# UNIFORM TRIAL COURT RULES

Including Amendments

**Effective**
**August 1, 2003**

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| In the Matter of the Adoption of Amendments to the Uniform Trial Court Rules | ) ) ) ) ) | CHIEF JUSTICE ORDER No. 03-047<br><br>ADOPTING AMENDMENTS TO THE UNIFORM TRIAL COURT RULES |

The Uniform Trial Court Rules, as amended below, are adopted and are effective August 1, 2003. ORS 1.002.

All current local rules inconsistent with the Uniform Trial Court Rules as amended will be deemed ineffective on August 1, 2003, see UTCR 1.030. However, local rules that are not inconsistent remain in effect and are subject to review as provided under UTCR 1.050. Pursuant to UTCR 1.050, each judicial district or court must submit any amendments or additions to its Supplementary Local Rules by September 1, 2003. Those amendments or additions not in conflict with the Uniform Trial Court Rules shall be filed on January 1, 2004, with the State Court Administrator pursuant to ORS 3.220. Those local rules that are not amended or repealed and are not disapproved on review under UTCR 1.050 remain in effect until so amended, repealed, or disapproved.

Dated this 14th day of May, 2003.

Wallace P. Carson, Jr.
Chief Justice, Oregon Supreme Court

# 2003 AMENDMENTS TO THE UNIFORM TRIAL COURT RULES

## PREFACE

The Uniform Trial Court Rules (UTCR), as amended, are effective August 1, 2003. The amendments are the result of many comments and suggestions received from the public, bench, bar, and agencies who use the rules. The proposed amendments were published in the Oregon Appellate Courts Advance Sheets and public comment was invited. As a result of the comments received, proposed amendments were revised and some proposals deleted entirely for this final version. A summary outline of the major changes contained in the 2003 amendments follows this preface.

The UTCR Committee members who worked on these amendments are listed below. They deserve special recognition for their contribution of time, effort and energy in performing the Committee's work.

Tracey Cordes (Trial Court Administrator, Benton County)
The Honorable Patricia Crain (Jackson Circuit Court)
Timothy M. Dolan (Attorney, Garibaldi)
The Honorable Eveleen Henry (Lane Circuit Court)
The Honorable William M. Horner (Polk Circuit Court)
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The 2003 UTCR may be obtained in an 8-1/2" x 11" format for $10 per copy from the OJD Publications Section, 1163 State Street, Salem, Oregon 97301-2563; telephone (503) 986-5656. The UTCR are also available in .PDF format at the following website address: www.ojd.state.or.us.

**UTCR REPORTER**
**SUMMARY OF MAJOR CHANGES**
**2003 UTCR AMENDMENTS**

**UTCR Reporter Note: Future UTCR Committee Meetings**

The following are the only currently scheduled dates for future meetings of the full UTCR Committee:

FALL MEETING, October 17, 2003, in Salem, at the Oregon Office of the State Court Administrator. The meeting will be carried over to the following day, October 18, 2003, if the business of the committee is not completed on the first day. At the fall meeting the committee will review proposed SLR and make recommendations to the Chief Justice on disapproval of proposed SLR under UTCR 1.050. This one-day to two-day meeting is also the only meeting currently anticipated in the 2004-2005 UTCR cycle at which the committee intends to accept proposals to make recommendations for UTCR changes that would take effect August 1, 2004. Meeting dates for the following year are scheduled at the fall meeting.

Changes to the UTCR for 2003 include changes in the places listed below. The changes are briefly explained and in many cases also set out. Where changes are made to an existing UTCR, the new language is underlined and language to be deleted is bracketed out. When new UTCR are added, the language may not be set out but may be found in the attached UTCR as adopted. The following changes go into effect August 1, 2003, and are also included in the attached UTCR:

## UTCR CHAPTER 1

**1. Amend UTCR 1.090(2), as follows:**

1.090 SANCTIONS

(1) * * *

(2) For willful and prejudicial resistance or refusal to comply with UTCR or SLR, the court, on its own motion or that of a party after opportunity for a hearing, may [*award reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court as a result of that failure, strike the offending pleading or other document, or treat as established an allegation or claim*] **do any of the following:**

**(a) Assess against the noncompliant party or attorney or both reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.**

**(b) Otherwise award reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.**

**(c) Strike the offending pleading or other document.**

**(d) Treat as established an allegation or claim**.

## UTCR CHAPTER 7

**2. Amend UTCR 7.060, as follows:**

7.060 AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION

(1) If special accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court **in the manner required by the court** as soon as possible, but no later than [*two*] **four** judicial days in advance of the proceeding. For good cause shown, the court may waive the [*two*] **four**-day advance notice.

(2) Notification to the court must provide:

(a) the name of the person needing accommodation;

**(b) the case number;**

**(c) charges (if applicable);**

**(d) the nature of the proceeding;**

[*(b)*] **(e)** the person's status in the proceeding;

**(f) the time, date, and estimated length of the proceeding;**

[*(c)*] **(g)** the type of disability needing accommodation; and

[*(d)*] **(h)** the type of accommodation, [*aural*] interpreter, or auxiliary aid needed or preferred.

**3. Amend UTCR 7.070, as follows:**

7.070 FOREIGN LANGUAGE INTERPRETERS

**(1)** If a foreign language interpreter is needed for a court proceeding, the party in need of an interpreter must notify the court **in the manner required by the court** as soon as possible, but no later than [*two*] **four** judicial days in advance of the proceeding. For good cause shown, the court may waive the [*two*] **four**-day advance notice.

**(2) Notification to the court must include:**

**(a) the name of the person needing an interpreter;**

**(b) the case number;**

**(c) charges (if applicable);**

**(d) the nature of the proceeding;**

**(e) the person's status in the proceeding;**

**(f) the time, date, and estimated length of the proceeding; and**

**(g) the language to be interpreted.**

**4. New UTCR 7.080, as follows:**

**7.080 INTERPRETERS' REQUESTS FOR INFORMATION**

**If requested by a neutral court interpreter, parties in civil and criminal cases shall provide a list of specialized terminology expected to be used in the proceeding in which the interpreter will be providing services. The list shall be provided prior to the commencement of the proceeding. The list shall be kept confidential by the interpreter and is not discoverable.**

## NEW UTCR CHAPTER 15

**CHAPTER 15—Small Claims**

**5. New UTCR 15.010, as follows:**

**15.010 SMALL CLAIMS FORMS**

**(1) The following small claims documents shall be accepted, when the proper fee is tendered, by all judicial districts that accept small claims filings:**

**(a) Claim and Notice of Claim substantially in the form specified in Form 15.010.1a in the UTCR Appendix of Forms, to commence a small claims action pursuant to ORS 46.425 and 46.445.**

**(b) Request for Default Judgment, Defendant Status Affidavit substantially in the form specified in Form 15.010.1b in the UTCR Appendix of Forms, to request a default judgment pursuant to ORS 46.475(2).**

**(c) Request for Judgment; Noncompliance Affidavit substantially in the form specified in Form 15.010.1c in the UTCR Appendix of Forms, to request a judgment for failure to comply with a mediation agreement.**

**(d) Small Claims Judgment; Money Award substantially in the form specified in Form 15.010.1d in the UTCR Appendix of Forms as a form for use to enter judgment in a small claims action under ORS 46.475(2), 46.485, and 46.488.**

**(2) Forms in these formats may be made mandatory by SLR. SLR 15.011 is reserved for making such formats mandatory in the judicial district.**

[NOTE: Forms 15.010.1a, 15.010.1b, 15.010.1c, and 15.010.1d can be found in the Appendix of Forms at the end of the UTCR.]

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## CHAPTER 1—General Provisions

### 1.010 SCOPE OF THESE RULES

(1) Effective October 1, 1985, these rules apply uniformly to all proceedings and actions in circuit court except those proceedings and actions specified in UTCR 1.010(3) or proceedings and actions for which a limited application is specifically provided by these rules.

(2) These rules shall be construed so as to achieve consistency with statutory provisions and to promote the just, speedy and inexpensive determination of every proceeding and action as well as the efficient use of judicial time and resources.

(3) Chapters 2 to 13 of the UTCR do not apply to small claims or violations or parking violations, except that:

(a) UTCR 7.050 applies to all cases that may be subject to a federal bankruptcy stay, including small claims cases.

(b) SLR relating to these subjects are placed in chapters as provided by UTCR 1.080(3).

(4) These rules apply to attorneys and to persons representing themselves.

### 1.020 AMENDMENT OF THESE RULES; EFFECTIVE DATE

(1) The UTCR may be amended by order of the Chief Justice.

(2) The effective date of any amendments to the UTCR shall be August 1 of each year, unless otherwise ordered by the Chief Justice.

(3) Proposed amendments to the UTCR will be published in the Oregon Appellate Courts Advance Sheets and will allow no less than a 49-day period for public comment.

(4) Once approved by the Chief Justice, the final rules with any amendments which are adopted will be published in the Oregon Appellate Advance Sheets no less than 49 days before their effective date.

### 1.030 TRANSITION TO THESE RULES

(1) On their effective date, these rules, and any amendments, shall apply to all actions and proceedings pending on or commenced after that date, except to the extent that, in the opinion of the court, application of the amendments in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event, the former rules or procedures apply.

(2) Upon the effective date of these rules, and any amendments, all supplementary local rules (SLR) or portions thereof which are inconsistent with these rules or their amendments, are superseded, except that, when justice requires, a judge may order that an action or

proceeding pending on that date be governed by the previous SLR or practice of the court.

## 1.040 LOCAL RULES OF COURT NOT PERMITTED; EXCEPTION

No circuit court may make or enforce any local rule except as provided in UTCR 1.030, 1.050 and 1.060.

## 1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) Pursuant to ORS 3.220, a court may make and enforce local rules consistent with and supplementary to these rules for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court.

(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement ("local practice") with which the court expects or requires parties and attorneys to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that neither create requirements for nor have potential consequences for parties or attorneys.

(c) Every court must promulgate an SLR governing the scheduling and notification of parties for criminal trials, show cause hearings and motions. A temporary rule may be issued for a specified period of time with Chief Justice approval if the procedures are under revision or study by the affected court.

(d) All forms required by SLR must be submitted as part of the SLR. Such forms shall be placed in an appendix and organized by chapter and SLR number. SLR and related forms shall contain cross-references to one another.

(e) Before the delivery of a certified copy of a local rule to the State Court Administrator, the presiding judge must give written notice of the rule to the president(s) of the bar association(s) in the affected district and give the bar association(s) at least 49 days to provide the court with comments on the rule.

(2) Review of SLR

(a) Proposed local rules will be considered by the Chief Justice or designee not more often than once each year. To be considered, the proposed rules must be received by the Office of the State Court Administrator on or before September 1. If the proposed rules are not disapproved by the Chief Justice or designee on or before December 15 of the same year, the proposed rules shall be deemed filed by the State Court Administrator on January 1 of the next year and shall become effective on February 1 of the next year.

(b) Proposed local rules submitted to the Chief Justice for review under subsection (2)(a) of this rule must show the proposed changes to the local rule as follows: proposed new language in the SLR and proposed new SLR will be in bold and underlined, language proposed to be deleted and SLR proposed to be repealed will be in italics and have brackets placed before and after the deleted language ([...]). When final SLR are submitted to the State Court Administrator after review under subsection (2)(a) of this rule, changes will not be indicated as required by this subsection.

(c) The Chief Justice may waive the limits of paragraphs (1)(e) and (2)(a) above on good cause shown.

(d) If a local rule is disapproved, notice of that action shall be given to the presiding judge of the court submitting the rule.

(3) Enforceability of Local Practices Not Contained in SLR

When any local practice is not contained in a court's SLR, the court may not enforce such local practice or impose any sanction therefore, unless the court has first afforded the party or attorney a reasonable opportunity to cure the violation by complying with the local practice.

1987 Commentary:

Subsection (2) renumbered as paragraph (1)(c) as of August 1, 1994: This subsection requires a court to promulgate local rules governing the scheduling and notification of counsel for trials, show cause hearings, and for motions. The purpose of this subsection is to give counsel, everywhere in the state, notice of how critical case events are scheduled by each local court. The purpose of this subsection, therefore, is not to promote any particular calendaring procedure, but rather to eliminate unwritten rules of court.

## 1.060 NUMBERING OF COURT RULES

UTCR shall be numbered as follows:

(1) Chapters and sections shall be numbered with Arabic numerals. Chapters shall be designated to the left of the decimal point. Sections shall be designated to the right of the decimal point. There shall be three decimal places to the right of the decimal point.

(2) When a section consists of more than one primary paragraph, each shall be numbered with an Arabic number in parentheses.

(3) If a section contains only one primary paragraph, which includes secondary paragraphs, the primary paragraph shall not be numbered, but the secondary paragraphs shall be numbered with Arabic numbers in parentheses.

(4) If a section contains more than one primary paragraph, any one or more of which includes a secondary paragraph, the secondary paragraphs shall be designated by lower case letters in parentheses.

(5) The use of paragraphs beyond primary and secondary paragraphs should be avoided.

(6) SLR approved pursuant to UTCR 1.050 must conform to this rule.

1.070 CITATION OF COURT RULES

(1) The Uniform Trial Court Rules (UTCR) shall be cited as UTCR by chapter and section number. Paragraph numbers and letters shall be included in the citation when appropriate.

(2) Supplementary local rules of the trial courts shall be cited as SLR by chapter and section number. Paragraph numbers and letters shall be included in the citation when appropriate. Identification of the particular court, county or judicial district which issued the rules also shall be included when such identification is necessary.

1.080 FORMAT AND LOCATION OF COURT RULES

(1) All UTCR and SLR must be printed on paper measuring 8-1/2 x 11 inches; printing must be on both sides when practical; each sheet must be three-hole punched to fit a standard three-ring binder.

(2) When SLR are printed, each page of the rules must include a footer that shows the following: the page number, the revision date applicable to the set of SLR, and the name of the court.

(3) SLR must be numbered as closely as possible to and in the same chapter as related UTCR, without using numbers reserved for UTCR. The following chapter numbers are reserved for the placement of SLR related to the subjects described for the chapter numbers:

(a) Chapter 12, SLR relating to mediation.

(b) Chapter 14, SLR relating to reference judges.

(c) Chapter 15, SLR relating to small claims.

(d) Chapter 16, SLR relating to violations.

(e) Chapter 17, SLR relating to local parking violations.

(f) Chapter 18, SLR relating to Forcible Entry and Detainer (FED) actions.

<u>1991 Commentary</u>:

For purposes of UTCR 1.080(3) the Committee did not intend that SLR required by UTCR 1.050(1)(c) be placed in Chapter 1 but intended that such SLR be placed in Chapter 7 or other chapters related to the particular subject.

## 1.090 SANCTIONS

(1) For failure to file a pleading or other document in the manner, the form or the time required by these rules or SLR, the court may strike the pleading or document.

(2) For willful and prejudicial resistance or refusal to comply with UTCR or SLR, the court, on its own motion or that of a party after opportunity for a hearing, may do any of the following:

(a) Assess against the noncompliant party or attorney or both reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.

(b) Otherwise award reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.

(c) Strike the offending pleading or other document.

(d) Treat as established an allegation or claim.

## 1.100 RELIEF FROM APPLICATION OF COURT RULES

Relief from application of these rules or SLR in an individual case may be given by a judge on good cause shown if necessary to prevent hardship or injustice.

## 1.110 DEFINITIONS

As used in these rules:

(1) Party means a litigant or the litigant's attorney.

(2) Trial Court Administrator means the court administrator, the administrative officer of the records section of the court, and where appropriate, means trial court clerk.

(3) Plaintiff and Petitioner mean any party asserting a claim for relief, whether by way of claim, third-party claim, crossclaim, or counterclaim.

(4) Defendant and Respondent mean any person against whom a claim for relief is asserted.

(5) Days mean calendar days, unless otherwise specified in these rules.

## 1.120 DISBURSING MONIES; MOTION AND ORDER

(1) The trial court administrator will not disburse monies without order of the court in any instance where the trial court administrator is unable to determine any of the following:

(a) The amount to be disbursed including, but not limited to, instances where the trial court administrator is required to calculate interest, past payments, or proceeds remaining from a sale.

(b) The specific party or parties to whom the trial court administrator is to disburse monies.

(2) In any instance described under subsection (1), the trial court administrator must give notice to the presiding judge and to any parties the trial court administrator can reasonably determine might have an interest in the monies. The following apply to notice under this subsection:

(a) Notice must be in writing.

(b) Notice must include all the following to the extent possible: an indication that it is being given under this section, the amount of the money in question, identification of the source from which the trial court administrator received the money, a copy of any papers received with the money, a description of the circumstances of receiving the money, identification of any case to which the trial court administrator can determine the monies may be related, and a description of the reasons for not disbursing monies.

(c) The trial court administrator shall enter in the register the fact of giving the notice, the time of giving notice, the manner of giving notice, and the persons to whom notice was given.

(3) At any time the trial court administrator does not disburse monies for reasons described under subsection (1) of this section or for any other reason, the court or any person with an interest in the money may submit a motion for an order to disburse the monies. The following apply to a motion under this subsection:

(a) Notice of the motion must be given to persons which the submitting party reasonably determines might have an interest in the money.

(b) The motion must indicate that it is being submitted under this section.

(c) The motion must include all the following: an explanation of the party's interest in the money, supporting mathematical calculations showing the amount of money that should be disbursed, any supporting documentation or affidavits that might assist the court in its determination, the name and address of the person to whom the monies should be disbursed, a proposed order to disburse.

(d) The motion is not a new filing or appearance but a continuation of an existing proceeding and no fee is required for filing the motion.

(4) If the court determines money is to be disbursed, the court must enter an order to disburse directing specific amounts of money held by the trial court administrator to be disbursed and specific persons to whom the trial court administrator is to disburse the monies.

(5) A trial court administrator must hold any monies subject to this section in the court trust account and follow the established accounting procedures until the trial court administrator receives the order to disburse.

1990 Commentary:

Situations to which this section applies include, but are not limited to, a trial court administrator receiving and being unable to disburse monies under ORS 23.300(3), 23.410(1), 23.490(5), 87.475(3), or 88.100.

## 1.130 TIME COMPUTATION

ORCP 10 shall be followed in computing any time period prescribed by these rules.

## 1.140 REQUESTS FOR EXTENDED RETENTION OF COURT RECORDS

(1) Notwithstanding the retention period established in the schedule adopted by the State Court Administrator under ORS 8.125, the following procedures allow persons to extend records retention as described:

(a) AUTOMATIC EXTENSION. Any party to a case may request an automatic extension of retention for records described in this paragraph that are related to the person's case. A trial court administrator will automatically grant a request under this paragraph. The court will not discard records subject to the request before one year from the date of entry of the request for automatic extension in the register of actions. A party may submit a new request under this paragraph prior to the expiration of a previous request. An automatic extension of records retention under this paragraph can apply only to the following records for the requestor's case:

(i) Records shown by the register maintained under ORS 7.020 as having been received by the court in the case, other documents maintained in the court file specifically established for the case, and the register of actions and judgment docket for that specific case.

(ii) The audio or video recordings and logs, court reporter notes or transcripts for that case which the court has and which are identified with the case number.

(b) JUDICIAL EXTENSION. Any person may request a judicial extension of the retention period for any records maintained by a court as described by this paragraph. Granting a request under this paragraph is at the court's discretion. The court will not discard records for which an extension is granted under this paragraph before the date certain set in the extension order. Where an extension order under this paragraph does not establish a specific date for extended retention, the extension runs for one year from the date an order granting the extension is entered in the register of actions. A request for a judicial extension under this paragraph can be made:

(i) For records not covered by paragraph (a) of this subsection.

(ii) By a person seeking an extension for records subject to paragraph (a) of this subsection for a period longer than provided under paragraph (a).

(iii) By any person not allowed to request an automatic extension under paragraph (a) of this subsection.

