In the Matter of Out-of-Cycle Amendment of UTCR 21.010, 21.020, 21.030, 21.040, 21.050, 21.060, 21.070, 21.080, 21.090, 21.100, 21.110, and 21.120	)	CHIEF JUSTICE ORDER No. 12-050 ORDER OF OUT-OF-CYCLE AMENDMENT OF UTCR 21.010, 21.020, 21.030, 21.040, 21.050, 21.060, 21.070, 21.080, 21.090, 21.100, 21.110, and 21.120

I HEREBY ORDER, pursuant to ORS 1.002 and UTCR 1.020, that:

1. Good cause has been shown and the effective date, requirements, and time limits established by UTCR 1.020(2), (3), and (4) are waived to make changes to the UTCR necessary for the Oregon eCourt Program implementation process.

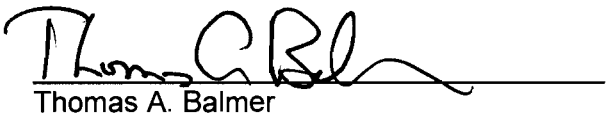
2. The following UTCR, as shown in Attachment A to this order, are amended effective immediately: 21.010, 21.020, 21.030, 21.040, 21.050, 21.060, 21.070, 21.080, 21.090, 21.100, 21.110, and 21.120. For the convenience of the reader, deleted wording is shown in [*brackets and italics*] and new wording is show in **{braces, underline, and bold}**.

3. The following UTCR is not amended by this order: UTCR 21.130. To provide context, clarity, continuity, and convenience to the public, the bench, and the bar, that rule is set out in Attachment A to this order in its current form.

4. Pursuant to UTCR 1.020(5), the UTCR Reporter will take the steps necessary to post these UTCR changes for public comment as soon as practicable and shall place the changes on the agenda of the next UTCR Committee meeting.

5. This order takes effect immediately.

Dated this 16th day of July, 2012.



Thomas A. Balmer
Chief Justice

21.010 DEFINITIONS

The following definitions apply to this chapter:

(1) "Conventional filing" means a process where**{by}** a filer files a paper document with the court.

(2) "Document" means a pleading, a paper, a motion, a declaration, an application, a request, a brief, a memorandum of law, an exhibit, or other instrument submitted by a filer, including any exhibit or attachment **{referred to}** [*referenced*] in the instrument. Depending on the context, as used in this chapter, "document" may refer to an instrument in either paper or electronic form.

(3) "Electronic filing" means the process where**{by}** a filer electronically transmits to a court a document in an electronic form to **{initiate}** [*commence*] an action or to be included in the court file[*s*] for an action.

(4) "Electronic filing system" means the system provided by the Oregon Judicial Department for the electronic filing and the electronic service of a document via the Internet**{, excluding the electronic filing of a criminal citation under ORS 133.073}**. A filer may access the system through the Oregon Judicial Department's website (http://www.courts.oregon.gov/**{OJD}** [*ojd*]).

(5) "Electronic service" means the electronic transmission of a notice of filing [*or a notice of a scheduled court proceeding*] by the electronic filing system to the electronic mail (**{email}**[*e-mail*]) address of a party **{who has consented to electronic service under UTCR 21.100(1)}** [*registered as a filer with the electronic filing system*]. The notice **{will}** [*may*] contain a hyperlink to access the document that **{was}** [*is*] filed electronically for the purpose of **{accomplishing}** [*effecting*] service.

(6) "Filer" means a person registered with the electronic filing system who submits a document for filing with the court.

(7) **{"Unrepresented party"}** [*"Pro se litigant"*] means a person who [*by law may*] appear**{s}** in an action without a lawyer.

{(8) "Service contact" means any party to be served electronically by the electronic filing system, through email notification.}

{(9) "Other service contact" means any person associated with the filer for purposes of an action whom the filer wishes to receive email notification from the electronic filing system of documents electronically served in the action. An "other service contact" includes another lawyer, administrator, or staff from the filer's place of business, or another person who is associated with the filer regarding the action or otherwise has a legitimate connection to the action.}

21.020 APPLICABILITY; LOCAL RULES OF COURT NOT PERMITTED

(1) As authorized by ORS 1.002, this chapter applies to those circuit courts that have [*written*] approval from the State Court Administrator to accept filings electronically for designated case types and filers. The Oregon Judicial Department's website lists the circuit courts approved to accept filing electronically for designated case types and filers (http://www.courts.oregon.gov/**{OJD}** [*ojd*]).

