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.

<u>1991 Commentary</u>:

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.