(2) EVERY REQUEST under this rule must:

(a) Be in writing, or where available, on the form specified by the court.

(b) Be submitted to the trial court administrator for the court where the records are maintained.

(c) Where the records subject to a request relate to a specific case, specify the case number and case title for the applicable case.

(d) Indicate that the request is being made under this rule.

(3) In addition to the requirements under subsection (2) of this rule, every request for an AUTOMATIC EXTENSION under this rule must:

(a) Be notarized.

(b) Specify the records described under paragraph (1)(a) of this rule to which the request applies.

(c) Be a separate request for each case.

(4) In addition to the requirements under subsection (2) of this rule, every request for a JUDICIAL EXTENSION under this rule must:

(a) Be accompanied by a supporting affidavit giving the reason for the request.

(b) Include a proposed order which provides a specific date to which the extended retention will run.

(c) If the request relates to records not described under paragraph (1)(a) of this rule, specify the records with sufficient detail for the court clerk to be able to identify the records to be retained. A request does not meet the requirement to specify records with sufficient detail for purposes of this paragraph if a request requires a clerk to perform substantial research to either identify the records or determine whether the records exist.

(d) If the request relates to records described under paragraph (1)(a) of this rule, specify the records described under paragraph (1)(a) of this rule to which the request applies.

(5) No fee will be charged for a request under this rule.

(6) Where the schedule adopted under ORS 8.125 specifies that a retention period runs from last document entry in the register of actions, entry in the register of a request or order granting or denying a request under this rule changes that retention period only to the extent granted under, according to the provisions of, and for the times established by this rule.

## 1.150 SLR TO ANNOUNCE HOURS OF COURT OPERATION

Each judicial district must adopt an SLR to announce the following: when each court location in the judicial district is open to conduct business; the hours when papers will be received and may be filed at each location, if different from when the court location is open to conduct business; special arrangements, if any exist or may be made, for filing of documents at times when the court location is not open to conduct business. SLR 1.151 is reserved for SLR adopted under this section.

## 1.160 FILING OF DOCUMENTS IN COURTS; LOCAL SLR

(1) Except as provided in subsection (2) of this rule, a document to be filed with the court or the clerk of court or the trial court administrator must be filed with the office of the local trial court administrator or designee. No document delivered to a judge, judge's staff, judge's mailbox, courtroom, or chambers is filed until it is received by the office of the trial court administrator or designee. For every document to be filed, other than an order or judgment submitted to a judge for signature, the original is to be delivered to the trial court administrator's office.

(2) Notwithstanding subsection (1) of this rule, local courts may adopt SLRs to allow filing of documents in places other than required by subsection (1). Such SLRs may allow such filing generally or in specific circumstances as convenient to the court adopting the SLR. SLR number 1.161 is reserved for the purposes of such SLRs.

## 1.170 COURT WEBSITES

SLR 1.171 is reserved for judicial districts to announce the website addresses of their courts. Links to these websites may also be found at the Oregon Judicial Department website: http://www.ojd.state.or.us.

## 1.200 INFORMATION ON FREE OR LOW-COST LOCAL LEGAL SERVICES

Each judicial district must post in a conspicuous location information, including the telephone numbers, of any free or low-cost legal services and other relevant services available in the district and the nature of those services.

## CHAPTER 2—Standards for Pleadings and Documents

### 2.010 FORM OF DOCUMENTS

The form of all documents, including pleadings and motions, except where a different procedure is specified by statute or rule, must be:

(1) Definitions

(a) Document, as used in this rule, means every paper filed in any type of proceeding.

(b) Printed document means documents wholly or partially printed.

(2) Size of Documents

All documents, except exhibits and wills, must be prepared on letter-size (8-1/2 x 11 inches) paper, except that smaller size paper may be used for bench warrants, commitments, uniform citations and complaints and other documents otherwise designated by the court.

(3) Documents Must be Printed or Typed

All documents must be printed or typed, except that blanks in preprinted forms may be completed in handwriting and notations by the trial court administrator or judge may be made in handwriting.

(4) Spacing, Paging and Numbered Lines

(a) All pleadings, motions and requested instructions must be double-spaced and prepared on paper with numbered lines.

(b) All other documents may be single-spaced and the lines need not be numbered.

(c) On the first page of each pleading or similar document, not less than two inches or more than four inches at the top of the page shall be left blank.

(d) All documents, except exhibits and wills, shall be prepared with at least a one-inch binding margin. The binding margin shall be at the edge of each sheet of paper in the document corresponding to the top of the first page printed on the sheet of paper, unless a different location is specified by SLR. All documents containing printing on the back side of a sheet shall be printed in such a manner so that when the page is turned on the binding edge, print on the back side is oriented in the same direction as the print on the front side of the following sheet.

(5) Backing Sheets

The use of backing sheets is discouraged. If used, they must be 8-1/2 x 11 inches, no heavier than 16-pound weight and not folded over at the top.

(6) Signature

The name of the party or attorney signing any pleading or motion must be typed or printed immediately below the signature. All signatures must be dated.

(7) Attorney or Litigant Information

All documents must include the author's name, address, telephone number, if any, and, if prepared by an attorney, the name and the Bar number of the author and the trial attorney assigned to try the case. Any document not bearing the name and Bar number of an attorney as the author or preparer of the document must bear or be accompanied by a certificate in substantially the form as set out in Form 2.010.7 in the UTCR Appendix of Forms.

(8) Distinct Paragraphs

All paragraphs in a pleading or motion must be numbered consecutively in the center of the page with Arabic numerals, beginning with the first paragraph of the document and continuing through the last. Subdivisions within a paragraph must be designated by lower case letters, enclosed in parentheses, placed at the left margin of each subdivision.

(9) Exhibits

(a) When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the bottom right-hand side of the exhibit, followed by an Arabic numeral identifying the exhibit. Each page number of the exhibit must appear in Arabic numerals immediately below the exhibit number; e.g.: "Exhibit 2
Page 10"

(b) Exhibits appended to a pleading may be incorporated by reference in a later pleading.

(10) Information at Bottom of Each Page

The name of the document, and the page number expressed in Arabic numerals, must appear at the bottom left-hand side of each page of each document.

(11) Document Title

(a) The title of each document filed with the court must include an identification of the filing party, such as "Plaintiff" or "Defendant." When there are multiple parties on a side, the party submitting the document must be suitably identified, such as "Plaintiff Smith" or "Defendant MegaCorp."

(b) In the title of each complaint or petition and at the beginning of each claim for relief, in the body of the pleading, there must be indicated the type of claim, such as "personal injury," "breach of contract," "specific performance" or "reformation of contract." The court case number must appear in the caption of every document. Every motion must show in the title the name of the pleading against which it is directed.

(12) Orders, Judgments or Writs

(a) The judge's signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

(b) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words "submitted by."

(c) Motions and orders may be submitted as a single document only if the motion is stipulated, subject to *ex parte* ruling, not contested or otherwise specifically allowed by SLR. Any other motion must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.

(d) When allowed to be submitted as a single document under paragraph (c) of this subsection, motions and orders submitted as a single document must contain a double solid line across the page separating the motion portion of the document from the order portion. The caption of the document must be labeled "Motion xxxxxxxx and Order" in the upper right-hand corner of the document. The full description of the motion must be included in the title. The order portion must be clearly labeled "Order" in the upper left-hand corner of the order portion of the document. A 2-inch by 2-inch space must be provided below the double solid line in the upper right-hand corner of the order portion for the file/date stamp of the order. The order portions must be written as clearly and simply as possible. Where appropriate, the order must consist of only two check boxes as follows: one for allowed, the other for denied. Where such check boxes are used in the order portion, they must be placed above the standard date and signature lines.

1993 Commentary:

Subsection (b) of Section (12) requires that the information include the author's name (signature not required), followed by an identification of party being represented, plaintiff or defendant.

Example: Submitted by:
A. B. Smith
Attorney for Plaintiff (or Defendant)

An exception to this style would be in cases where there is more than one plaintiff or one defendant. In those situations, the author representing one defendant or plaintiff, but not all, should include the last name (full name when necessary for proper identification) after the designation of plaintiff or defendant.

Example: Submitted by:
A. B. Smith
Attorney for Plaintiff Clarke

(13) Citation of Oregon Cases

In all matters submitted to the circuit courts, Oregon cases must be cited by reference to the Oregon Reports as: Blank v. Blank, ___ Or ___ (year) or as State v. Blank, _____ Or App _____ (year). Parallel citations may be added.

(14) Notice of Address or Telephone Number Change

An attorney or unrepresented party whose address or telephone number changes must immediately mail or deliver notification of such change to the trial court administrator and all other parties.

(15) Application to Court Forms

Forms created by the Oregon Judicial Department are not required to comply with the provisions of UTCR 2.010(4) or (8) where the Oregon Judicial Department determines variation from those provisions will promote administrative convenience for courts or parties. Such forms and exact copies of such forms may be used and submitted to courts without challenge under UTCR 2.010(4) or (8).

1996 Commentary:

The UTCR Committee strongly encourages the use of recycled paper and strongly recommends that all original pleadings, motions, requested instructions, copies, and service copies be on recycled paper having the highest available content of postconsumer waste.

## 2.020 CERTIFICATE OF SERVICE

When a summons or other civil process is served by one other than a sheriff or deputy sheriff, the certificate of service must include the name, telephone number and address of the person who served the summons or process.

## 2.030 MATTERS UNDER ADVISEMENT MORE THAN 60 DAYS

(1) If any judge shall have any matter under advisement for a period of more than 60 days, it shall be the duty of all parties to call the matter to the court's attention forthwith, in writing.

(2) If the matter remains under advisement for 90 days, all parties are required again to call the matter to the judge's attention forthwith, in writing, with copies to the presiding judge, if any, and the Chief Justice.

## 2.050 ATTORNEY FEES ON WRITTEN INSTRUMENTS

When attorney fees are based on a written instrument, the original or a true copy of the instrument must be submitted to the court with the requested judgment, unless a true copy is attached to or set out in the pleadings. This rule also applies to reciprocal fees claimed under ORS 20.096. If an original or copy is not available, the court may require proof by affidavit or testimony.

## 2.060 ENTERING JUDGMENT ON FACE OF NEGOTIABLE INSTRUMENT

(1) In all cases when a judgment is to be based on a negotiable instrument, the party with custody of the original instrument must tender such instrument to the court before the entry of judgment, and the court must enter a notation of the judgment on the face of the instrument.

(2) The trial court administrator shall return the original instrument only after filing a certified copy of the instrument.

1987 Commentary:

The rule is silent on the time when the judgment notation is to be entered on the face of the instrument. The rule permits the holding of documents submitted at the time the decree is entered while delaying endorsement until after the court receives confirmation of the sheriff's sale.

## 2.070 NOTICE OF ARBITRATION IN PLEADINGS

The title of a pleading, including a claim, counterclaim, cross claim, or third-party claim, must comply with UTCR 13.060.

## 2.080 COMMUNICATION WITH COURT

(1) Except as exempted by statute, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing or delivery.

(2) All written communication to the court shall refer to the title of the cause and the case number.

## 2.090 FILINGS FOR CONSOLIDATED CASES

Cases that are consolidated are consolidated for purposes of hearing or trial only. All pleadings, memoranda, and other documents applicable to more than one file will be filed in each case under existing captions and case numbers. Any document applicable to only a single file will be singly filed. It is the duty of counsel to provide the trial court administrator with sufficient documents to allow filings consistent with this rule.

## CHAPTER 3—Decorum In Proceedings

### 3.010 PROPER APPAREL

(1) All persons attending the court must be dressed so as not to detract from the dignity of court. Members of the public not dressed in accordance with this rule may be removed from the courtroom.

(2) When appearing in court, all attorneys and court officials must wear appropriate attire.

### 3.020 PROPER APPAREL FOR INCARCERATED WITNESSES AND DEFENDANTS APPEARING IN CRIMINAL PROCEEDINGS

Incarcerated witnesses and defendants appearing for trial must be dressed in neat, clean civilian clothing, unless otherwise ordered by the court.

### 3.030 MANNER OF ADDRESS

During trial, the litigants and litigants' attorneys must not address adult witnesses, jurors or opposing parties by their first names, and, except in voir dire, must not address jurors individually.

### 3.040 ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES

Attorneys must advise their clients and witnesses of the formalities of the court and must encourage their cooperation. Unrepresented parties must similarly advise their witnesses and encourage their cooperation.

### 3.050 PROPER POSITION OF PARTIES BEFORE COURT

Parties must:

(1) rise from their positions at counsel table and remain standing while addressing the court or the jury, except during voir dire;

(2) not approach the bench except by permission; and

(3) be allowed to move freely about the courtroom during trial unless otherwise instructed by the court.

1991 Commentary:

This 1991 change is not intended by the Committee to transfer control of the conduct of the trial process from the trial judge to the litigants. The change is intended to facilitate the identification of exhibits by witnesses; the use of diagrams, photographs, and other exhibits by the examining attorney and witnesses; and to encourage the effective use of demonstrative evidence and exhibits in a manner facilitating the fact finder's understanding of the evidence.

The Committee recognizes that there is the potential for abuse of this rule change, which may be distracting or disruptive of the proceedings, and thus the court retains the ability to maintain appropriate decorum and order.

The Committee recognizes that there are a number of factors which may affect the extent to which free movement is appropriate in a particular case. Without attempting to be all inclusive, these factors may include such things as: the physical layout of the courtroom; the age of the witness; the emotional/physical condition of the witness; the size, number, and nature of exhibits; etc. The Committee therefore encourages communication between the litigants and the trial judge at the commencement of trial covering these considerations and resolving any uncertainty.

## 3.060 DEFENDANT IN CRIMINAL TRIAL

During arraignment, plea and sentence, the defendant must stand unless otherwise permitted by the court.

## 3.070 PERSONS PERMITTED WITHIN BAR OF COURT

Except as otherwise permitted by the court, during the trial of any case or the presentation of any matter to the court, no persons, including members of litigants' families, shall be permitted within the bar of the courtroom, other than clients, attorneys, court personnel and witnesses when called to the stand.

## 3.080 PROCEDURE FOR SWEARING WITNESSES

The swearing of witnesses shall be conducted as a serious ceremony and not as a mere formality.

## 3.090 UNDUE RECOGNITION OR FAMILIARITY BY JUDGE

Judges shall refrain from showing undue recognition of or familiarity with any person in the courtroom.

## 3.100 PROPER USE OF COURT CHAMBERS

Except when court business is being conducted, parties must not congregate in the court's chambers or use the facilities or the court's entryway between the chambers and the bench without the permission of the court.

## 3.110 CONFERENCES IN CHAMBERS

Conferences may be conducted in chambers and shall be conducted without litigants present unless required by the court, requested by a party or otherwise required.

## 3.120 COMMUNICATION WITH JURORS

(1) Except as necessary during trial, and except as provided in subsection (2), parties, witnesses or court employees must not initiate contact with any juror concerning any case which that juror was sworn to try.

(2) After a sufficient showing to the court and on order of the court, a party may have contact with a juror in the presence of the court and opposing parties when:

(a) there is a reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict; or

(b) there is a reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.

## 3.130 DISCLOSURE OF RELATED MATTERS WHEN SEEKING COURT ORDER

When a party seeks to obtain an order from a judge, the party must inform that judge of any ruling, hearing or application for a ruling or hearing before any other judge that concerns the subject of the order requested.

## 3.140 RESIGNATION OF ATTORNEYS

(1) An application to resign made pursuant to ORS 9.380 must contain the name, address and telephone number of the party and of the new attorney, if one is being substituted, and the date of any scheduled trial or hearing. It must be served on that party and the opposing party's attorney. If no attorney has appeared for the opposing party, the application must be served on the opposing party, either in person or by certified mail, return receipt requested, to the opposing party's last known address. A notice of change or withdrawal of attorney must be promptly filed.

(2) The attorney who files the initial appearance for a party, or who personally appears for a party at arraignment on an offense, is deemed to be that party's attorney-of-record, unless at that time the attorney otherwise notifies the court and opposing party(ies) in open court or complies with subsection (1).

(3) When an attorney is employed or appointed to appear in an already pending case, the attorney must immediately notify the court and the opposing party in writing or in open court. That attorney shall be deemed to be the attorney-of-record unless that attorney otherwise notifies the court.

<u>1987 Commentary</u>:

In subsection (3), a change of attorneys in a pending case requires notification to the opposing party and to the court. This rule makes no changes to ORCP procedures for taking a default judgment. It only addresses who will be considered the attorney of record in a case.

1991 Commentary:

UTCR 3.140 is intended neither to establish new standards of professional responsibility nor to provide a method of discharging existing standards of professional responsibility. See DR 2-110.

## 3.150 NO REACTION TO JURY VERDICT

After the jury returns a verdict, all persons present in the courtroom must remain seated until the jury has left the room and must refrain from visibly or audibly reacting to the verdict in a manner which disrupts the dignity of the courtroom.

## 3.160 EXPLANATION OF PROCEEDINGS TO JURORS

In jury cases, after sustaining a dismissal of the case before verdict, the judge, in dismissing the jury, should, without discussion of the facts, briefly explain the procedure and why a verdict was unnecessary.

## 3.170 ASSOCIATION OF OUT-OF-STATE COUNSEL (*PRO HAC VICE*)

(1) An attorney authorized to practice law before the highest court of record in any state or country ("out-of-state attorney") may appear on behalf of a party in any action, suit, or proceeding pending in this state before a court or administrative body even though that attorney is not licensed to practice law in this state, if the attorney satisfies all of the following requirements:

(a) Show that the attorney is an attorney in good standing in another state or country.

(b) Certify that the attorney is not subject to pending disciplinary proceedings in any other jurisdiction or provide a description of the nature and status of any pending disciplinary proceedings.

(c) Associate with an active member in good standing of the Oregon State Bar ("local attorney") who must participate meaningfully in the matter.

(d) Certify that the attorney will: comply with applicable statutes, law, and procedural rules of the state of Oregon; be familiar with and comply with the disciplinary rules of the Oregon State Bar; and submit to the jurisdiction of the Oregon courts and the Oregon State Bar with respect to acts and omissions occurring during the out-of-state attorney's admission under this rule.

(e) If the attorney will engage in the private practice of law in this state, provide a certificate of insurance covering the attorney's activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund plan.

(f) Agree, as a continuing obligation under this rule, to notify the trial court or administrative body promptly of any changes in the out-of-state attorney's insurance or status.

(g) If application will be for an appearance before a court, pay any fees required by subsection (6) below for appearance under this rule. No fee is required if application will be for an appearance before an administrative body.

(2) The information required by subsection (1) of this rule must be presented as follows:

(a) If application will be for an appearance before a court , to the Oregon State Bar (Bar) in a form established by the Bar. The Bar may accomplish the submission of information by requiring a certificate with attachments or other means administratively convenient to the Bar. Upon receipt of all information necessary under subsection (1) of this section and receipt of the fee required by subsection (6) below, the Bar will acknowledge receipt in a form determined by the Bar. In making the acknowledgment, the Bar may attach copies or comment on any submitted material the Bar finds may be appropriate for a court to consider with an application under this section. The local attorney must then submit the Bar's acknowledgment with any information the Bar includes to the court by motion signed by the local attorney requesting the court to grant application under this section. The court may rely on the acknowledgment of the Bar as a basis to conclude that all information required to be submitted and fees required to be paid for granting an application under this section have been submitted and paid. Bar records on materials it receives under this section will be available to a court on request for two years or such longer period as the Bar considers administratively convenient.

(b) If the application is for an appearance before an administrative body, to the administrator of the agency before which the proceeding will occur or that person's designee or to any other appropriate officer, employee or designee of that agency as set forth by procedures or rules established by that agency. Application may be accomplished by an application certificate with attachments or other means administratively convenient to and established by the agency. Agency records on materials the agency or designee receives under this section will be available to the Bar on request for two years or such longer period as the agency considers administratively convenient.