(2) No circuit court may make or enforce any local rule, other than those local rules authorized by UTCR 4.090, governing the electronic filing and electronic service of documents.

21.030 FILERS

(1) Authorized Filers

(a) **{Any person who completes an online registration form and obtains a login under subsection (b) of this section is an authorized filer in the electronic filing system.}** [*The following may register as filers in the electronic filing system:*

(i) any member of the Oregon State Bar who is authorized to practice law;

(ii) any lawyer admitted to the practice of law pro hac vice during the period of the lawyer's temporary admission;

(iii) a pro se litigant who is a party to the action; and

(iv) any other person as approved by the State Court Administrator.]

(b) A filer must complete a**{n online}** registration form to request a login for access to the electronic filing system and **{must execute}** [*sign*] a user agreement. The filer must provide information sufficient to establish the filer's technical capacity to send and receive electronic filings and court notices. On receipt of the required information, **{the electronic filing system will send an email}** [*notice will be sent*] to the filer **{with an activation link and login information}** [*of his or her registration status. If the filer is approved to access the electronic filing system, a filer shall be assigned a login*].

(2) Conditions of Electronic Filing

To have access to the electronic filing system, each filer agrees to, and must:

(a) register for access to the electronic filing system;

(b) comply with the registration conditions when using the electronic filing system;

(c) maintain one or more operative **{email}**[*e-mail*] addresses at which the filer agrees to accept **{email notifications from the electronic filing system and electronic}** service **{of documents, provided that the filer has consented to electronic service in an action as provided in UTCR 21.100(1)}**; and

(d) furnish required information for case processing.

21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) **{A}** [*All*] document[*s*] submitted **{electronically}** to the court must be in **{the form of}** a text-searchable Portable Document Format (PDF) **{file that does not exceed 25 megabytes. A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each}**.

(2) When viewed in an electronic format and when printed, a submitted document must comply with the requirements of ORCP 9 E and UTCR 2.010 except as to any requirement that a document bear a physical signature when filed.

(3) **{The court may reject s}**[*S*]ubmitted documents that do not comply with these provisions [*may be rejected*] as provided in UTCR 21.080**{(5)}**.

21.050 PAYMENT OF FEES

(1) Payment Due **{o}**[*O*]n Filing

A filer must pay the filing fees for filing a document electronically at the time of electronic filing.

(2) Fee Waivers and Deferrals

{(a) Except as provided in subsection (b) of this rule, a}[*A*] filer may apply for a waiver or deferral of court fees and costs [*at the time of filing a document electronically*], as provided in ORS 21.682 and ORS 21.685**{, when}** [. *A filer may*] submit**{ting}** for **{electronic}** filing a document that constitutes an appearance, motion, or pleading for which a fee is required, with an accompanying application for a waiver or deferral of a required fee. The document will not be accepted for filing unless the **{court grants the}** fee waiver or deferral [is *granted*].

{(b) A filer may not electronically apply for a waiver or deferral of court fees when submitting a document that initiates an action, as provided in UTCR 21.070(3)(b).}

21.060 FILES OF THE COURT

(1) Electronic Filing

(a) The electronic filing of a document is accomplished when **{a filer submits a document electronically to the court, the electronic filing system receives the document, and the court accepts the document for filing.}**[*:*

(i) a filer submits a document electronically to the court;

(ii) the electronic filing system sends a confirmation receipt to the filer that the electronic filing system received the document; and

(iii) the court accepts the document for filing.]

(b) When the court accepts the electronic document for filing, the electronic document constitutes the court's record of the document.

(2) Converting a Conventional Filing into an Electronic Format

The court may digitize, microfilm, record, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a document that is filed conventionally in accordance with the protocols established by the State Court Administrator under ORS 8.125(11) and ORS 7.124.

