be the same regardless of whether or not a party is represented, and the group also thought it made sense to adopt a timeline that was consistent with other types of

objections.¹ Otherwise, I note that the LPWG's intent was to retain flexibility for parties and judges in requesting (or determining) particular means of resolving objections to the form of order or judgment (ex: via hearing or otherwise).

Next Steps: The preference of the Multnomah County drafting group and the LPWG is that this proposed rule be adopted out-of-cycle, instead of waiting for submission for the fall UTCR Committee meeting, for adoption (if approved) effective August 2016. The LPWG recommends that the rule be considered for out-of-cycle adoption via Chief Justice order, following a minimum 30-day comment period, given the change in practice resulting from the proposed change. I note that I also will be taking this proposal to the joint OJD-OSB eCourt Task Force (meeting on March 17, 2015), for further discussion and possible additional input, so I would recommend that a public comment period begin at a point in time after the date of that meeting. At this juncture, the LPWG presents the proposal to the UTCR Committee for its consideration and for any additional input.

Proposal: (see next page)

¹ Of course, a party may either approve or object sooner than 14 days if desired, so the drafter would not necessarily always need to wait 14 days to submit. The rule states as much in proposed new subsection (3)(a).

Oregon eCourt Law & Policy Work Group
Proposed Amendment to UTCR 5.100 (March 11, 2015)
{braces/bold/underline} = added text; [*brackets/italics*] = deleted text

5.100 {SERVICE AND} SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

- (1) {Service of Proposed Order or Judgment}*[Any proposed judgment or proposed order submitted in response to a ruling of the court must be:]*
- (a) {Except as provided in subsections (1)(c) and (3)(a) of this rule, any proposed order or judgment to be submitted to the court must be} served{, pursuant to ORCP 9,} on {the }opposing {party,}*[counsel]* not less than {14}*[3]* days prior to submission to the court{, together with the notice described in subsection (1)(b) of this rule.}*[, or]*
- (b) {The accompanying notice must inform the opposing party that the party may:}*[accompanied by a stipulation by opposing counsel that no objection exists as to the form of the judgment or order, or]*
- {(i) stipulate to or approve the proposed order or judgment by signature;
- {(ii) approve by written confirmation to the sender the form of the proposed order or judgment; or
- {(iii) object to the proposed order or judgment in writing within 14 days. The information required by this paragraph must be in substantially the following form: "Any objections to the form of this order or judgment must be served on me within 14 days. You must date and sign any objections."}
- (c) {The requirements of subsection (1)(a) of this rule do not apply to:}*[mailed to a self-represented party at the party's last known address not less than 7 days prior to submission to the court, or]*
- {(i) a proposed order or judgment presented in open court with the parties present;
- {(ii) a proposed order or judgment that may be presented ex parte by law or rule and is so submitted;
- {(iii) a proposed judgment when an order of default already has been entered or is simultaneously being requested against the other party;

this rule if the other party:}*[proposed judgments subject to UTCR 10.090, and]*

- {(i) stipulates to or approves the form of order or judgment, as shown by that party's signature on the form or order of judgment, before the 14-day period expires;
 - (ii) approves by written confirmation to the sender the form of the proposed order or judgment, before the 14-day period expires; or
 - (iii) objects before the 14-day period expires, and all objections are resolved by agreement or are ready for court for resolution at the time of submission.
- (b) Every proposed order or judgment submitted to the court that is subject to subsections (1)(a) and (1)(d) of this rule must include a Certificate of Service describing the manner of compliance with the service requirement set out in that subsection.
- (c) Every proposed order or judgment submitted to the court for judicial signature must include on its last page a Certificate of Readiness that includes the date and signature of the submitting party and that certifies that the proposed order or judgment is ready for judicial signature or that objections are ready for resolution. The Certificate must be in substantially the following form:}*[uncontested probate and protective proceedings.]*

{"Certificate of Readiness:

"This proposed order or judgment is ready for judicial signature because:

"1. [] Each opposing party affected by this order or judgment has stipulated to or approved its terms, as shown by each party's signature on the proposed order or judgment being submitted.

"2. [] Each opposing party affected by this order has approved the form of the document, as shown by written communication to me.

"3. [] I have served a copy on all parties entitled to service and provided written notice of the 14-day objection period set out in subsection (2)(a)(ii) of this rule and:

"a. [] No objection has been served on me within that time frame.

"b. [] I received objections that I could not resolve with the objecting party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.

"4. [] The relief sought is against a party who has been found in default.

"5. [] An order of default is being requested with this proposed judgment.

"6. [] Service is not required pursuant to subsection (1)(c) of this rule, or by statute, rule, or otherwise.

"7. [] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (1)(d) of this rule."}

[(4) Any proposed judgment containing an award of punitive damages shall be served on the Director of the Crime Victims' Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, not less than 3 days prior to submission to the court.]