(3) The court or administrative body shall grant the application by order if the application satisfies the requirements of this rule, unless the court or administrative body determines for good cause shown that granting the application would not be in the best interest of the court or administrative body or the parties. At any time and upon good cause shown, the court or administrative body may revoke the out-of-state attorney's permission to appear in the matter.

(4) Each time a court or administrative body grants an application under this rule or revokes an out-of-state attorney's permission to appear in a matter, the local attorney must provide a notice to the Bar of such occurrence in a manner and within the time determined by the Bar.

(5) This rule applies to all judicial and administrative proceedings in this state. When a court or administrative body grants an application for approval to appear under this rule, the authorization allows that individual attorney to appear in all proceedings for a single case that occur within a year after the application is granted. Applications will not be granted for firms. There must be separate application and approval for any of the following: appearance by another out-of-state attorney representing the same or any other party; representation by the same out-of-state attorney in this state on another matter; any

appearance that occurs later than that one-year period. The Bar or an administrative body may establish such abbreviated procedures and requirements as Bar or body finds administratively convenient to limit unnecessary submission of duplicate information by an attorney who has already had application granted to appear in one proceeding and is seeking to appear in other proceedings or to renew an application at the end of a current one-year grant for a case.

(6) Except as otherwise provided in this rule, for each application under this rule to appear before a court, the applicant must pay to the Bar a fee of $250 at the time of submission of information under subsection (2) of this section, including when application is sought to renew an application at the end of a current one-year grant for a case. The fee will not be refundable.

(7) Subject to the following, the Bar or any administrative agency acting under this section, may use electronic means to accomplish acts required or authorized under this section:

(a) The Bar shall provide acknowledgment under paragraph (2)(a) of this rule for court purposes by electronic means only upon approval of the State Court Administrator.

(b) No administrative agency may provide electronic means of notifying the Bar of a grant of application or revocation under this section without prior approval of the Bar.

(8) An applicant is not required to pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that the applicant is employed by a government body and will be representing that government body in an official capacity in the proceeding that will be the subject of the application.

NOTE: UTCR 3.170 is adopted by the Oregon Supreme Court under ORS 9.241 and may be modified only by order of that Court.

NOTE: As modified by Supreme Court Order #99-081 dated July 15, 1999.

## 3.180 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS

(1) Courtrooms. Upon request or on the court's own motion, after notice to all parties, public access coverage shall be allowed in any courtroom, except as provided under this rule.

(2) There shall be no public access coverage of the following:

(a) Proceedings in chambers.

(b) Any notes or conversations intended to be private including, but not limited to, counsel and judges at the bench and conferences involving counsel and their clients.

(c) Dissolution, juvenile, paternity, adoption, custody, visitation, support, mental commitment, trade secrets, and abuse, restraining and stalking order proceedings.

(d) At a victim's request, sex offense proceedings.

(e) *Voir dire*.

(f) Any juror anywhere during the course of the trial in which he or she sits.

(g) Recesses.

(3) Limitations on Denial of Public Access Coverage in Courtrooms. A judge may deny a request for or terminate public access coverage only if the judge makes findings of fact on the record setting forth substantial reasons for the denial. The judge may prohibit public access coverage if there is a reasonable likelihood of any of the following:

(a) The public access coverage would interfere with the rights of the parties to a fair trial or would affect the presentation of evidence or outcome of the trial.

(b) Any cost or increased burden resulting from the public access coverage would interfere with the efficient administration of justice.

(4) A judge may summarily prohibit public access coverage of a particular witness only if the judge finds on the record that public access coverage would endanger the welfare of the witness or materially hamper the witness' testimony.

(5) Areas Outside of Courtrooms. The presiding judge may allow public access coverage in any area outside the courtroom that is on the courthouse premises and under the control and supervision of the court. Courts are encouraged to designate an area or areas outside the courtroom that is on the courthouse premises for public access coverage. For areas subject to this subsection, each judicial district, by SLR, may establish, for any court location, procedures for obtaining permission for public access coverage that differ from this subsection or may designate locations where public access coverage is allowed or prohibited. SLR 3.181 is reserved for SLR adopted under this subsection.

(6) Public Access Coverage Defined. As used in this rule:

(a) "Public access coverage" means coverage by means of any public access coverage equipment.

(b) "Public access coverage equipment" means any of the following in the possession of persons other than the court or the court's staff: television equipment; still photography equipment; audio, video, or other electronic recording equipment.

(7) Equipment and Personnel for Public Access Coverage. The court may limit the location of public access coverage equipment. One pool video camera and one pool still camera and one pool tape recorder shall be permitted.

(a) No public access coverage device shall be operated by more than one person.

(b) No person shall use public access coverage equipment that interferes or distracts from proceedings in the courtroom.

(c) The video camera must be mounted on a tripod or other device or installed in the courtroom. The tripod or other device must not be moved while the proceedings are in session. Video equipment must be screened where practicable or located and operated as directed by the court.

(d) No artificial lighting devices of any kind shall be allowed.

(e) Any pooling arrangement required by limitations on equipment and personnel imposed by the judge or by this rule must be the sole responsibility of the persons seeking public access coverage, without calling upon the judge to mediate any disputes involved therein.

In the absence of agreement on such issues by persons seeking public access coverage, the judge may exclude any or all public access coverage.

(8) Upon request, any person engaging in public access coverage of a court event or in a courtroom, courthouse, its premises, or environs under the control and supervision of the court must provide to the court, without expense, or to any other person, if the requestor pays actual copying expense, a copy of any public access coverage the person performed.

(9) A judge may impose other restrictions or limitations necessary to preserve the solemnity, decorum, and dignity of the court and to protect the parties, witnesses, and jurors. A judge may terminate any or all public access coverage at any point upon finding, based on substantial reasons in the record, that this UTCR or other rules imposed by the judge have been violated.

(10) Nothing in this rule is intended to limit the court's contempt powers.

(11) Nothing in this rule shall alter or affect the rules of the Supreme Court promulgated under "Video-Trial Project No. 88-38." Under that project, the audio-video coverage constitutes the entire record. In all other courts, the record shall be preserved with court reporters or audiotape. Restrictions on releasing audio-video coverage in courts participating in the Video-Trial Project shall be set forth in separate rules.

NOTE: UTCR 3.180 was adopted by the entire Oregon Supreme Court, and any changes to the rule will be made only with the consent of the Supreme Court.

## CHAPTER 4—Proceedings in Criminal Cases

NOTE: Rules specifically relating to contempt proceedings are located in UTCR Chapter 19.

### 4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later, unless a different time is permitted by the court for good cause shown.

### 4.030 PROCEDURE FOR ORDER OF TRANSPORTATION

(1) Any motion that a person held in custody be transported from the place of confinement to a designated place must be accompanied by a separate proposed court order directing the sheriff to transport the person to and from the designated place at the appointed time.

(2) All proposed orders of transportation must contain the dates and times on which the person in custody is to appear at the designated place and is to be returned to the place of confinement, the exact location of the designated place and, if the person in custody is to appear as a witness in a court proceeding, the caption and number of the case. A person in custody appearing as a witness must be returned to the place of confinement only after execution of an order of release signed by the judge presiding over the court proceeding.

### 4.040 COMMUNICATIONS WITH VICTIMS AND WITNESSES IN CRIMINAL CASES

(1) When a victim or a witness requests that his or her address and telephone number not be disclosed to the defendant, the district attorney must promptly prepare, serve on the opposing party and submit to the court for signature an appropriate order.

(2) The district attorney must report to the court, in writing or on the record, that the victim has been informed of any rescheduled trial date, or court hearing date where the presence of that victim is required, and whether that date is convenient to the victim.

### 4.050 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

(1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.

(2) Counsel for either the state or the defense may request that a motion not requiring testimony be heard by telecommunication. The following apply to a request for oral argument by telecommunication:

(a) A request must be in the caption of the motion or response. If oral argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request, a statement whether the office of the requesting person is more than 25 miles from the

courthouse, the position of opposing counsel, and if the defendant has waived in writing the right to appear at the hearing.

(b) A request by counsel for defense must be granted if counsel for defense represents that the defendant agrees to the procedure and provides a signed waiver of personal appearance, and if counsel for the defendant is located more than 25 miles from the courthouse.

(c) A request by the state must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.

(d) In the event telecommunication is allowed, all parties must appear by telecommunications with no party personally appearing.

(e) The party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.

(3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other.

## 4.060 MOTION TO SUPPRESS EVIDENCE

(1) All motions to suppress evidence:

(a) must make specific reference to any constitutional provision, statute, rule, case, or other authority upon which it is based; and

(b) must be accompanied by the moving party's brief which must be adequate reasonably to apprise the court and the adverse party of the arguments and authorities relied upon.

(2) Any response to a motion to suppress:

(a) together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed not more than 7 days after the motion to suppress has been filed;

(b) must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and

(c) must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.

(3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.

(4) Failure to file a written response shall not preclude a hearing on the merits.

1991 Commentary:

The Committee proposes these amendments to clarify its intent in originally adopting this rule that a written response not be required.

## 4.070 DISMISSAL OF CHARGES FOLLOWING SUCCESSFUL COMPLETION OF DIVERSION

For any charge dismissed based upon successful completion of diversion for driving under the influence of intoxicants, marijuana diversion, or other diversion program, the dismissing instrument must state the basis for the dismissal.

## CHAPTER 5—Proceedings in Civil Cases

NOTE: Rules specifically relating to contempt proceedings are located in UTCR Chapter 19.

### 5.010 CONFERRING ON MOTIONS UNDER ORCP 21, 23 and 36-46

(1) The court will deny any motion made pursuant to ORCP 21 and 23, except a motion to dismiss: (a) for failure to state a claim; or, (b) for lack of jurisdiction, unless the moving party, before filing the motion, makes a good faith effort to confer with the other party(ies) concerning the issues in dispute.

(2) The court will deny any motion made pursuant to ORCP 36 through 46, unless the moving party, before filing the motion, makes a good faith effort to confer with the other parties concerning the issues in dispute.

(3) The moving party must file a certificate of compliance with the rule at the same time the motion is filed. The certificate will be sufficient if it states either that the parties conferred or contains facts showing good cause for not conferring.

(4) Upon certification that a motion is unopposed, it may be submitted *ex parte*.

### 5.020 POINTS AND AUTHORITIES TO ACCOMPANY MOTION AND OTHER REQUIREMENTS

(1) Every motion must be accompanied by or include a memorandum of law or a statement of points and authorities, explaining how any relevant authorities support the contentions of the moving party.

(2) If a pleading is moved against in more than two particulars under ORCP 21 D or E, there must be attached to the motion a copy of the pages of the pleading moved against with the parts of the pleading to be stricken shown in parentheses and the parts to be made more definite and certain underlined.

### 5.030 OPPOSING PARTY'S RESPONSE; TIME FOR FILING RESPONSE AND REPLY

In matters other than motions for summary judgment:

(1) An opposing party may file a written memorandum of authorities in response to the matters raised in any motion not later than 14 days from the date of service of the motion.

(2) A reply memorandum, if any, must be filed within 7 days of the service of the responding memorandum.

### 5.040 MOTIONS TO BE DETERMINED BY THE PRESIDING JUDGE OR DESIGNEE

The presiding judge or designee shall hear and determine all motions.

## 5.050 ORAL ARGUMENT ON MOTIONS IN CIVIL CASES

(1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.

(2) A party may request that a motion not requiring testimony be heard by telecommunication. A request for oral argument by telecommunication must be in the caption of the motion or response. If argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request and a statement whether the office of the requesting person is more than 25 miles from the courthouse. The request must be granted if the office of the attorney making the request is located more than 25 miles from the courthouse. The first party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.

(3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other and permits official court reporting when requested. When recording is requested, telecommunications hearings must be recorded by the court if suitable equipment is available; otherwise, it will be provided at the expense of the party requesting recording.

1987 Commentary:

In subsection (2), a request for oral argument by telecommunication may be granted if the office of the requesting person is 25 miles or less from the courthouse; however, it is not mandatory upon the court to grant it in these circumstances.

## 5.060 STIPULATED AND *EX PARTE* MATTERS

(1) Any stipulated or *ex parte* matter may be delivered by mail or messenger to the trial court administrator for distribution to a judge for signature. An *ex parte* default, a stipulated order or a stipulated judgment also may be personally presented to a judge by the attorney or the attorney's agent. Other types of *ex parte* matters personally presented to a judge must be presented by the attorney.

(2) A motion for an *ex parte* order must contain the term "*ex parte*" in the caption and must be accompanied by a proposed order.

(3) *Ex parte* matters shall be presented anytime during court hours, except as modified by SLR promulgated pursuant to UTCR 1.050. Until such local rules are adopted, stipulated and *ex parte* matters may be personally presented anytime during court hours.

## 5.080 STATEMENT FOR ATTORNEY FEES

In civil cases, the statement for attorney fees must be filed in the form set forth in Form 5.080 in the UTCR Appendix of Forms.

## 5.090 NOTICE TO COURT IN WATER RIGHTS CASES.

If at any time during the life of a case a party asserts a disputed water right, the party must give notice to the court that the case involves water rights. If not stated in the caption of the original complaint that begins the court case, the notice shall be in the following form:

(1) Be on a separate piece of paper.

(2) Include the caption for the case and the case number.

(3) Include a simple statement that the case involves water rights.

(4) Be signed by the attorney or party.

## 5.100 SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

Any proposed judgment, except those subject to UTCR 10.090, or proposed order submitted in response to a ruling of the court must be:

(1) served on opposing counsel not less than three days prior to submission to the court, or

(2) accompanied by a stipulation by opposing counsel that no objection exists as to the form of the judgment or order, or

(3) mailed to an unrepresented party at the party's last known address not less than 7 days prior to submission to the court, or

(4) presented in open court with the parties present.

## 5.110 CLASS ACTIONS

Rules relating to class actions may be found at Oregon Rule of Civil Procedure 32 and Oregon Rule of Appellate Procedure 12.15.

## CHAPTER 6—Trials

### 6.010 CONFERENCES IN CIVIL PROCEEDINGS

(1) In any civil proceeding the court may, in its discretion, direct the parties to appear before the court for a conference to consider:

(a) the simplification of the issues;

(b) the necessity or desirability of amendments to the pleadings;

(c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof or delay;

(d) the limitation of the number of expert witnesses;

(e) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(f) a reference in whole or in part;

(g) the possible settlement of the case; and

(h) such other matters as may aid in the disposition of the action.

(2) All conferences may be by personal appearance except that any party may apply, or the court may arrange for, a conference by telecommunication.

1991 Commentary:

Settlement conferences are required as provided by each court by its SLR 6.012 and under UTCR 6.200.

### 6.020 COURT NOTIFICATION ON SETTLEMENT OR CHANGE OF PLEA

(1) In criminal cases, the parties must notify the court immediately of any decision that a case will be dismissed or a change of plea entered.

(2) In all other cases, the parties must immediately notify the court of a decision to settle, dismiss, or otherwise resolve a case. After receipt of the notice, a court may require the parties to put the decision on the record, give written notice to the parties that the case will be dismissed unless an appropriate judgment is tendered to the court within 28 days, or both.

(3) If parties to a civil action fail to notify the court of a settlement before 12:00 p.m. (noon) of the last judicial day preceding a jury trial, or if the case settles after 12:00 p.m. (noon) of such day, the court may assess on one or both parties the per diem fees and mileage costs of bringing in the jury panel for that particular trial.

## 6.030 POSTPONEMENT OF TRIAL DATE

(1) A request to postpone a trial date must be by motion.

(2) A motion to postpone a trial date must be signed by the attorney of record and contain a certificate stating that counsel has advised the client of the request and must set forth:

(a) the date scheduled for trial,

(b) the reason for the requested postponement,

(c) the dates previously set for trial,

(d) the date of each previous postponement, and

(e) whether any parties to the proceeding object to the requested postponement.

(3) If the motion to postpone is based upon a conflicting proceeding in another court, it must set forth, in addition to the information required by subsection (2) of this section:

(a) the name of the court in which the conflict exists,

(b) the date of the conflict,

(c) the date on which the other proceeding is to begin,

(d) the case number and the date of filing of the conflicting case,

(e) the date on which the conflicting case was set for trial, and

(f) the information required by UTCR 6.040(2).

(4) If a motion to postpone a civil trial is based upon stipulation of the parties:

(a) the new trial date must be within the time periods set forth in UTCR 7.020(5),

(b) the motion must be filed at least 28 days before the date then set for trial,

(c) the motion must be signed by the attorneys of record,

(d) the motion must contain a certificate stating that the attorneys have advised their clients of the stipulation and the clients agree to the postponement, and

(e) the motion must set forth the date scheduled for trial, the new trial date requested, and that the new date is available on the court's trial docket.

(5) The motion may be decided by a summary determination without a hearing.

(6) Motions to postpone are not subject to UTCR Chapter 5, except UTCR 5.040 and 5.060.

1993 Commentary:

The court has discretion to allow or deny any motion for postponement under ORCP 52 and this rule, but the Committee recommends that the court generally allow a motion under subsection (4) of this rule if the new trial date requested can be reasonably accommodated on the court's docket.

## 6.040 RESOLVING SCHEDULING CONFLICTS

(1) When a party is scheduled to appear in more than one court at the same time, and has been unable to obtain a postponement in one of the courts, the scheduling conflict will be resolved by the presiding judges of the affected courts on motion of the affected party in both courts.

(2) In resolving scheduling conflicts, the following must be considered:

(a) statutory preference;

(b) the custodial status of a criminal defendant;

(c) the filing date of the case;

(d) the dates on which the courts sent notices of the trial date;

(e) the relative complexity of the cases;

(f) the availability of competent, prepared substitute counsel; and

(g) the inconvenience to the parties, the witnesses or the court.

(3) If the scheduling conflict cannot be resolved by the affected presiding judges after consultation with each other, the conflict must be referred by them to the Chief Justice for summary resolution.

## 6.050 SUBMISSION OF TRIAL MEMORANDA

Trial memoranda, if any, must be filed with the trial court administrator, and copies must be delivered concurrently to the court and to opposing parties.

## 6.060 PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS

(1) All requested jury instructions and verdict forms must be in writing and delivered concurrently to the court and to opposing parties.

(2) The original and one copy of the requested jury instructions and verdict forms must be submitted to the court.

(3) Requested instructions may include any Uniform Oregon Jury Instruction by reference only to its instruction number and title: such as "Instruction No. 70.04 - Lookout." If the uniform instruction contains blanks or alternative choices, the appropriate material to complete the instruction must be supplied in the request.

(4) Requested jury instructions, including references to Uniform Oregon Jury Instructions, must be prepared as follows:

(a) Requested uniform instructions must be identified in accordance with UTCR 6.060(3).

(b) Instructions, including uniform instructions, must be numbered consecutively, beginning with the number "1" for the first requested instruction.

(c) Except for requested uniform instructions, not more than one proposed instruction must appear on each sheet of paper.

(d) If any requested jury instruction requires more than one page to be set out, each of the pages must be numbered at the lower left-hand corner; the number must contain the consecutively assigned requested jury instruction number provided pursuant to subparagraph (b) of this paragraph, followed by a hyphen, followed by the consecutive number for each page.

(e) The designation of the party requesting the instruction must be typed on each page.

(f) Below each requested instruction must be a statement citing the statute, decision or other legal authority which supports the requested instruction.

(5) The court must inform the parties before argument of the instructions that it proposes to give.

(6) Proposed verdict forms and written interrogatories, if any, must be prepared without the name of the attorney or the name of the firm and must be submitted at commencement of trial and as otherwise allowed by the court.

## 6.070 RECORDED OR WRITTEN JURY INSTRUCTIONS

(1) A party requesting written or recorded jury instructions, as provided by ORCP 59 B, shall have the responsibility for recording or reducing the court's instructions to writing in a timely manner.

(2) No identifying information relating to the parties or any other extraneous material, including authorities, must appear on the typed or copied instructions.

