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.