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

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

(2) A motion to postpone a trial 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 trial judge 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 JURY INSTRUCTIONS

No identifying information relating to the parties or any other extraneous material, including authorities, shall appear on submitted jury 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 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 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.