## 6.080 MARKING EXHIBITS

(1) Before the commencement of the trial, parties must mark all exhibits in the following manner:

(a) Plaintiff's exhibits must be marked consecutively from 1 through 99.

(b) Defendant's exhibits must be marked consecutively from 101 through 199.

(c) On request, the court must assign additional blocks of numbers.

(d) In cases involving multiple parties or large numbers of exhibits, the parties shall agree on the assignment of the numbers. If the parties cannot reach agreement, or if for any reason the numbering system cannot accommodate the parties, then the court may direct the parties to use any other numbering system not inconsistent with the intent of this section.

(2) Upon request, the trial court administrator shall provide a party with appropriate stamps, labels or tags for exhibit marking.

(3) The parties must submit to the court at the time of trial a list of premarked exhibits.

(4) Exhibits not available at the commencement of trial, exhibits not reasonably anticipated to be used and exhibits intended for impeachment purposes need not be premarked.

1988 Commentary:

Subsection (4) cannot and does not change discovery rules as established for criminal cases by statute.

## 6.090 PEREMPTORY CHALLENGES IN CIVIL CASES

In civil trials, peremptory challenges must be taken in writing by secret ballot unless the parties stipulate to taking the challenges orally and the court agrees.

## 6.100 EXAMINATION OF WITNESSES

Except for good cause shown, no more than one attorney for each party shall examine a witness or present argument on an issue.

## 6.110 SPECIAL AND GENERAL FINDINGS IN SEPARATE DOCUMENT

Special or general findings or conclusions must be included in a document separate from the judgment.

## 6.120 DISPOSITION OF EXHIBITS

(1) Unless otherwise ordered, all exhibits shall be returned to the custody of counsel for the submitting parties upon conclusion of the trial or hearing. Such counsel must sign an acknowledgment of receipt for the exhibits returned. Counsel to whom any exhibits have been returned must retain custody and control until final disposition of the case unless the exhibits are returned to the trial court pursuant to subsections (2) or (3) of this rule. Both documentary and nondocumentary exhibits submitted by parties not represented by counsel shall be retained by the trial court, subject to subsection (4) of this rule.

(2) Upon the filing of a notice of appeal by any party, the trial court administrator promptly shall notify all counsel that they are required to return all documentary exhibits in their custody to the trial court within 21 days of receipt of the trial court's request. All counsel are required to comply with the notice. The trial court promptly will transmit the documentary exhibits to the appellate court, when requested to do so by the appellate court, under ORAP 3.25.

(3) Upon request by an appellate court for transmission of nondocumentary exhibits, under ORAP 3.25, the trial court shall notify the party in whose custody the nondocumentary exhibits have been placed. The party must resubmit the designated exhibits to the custody of the trial court for transmittal to the appellate court.

(4) Exhibits not returned to the parties shall be processed as follows:

(a) Such exhibits shall be retained by the trial court until the appeal period has elapsed and there is a final disposition of the case.

(b) After final disposition of the case, a notice shall be sent to the parties of record that, unless they withdraw their respective exhibits within 30 days, the exhibits will be disposed of by the court.

(5) Nothing contained in this rule shall prevent parties to any matter before the court from seeking the release or return of exhibits before the times specified in this rule.

(6) Exhibits in the court's custody shall not be removed from the trial court administrator's control except by stipulation or by order of the court.

(7) For purposes of this rule, "documentary exhibits" include text documents, photos and maps, if not oversized, and audio and video tapes. An oversized document is one larger than standard letter size or legal size.

## 6.130 WAIVER OF JURY TRIAL IN CIVIL CASES

No waiver of trial by jury in civil cases in circuit court shall be deemed to have occurred unless the parties notify the court of such a waiver before 5:00 p.m. of the last judicial day before trial. Thereafter, a jury trial may not be waived without the consent of the court. Failure to timely notify the court of a waiver before the day of trial may result in an assessment by the judge on one or both of the parties for the per diem fee and mileage costs of bringing in the jury panel for that particular trial.

## 6.140 PROCEDURES FOR USE OF HAZARDOUS SUBSTANCE

(1) If a party intends to offer into evidence any hazardous substance at an evidentiary hearing or trial, the party must file a motion no later than 28 days prior to the hearing or trial seeking an order from the court regulating the handling, use and disposition of the hazardous substance.

(2) "Hazardous substance" in this rule is defined as any substance listed or hereafter added to the Department of Transportation Hazardous Substances List and the Oregon State Police List of Chemicals and Precursors for Methamphetamine Production and any other hazardous substance designated by SLR.

(3) The court, in its discretion, may issue an order concerning any of the following matters:

(a) a jury view and/or photograph in lieu of transportation of the hazardous substance to the courthouse;

(b) appointment of a custodian;

(c) appointment of a disposition expert;

(d) appointment of a medical expert;

(e) the amount to be transported or viewed;

(f) the container in which the hazardous substance is to be stored;

(g) the location and duration of handling and storage of the hazardous substance;

(h) the disposition of the hazardous substance; and

(i) other matters intended by the court to safeguard the public and the evidentiary record.

(4) Failure to file a timely motion under subsection (1) of this rule may be grounds for excluding any hazardous substance from the courthouse.

1989 Commentary:

To prevent hardship or injustice, relief from application of this rule in an individual case may be sought under UTCR 1.100.

## 6.150 WEAPONS AND DANGEROUS INSTRUMENTS IN THE COURTROOM

If a party intends to offer into evidence any weapons or other hazardous materials at an evidentiary hearing or trial, before bringing the items into the courtroom, the party must:

(1) For weapons:

(a) All firearms, BB guns, and pellet guns intended to be offered in evidence must be unloaded and either rendered inoperable or have a trigger guard installed.

(b) Guns and ammunition must be kept separate at all times.

(c) Knives, scissors, and any other sharp objects that could penetrate the skin must be sealed in puncture-proof containers, provided with secure and protective sheaths, or otherwise rendered harmless.

(2) For other hazardous materials:

(a) Hypodermic needles must be provided with covers over needle points and sealed in a transparent puncture-proof bag.

(b) An unbreakable, transparent tube that locks on one end must be provided for safe handling and viewing of chemicals, pharmaceuticals, and biological substances.

1990 Commentary:

The court should be mindful that the court may grant exception to the above for good cause shown under UTCR 1.100 and that the Committee intended that there be exceptions granted if any part of the rule would affect the mechanical operation when mechanical operation was an evidentiary issue.

## 6.160 CONTROLLED SUBSTANCES IN THE COURTROOM

(1) Unless otherwise ordered by the court, only a representative sample of controlled substances shall be brought into the courtroom to be presented as evidence. Such sample must have been placed in a see-through, heat-sealed container prior to coming into the custody of the court and must not be opened except by order of the court. The remainder may be presented by photograph, videotape, or may be available for viewing by the jury in some secure setting.

(2) At all times between the receipt of the controlled substances and the return of controlled substances to the submitting party under UTCR 6.120 or destruction or transmittal of the controlled substances to the appellate courts, the controlled substances shall be in the court's evidence locker in the custody and possession of a member of the court staff or in the custody of such appropriate law enforcement agency as the court orders.

## 6.170 JUROR HANDLING OF CONTROLLED, HAZARDOUS, OR INFECTIOUS SUBSTANCES AND CHEMICALS

Jurors must be advised if any controlled, hazardous, or infectious substances or chemicals to be handled in the jury room present a danger and must be provided instructions on safe handling, including providing protective devices, if necessary.

## 6.180 WEAPONS AND HAZARDOUS SUBSTANCES IN THE COURT FACILITIES

Unless otherwise ordered by the court, no person except a law enforcement officer shall possess in a court facility a firearm, knife, device, or hazardous substance capable of inflicting death or physical injury.

## 6.200 PRETRIAL SETTLEMENT CONFERENCES.

(1) Each judicial district may adopt an SLR 6.012 providing for a uniform pretrial settlement conference procedure for use in all circuit court civil cases, including dissolution of marriage and postjudgment modification proceedings. The SLR shall be designed to most effectively meet the needs of the judges, lawyers, and litigants in each district and to promote early pretrial settlements.

(2) Each SLR under this section, if adopted, should include the following provisions:

(a) If one party requests a pretrial settlement conference, the settlement conference must be held and must be conducted according to the procedure set forth in the SLR. However, the pretrial settlement conference will not be required if the opposing party demonstrates good cause why the settlement conference should not be held.

(b) Each trial attorney and party or representative of a corporation or insurance company who has full authority to settle and compromise the litigation must personally appear at the pretrial settlement conference; however, the judge may permit telephone appearances for good cause.

(c) Each settlement conference shall be scheduled to allow adequate time for meaningful settlement discussions. Additional settlement conferences may be scheduled by the judge or by agreement of all attorneys and parties.

(d) The pretrial settlement conferences shall not delay the trial scheduling.

(3) Each SLR under this UTCR section, if adopted, should specify:

(a) Whether the settlement conference judge shall be permitted to act as trial judge if the case does not settle.

(b) Whether a pretrial statement or other document must be submitted to the judge prior to the pretrial settlement conference, when it should be submitted, and whether it should be confidential or nonconfidential.

(c) Whether and under what circumstances materials or notes prepared by the pretrial settlement judge may be placed in the trial court file in the event that the case does not settle.

(d) The methods for reporting settlement and removing the case from the active trial docket.

(e) Whether a trial-setting conference shall be held prior to the pretrial settlement conference.

(4) SLR 6.012 is reserved for SLR adopted under this UTCR section.

## CHAPTER 7—Case Management and Calendaring

### 7.010 PLEAS, NEGOTIATIONS, DISCOVERY AND TRIAL DATES IN CRIMINAL CASES

(1) At the time of arraignment, the court may either accept a not guilty plea and set a trial date or set a date for entry of a plea in accordance with subsection (2) of this section.

(2) Plea agreements, negotiations, discovery, and investigations must be concluded by a date as set by the court which is:

(a) for defendants in custody, not less than 21 days after arraignment but, in any event, not later than 21 days prior to the trial date; and

(b) for defendants who are not in custody, not less than 35 days after arraignment, but not later than the 35th day prior to the trial date.

(3) Not later than the date set pursuant to subsection (2), trial counsel must report the following:

(a) whether a jury trial is desired;

(b) the probable length of trial;

(c) the need for a pretrial hearing; and

(d) any other matter affecting the case.

(4) Relief from the dates set pursuant to subsection (2) of this rule shall be granted for good cause shown.

1988 Commentary:

Relief from application of the deadlines set by this rule is subject to UTCR 1.100, as are all UTCR provisions.

1990 Commentary:

As used in this section, arraignment means the initial appearance of the defendant in the court having jurisdiction to dispose of the case.

Relief from time set in this section is subject to UTCR 1.100, as are all UTCR provisions. The purpose of this rule, among others, is to give certainty in trial dockets. Therefore, the last date for entry of a plea will change with changes in trial dates.

Section 4.010 of UTCR should be read in conjunction with this section. In this regard, the parties may request that the court decide any legal issue, including motions to suppress, before plea negotiations are concluded. Nothing requires the court to allow that request.

## 7.020 SETTING TRIAL DATE IN CIVIL CASES

(1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.

(2) If no return or acceptance of service has been filed by the 63rd day after the filing of the complaint, written notice shall be given to the plaintiff that the case will be dismissed for want of prosecution 28 days from the date of mailing of the notice unless proof of service is filed within the time period, good cause to continue the case is shown to the court on motion supported by affidavit or the defendant has appeared.

(3) If proof of service has been filed and any defendant has not appeared by the 91st day from the filing of the complaint, the case shall be deemed not at issue and written notice shall be given to the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution 28 days from the date of mailing of the notice unless one of the following occurs:

(a) An order of default has been filed and entry of judgment has been applied for.

(b) Good cause to continue the case is shown to the court on motion supported by affidavit.

(c) The defendant has appeared.

(4) If all defendants have made an appearance, the case will be deemed at issue 91 days after the filing of the complaint or when the pleadings are complete, whichever is earlier.

(5) The trial date must be no later than one year from date of filing for civil cases or six months from the date of the filing of a third-party complaint under ORCP 22 C, whichever is later, unless good cause is shown to the presiding judge or designee.

(6) Parties have 14 days after the case is at issue or deemed at issue to:

(a) Agree among themselves and with the presiding judge or designee on a trial date within the time limit set forth above.

(b) Have a conference with the presiding judge or designee and set a trial date.

(7) If the parties do neither (a) nor (b) of (6) above, the calendar clerk will set the case for trial on a date that is convenient to the court.

<u>1987 Commentary</u>:

Nothing in this rule precludes a court from issuing its trial notices prior to 91 days after filing of the complaint.

<u>1988 Commentary</u>:

It is recognized that some cases may not be appropriate for trial setting "in the ordinary course" of the court's business. Special settings of trial dates in complex or other appropriate cases is permissible and may be initiated by any party or the court.

## 7.030 COMPLEX CASES

(1) Any party in a case may apply to the presiding judge to have the matter designated as a "complex case."

(2) The criteria used for designation as a "complex case" may include, but shall not be limited to, the following: the number of parties involved, the complexity of the legal issues, the expected extent and difficulty of discovery, and the anticipated length of trial.

(3) A presiding judge shall assign any matter designated as a "complex case" to a specific judge who shall thereafter have full or partial responsibility for the case as determined by the presiding judge.

(4) A "complex case" shall not be subject to the time limitation or trial setting procedures set forth in UTCR 7.020(5), (6) and (7); however, any such case will be set for trial as soon as practical, but in any event, within two years from the date of filing unless, for good cause shown, the trial date is extended by the assigned judge.

## 7.040 NOTIFY COURT OF ACTIVITY CHANGING SCHEDULE

The parties shall report immediately to the court any resolution of any matter scheduled on the court's docket.

## 7.050 EFFECT OF BANKRUPTCY PETITION

(1) Upon notice that proceedings in an action are subject to a federal bankruptcy stay, the court must stay the action until it is shown to the court’s satisfaction that the federal bankruptcy stay has been terminated or is not applicable to the action.

(2) Upon motion of any party, the court may sever a claim that continues to be subject to the federal bankruptcy stay or a claim as it applies to the bankruptcy debtor and proceed with the remainder of the action if:

   (a) the action includes multiple claims or multiple parties; and

   (b) it is shown to the court’s satisfaction that, as to one or more claims, the federal bankruptcy stay has been terminated or is not applicable.

(3) A court must not dismiss the action stayed under this rule solely because of the bankruptcy filing. Nothing in this rule limits a court’s ability to initiate the process to dismiss an action stayed under this rule for want of prosecution under ORCP 54B(3) or as provided by statute. However, if a party to the action responds to the court notice concerning dismissal for want of prosecution by timely application to continue the action because bankruptcy proceedings are ongoing:

   (a) the ongoing bankruptcy proceedings constitute good cause to continue the action for purposes of ORCP or statute; and

   (b) the court must continue the action as a pending case.

(4) Time periods established by UTCR 7.020 or by SLR for proceeding with an action are not applicable during the stay to that action or part of an action stayed under this rule. For all or part of the action stayed under this rule, time periods held in abeyance under this subsection continue when the court proceeds and only as to that part of the action with which the court proceeds.

(5) Nothing in this section limits a court's ability to grant dismissal of an action stayed under this rule as provided under ORCP 54A.

(6) References in this rule to federal bankruptcy stays are to a stay under provisions of 11 U.S.C. Sections 105, 362, 1201, or 1301. As provided under UTCR 1.010(3), this rule is applicable to all cases that may be subject to a federal bankruptcy stay, including small claims cases.

NOTE: For purposes of subsection (3) of this section, ORS 46.270 continues to provide a statutory basis for dismissal of actions for want of prosecution until its repeal on 1/15/98.

## 7.060 AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION

(1) If special accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.

(2) Notification to the court must provide:

(a) the name of the person needing accommodation;

(b) the case number;

(c) charges (if applicable);

(d) the nature of the proceeding;

(e) the person's status in the proceeding;

(f) the time, date, and estimated length of the proceeding;

(g) the type of disability needing accommodation; and

(h) the type of accommodation, interpreter, or auxiliary aid needed or preferred.

## 7.070 FOREIGN LANGUAGE INTERPRETERS

(1) If a foreign language interpreter is needed for a court proceeding, the party in need of an interpreter must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.

(2) Notification to the court must include:

(a) the name of the person needing an interpreter;

(b) the case number;

(c) charges (if applicable);

(d) the nature of the proceeding;

(e) the person's status in the proceeding;

(f) the time, date, and estimated length of the proceeding; and

(g) the language to be interpreted.

## 7.080 INTERPRETERS' REQUESTS FOR INFORMATION

If requested by a neutral court interpreter, parties in civil and criminal cases shall provide a list of specialized terminology expected to be used in the proceeding in which the interpreter will be providing services. The list shall be provided prior to the commencement of the proceeding. The list shall be kept confidential by the interpreter and is not discoverable.

## CHAPTER 8—Domestic Relations Proceedings

### 8.010 ACTIONS FOR DISSOLUTION OF MARRIAGE, SEPARATE MAINTENANCE AND ANNULMENT, AND CHILD SUPPORT

(1) Together with the original petition, the attorney for a petitioner, or if unrepresented, a petitioner, must file with the trial court administrator a certificate of residency establishing that one or both of the parties currently resides in the county in which the petition is being filed. Any petition tendered without a certificate of residency must be returned forthwith by the trial court administrator to the person who submitted the petition for filing, together with any tendered filing fee.

(2) Petitioners, when providing service on respondents, must attach to the petition a copy of the Notice to Parties of A Marriage Dissolution as required by ORS 107.092. Copies of the notice may be obtained from the trial court administrator's office.

(3) Unless otherwise ordered by the court, decrees in all uncontested actions for annulment or dissolution of marriage or for separation shall be entered on the basis of the affidavit set forth in ORS 107.095(4) in lieu of a hearing on the merits.

(4) In any contested dissolution of marriage, separate maintenance or annulment action, each party must file with the trial court administrator and serve on the other party a statement listing all marital and other assets and liabilities, the claimed value for each asset and liability and the proposed distribution of the assets and liabilities. In the alternative, the parties may elect to file with the trial court administrator a joint statement containing this information.

(5) In any proceeding under ORS chapters 107, 108, or 109 wherein child support or spousal support is contested, each party must file with the trial court administrator and serve on the other party a Uniform Support Affidavit in the form specified in Form 8.010.5 in the UTCR Appendix of Forms. A Uniform Support Affidavit required by this subsection must be completed as follows:

(a) If no party seeks spousal support or deviation from the uniform child support guidelines, the parties must complete the affidavit and attachments required for the affidavit, but the parties need not complete the schedules or attachments to the schedules.

(b) If any party seeks spousal support or any deviation from the uniform child support guidelines, all parties must complete the affidavit and all schedules and the attachments for all of them.

(6) The documents required to be filed under subsections (4) and (5) above must be filed and served:

(a) at the time designated in the relevant SLR;

(b) in the absence of an SLR thereof, not less than 14 days before the hearing on the merits unless both parties stipulate otherwise, but in any event by the beginning of trial.

(7) No judgment under this chapter shall be signed, filed or entered without the filing with the trial court administrator of all relevant documents, including all of the following:

(a) An affidavit of completed service.

(b) An affidavit of nonmilitary service and the proposed order of default, if the respondent is in default.

(c) The affidavit described in ORS 107.095(4) if the matter is uncontested.

(d) A completed Oregon State Health Division Record of Dissolution of Marriage form.

(e) If child support or spousal support is an issue, a Uniform Support Affidavit for each party, except where that issue is resolved by stipulation or default. A Uniform Support Affidavit required by this paragraph must be completed in the form specified in Form 8.010.5 in the UTCR Appendix of Forms and as provided under subsection (5) of this rule.

(f) If child support is an issue, the SED work sheets described under UTCR 8.060.

(g) A proposed judgment.

(8) Parties who have been ordered to submit a proposed judgment in cases involving child or spousal support must submit the original and one copy to the trial court administrator.