21.070 SPECIAL FILING REQUIREMENTS

(1) Courtesy Copies

The court may require that a filer submit, in the manner and time specified by the court, a copy of the document that was filed electronically and a copy of the **{submission or acceptance email}** [*confirmation receipt*] from the electronic filing system.

(2) Court Order Requiring Electronic Filing and Electronic Service

Except for any document that requires service under ORCP 7 or that requires personal service, the court may, on the motion of any party or on its own motion, order all parties to file and serve all documents electronically, after finding that such an order would not cause undue hardship or significant prejudice to any party.

(3) **{Documents that Must Be Filed Conventionally**

The following documents must be filed conventionally:

(a) An accusatory instrument that initiates a criminal action, except as otherwise provided by ORS 133.073.

(b) A petition that initiates a juvenile delinquency proceeding under ORS 419C.250.

(c) A document that initiates an extradition proceeding under ORS 133.743 to 133.857.

(d) A citation that initiates a parking violation proceeding.

(e) An initiating instrument in a contempt proceeding, other than a motion, under ORS 33.055 (remedial) or an accusatory instrument that initiates a contempt proceeding under ORS 33.065 (punitive).

(f) A notice of appeal from a justice court or municipal court judgment under ORS 138.057 or ORS 157.020(1), a justice court order under ORS 157.020(2), or a municipal court conviction under ORS 221.359.

(g) A document that initiates an action that is accompanied by an application for a waiver or deferral of a required fee.

(h) A document filed under seal or subject to in camera inspection, including a motion requesting that a simultaneously filed document be filed under seal or subject to in camera inspection.

(i) A document delivered to the court under ORCP 55 (H)(2)(c).

(j) A Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV) record, as defined in UTCR 10.020(1).}

(**{4}**[*3*]) **{Limits on}** Attachments and Exhibits

(a) A filer **{who electronically}** [*must*] submit**{s for filing}** [*as*] a[*n*] **{document that includes one or more}** exhibit**{s}** or attachment**{s must limit the exhibits or attachments to}** only [*an excerpt of the referenced*] material**{, including an excerpt from another document,}** that is directly **{and specifically related}** [*germane*] to the **{subject of, and referred to in, the document being submitted for electronic filing}** [*matter under consideration by the court*]. A responding party may timely file an additional excerpt or the complete document that the party believes is directly **{and specifically related}** [*germane*]. The court may require a party to file an additional excerpt or the complete document.

(b) A demonstrative or oversized exhibit must be filed conventionally.

(c) Trial exhibits may not be filed electronically or conventionally with the court and must be delivered or submitted as ordered by the assigned judge.

{(5) Expedited Filings

A filer must include the words "EXPEDITED CONSIDERATION REQUESTED" in the Filing Description field when preparing an expedited filing for submission through the electronic filing system.}

21.080 ELECTRONIC FILING DEADLINES

(1) **{A filer may use the electronic filing system at any time}** [*Electronic filing is permitted at all times*], except when the electronic filing system is temporarily unavailable.

(2) The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone where the court is located on the day the document must be filed.

(3) The court considers a document submitted for an electronic filing when the electronic filing system receives the document [*and sends a confirmation receipt to the filer*]. The electronic filing system will **{send}** [*affix to each document the time of day, day of the month, month, and year that the document is received and will issue*] an **{email}** [*electronic confirmation receipt*] to the filer that includes the date and time of receipt**{, unless the filer has elected through system settings not to receive the email}**.

(4) If the court accepts the document for filing, the date and time of filing entered in the register relate[*s*] back to the date and time the electronic filing system received the document. **{When the court accepts the document, t}**[*T*]he electronic filing system will affix the date and time of **{submission}** [*acceptance*] on the document**{, thereby**

indicating the date and time of filing of the document}. When the court accepts a document for filing, the **{electronic filing system}** [*court*] sends an **{email}** [*electronic notice*] to the filer**{, unless the filer has elected through system settings not to receive the email.}**

{(a) The provisions of this subsection do not apply to a proposed order or judgment that is electronically filed.}

{(b) When the court accepts a proposed order or judgment through the electronic filing system, the document is deemed submitted for judge review.}

(5) If the court rejects a document submitted electronically for filing, the **{electronic filing system}** [*court*] will **{send an email to}** [*affix the date and time of rejection on the document and electronically return the document to*] the filer [*with a notice to all parties who have been provided notice of filing under UTCR 21.100(2)*] that explains why the court rejected the document**{, unless the filer has elected through system settings not to receive the email. The email will include a hyperlink to the document}**.