## 8.020 SUPPORT ORDERS

Every proposed order or judgment providing for the support of any person under ORS chapters 107, 108, 109, 110, 416 or 419A, 419B, or 419C, or modifying any order or judgment for support of any person under those chapters, must set forth the due date of the first support payment to be made thereunder, the means of payment and the person to whom payment must be made.

## 8.040 PREJUDGMENT RELIEF UNDER ORS 107.095(1)

(1) An order for relief authorized by ORS 107.095(1) may be granted on motion supported by affidavit setting forth sufficient facts to establish a right to the requested relief.

(2) Any motion regarding temporary custody of a minor child must be supported by an affidavit which must state the present location of the minor child, the person with whom the child presently resides, the persons with whom and the places where the child has resided for the last 6 months, including the length of time with each person and at each residence, and the reasons why a temporary custody order is sought.

(3) Any motion regarding temporary support must be accompanied by a Uniform Support Affidavit in the form specified in Form 8.010.5 in the UTCR Appendix of Forms. A Uniform Support Affidavit required by this subsection must be completed as provided under subsection (5) of UTCR 8.010.

(4) At least 7 days before the hearing, the opposing party also must serve and file a Uniform Support Affidavit on the moving party, when support is to be an issue. A Uniform Support Affidavit required by this subsection must be completed in the form specified in Form 8.010.5 in the UTCR Appendix of Forms and as provided for completion of the affidavit under subsection (5) of UTCR 8.010.

## 8.050 JUDGMENT MODIFICATION PROCEEDINGS

(1) Modification proceedings must be initiated by an order to show cause based on a motion supported by an affidavit setting forth the factual basis for the motion or by other procedure established by SLR. When support is to be an issue, a Uniform Support Affidavit, as set out in Form 8.010.5 in the UTCR Appendix of Forms, must also be filed with the motion and completed as provided under subsection (5) of UTCR 8.010.

(2) The order to show cause must be served by delivering a certified copy thereof, together with a certified copy of the motion, affidavit and Uniform Support Affidavit, if applicable, in the manner necessary to obtain jurisdiction.

(3) At least 7 days before the hearing, the opposing party also must serve and file a Uniform Support Affidavit on the moving party, when support is to be an issue. The Uniform Support Affidavit must be completed in the form specified in Form 8.010.5 in the UTCR Appendix of Forms and as provided under subsection (5) of UTCR 8.010.

(4) If public assistance is being provided to the minor child(ren), however, and the Support Enforcement Division (SED) of the Department of Justice either initiates or responds to a support modification proceeding, SED must be allowed to file and serve, in lieu of the Uniform Support Affidavit, an affidavit which sets out the following information:

(a) The name of the legal or physical custodian of the child(ren).

(b) The name and date of birth of each child for whom support modification is being sought.

(c) A statement of the amount of public assistance being provided.

(d) A statement of the value of food stamps being provided.

(e) A statement of whether medical insurance (Medicaid) is being provided.

(f) A statement of any other known income of the physical custodian.

(g) A statement concerning any special circumstances which might affect the determination of support.

## 8.060 FILING SED WORK SHEETS REQUIRED IN CHILD SUPPORT CASES

Parties must submit the completed Support Enforcement Division (SED) child support computation work sheets that are appended to OAR 137-50-320 to 137-50-490 as required by the following:

(1) If child support is an issue at the time of trial, the UTCR 8.010 statement of each party must include the work sheets.

(2) If child support is awarded, the judgment must incorporate the work sheet as an exhibit evidencing the basis for the court's award.

(3) In cases involving temporary child support, the moving party must serve the adverse party with the work sheets, and financial affidavits filed by parties with the court must include the work sheets.

(4) If child support is an issue at the time of hearing, each party must submit the work sheets to the court.

(5) If an award of child support is modified, the amending judgment must incorporate the work sheet as an exhibit evidencing the basis for the court's award.

## 8.070 STANDARDIZED PARENTING PLANS

(1) SLR 8.075 is reserved for judicial districts to announce that they have adopted a standardized parenting plan.

(2) The specifics of such plans shall be placed in an appendix to the SLR.

## CHAPTER 9—Probate and Adoption Proceedings

REPORTER'S NOTE: Effective 8/01/01, UTCR Chapter 9 underwent a minor reorganization and renumbering. A number of sections in the chapter were renumbered and moved into sequence at that time. Those sections are indicated temporarily by a reporter's note after the section.

### 9.010 MAILING PROBATE MATERIALS TO THE COURT

Petitions, motions, orders and judgments not requiring a court appearance may be mailed to the trial court administrator, with self-addressed stamped envelopes or postcards for responses.

### 9.020 APPROVAL OF BONDS

A supporting affidavit, signed by the guardian, conservator, personal representative or attorney of record, must be filed if there is a request for approval of a surety bond in an amount less than the aggregate value of the property in the estate as disclosed by the petition. The requirement of this section may be satisfied by a statement in the petition for appointment.

### 9.030 ADDRESSES AND TELEPHONE NUMBERS REQUIRED

The name, address, telephone number and bar number of the attorney of record must be typed or printed on the last page of every petition, motion and order. The name, address and telephone number of the guardian, conservator or personal representative must be typed or printed on the last page of every order. The trial court administrator must be promptly notified by separate letter of any change in address or telephone number of any attorney of record, unrepresented party, guardian, conservator or personal representative.

### 9.040 SETTLEMENT OF PERSONAL INJURY CLAIMS IN PROBATE CASES

A petition for approval of a settlement of a personal injury claim must be accompanied by an affidavit setting forth all relevant information concerning the settlement, including medical reports covering the nature and extent of the injuries sustained and the prognosis. The court may require further information.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.050.

### 9.050 RESTRICTED ACCOUNTS

When assets of an estate or conservatorship are placed with a depository subject to withdrawal only on order of the court, a writing signed by the depository showing the assets held and that they are subject to withdrawal only on further order must be filed with the court within 30 days of entry of the order unless the order allows a longer period of time. Prompt procurement of the writing is the responsibility of the attorney for the fiduciary. Any asset restricted by court order

shall be identified in the inventory or annual accountings as restricted with reference to the date and title of the order imposing the restriction.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.080.

## 9.060 FEES IN ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Attorney fees requested in protective proceedings under ORS chapter 125 must be supported by affidavit setting out the justification for the amount requested.

(2) Attorney fees requested for a decedent's estate must be supported by affidavit in compliance with ORS 116.183.

(3) Personal representative fees requested in excess of the statutory amounts provided in ORS 116.173(1) must be supported by affidavit setting out justification for the additional claimed amount.

(4) All fiduciary and attorney fee applications and accountings in decedents' estates, guardianships and conservatorships must be served in the manner and on the persons described in ORS 116.093, 125.475, and acts amendatory thereof.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.090.

## 9.070 SUMMARY DETERMINATION OF CLAIM UNDER ORS 115.145(1)(a) AND 115.165

A party requesting a summary determination of a claim under ORS 115.145(1)(a) and 115.165 must:

(1) indicate in the caption of the request that a summary determination is being requested, and

(2) tender the appropriate fee with the request.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.130.

## 9.080 ORAL OBJECTIONS IN PROTECTIVE PROCEEDINGS AND NOTICE OF FREE AND LOW-COST LEGAL SERVICES

(1) Every court exercising probate jurisdiction must adopt an SLR designating a place where oral objections may be made under ORS 125.075 to petitions in protective proceedings. SLR number 9.081 is reserved for this purpose.

(2) Every court exercising probate jurisdiction shall post, at the place where oral objections may be made pursuant to subsection (1) of this rule, information regarding any free or low-cost legal services available in the area sufficient to satisfy the requirements of ORS 125.070.

## 9.160 FORM OF ACCOUNTINGS

Accountings substantially in the form specified in Form 9.160 in the UTCR Appendix of Forms, as further explained in this rule, must be accepted by all judicial districts. Accountings in this format may be made mandatory by SLR. SLR 9.161 is reserved for purposes of making such format mandatory in the judicial district:

(1) Preliminary information. The beginning of the accounting shall state:

(a) The first and last date of the accounting period. For annual accountings, the last day of the accounting period shall be within 30 days of the anniversary of appointment.

(b) If no bond is required, the date of the court order waiving the bond or a reference to the statute exempting the fiduciary from filing a bond. If a bond is required, the accounting shall state the current amount of the total bond. If a bond is required, an interim accounting shall also provide the following information.

(i) The total value of the assets as of the last date of the current accounting period;

(ii) The income estimated to be received during the next accounting period;

(iii) Total assets and income (the sum of items (i) and (ii));

(iv) The value of the total assets and income which have been restricted by court order and a reference to the dates of all orders restricting assets;

(v) Unrestricted assets and income (the difference between (iii) and (iv), generally the amount which should be bonded);

(vi) The fiduciary's request for any change in the amount of the existing bond or in restrictions on assets or income.

(vii) If appropriate, an explanation for any difference between the amount of the requested bond and the amount that should be bonded.

(2) Asset Schedule. There shall be a separate asset schedule with a summary of all property of the estate or conservatorship. All assets listed in the Inventory, any Amended or Supplemental Inventory, or the previous accounting and all assets subsequently acquired shall be listed in this schedule if they are owned at any time during the accounting period.

(a) This schedule shall have at least five columns.

(i) Description of Asset. The first column shall describe each asset owned by the estate or conservatorship at any time during the accounting period. The

description of any asset that has been restricted pursuant to court order shall include the date and title of the order. The description of any asset acquired or disposed of during the accounting period shall include the date of acquisition or disposal. If an asset consists of a depository account into which funds are received or from which funds are disbursed, the description shall include a reference to any separate paragraph or exhibit containing the statement of receipts and disbursements for the depository account.

(ii) Beginning Value. If the asset was owned by the estate or conservatorship at the beginning of the accounting period, the second column shall state the value of the asset at the beginning of the accounting period.

(iii) Value of Later-Acquired Asset. If the asset was acquired after the beginning of the accounting period, the third column shall state the value at acquisition.

(iv) Value at Disposition. If the asset was disposed of before the end of the accounting period, the fourth column shall state the value at disposition.

(v) Current Value. If the asset is in existence at the end of the accounting period, the fifth column shall state the current value.

(b) The sums of the second through fifth columns shall be provided at the bottoms of those columns.

(c) The schedule may have additional information such as original cost, increase or decrease in value, the source of an acquisition or the reason for disposition of assets, and any other information which would aid in accounting for assets.

(d) For the purpose of this schedule, total value of household goods and personal belongings may be listed on one line.

(e) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(f) A trust company acting as a fiduciary is exempt from the requirement to file an asset schedule as provided above. Instead, a trust company acting as a fiduciary may provide a schedule of assets in existence at the beginning of the accounting period and a schedule of assets in existence at the end of the accounting period.

(3) Receipts and Disbursements. The accounting of receipts and disbursements shall meet the following requirements for each depository account:

(a) For each account, receipts and disbursements shall be separately listed in chronological order, with the date and value of each transaction. For each account, the total of each list of receipts and disbursements shall be provided at the end of each list.

(b) Each receipt into the account shall show the source and shall have a brief explanation of the source or purpose of the entry. The first entry in the list of receipts shall be the beginning balance for the account.

(c) Each disbursement from the account shall show the payee or recipient and shall have a brief explanation of its purpose. If the disbursement is by check or similar instrument, the name on the disbursement shall match the payee on the instrument. The sum of the total disbursements plus the ending balance in the account shall be shown.

(d) A sale of real property shall be evidenced by a copy of the seller's closing statement from escrow or, if none is available, third-party documentation of the details of the transaction.

(e) Any transfers between depository accounts shall be so labeled with reference to the source or destination of the deposit or withdrawal.

(f) Any difference between the closing balance shown for the account in the accounting and the closing balance shown for the account in a depository statement filed under UTCR 9.060(2) shall be reconciled.

(g) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(h) A trust company acting as a fiduciary is exempt from the requirements of UTCR 9.160(3)(a). Instead, a trust company acting as a fiduciary may provide a chronological list of receipts and disbursements, with a total for the amount of receipts and a total for the amount of disbursements.

(4) Narrative. The accounting shall include a description of any changes in the assets of the estate or conservatorship or the financial life of the protected person not clearly shown in the Asset Schedule including, but not limited to, corrections to previously declared values, omitted assets, the closing of an account, the sale or purchase of an asset, a significant change in living expenses, or a stock split.

(5) Other forms of accounting. In its discretion, the court may allow other forms of accounting.

## 9.170 FIDUCIARY DISCLOSURE IN ACCOUNTINGS

The narrative of an accounting shall specifically disclose and explain all of the following transactions during the accounting period unless previously approved by the court:

(1) All gifts.

(2) Transactions with a person or entity with whom the fiduciary has a relationship which could compromise or otherwise affect decisions made by the fiduciary. The disclosure shall include, but is not limited to, payment for goods, services, rent, reimbursement of expenses, and any other like transactions.

(3) Any payment for goods or services provided either:

(a) by a person who is not engaged in an established business of providing similar goods or services to the general public; or

(b) at a rate higher than that ordinarily charged to the general public.

## 9.180 VOUCHERS AND DEPOSITORY STATEMENTS

(1) Unless otherwise provided by statute, SLR, or order of the court, a voucher for each disbursement reported in the accounting must accompany the accounting as a separate exhibit or shall be attached to a cover page showing the case caption. Vouchers required by statute or order of the court must be documents evidencing each disbursement and showing the name of the payee, date, and amount.

(2) Unless the fiduciary is excused from the requirement of filing vouchers, the accounting shall include depository statements for each account. An opening depository statement must evidence the account beginning balance, unless one was submitted with a previous accounting. A closing depository statement must evidence the balance in the account within 30 days of the close of the accounting period or on the date of closing of an account closed during the accounting period.

(3) For purposes of this rule, a "depository" is an entity holding assets of the estate or conservatorship, including a bank, stock and bond broker, mutual fund, or similar entity.

(4) Copies of vouchers and depository statements need not be served on persons entitled to copies of the accountings or on persons who have requested notice in the proceedings.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.060.

## 9.190 RETURN OF VOUCHERS AND DEPOSITORY STATEMENTS

Vouchers and depository statements submitted under UTCR 9.180 may, in the court's discretion, be returned to a personal representative, conservator, guardian or attorney of record at any time after expiration of the time for appeal or, if an appeal is taken, after final determination of the case. A person requesting return of vouchers or depository statements shall submit a self-addressed envelope with adequate postage with the documents filed.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.070.

## 9.300 APPOINTMENT OF GUARDIANS IN ADOPTIONS

Except in cases when one or more of the petitioners, or a state or private agency, is the legal or natural guardian of the minor child, when a petition is filed for leave to adopt a minor child and the required consent thereto has been filed, the attorney for the petitioner must prepare and

submit to the court an order providing for the appointment of the petitioner, or other suitable person, as guardian of the person of the minor child pending further order of the court or entry of a decree.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.100.

## 9.310 PRESENTATION OF ADOPTION DECREES

Proposed adoption decrees may be presented to the court without the necessity of a personal appearance by the attorney or the adoptive parents.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.110.

## 9.320 CHANGE OF NAME AND CHANGE OF SEX PROCEEDINGS

The public notice required by ORS 33.420 or ORS 33.460 may be given either by posting in a public place or publication in a newspaper of general circulation. The notice must give 14 days from the date of posting or publication for all persons to appear and show cause. If no appearance is made, the decree or order may be entered 15 days after posting or publication. After entry of the decree or order, public notice of the change must be given by posting in a public place or publication in a newspaper of general circulation. A certificate of posting or publication must be submitted to the trial court administrator.

REPORTER'S NOTE: UTCR Chapter 9 underwent a minor reorganization and renumbering effective 8/1/01. Before the reorganization/renumbering, this UTCR was numbered UTCR 9.120.

## CHAPTER 10—Proceedings Relating to Vehicle Laws and Driving Privilege Suspensions

### 10.010 PETITION FOR REVIEW OF ORDER OF SUSPENSION UNDER ORS 813.410

A petition for review of a final order of the Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV) must be filed with the trial court administrator. Copies of the petition must be served on the DMV and the Attorney General. The petition filed with the trial court administrator must contain a certificate of service of the above copies. The petition as filed and served must be accompanied by a copy of the final order of the DMV from which the appeal is taken. The petition for review and the certificate of service must be substantially in the form specified in Form 10.010.a and Form 10.010.b in the UTCR Appendix of Forms.

### 10.020 PREPARATION AND DELIVERY OF THE RECORD ON REVIEW

(1) When a petition is served on the DMV, the DMV must prepare the record of the proceeding, including a transcription of the oral proceedings, or the agreed portion thereof if the parties have stipulated to shorten the record, and all exhibits introduced and made a part of the record at the hearing. The DMV must serve certified true copies of the record on the petitioner and the Attorney General. The DMV must file the original record with the trial court administrator within 30 days of service of the petition for review. The record must be accompanied by proof of service. On good cause shown, the court may extend the time for filing of the record.

(2) The record, preceded by an index of its contents, must be securely fastened in a suitable cover or folder showing on the outside the title and agency number of the case, the name of the hearings officer and the date and location of the hearing. The pages of the record must be consecutively numbered at the bottom center of each page.

(3) When the court has entered its judgment and the period for appeal has elapsed without an appeal being taken, the record will be returned to the agency, unless the court otherwise directs.

### 10.030 FORM OF TRANSCRIPT OF ORAL PROCEEDINGS

A written transcript of the oral proceedings must meet the following specifications:

(1) It must be typewritten, double-spaced, on paper with numbered lines and prepared on one side only. Typewriting must be first impression; clear and legible; and on good quality white, opaque, unglazed paper 8-1/2 x 11 inches in size.

(2) Each page must be consecutively numbered at the top right corner, and to the left thereof must be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by "D," "X," "ReD" or "ReX." Appropriate notation must similarly be made of other proceedings.

(3) Pages must contain no more than 25 lines, with margins of 1-1/2 inches on the left and ½ inch on the right.

(4) Type must be standard pica or equivalent size.

## 10.040 SETTLEMENT OF THE RECORD

A motion to correct the record may be filed within 7 days of the filing of the record. Unless a motion to correct is filed, the record is deemed settled. Upon filing with the trial court administrator of a motion to correct the record, the court shall direct the making of such corrections as may be appropriate, and shall fix the time within which such corrections will be made. Upon filing with the trial court administrator of the record so corrected, the record shall be deemed settled.

## 10.050 PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES

(1) The petitioner must file a memorandum of points and authorities in support of the challenge to the validity of the final order of the DMV. Points must be concise statements of the arguments supporting the petitioner's challenge to the validity of the final order. Each point must be accompanied by a reference to the page number of the record where the matter is found. Each point must be followed by a citation of authorities for that point. Points not accompanied by a reference to the record or a statement of authorities need not be considered by the court.

(2) The petitioner's memorandum of points and authorities, including proof of service on the Attorney General at the address shown in the Certificate of Service required under UTCR 10.010, must be filed with the trial court administrator no later than 14 days after the date of settlement of the record.

## 10.060 OPPOSING PARTY'S RESPONSE

The respondent may file a written memorandum of points and authorities in response to the matters raised in the petitioner's memorandum, including proof of service on the petitioner, not fewer than three days before the date set for hearing. The respondent's memorandum must refer to each point in the petitioner's memorandum being addressed, and each point must be followed by a statement of authorities in support of the respondent's position.

## 10.070 SETTING HEARING DATE

(1) Unless waived in writing by both parties, the court shall schedule the hearing within 35 days of the filing of the petitioner's memorandum of points and authorities or the settlement of the record, whichever occurs later. The court shall notify the parties of the date at least ten days before the scheduled hearing.

(2) A party may request that the hearing be conducted by a conference call between the court and the opposing parties. The request must be granted if the office making the request is located more than 25 miles from the courthouse. UTCR 10.090 and all applicable rules of decorum in proceedings must be observed by the parties and enforced by the court during the conduct of a conference call hearing.

## 10.080 ORAL ARGUMENT AT HEARING

(1) At oral argument, the petitioner shall be entitled to open and close. Unless the court otherwise orders, the petitioner shall be limited to ten minutes oral argument and the respondent shall be limited to ten minutes; but, the petitioner may reserve up to five minutes for rebuttal.

(2) No point raised by a party's memorandum of points and authorities shall be deemed waived by the party's failure to present the point in oral argument.

(3) If a party fails to appear at the hearing, the court shall deem the cause as to that party submitted without oral argument. A party's failure to appear shall not preclude oral argument by the other party.

## 10.090 ENTRY OF JUDGMENT

The court shall enter its judgment within 7 days of the hearing or, if no hearing is held, within 7 days of the time provided for hearing in UTCR 10.070(1).

## CHAPTER 11—Juvenile Court Proceedings

### 11.010 APPLICATION FOR COURT APPOINTED COUNSEL

(1) An application for a court appointed counsel and a sworn statement of financial condition shall be provided for each affected adult and child on intake or at the earliest practicable other time.

(2) Counsel may be appointed for a child in any case, but counsel will not be appointed for any adult person unless that person files a verified financial statement and any other information in writing and under oath that the court may require or that the applicant desires to submit relating to the applicant's financial ability to retain counsel.

(3) On receipt of an application, the court shall promptly rule in the matter. If the application is granted, the court shall promptly appoint counsel and notify counsel of the appointment.

### 11.020 COMPENSATION AND APPOINTMENT OF COURT APPOINTED COUNSEL

(1) Allowance of attorney fees in juvenile proceedings shall be governed by ORS 135.055.

(2) Unless otherwise specified by written court order, an order for appointment of counsel shall expire when the time for taking an appeal has expired.

### 11.040 ADMISSION OR STIPULATION TO JURISDICTION; DISMISSAL

In juvenile cases, after having knowledge thereof, the parties must immediately notify the court of an admission or stipulation of jurisdiction or of a dismissal before the jurisdictional or dispositional hearing.

### 11.050 TIME REQUIRED FOR HOLDING DISPOSITIONAL HEARING

A dispositional hearing shall be held within 28 days after the court assumes jurisdiction, except as ordered by the court on a showing of good cause.

### 11.060 PREDISPOSITION INVESTIGATION

(1) If an investigation report is prepared under ORS 419A.012, 419B.265, and 419C.300, it shall be made available to the parties at least 7 days before the dispositional hearing, unless the parties stipulate to a shorter time.

(2) If jurisdiction is contested, the court shall not read the report until after jurisdiction has been established.

(3) If the investigation produces information which the Juvenile Department or other agency preparing the report concludes should not be divulged to the child, parents or counsel, that information must, on notice to the parties, be separated from the predisposition reports and must be divulged only pursuant to court order. If the court does not issue an order to divulge such information, the court shall set forth the reasons for its action.

## 11.070 TEMPORARY SUSPENSION OF VISITATION RIGHTS WHEN TERMINATION PETITION FILED

Parental visitation rights with respect to children who are wards of the court shall not be suspended while a petition to terminate parental rights is pending, unless ordered by the court on good cause shown.

## CHAPTER 13—Arbitration

### 13.010 APPLICATION OF CHAPTER

(1) This UTCR chapter applies to arbitration under ORS 36.400 to 36.425 and Acts amendatory thereof but, except as therein provided, does not apply to any of the following:

(a) Arbitration by private agreement.

(b) Arbitration under any other statute.

(c) Matters exempt by ORS 36.400.

(d) Any civil action exempt from arbitration by action of a presiding judge under ORS 36.405.

(2) This UTCR chapter on arbitration is not designed to address every question that may arise during the arbitration hearing. These rules give considerable discretion to the arbitrator. The arbitrator should not hesitate to exercise that discretion.

### 13.020 MANDATORY ARBITRATION PROGRAM

A court must announce, by SLR, the monetary limits established under ORS 36.400(3) for its arbitration program under ORS 36.400 to 36.425. It is sufficient for the SLR to reference the statute and the monetary limit established. SLR 13.005 is reserved for purposes of the announcement.

### 13.030 ARBITRATION COMMISSION

(1) Each court must establish an arbitration commission.

(2) The function of the arbitration commission is to supervise the arbitration program and to give advisory opinions relating to arbitration.

(3) The arbitration commission must include both judge and attorney members and, as an ex officio member, the court administrator.

### 13.040 RELATIONSHIP TO COURT JURISDICTION AND APPLICABLE RULES

(1) A case filed in the circuit court remains under the jurisdiction of that court in all phases of the proceedings, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the court of jurisdiction.

(2) Until a case is assigned to the arbitrator, Oregon Rules of Civil Procedure apply. After a case is assigned to an arbitrator, these arbitration rules apply except where an arbitration rule states that a Rule of Civil Procedure applies.

(3) Once a case is assigned to arbitration, all motions against the pleadings, all motions for discovery, and all similar pretrial motions not then resolved will be submitted to the arbitrator only and determined by the arbitrator. The arbitrator's determination, however, will apply only during the arbitration proceeding. If a request for trial *de novo* is filed, such matters may be raised again. If the arbitrator's decision on a pretrial motion will prejudice a party on trial *de novo*, that party may file an appropriate motion with the court.

## 13.050 ARBITRATION WHEN CASE ALREADY SET FOR TRIAL

(1) Cases will not be assigned to arbitration within 63 days of the set trial date, except by order of the court.

(2) A court order is not necessary if by stipulation the parties agree upon an arbitrator and agree upon a hearing date at least 28 days before the scheduled trial date.

## 13.060 PLEADINGS IN CASES SUBJECT OR NOT SUBJECT TO ARBITRATION

(1) All civil actions (including domestic relations cases described under ORS 36.405(1)(b)) will be assigned to arbitration unless one of the following occurs:

(a) The title of a pleading contains the words "CLAIM NOT SUBJECT TO MANDATORY ARBITRATION" in compliance with subsection (3) of this rule.

(b) Any party files a notice, prior to the assignment to arbitration, that the case is not subject to mandatory arbitration. The notice must state grounds sufficient, under ORS 36.405(1), to remove the case from mandatory arbitration.

(c) The court orders the case removed from mandatory arbitration under ORS 36.405(2).

(2) Notice under part (1)(a) or (1)(b) of this rule does not prevent any party from asserting by appropriate motion, that the case is subject to mandatory arbitration.

(3) A party must place one or the other of the following in the title of a pleading in the case (including a claim, counterclaim, cross claim, third-party claim, petition, and response): "SUBJECT TO MANDATORY ARBITRATION" or "CLAIM NOT SUBJECT TO MANDATORY ARBITRATION." When a party places the "NOT SUBJECT" language in the title of the pleading, the party gives notice to the court and other parties that the case is exempted from mandatory arbitration either clearly by statute or under these rules. This language must not be in the title of a pleading for any other purpose. A party's signature on pleadings containing such language constitutes the party's certificate of such notice under ORCP 17. In all other instances, the party will place the language in the title indicating the case is subject to mandatory arbitration.

## 13.070 EXEMPTION FROM ARBITRATION

Within 14 days after notification by the court that the case is assigned to arbitration, any party seeking exemption from arbitration must file and serve a "Motion for Exemption from Arbitration."

## 13.080 ASSIGNMENT TO ARBITRATOR

(1) The parties may select an arbitrator by stipulation.

(2) At the time of giving notice of the assignment to arbitration, the trial court administrator shall furnish a list of proposed arbitrators as well as a copy of the procedures for the selection of arbitrators and for setting an arbitration hearing. The procedures for selection of arbitrators shall be established by the arbitration commission.

(3) An arbitrator shall be assigned under (1) or (2) of this rule within 21 days after the assignment to arbitration.

## 13.090 ARBITRATORS

(1) Unless otherwise ordered or stipulated, an arbitrator must be a member of the Oregon State Bar, who has been admitted to any Bar for a minimum of five years, or a retired or senior judge. The parties may stipulate to a nonlawyer arbitrator.

(2) An arbitrator who is not a retired or senior judge or stipulated nonlawyer arbitrator must be in good standing with the Oregon State Bar at the time of each appointment. During any period of suspension from the practice of law or in the event of disbarment, an arbitrator will be removed from the court's list of arbitrators and may reapply when the attorney is reinstated or readmitted to the bar.

(3) Arbitrators will conduct themselves in the manner prescribed by the Code of Judicial Conduct.

## 13.100 AUTHORITY OF ARBITRATORS

An arbitrator has the authority to do all of the following, but may exercise the authority conferred only after the case is assigned to a specific arbitrator and any disputes over the assignment have been settled:

(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to arbitrability or the qualification of an arbitrator. The court may entertain a challenge to the qualification of an arbitrator on grounds that could not be discovered prior to assignment of the arbitrator to the case.

(2) Invite, with reasonable notice, the parties to submit trial briefs.

(3) After notice to the parties, examine any site or object relevant to the case.

(4) Issue a subpoena, enforceable in the manner described in ORS 36.340.

(5) Administer oath or affirmations to witnesses.

(6) Rule on the admissibility of evidence in accordance with these rules.

(7) Determine the facts, apply the law and make an award; perform other acts as authorized by these rules.

(8) Determine the place, time and procedure to present a motion before the arbitrator, including motions for Summary Award (known as Summary Judgment under ORCP).

(9) Require a party, an attorney advising each party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure of such party or attorney or both, to obey an order of the arbitrator.

(10) Award attorney fees as authorized by these rules, by contract or by law.

## 13.110 ARBITRATOR'S OATH

Arbitrators will be required to execute the following oath in writing on a form provided by the trial court administrator at the time of appointment:

> I solemnly affirm that I will faithfully and fairly hear and examine the matters in controversy and that I will make a just award to the best of my understanding.

## 13.120 COMPENSATION OF ARBITRATOR

(1) The arbitration commission shall establish a compensation schedule for arbitrators. If the arbitrator suggests that extraordinary conditions justify a different fee, and the parties concur, the fee may be adjusted accordingly. If the parties, or any of them, do not concur, the arbitrator shall direct an inquiry to the court for determination of the appropriate fee.

(2) Within 14 days of the appointment of the arbitrator, each party must tender to the arbitrator a pro rata share of the preliminary payment for the arbitrator. Any deposit in excess of the arbitrator's actual fee will be refunded to the parties. Regardless of whether the arbitration hearing is conducted, the parties must pay a proportionate share of the arbitrator's fee. The arbitrator must submit to each party an itemized statement.

(3) Relief from the payment of arbitration fees, in whole or in part, as provided for in ORS 36.420(3) must be applied for immediately upon a case or a small claim becoming eligible for arbitration. The court will provide the arbitrator with a copy of any order waiving or deferring all or any part of the fees.

(4) Any dispute as to the amount of the arbitrator's fee must be submitted to the court.

(5) The arbitrator's fee may be considered a recoverable item of costs.

## 13.130 RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES AND ATTORNEYS

Unless all parties otherwise agree, no disclosure of any offers or settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator, regarding the merits of the case, except in the presence of, or on reasonable notice to, all other parties.

Except for Judicial Rules 3, 4, and 5 of the Code of Judicial Conduct, all rules of professional conduct concerning Bench and Bar apply in the arbitration process.

## 13.140 DISCOVERY

Discovery shall be conducted in accordance with Oregon Rules of Civil Procedure, and all motions shall be determined by the arbitrator. The arbitrator shall balance the benefits of discovery against the burdens and expenses. The arbitrator shall consider the nature and complexity of the case, the amount of controversy, and the possibility of unfair surprise that may result if discovery is restricted.

## 13.150 SUBPOENA

In accordance with the Oregon Rules of Civil Procedure, a lawyer of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing.

## 13.160 SCHEDULING OF THE HEARING

(1) The arbitrator shall set the time, date and place of hearing and shall give reasonable notice of the hearing date to the parties and comply with ORS 36.420.

(2) Except for good cause shown, the hearing must be scheduled to take place not sooner than 14 days, or later than 49 days, from the date of assignment of the case to the arbitrator. The parties may stipulate to a postponement or continuance only with the permission of the arbitrator. Such postponements or continuances must also be within the 49-day period. Any continuances or postponements beyond such period require the arbitrator to obtain approval of the presiding judge. The arbitrator must give notice of the hearing date and any continuance to the trial court administrator.

(3) Continuances and postponements shall not be granted except in the more unusual circumstances. Approximately two months are allocated for the arbitration process. The arbitrator is given the power to enforce the rules and will be required to maintain the schedule.

## 13.170 PREHEARING STATEMENT OF PROOF

(1) At least 14 days prior to the date of the arbitration hearing, each party must submit to the arbitrator and serve upon all other parties all the following:

   (a) A list of all exhibits to be offered showing or accompanied by a description of the document and the name, address and telephone number of its author or maker and complying with UTCR 13.190(2)(c). Each party, upon request, must make any exhibits available for inspection and copying by other parties.

   (b) A list of witnesses the party intends to call at the arbitration hearing with their addresses and telephone numbers and a statement of the matters about which each witness will be called to testify.

   (c) An estimate as to the expected length of the hearing.

(2) A party failing to comply with this rule, or failing to comply with a discovery order, may not present at the hearing any witness or exhibit required to be disclosed or made available, except with the permission of the arbitrator.

(3) Each party must also furnish the arbitrator, at least 14 days prior to the arbitration hearing, with copies of pleadings and other documents contained in the court file which that party deems relevant.

## 13.180 CONDUCT OF HEARING

(1) Arbitration hearings shall be informal and expeditious. The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to do the following:

(a) Make the interrogation and presentation effective for the ascertainment of the facts.

(b) Avoid needless consumption of time.

(c) Protect witnesses from harassment or undue embarrassment.

(2) A witness shall be placed under oath or affirmation prior to presenting testimony, a violation of which oath shall be deemed contempt of court, in addition to other penalties that may be provided by law. The arbitrator may question the witness. The extent to which the rules of evidence will be applied shall be determined in the discretion of the arbitrator.

(3) The hearing may be recorded electronically or otherwise by any party or the arbitrator. The cost of such recording is not a recoverable item of cost.

## 13.190 CERTAIN DOCUMENTS ADMISSIBLE

(1) The documents listed in subsection (2) of this rule, if relevant, are admissible at an arbitration hearing, but only if:

(a) The party offering the document has included in the prehearing statement of proof a description of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing; and

(b) The party offering the document promptly has made available, after request, to all other parties, all other documents from the same author or maker.

(2) The following documents are subject to this rule:

(a) A bill, report, chart or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider on a letterhead or a printed bill.

(b) A bill for drugs, medical appliances or other related expenses on a letterhead or a printed bill.

(c) A bill for, or an estimate of, property damage on a letterhead or a printed bill. In the case of an estimate, the party intending to offer the estimate must forward with the prehearing statement of proof under UTCR 13.170 a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid.

(d) A police, weather, wage loss or traffic signal report or standard life expectancy table.

(e) A photograph, x-ray, drawing, map, blueprint or similar documentary evidence.

(f) The written statement of any witnesses, including the written report of an expert witness which may include a statement of the expert's qualifications, and including a statement of opinion which the witness would express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury.

(g) A document not specifically covered by any of the foregoing provisions, but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the policies, purposes and interests of justice.

(3) Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination.

## 13.200 ABSENCE OF PARTY AT HEARING

(1) The arbitration hearing may proceed and an award may be made in the absence of any party who, after due notice, fails to participate or to obtain a continuance or postponement.

(2) If a defendant is absent, the arbitrator shall require the plaintiff to submit evidence sufficient to support an award.

(3) In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award damages against the defendant or defendants who are absent.

(4) The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award.

## 13.210 FORM AND CONTENT OF AWARD

(1) The award must be in writing and prepared on a form prescribed by the court and signed by the arbitrator.

(2) The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages, costs and attorney fees where allowed under applicable law.

(3) Findings of fact, conclusions of law and written opinions are not required.

(4) The award must contain the caption of the case and all the following information:

(a) The date of the hearing, if any.

(b) The prevailing party and the amount of relief awarded.

(c) Whether any part of the award was based on the failure of any party to appear and the identity of that party.

(d) The name and office address of the arbitrator.

(e) Provision for costs and for attorney fees where allowed under applicable law.

(f) Interest in accordance with applicable law specifying the rate of interest and the date from which it accrues.

(5) Within 7 days after the conclusion of the arbitration hearing, the arbitrator shall send the award to the parties without filing with the court and shall establish procedures for determining attorney fees and costs.

(6) In dissolution cases, the arbitrator shall send the award to the parties within 7 days after the conclusion of the arbitration hearing and shall direct a party to prepare and submit a form of decree. The arbitrator, upon request of any party, shall give the parties an opportunity to be heard on the form of decree. The arbitrator shall then approve a form of decree and file the award, along with the approved form of decree, per UTCR 13.220.

1988 Commentary:

It is the intent of the Committee that 13.210(2) applies in dissolution cases.

1994 Commentary:

The Committee intends that the arbitrator determine all costs to which the prevailing party may be entitled, including the prevailing fee and share of the arbitrator's fee.

## 13.220 FILING OF AN AWARD

(1) The arbitrator shall file the award with the trial court administrator, together with proof of service of a copy of the award, upon each party within the following times after the completion of the arbitration hearing:

(a) In dissolution cases within 21 days.

(b) In all other cases within 14 days.

(2) An arbitrator may request an extension of time for filing of the award by presenting a written *ex parte* request to the trial court administrator. The trial court administrator may grant or deny the request, subject to review of the presiding judge. The arbitrator shall give the parties notice of any extension granted.

(3) The arbitrator may file with the trial court administrator and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the court to amend.

(4) After the award is filed, the arbitrator must return all documents and exhibits to the parties who originally offered them. All other documents and materials relating to the case must be delivered to the trial court administrator. The parties must retain all exhibits returned by the arbitrator until a final judgment is entered in the case.

## 13.240 JUDGMENT ON AWARD

If no request for trial *de novo* is filed within the time established by ORS 36.425(3), the arbitration decision and award will be entered and have the effect provided in that statute.

## 13.250 REQUEST FOR TRIAL *DE NOVO*

(1) A party who qualifies under ORS 36.425(2) may obtain a trial *de novo* on the case determined by completing the service, filing, payment of trial or jury fee and deposit as required under ORS 36.425(2).

(2) In addition to the provisions under ORS 36.425 relating to a trial *de novo*, the following provisions apply:

(a) In addition to filing a written notice of appeal and request for trial *de novo* with the trial court administrator, the party must serve on the parties a copy of the written notice of appeal and request for a trial *de novo* filed with the trial court administrator, and proof of such service must be filed with the trial court administrator.

(b) When cases are consolidated for arbitration and a party has filed an appeal from the arbitration award in one or more of the consolidated cases, any other party who otherwise qualifies under ORS 36.425(2) may serve and file with the trial court administrator a request for trial *de novo*, with proof of service on all other parties, within 20 days from the filing of the arbitration award or within two judicial days after the service of the initial written request for trial *de novo*, notwithstanding the lapse of 20 days from the filing of the arbitration award.

(c) If the trial *de novo* request is withdrawn, or abandoned, such appealing party must obtain permission of the court or there must be a stipulation of all parties to the abandonment of the appeal and the terms thereof.

(d) Cross appeal is not necessary to preserve issues raised in a counterclaim, because the trial *de novo* encompasses all claims raised by any party in the particular case appealed.

(e) The court may assess statutory costs against a party who withdraws a request for trial *de novo*.

## 13.260 PROCEDURE AT TRIAL *DE NOVO*

The trial court administrator must seal any award if a trial *de novo* is requested. Neither judge nor jury will be informed of the arbitration result. The sealed arbitration award will not be opened until after the verdict is received and filed in a jury trial or until after the judge has rendered a decision in a court trial.

## 13.280 TRIAL DOCKET

Every case assigned to arbitration shall maintain its approximate position on the civil trial docket as if the case had not been assigned to arbitration, unless, at the discretion of the court, the docket position should be modified.