{(a) A filer who resubmits a document} [*The court may give a filer the opportunity to resubmit the document*] within 3 days of the **{date}** [*day and time*] of rejection **{under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document}** to meet [*the*] filing requirements. **{If the third day following rejection is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day. For purposes of this subsection, resubmission means submission of the document through the electronic filing system under section (3) of this rule or physical delivery of the document to the court. A filer who resubmits a document under this subsection must include:**

(i) a cover letter that sets out the date of the original submission and the date of rejection and that explains the reason for requesting that the date of filing relate back to the original submission, with the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the subject line of the cover letter; and

(ii) if an electronic resubmission, the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the Filing Description Field.}

{(b) A responding party may object to a request under subsection (a) of this section within the time limits as provided by law for the type of document being filed. For the purpose of calculating the time for objection provided by law under this subsection, if applicable, the date of filing is the date that the document was resubmitted to the court under subsection (a) of this section.} **[***If the court gives a filer the opportunity to resubmit the document and the filer does so within the time allowed, the date and time of filing of the resubmitted document relates back to the date and time of the filing of the original document and the time to*

respond is extended by the number of full or partial elapsed days from the time of the rejection notice to the time of the resubmission of the document to the court. The court may, by order, strike the document from the court's file in the action if the filer receives notice from the court and does not resubmit the document within the time period specified by the court.]

21.090 ELECTRONIC SIGNATURES

(1) The use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required.

(2) In addition to information that law or rule requires to be in the document, a document filed electronically must have a signature block that includes the typed name of the filer preceded by an "s/" in the space where the signature would otherwise appear.

Example:
s/ John Q. Attorney
JOHN Q. ATTORNEY
OSB #
Email address
Attorney for Plaintiff Smith Corporation, Inc.

(3) When more than one party joins in filing a document, the filer must show all of the parties who join by one of the following:

(a) submitting a**{n imaged}** [*scanned*] document containing the signatures of all parties joining in the document;

(b) a recitation in the document that all such parties consent or stipulate to the document; or

(c) identifying in the document the signatures that are required and submitting each such party's written confirmation no later than [*three (*]3[*)*] days after the filing.

2011 Commentary:

The Committee does not intend the requirement to include an email address in a signature block to constitute consent to receipt of service of documents by email. Electronic service of documents may only be accomplished as specified in UTCR 21.100.

21.100 ELECTRONIC SERVICE

(1) **{Consent to Electronic Service and Withdrawal of Consent}**

{(a) A f}[*F*]iler[*s*] who [*are registered with the electronic filing system and who have*] **{electronically}** appear**{s}**[*ed*] in the action **{by filing a document through the electronic filing system that the court has accepted}** [*and not withdrawn*] **{is}** [*are*] deemed to consent to **{accept}** electronic service of **{any}** [*all*] document[*s*] filed by **{any}** [*the court or*] other registered filer[*s*] in an action, except for any document that requires service under ORCP 7 or that requires personal service. [*A*

party may also agree to accept electronic service by filing and serving notice. The notice must include the electronic notification address(es) at which the party agrees to accept service.]

{(b) A filer who is dismissed as a party from the action or withdraws as a lawyer of record in the action may withdraw consent to electronic service by removing the filer's contact information as provided in subsection (2)(a) of this rule.

(c) Except as provided in subsection (b) of this section, a filer may withdraw consent to electronic service only upon court approval based on good cause shown.}

{(2) Contact Information

(a) At the time of preparing the filer's first electronic filing in the action, a filer described in subsection (1) of this rule must enter in the electronic filing system the name and service email address of the filer, designated as a service contact on behalf of an identified party in the action. If the filer withdraws consent to electronic service under subsection (1)(b) or (1)(c) of this rule, then the filer must remove the filer's name and service email address as a designated service contact for a party.