## 13.300 PRETRIAL SETTLEMENT CONFERENCES AND ARBITRATION

Cases assigned to arbitration or the pendency of an arbitration hearing does not exclude a case from participating in a court pretrial settlement conference.

## CHAPTER 15—Small Claims

15.010 SMALL CLAIMS FORMS

(1) The following small claims documents shall be accepted, when the proper fee is tendered, by all judicial districts that accept small claims filings:

(a) Claim and Notice of Claim substantially in the form specified in Form 15.010.1a in the UTCR Appendix of Forms, to commence a small claims action pursuant to ORS 46.425 and 46.445.

(b) Request for Default Judgment, Defendant Status Affidavit substantially in the form specified in Form 15.010.1b in the UTCR Appendix of Forms, to request a default judgment pursuant to ORS 46.475(2).

(c) Request for Judgment; Noncompliance Affidavit substantially in the form specified in Form 15.010.1c in the UTCR Appendix of Forms, to request a judgment for failure to comply with a mediation agreement.

(d) Small Claims Judgment; Money Award substantially in the form specified in Form 15.010.1d in the UTCR Appendix of Forms as a form for use to enter judgment in a small claims action under ORS 46.475(2), 46.485, and 46.488.

(2) Forms in these formats may be made mandatory by SLR. SLR 15.011 is reserved for making such formats mandatory in the judicial district.

## CHAPTER 19—Contempt Proceedings

NOTE: The rules in UTCR Chapter 19 were adopted pursuant to ORS 33.145 by the Oregon Supreme Court. They were originally adopted as Temporary Oregon Contempt Rules (TOCR) by the Supreme Court on the 27th of September, 1991, by Supreme Court Order No. 91-078. Although not originally adopted as UTCR, these rules were amended by the Supreme Court and added to the UTCR effective August 1, 1993, by Supreme Court Order No. 93-035. Even though added to the UTCR for purposes of citation, comment, and proposed changes, the rules in this UTCR chapter will continue to be changed only by action of the Supreme Court as provided under ORS 33.145.

### 19.010 SCOPE, CONSTRUCTION, APPLICATION

(1) The rules in this UTCR chapter govern contempt proceedings under ORS 33.015 to 33.155 and are intended to promote efficient and fair resolution of contempt proceedings. The rules in this chapter will be changed only by action of the entire Supreme Court.

(2) The rules in this chapter do not preclude courts from exercising their inherent authority in contempt proceedings over matters not covered by rule or statute, so long as that exercise fosters efficient and fair resolution of the matter.

### 19.020 INITIATING INSTRUMENT REQUIREMENTS

(1) In addition to any other requirements for initiating instruments, the initiating instrument in a contempt proceeding under ORS 33.055 (remedial) or ORS 33.065 (punitive), must state:

(a) the maximum sanction(s) that the party seeks;

(b) whether the party seeks a sanction of confinement; and

(c) as to each sanction sought, whether plaintiff considers the sanction remedial or punitive.

(2) Maximum Penalty Imposed

The court shall not impose a sanction greater than the sanction sought. A punitive sanction is presumed greater than a remedial sanction. A punitive sanction of confinement is presumed greater than other punitive sanctions. A remedial sanction of confinement is presumed greater than other remedial sanctions.

### 19.030 ALLOWING REMEDIAL SANCTIONS

Rules that apply to allowing remedial sanctions in a proceeding for only remedial sanctions under ORS 33.055 also apply to allowing remedial sanctions in a proceeding for punitive sanctions under ORS 33.065.

## 19.040 APPLICABILITY OF ORCP AND OTHER UTCR

(1) To the extent rules in this chapter are inconsistent with other applicable rules, the rules in this chapter govern contempt proceedings under ORS 33.015 to 33.155. Except as otherwise provided in this chapter:

(a) Oregon Rules of Civil Procedure (ORCP) and Oregon Rules of Appellate Procedure (ORAP) apply respectively to original and appellate contempt proceedings for remedial sanctions under ORS 33.055;

(b) UTCR that govern civil proceedings apply to original proceedings for remedial sanctions under ORS 33.055;

(c) UTCR and ORAP that govern criminal proceedings apply respectively to original and appellate contempt proceedings for punitive sanctions under ORS 33.065.

(2) On its own motion or that of a party in a contempt proceeding for remedial sanctions, a court may determine that a specific rule of procedure would not foster the fair and efficient resolution of the contempt proceeding.

(a) When a court makes that determination, it may modify the specific rule or adopt a different rule for all or part of the proceeding, so long as the modified or new rule fosters the fair and efficient resolution of the proceeding. Under this rule, the court may increase or decrease time limits or may limit or exclude responsive pleadings, or both, and may also modify other rule provisions.

(b) The court must give all parties to the proceeding notice that describes the modified or new rule. The notice must be in writing or on the record or both.

## 19.050 EXCEPTIONS TO AND LIMITATIONS ON APPLICABLE ORCP IN REMEDIAL PROCEEDINGS

Notwithstanding UTCR 19.040, in contempt proceedings for remedial sanctions:

(1) Unless the court determines that other claims should be joined for fair resolution of the contempt matter, only the following claims may be joined with a contempt claim:

(a) claims that arise out of the order or judgment that the contemnor allegedly violated;

(b) claims that involve facts and issues that would necessarily be determined in the contempt proceeding; and

(c) other claims for contempt arising out of a related matter.

(2) ORCP references to "complaint" include the initiating instrument in a contempt proceeding.

(3) ORCP applicable to juries and jury trials apply only when a statute or constitution provides a specific right to jury trial in a contempt proceeding and a party claims that right.

(4) A party may amend a pleading only on motion and with the court's approval.

(5) The following ORCP do not apply: 3, 5, 21 C, 21 D, 21 E, 23 A, 24 A, 24 B, 25 A, 32, 54 A(1), 54 E, 66, 73, 81 A, 81 C, 82 A(3), 84, and 85.

BAS:BCM:sh/E3S89013.03
5/8/03

# APPENDIX OF FORMS

Certificate of Document Preparation. You are required to truthfully complete this certificate regarding the document you are filing with the court. Check all boxes and complete all blanks that apply:

A. [ ] I selected this document for myself, and I completed it without paid assistance.

B. [ ] I paid or will pay money to _____ for assistance in preparing this form/document.

_____
(Signature)

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

| | | |
|---|---|---|
| _____ | ) | |
| _____, | ) | |
| Plaintiff, | ) | CIVIL CASE NO. _____ |
| | ) | |
| v. | ) | STATEMENT FOR |
| | ) | ATTORNEY FEES FOR |
| _____ | ) | (PLAINTIFF/DEFENDANT) |
| _____, | ) | JUDGE _____ |
| Defendant. | ) | |

STATE OF OREGON )
) ss.
County of _____ )

The undersigned attorney represents to the Court, under penalties of perjury, the following facts offered in support of an award of reasonable and necessary attorney fees are true:

1. Plaintiff/Defendant is entitled to recover attorney fees pursuant to the following facts, statute or rule:

_____

_____

2. The number of hours and services rendered in this matter for each attorney, clerk, and legal assistant and the hourly rates for each are set forth in detail in Exhibit "1" attached. Exhibit "1" is summarized as follows:

| Name | Position | Hourly Rate | Number of Hours | Fees |
|---|---|---|---|---|

3. The following charges are reasonable and necessary and are not included in the hourly rates set forth above:

(a) Postage: $_____

(b) Photocopies: $_____ (_____¢/page)

(c) Long Distance Telephone Charges: $_____

(d) Mileage: $_____ (_____¢/mile)

(e) Computer Research: $_____

(f) Investigator: $_____ ($_____/hour)

(g) _____: $_____

4. The Court should consider the factors checked below in determining a reasonable attorney fee award, as explained more fully in Exhibit(s) _____ attached:

___ the novelty and difficulty of the questions involved;

___ skills requisite to perform the legal service properly;

___ the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

___ fees customarily charged in the locality for similar legal services;

___ the amount involved and the results obtained;

___ the time limitations imposed by the client or by the circumstances;

___ the nature and length of the professional relationship with the client;

___ the experience, reputation and ability of the lawyer(s) performing the services; and

___ whether the fee is fixed or contingent.

5. In anticipation of efforts that will be spent in postcollection proceedings, plaintiff/defendant seeks the additional sum of $_____ as explained more fully in Exhibit _____ attached.

6. Based on the above, plaintiff/defendant is entitled to an award of reasonable and necessary attorney fees in the sum of $_____.

DATED this _____ day of _____, 20___.

_____

_____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20___.

_____

Notary Public for Oregon
My commission expires: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

| | | |
|---|---|---|
| In the Matter of the Dissolution of Marriage/Separation of: | ) | |
| | ) | |
| _____, | ) | Circuit Court No. _____ |
| Petitioner, | ) | |
| | ) | Uniform Support Affidavit of Petitioner/ |
| AND | ) | Respondent (Child/Spousal Support Case) |
| | ) | |
| _____, | ) | |
| Respondent. | ) | |

This form is a SWORN AFFIDAVIT (under oath) required for support determinations. It must be signed before a notary public, may be made available to the other party, and may be filed in court. The form consists of this part, on pages 1 through 4, and any attachments requested on those pages. If either party seeks spousal support or any change from the uniform child support guidelines, you must also complete the following and the attachments requested therein and submit all of them with this form:

Schedule 1--Monthly Expenses and Rebutting Factors Required

In addition, certain documentation MUST be attached as indicated on page 2.

STATE OF OREGON )
) ss.
County of _____ )

I, _____, being first duly sworn under oath, depose and say that I am the _____ in the above-entitled matter and that the following are true to the best of my knowledge and belief:

1. Your Age: _____ Date of Birth: _____ Social Security No.: _____-_____-_____
2. Residence Address: _____
3. Name of Employer & Address: _____
4. Occupation: _____ Title: _____
5. Length of Employment: _____
6. Children born of or adopted during this relationship:

| Name of Child | Age | Child living with: Me | Other Parent | Other |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

7. List all people living in your household (other than children named in item 6 above):

| Name | Age | Relationship to You | Monthly Income |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

8. List your other dependents or children not listed in items 6 or 7 above:

| Name | Age | Relationship to You | Monthly Income |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

9. ENTER THE FOLLOWING INFORMATION FROM SCHEDULES INDICATED:
   A. TOTAL GROSS INCOME (From page 3, item 16.D.) :_____
   B. TOTAL EXPENSES OF CHILDREN (From Schedule 1, item 1.) :_____
   C. TOTAL MONTHLY EXPENSES (From Schedule 1, item 6.) :_____

10. (a) Are you or your present spouse entitled to receive **court-ordered** child support for any children now living with you? YES ❑ NO ❑ If "YES," complete the following and **ATTACH A COPY OF ALL SUCH CHILD SUPPORT ORDERS**.

| Name of Child | Age | Relation to You | Support Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(b) Are those support payments being made? YES ❑ NO ❑

11. Are you required to pay a court-ordered child support obligation for a child of yours who is not listed in item 6 above? YES ❑ NO ❑ If "YES," complete the following and **ATTACH A COPY OF ALL SUCH CHILD SUPPORT ORDERS**.

| Name of Child | Age | Name of Recipient | Monthly Support Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

12. Are you ordered to pay or entitled to receive court-ordered **spousal** support? YES ❑ NO ❑ If "YES," complete the following and **ATTACH A COPY OF ALL SUCH SPOUSAL SUPPORT ORDERS**.

| Owed To | Paid By | Monthly Support Amount |
|---|---|---|
| | | |

Owed Until: _____ (Date or Event): _____

13. Are you incurring child care costs on behalf of the children listed in item 6 above? YES ❑ NO ❑ If "YES," complete the following and **attach documentation** verifying the information provided below:

| Name of Child | Day-care Provider and Address | Monthly Cost (gross amount before application of any tax credit or subsidy) |
|---|---|---|
| | | |
| | | |
| | | |

14. Do you receive any subsidy for such care? If so, amount $_____ per month.

15. **MEDICAL AND DENTAL ELECTIONS**--The child support recipient may elect to require the support payor to name the child(ren) as the beneficiary on a health/dental insurance plan. If so elected, the child support may be adjusted by an amount equal to all or a portion of the cost to parent who provides the child's(ren's) portion of the health/dental insurance premium. Please choose:

❑ I wish to require health/dental insurance coverage by the other party and understand that a portion of the premium may be deducted from support.

❑ I do not wish to require health/dental insurance coverage by the other party.

❑ I provide health/dental insurance through my employer; see page 4, item 18, of this schedule, for information.

**ATTACHMENTS**

**REQUIRED**

❑ Last four (4) payroll stubs.

❑ Most recent federal and state income tax return.

❑ Copies of any and all relevant child/spousal support orders.

**OPTIONAL**

❑ Child care documentation if you want this considered.

❑ Medical/dental insurance documentation.

(Income, Deductions and Medical/Dental Insurance)

You must complete and submit the following attachments. Copies of recent: (1) federal and state income tax returns, (2) last four pay stubs, and (3) if self-employed, most recent profit and loss statement.

16. Your Monthly Gross Income:

A. From Employment: If paid weekly, multiply weekly income by 4.3 to arrive at a monthly gross income and insert below. If paid every two weeks, multiple two weeks' income by 2.15 and insert below):

| Description | Monthly Amount |
|---|---|
| Gross Hourly Wage: _____ | |
| Average Number of Hours Worked Per Week: _____ | |
| Gross Monthly Income: | _____ |
| Gross Monthly Tips/Commissions/Bonuses (identify): | _____ |
| **SUBTOTAL: 16.A.** | _____ |

B. From Self-Employment: If you own an interest in a partnership or in a closely held corporation, attach last year's Schedule K-1, and/or corporation federal income tax return:

| Description | Monthly Amount |
|---|---|
| Gross Receipts: | _____ |
| Expense Reimbursements: | _____ |
| Rental Income: | _____ |
| Royalty Income: | _____ |
| Less Ordinary/Necessary Expenses: | (_____) |
| Plus Monthly Portion of Accelerated Component of any Depreciation Allowance or Investment Tax Credits: | _____ |
| **SUBTOTAL: 16.B.** | _____ |

C. Other Sources of Income: (Please attach verification of any income available to you as listed below):

| Description | Monthly Amount |
|---|---|
| Dividends: | _____ |
| Interest Income: | _____ |
| Trust Income: | _____ |
| Contract Payments (less underlying debt): | _____ |
| Annuity Income: | _____ |
| Retirement Benefits--Pension/IRA/Keogh (nonsocial security): | _____ |
| Social Security Income: | _____ |
| Workers' Compensation Benefits Per Week Multiplied by 4.3 = | _____ per month |
| Unemployment Benefits Per Week Multiplied by 4.3 = | _____ per month |
| Disability Income: | _____ |
| Gift or Prizes: | _____ |
| Spousal Support: | _____ |
| Expense Reimbursements and/or Per Diem Allowance (not listed in item B. above): | _____ |
| ADC Benefits: | _____ |
| FCAS (food stamps): | _____ |
| Other (specify): _____ | _____ |
| **SUBTOTAL: 16.C.** | _____ |

D. Summary of Your Gross Income:

| Description | Monthly Amount |
|---|---|
| Income from Employment (item 16.A. above): | _____ |
| Self-Employment Income (item 16.B. above): | _____ |
| Other Income (item 16.C. above): _____ | |

YOUR TOTAL MONTHLY GROSS INCOME: **ENTER HERE and on this Affidavit Page 1, line 9.A.** **16.D.** _____

17. Your Monthly Deductions from Gross Income:

A. Mandatory Deductions:

Number of exemptions claimed by you: _____

| Description | Monthly Amount |
|---|---|
| State Income Taxes: | _____ |
| Federal Income Taxes: | _____ |
| Social Security (FICA): | _____ |
| Workers' Compensation Insurance Premium: | _____ |
| Wage Withholding, Wage Assignment or Garnishment: | _____ |
| (Paid to: _____) | |
| Medical Insurance for the Parties' Joint Children if Additional Premium Total Premium _____--less cost of coverage for yourself + other dependents = | _____ |
| **SUBTOTAL OF MANDATORY: 17.A.** | _____ |

B. Optional Deductions:

| Description | Monthly Amount |
|---|---|
| Retirement/Profit Sharing: | _____ |
| Savings Plan: | _____ |
| Credit Union: | _____ |
| Other: | _____ |
| **SUBTOTAL OF OPTIONAL: 17.B.** | _____ |

C. Summary of Deductions:

Mandatory--from item 17.A. above: _____

Optional--from item 17.B. above: _____

**TOTAL MONTHLY DEDUCTIONS: 17.C.** _____

18. Information for Medical and Dental Insurance Coverage: (For children listed on page 1, item 6, of this Affidavit which is currently provided or available for the benefit of those children.):

❑ I provide this (complete information below)

❑ Other parent provides this (complete if known)

| | **HEALTH INSURANCE** | **DENTAL INSURANCE** |
|---|---|---|
| Name of Insurance Company: | _____ | _____ |
| Plan or Group Name: | _____ | _____ |
| Plan/Group Number: | _____ | _____ |
| Individual I.D. Number: | _____ | _____ |
| Address for Claims Submission: | _____ | _____ |
| Phone Number for Information: | _____ | _____ |
| Amount of Annual Deductible: | _____ | _____ |
| Gross Monthly Premium Actually Paid by You (exclude amounts paid by your employer): | _____ | _____ |
| Monthly Premium to Cover Only You: | _____ | _____ |
| Dependent's Portion of Monthly Premium: | _____ | _____ |

Are there dependents other than children on page 1, item 6, of this Affidavit enrolled with plan? YES ❑ NO ❑

If Yes, total number of other dependents: _____ | _____

I certify that my answers and the information on this affidavit and the attached schedules are true to the bet of my knowledge and ability. I further certify that the information on the attached documents is true to the best of my knowledge and ability. DATED this _____ day of _____, 20____.

_____

Name

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ day of _____, 20____.

_____

Notary Public for Oregon

My Commission Expires: _____

**SCHEDULE 1**
(Monthly Expenses and Rebutting Factors)

You must complete this schedule and prepare and submit the attachments requested in this schedule if either party seeks spousal support or any change from the uniform child support guidelines. These are the total household expenses you must pay each month. Utility bills should be averaged over the year. Any other annual, quarterly, or other periodic payments should be converted to a monthly average. DO NOT LIST ANY EXPENSE IF IT IS DEDUCTED FROM YOUR WAGES. ONLY INCLUDE DIRECT EXPENSES FOR JOINT CHILDREN IN SECTION 1.

1. Direct monthly expenses for children of this relationship which you pay:

| | | AMOUNT |
|---|---|---|
| A. | School Expenses: | |
| | School Lunches: | _____ |
| | Books, Tuition: | _____ |
| | Activities: | _____ |
| | Other (Specify): | _____ |
| B. | Food (other than school lunches): | _____ |
| C. | Day Care: | _____ |
| D. | Clothing: | _____ |
| E. | Medical Insurance--Premium Payments: | _____ |
| F. | Unreimbursed Health Costs: | _____ |
| G. | Unreimbursed Dental Costs: | _____ |
| H. | Baby-Sitting (not work-related): | _____ |
| I. | Lessons: | _____ |
| J. | Grooming Needs: | _____ |
| K. | Hobbies, Recreation: | _____ |
| L. | Entertainment: | _____ |
| M. | Allowances: | _____ |
| N. | Transportation: | |
| | Gasoline, Oil: | _____ |
| | Insurance for Driving-Age Child: | _____ |
| O. | Miscellaneous (Specify): _____ | _____ |

TOTAL DIRECT EXPENSES OF CHILDREN: **ENTER HERE and on Uniform Support**
(ADD 1.A. thru 1.O.) **Affidavit page 1, line 9.B.** 1. _____

| | Source | Amount | Name |
|---|---|---|---|
| Average Monthly Amount of Child's Income: | | | |

2. FIXED COSTS

| | | Monthly Amount |
|---|---|---|
| A. | RESIDENCE: | |
| | Mortgage or Rent: | _____ |
| | Property Taxes: (if not included in mortgage) | _____ |
| | Second Mortgage: | _____ |
| | Other: | _____ |
| B. | UTILITIES: | |
| | Electricity: | _____ |
| | Heat (other than electricity): | _____ |
| | Water: | _____ |
| | Garbage: | _____ |
| | Telephone: | _____ |
| | Other: | _____ |
| C. | TRANSPORTATION: | |
| | Car Payments: | _____ |
| | Gas & Oil: | _____ |
| | Maintenance & Repairs: | _____ |
| | Other (Specify): | _____ |
| D. | INSURANCE: | |
| | Life: | _____ |
| | Automobile: | _____ |
| | Medical/Dental: | _____ |
| | Residence: | _____ |
| E. | FOOD AND HOUSEHOLD ITEMS: (exclude food expenses for joint children covered in Schedule 1, part 1, above) | _____ |

F. CLOTHING: _____
Grooming/Personal Needs: _____

G. MEDICINE AND PHARMACEUTICAL--Unreimbursed medical/dental costs: _____

H. COURT/DHR-ORDERED SUPPORT PAYMENTS: _____

**TOTAL FIXED COSTS (A-H):** 2. _____

3. CONSUMER OBLIGATIONS:

| NAME OF CREDITOR | BALANCE DUE | MONTHLY PAYMENTS |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

**TOTAL MONTHLY PAYMENTS ON CONSUMER OBLIGATIONS:** 3. _____

4. DISCRETIONARY EXPENSES:

A. Entertainment: _____
B. Vacations: _____
C. Gifts: _____
D. Religious Contributions: _____
E. Dues and Subscriptions: _____
F. Club Memberships & Dues: _____

**TOTAL DISCRETIONARY EXPENSES:** 4. _____

5. ADDITIONAL EXPENSES:

_____ _____
_____ _____

**TOTAL ADDITIONAL EXPENSES:** 5. _____

6. TOTAL EXPENSES EXCLUDING DIRECT EXPENSES OF CHILD
(Add 2, 3, 4, and 5): **ENTER HERE and on Uniform Support Affidavit, page 1, line 9.C.** 6. _____

7. Other factors that affect my income and expenses or that should be considered to rebut the presumptive child support calculations: (attach supporting documentation whenever possible).

*[**NOTE:** This form illustrates the accounting format required by UTCR 9.160. Each accounting must also comply with all other applicable statutes and court rules. An accounting filed in the court need not include check boxes, instructions in the form shown in bracketed italics, and portions of the form inapplicable to the individual accounting.]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON
For the County of _____
*[Probate Department]*

| | | |
|---|---|---|
| In the Matter of the *[Mark one]*<br>❑ Conservatorship ❑ Estate of<br><br>_____,<br><br>❑ Protected Person ❑ Deceased | )<br>)<br>)<br>)<br>)<br>)<br>) | Case no. _____<br><br>*[TITLE]* ACCOUNTING<br>*[The title must distinguish the accounting from all prior accountings by annual accounting number, time period, or "FINAL".]* |

The ❑ conservator ❑ personal representative ("the Fiduciary") presents this *[Title]* _____ Accounting, covering the period from _____, 20___ through _____, 20___ ("the accounting period").

1.

**Bonding and Asset Restrictions**. *[Mark (a) or (b).]*

(a) ❑ No bond is required because _____. *[If the bond was waived by court order, so state and show date of the order. If the bond is waived by statute or rule, so state and identify the statute or rule.]*

(b) ❑ The current amount of the total bond, including riders, is $_____.

*[Complete the following information for interim (annual) accounts only.]*

| | |
|---|---|
| Value of the assets on last date of this accounting period | $_____ |
| Plus: estimated income for next accounting period | $_____ |
| Total assets and income | $_____ |
| Less: value of restricted assets and income<br>(Orders restricting assets or income are dated _____) | $_____ |
| Unrestricted assets and income requiring bond or new restrictions | $_____ |

(c) The Fiduciary requests the following changes in the amount of the existing bond or in restrictions on assets or income. *[Check all that apply.]*

- ❑ None.
- ❑ Reduce the bond to $_____.
- ❑ Increase the bond to $_____.
- ❑ Restrict the following assets: _____.
- ❑ Remove the restrictions from the following assets: _____.

(d) *[If appropriate, explain the Fiduciary's request for the bond and restrictions.]*

2.

**Asset Schedule.** The following *[or Exhibit 1 hereto]* is a complete and accurate statement of all assets owned by the estate or conservatorship at any time during the accounting period and the Fiduciary's estimate of the value of each asset: *[If preferred, attach an exhibit using the following format.]*

| Description of Asset* | Beginning Value | Value of Later-Acquired Asset | Value at Disposition | Current (Ending) Value |
|---|---|---|---|---|
| | | | | |
| | | | | |
| TOTALS | | | | |

* *[For assets restricted by court order, include the date and title of the order. For any asset acquired or disposed of during the accounting period, include the date of acquisition or disposal. For a depository (an account into which funds are received or from which funds are disbursed) include the separate paragraph or exhibit with the statement of receipts and disbursements.]*

3.

**Receipts and disbursements.** The following *[or Exhibits ___ to ___ hereto]* are complete and accurate schedules of funds received in and disbursed from each depository account of the estate or conservatorship during the accounting period. *[If preferred, attach exhibits using the following format.]*

(a) *[State name of depository and account number.]*

| Date | Source of Receipt | Explanation | Amount |
|---|---|---|---|
| | OPENING BALANCE | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL RECEIPTS | | | |
| TOTAL RECEIPTS PLUS (+) OPENING BALANCE | | | |

| Date | Check # | Payee | Explanation | Amount |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| TOTAL DISBURSEMENTS | | | | |
| ENDING BALANCE (Total Receipts, Plus (+) Opening Balance, Minus (-) Total Disbursements) | | | | |
| TOTAL DISBURSEMENTS PLUS (+) ENDING BALANCE | | | | |

*[Reconcile any difference between the accounting ending balance for the depository account and the ending balance shown on any ending depository statement filed with this accounting.]*

(b) *[Add a separate subparagraph or exhibit for each additional depository account.]*

4.

**Vouchers and Depository Statements.** *[Vouchers are documents evidencing each disbursement and showing the name of the payee, date, and amount. Depository statements are statements from banks, brokerage firms, insurance companies, and similar entities with which estate assets are deposited showing the balance in the depository account at the beginning and end of the accounting period. If vouchers and depository statements are filed with the account, skip to (c). Otherwise mark (a) or (b).]*

(a) ❑ The filing of vouchers and depository statements was waived *[Mark one.]*
- ❑ By court order herein dated _____.
- ❑ By the following statute or court rule: _____.

(b) ❑ The Fiduciary requests that the Court waive the requirement of filing vouchers and depository statements for this accounting. The vouchers and depository statements are located at the following address: _____. The vouchers and depository statements will be available for examination by interested persons at that location until one year after the approval of the final accounting herein.

(c) ❑ The Fiduciary requests that vouchers and depository statements filed with this accounting be returned. A self-addressed envelope with adequate postage for return of the documents is attached to the vouchers.

5.

**Narrative Description of Changes during the Accounting Period.** During the accounting period the following changes in the assets or financial circumstances occurred: *[Describe all changes not clearly disclosed in the Asset Schedule, including, without limitation, corrections to previously declared values, omitted assets, the closing of an account, the sale or purchase of an asset, a significant change in living expenses, or a stock split.]*

(a) *[Use as many subparagraphs as necessary to separately describe each change.]*

(b)

6.

**Fiduciary Disclosures.** *[Disclose and explain every transaction if the transaction was any of the following: (a) A gift. (b) A transaction with a person or entity with whom the Fiduciary has a relationship which could compromise or otherwise affect decisions made by the Fiduciary. The disclosure shall include, but is not limited to, payment for goods, services, rent, reimbursement of expenses, and any other like transactions. (c) A payment for goods or services provided by a person not engaged in an established business of providing similar goods or services to the general public. (d) A payment for goods or services at a rate higher than that ordinarily charged to the general public.]*

(a) *[Use as many subparagraphs as necessary to separately describe each transaction.]*

(b)

7.

**Fees.** *[Insert any information regarding requests for Fiduciary or attorney fees and costs.]*

8.

**Notice.** *[Insert any required information addressing the Fiduciary's notice requirements.]*

9.

**Other Matters.** *[Add as many additional paragraphs as may be needed to justify requests for court orders included in the prayer of the accounting and to comply with requirements applicable to the particular accounting, such as the representations concerning tax filings required by ORS 116.083(3)(a) in a final account for a decedent's estate. If necessary, add an appropriate indication of relief requested to the title of the accounting. It is the responsibility of the Fiduciary and the attorney for the Fiduciary to identify and comply with all requirements imposed by statue, rule, or court order.]*

WHEREFORE the Fiduciary prays for an order:

1. Approving this accounting. *[If applicable. Generally annual accounts in decedent's estates will not be approved by the Court until the final account is approved.]*

2. Setting the amount of the bond at $_____. *[Include this provision only if a change of the bond amount is requested in Paragraph 1.]*

3. Changing the asset restrictions as follows: _____. *[Include this provision only if a change of the asset restrictions is requested in Paragraph 1.]*

4. Directing the payment of $_____ as reasonable Fiduciary's fee and $_____ as reasonable attorney fees incurred by the Fiduciary. *[If applicable.]*

5. *[Set forth any additional relief requested.]*

Dated _____, 20___

_____
*[Print name of Fiduciary signing above]*
*[Mark one:]* ❑ Conservator ❑ Personal representative

STATE OF OREGON )
: ss.
County of _____ )

I, *[Print name of Fiduciary]*, being first duly sworn or affirmed, depose and say that I have read the foregoing *[Title]* Accounting, and the same is true as I verily believe.

_____
*[Print name of Fiduciary signing above]*

SUBSCRIBED AND SWORN TO or affirmed before me on _____, 20__.

_____
NOTARY PUBLIC FOR OREGON

CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

| | | |
|---|---|---|
| In the Matter of the Suspension of the Driving Privileges of _____. | ) | PETITION FOR JUDICIAL REVIEW |
| _____, Petitioner | ) | DMV No. _____ |
| v. | ) | Circuit Court Case No. _____ |
| Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV), Respondent. | ) | |

PETITION FOR JUDICIAL REVIEW OF ORDER OF DMV

Petition seeks judicial review of the final order of suspension of driving privileges entered by the Hearings Officer of the DMV in case number _____, date _____.

Parties to this review are:

_____
_____
_____
(set out petitioner's full name and address)

And,
Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV)

The Order of the DMV should be vacated because evidence in the record fails to substantially support the Hearings Officer's finding that the following requirements were met (check those items that apply):

___ (a) The petitioner, at the time the petitioner was requested to submit to a test under ORS 813.100, was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

___ (b) The police officer had reasonable grounds to believe, at the time the request was made, that the petitioner had been driving under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

___ (c) The petitioner refused to test under ORS 813.100 or took the test and the test disclosed that the level of alcohol in the petitioner's blood was sufficient to constitute being under the influence of intoxicating liquor under ORS 813.300.

___ (d) The petitioner had been informed under ORS 813.100 of the rights and consequences as described under ORS 813.100.

___ (e) The petitioner was given written notice required under ORS 813.100.

___ (f) If the petitioner submitted to the test, the person administering the test was qualified to administer the test under ORS 813.160.

__ (g) If the petitioner submitted to the test, the methods, procedures and equipment used in the test complied with requirements under ORS 813.160.

___ (h) Other: _____
_____
_____

Dated this _____ day of _____, 20___.

_____
Set out name, OSB number (attorneys only),
address and telephone number
( ) Petitioner
( ) Attorney for Petitioner
(Please check one of the above)

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Petition for Judicial Review on:

Manager
DMV Hearings
Driver and Motor Vehicle Services Branch of the
Oregon Department of Transportation
1905 Lana Avenue NE
Salem, Oregon 97314

and,

Attorney General or Designee
General Counsel Division
Transportation - Implied Consent Unit
100 Justice Building
Salem, Oregon 97310

by mailing by registered or certified mail to those persons a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office at _____, Oregon, on _____ (date) with the postage prepaid.

_____
( ) Petitioner
( ) Attorney for Petitioner
(Please check one of the above)

FORM 10.010.b – CERTIFICATE OF SERVICE FOR PETITION OF JUDICIAL REVIEW OF ORDER OF DMV – UTCR 10.010

(Rev. 8-1-02)
TCG-5-F2

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____COUNTY
Small Claims Division - _____
(court's address and phone number)

_____
Plaintiff
_____
Address
_____
City State Zip
_____
County

**V.**

_____
Defendant Defendant
_____
A.K.A. A.K.A.

CASE No. _____

**CLAIM AND**
**NOTICE OF CLAIM**

Name, Title (if applicable) and Address for Service on Defendant(s):

_____ _____
Defendant Defendant
_____ _____
A.K.A. A.K.A.
_____ _____
Address Address
_____ _____
City State Zip City State Zip
_____ _____
County County

I, Plaintiff, claim that on or about _____,_____, the above-named defendant(s) owed me the sum of $_____, and this sum is still owing for (reason) _____
_____
_____

I have incurred fees of $_____ and service expense of $_____.

Claim Amt: _____
Filing Fee: _____
Service Fee: _____
Total Due: _____

STATE OF OREGON
_____ COUNTY ss.
I, the above-named plaintiff, having been duly sworn, state that I have read the above claim and that it is true as I verily believe, and that I have made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.

DATED: _____

_____
Plaintiff

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

_____
My Commission expires _____

**********

NOTICE TO DEFENDANT: I certify that the foregoing is a true copy of the claim filed against you.

TRIAL COURT ADMINISTRATOR
By_____

NOTICE TO DEFENDANT — READ REVERSE SIDE

NOTICE TO DEFENDANT

READ THESE PAPERS CAREFULLY!

Within 14 DAYS after receiving this notice you MUST do ONE of the following things:

- Pay the claim plus filing and service expenses paid by the plaintiff; OR
- Demand a hearing; OR
- Demand a jury trial.

If you fail to do one of the following things within 14 DAYS after receiving this notice, then upon written request from the plaintiff, the clerk of the court will enter a judgment against you for the amount claimed plus filing fees and service expenses paid by the plaintiff, plus a prevailing party fee.

If you have any questions about the small claims court filing procedures after this notice, you may contact the clerk of the court; however, the clerk cannot give you legal advise on this claim.

Defendant filing fees (to be filled in by plaintiff with fees for specific county where filed):

To Demand a Hearing if the amount claimed is $1500.00 or less ..... $_____

To Demand a Hearing if the amount claimed is over $1500.00 ..... $_____

To Demand a Jury Trial (Only if the amount claimed is over $750.00) .... $_____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____COUNTY
Small Claims Division - _____
(court's address and phone number)

_____
Plaintiff

**v.**

_____

_____
Defendant(s)

CASE No. _____

**REQUEST FOR DEFAULT JUDGMENT; DEFENDANT STATUS AFFIDAVIT**

(NOTE: Complete this and attach a completed Judgment you propose)

I, _____ request default judgment against _____
Name Other Party's Name
for the following :

A total judgment award of $_____, which total includes:
1. A money award of $_____ ,
2. Prejudgment interest of $_____,
3. Accrued arrearages of $_____, if any,
4. Costs and service expenses of $_____,
5. A prevailing party fee under ORS 20.190 of $_____

I request judgment include postjudgment interest at a rate of _____% per _____ based on _____
(authority for interest)

And, I request the following terms in addition to or in lieu of a money award: ☐ NONE, or _____
_____

I have attached a completed proposed small claims judgment for purposes of this request.

In furtherance of this request and being duly sworn, I state that:

1. The above-named defendant(s) was duly and regularly served with a copy of the claim and failed to pay the claim or demand a hearing or trial within 14 days;

2. No person against whom I seek judgment by this request is, to the best of my knowledge and belief:

(a) one of the following defined by ORS 125.005 and protected by ORCP 69B: a minor, incapacitated, a protected person, or a respondent;
(b) a person protected by the Soldiers' and Sailors' Civil Relief Act or 1940, as amended (50 App.USC 501 to 593).

_____
Plaintiff's Name (print)

DATED: _____

_____
Authorized Signature

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

_____
My Commission expires _____

Form 15.010.1b – REQUEST FOR DEFAULT JUDGMENT; DEFENDANT STATUS AFFIDAVIT; – UTCR 15.010(1)(b)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____COUNTY
Small Claims Division - _____
(court's address and phone number)

_____
Plaintiff

**v.**

_____

_____
Defendant(s)

CASE No. _____

**REQUEST FOR JUDGMENT; NONCOMPLIANCE AFFIDAVIT**

(NOTE: Complete this and attach a completed Judgment you propose)

I, _____ request judgment against _____
Name Other Party's Name
for the following :

A total judgment award of $_____, which total includes:
1. A money award of $_____ ,
2. Prejudgment interest of $_____,
3. Accrued arrearages of $_____, if any,
4. Costs and service expenses of $_____,
5. A prevailing party fee under ORS 20.190 of $_____

I request judgment include postjudgment interest at a rate of _____% per _____ based on _____
(authority for interest)

And, I request the following terms in addition to or in lieu of a money award: ☐ NONE, or _____
_____

I have attached a completed proposed small claims judgment for purposes of this request.

I, _____, hereby swear or affirm that on _____
(date agreement signed)
_____ and I signed a Mediation Agreement which has been entered
(Print other party's name)
in this case and which contained the following terms. _____
_____

_____ has not complied with the agreement by failing to do the following:
(print other party's name)
_____
_____
I did not keep the other party from following the agreement. I certify that on _____ I mailed a copy
(date)
of this request to the party against whom I request judgment at _____.
(address)

_____
Plaintiff's Name (print)

Dated: _____

_____
Authorized Signature

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON
_____
My Commission expires _____

Form 15.010.1c – REQUEST FOR JUDGMENT; NONCOMPLIANCE AFFIDAVIT – UTCR 15.010(1)(c)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____COUNTY
Small Claims Division - _____
(court's address and phone number)

_____
Plaintiff

**v.**

_____

_____
Defendant(s)

CASE No. _____

**SMALL CLAIMS JUDGMENT; MONEY AWARD**

Submitted by: _____ ☐ Plaintiff ☐ Defendant

JUDGMENT. I hereby give judgment in this case for the Judgment Creditor named in the money judgment/money award below and against the judgment debtor(s) named therein.
In addition to or in lieu of the money award below, this judgment establishes the following requirements: ☐ NONE, OR _____

_____.

MONEY JUDGMENT/MONEY AWARD

1. Judgment Creditor: _____
Name(s)/Address

2. Judgment Creditor's Attorney: ☐ None, OR _____
Name/Address/Phone No.
_____ in this case.

3. Judgment Debtor(s). Information for any additional debtor(s) is provided in attachments and incorporated herein by reference:

4a. Name: _____ 4b. Name: _____

5a. Address: _____ 5b. Address: _____

6a. DOB: _____ 6b. DOB: _____

7a. SSN or Tax ID: _____ 7b. SSN or Tax ID: _____

8a. Dr Lic. No./State: _____ 8b. Dr Lic. No./State: _____

9. Judgment Debtor's Attorney: ☐ None, OR _____ in this case.
Name

10. I know the following person or public body is entitled to a portion of the money award: ☐ NO ONE, OR _____
Name

11. Judgment is for a total judgment award of $_____ , which includes the following money amounts (and postjudgment interest at rate shown):

12. Money award of $_____

13. Prejudgment interest of $_____

14. Postjudgment interest on "11" will be at _____% per _____.

15. Accrued arrearages of $_____

16. Costs and service expenses of $_____

17. Prevailing party fee of $_____

DATED SIGNED: _____

_____
Circuit Court Judge

_____
Print Judge's Name

Form 15.010.1d – SMALL CLAIMS JUDGMENT; MONEY AWARD – UTCR 15.010(1)(d)