(b) A filer described in subsection (1)(a) of this rule may enter in the electronic filing system, as an other service contact in the action:

(i) an alternative email address for the filer; and

(ii) the name and email address of any additional person whom the filer wishes to receive electronic notification of documents electronically served in the action, as defined in UTCR 21.010(9). If a lawyer enters a client's name and contact information as an other service contact under this subsection, then the lawyer is deemed to have consented for purposes of Rule of Professional Conduct 4.2 to delivery to the client of documents electronically served by other filers in the action.

(c) A filer is responsible for updating any contact information for any person whom the filer has entered in the electronic filing system as either a service contact for a party or as an other service contact in an action.

(d) A filer may seek court approval to remove a person entered by another filer as an other service contact in an action if the person does not qualify as an other service contact under UTCR 21.010(9).}

{(3) Selecting Service Contacts and Other Service Contacts

When preparing an electronic filing submission with electronic service, a filer is responsible for selecting:

(a) the appropriate service contacts in the action, for the purpose of accomplishing electronic service as required by law of any document being electronically filed; and

(b) the appropriate other service contacts in the action, if any, for the purpose of delivering an electronic copy of any document being electronically filed.}

({**4**}[2]) When **{the court accepts an electronic document for filing under UTCR 21.060(1)(a)}** [*a filer submits a document through the electronic filing system*], the electronic filing system **{sends an email}** [*transmits a notice of filing*] to the **{email}**[*e-mail*] address of each **{person}** [*party*] who**{m}** the filer **{selected as a service contact or other service contact under subsection (3) of this rule}** [*designates as a person to be electronically served*]. The **{email}** [*notice of filing*] contains a hyperlink to access **{the}** [*a*] document **{or documents}** that **{have been}** [*is*] filed electronically. Transmission of the **{email}** [*notice of the filing*] by the electronic filing system **{to the selected service contacts in the action}** constitutes service.

({**5**}[3]) Completion and Time of Electronic Service

Electronic service is complete when the electronic filing system **{sends the email to the selected service contacts in the action}** [*transmits the notice of filing*].

({**6**}[4]) Electronic service performed in accordance with this chapter is equivalent to service by mail as provided in ORCP 10 C.

({**7**}[5]) Proof of Electronic Service

A filer must attach at the end of any document submitted electronically a list of names and addresses of all parties requiring conventional paper service, followed by a clearly identified list of the names of all parties requiring service that will be served electronically by the electronic filing system.

({**8**}[6]) Service Other **{t}**[*T*]han **{b}**[*B*]y Electronic Means

The filing party is responsible for **{accomplishing}** [*perfecting*] service in any manner permitted by the Oregon Rules of Civil Procedure and for filing a proof of service with the court for the following documents:

(a) **{a}** document[*s*] required to be filed conventionally under this chapter;

(b) **{a}** document[*s*] that cannot be served electronically on a party who appeared in the action; and

(c) **{a}** document[*s*] subject to a protective order.

21.110 HYPERLINKS

(1) A document that is filed electronically may contain hyperlinks to other **{parts}** [*portions*] of the same document or hyperlinks to a location on the Internet that contains a source document for a citation or both.

(2) A hyperlink to cited authority does not replace standard citation format. A filer must include the complete citation within the text of the document. Neither a hyperlink, nor any site to which it refers, is part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in a document filed electronically.

(3) The Oregon Judicial Department neither endorses nor accepts responsibility for any product, organization, or content at any hyperlinked site, or to any site to which that site refers.

21.120 RETENTION OF DOCUMENTS BY FILERS

(1) Unless the court orders otherwise, if a filer electronically files a document that contains the original signature of a person other than the filer, the filer must retain the document in its original paper form for [*ten (*]10[*)*] years.

(2) On reasonable notice, the filer must provide a paper copy for inspection by another party, the clerk, or the court.

21.130 PROTECTED INFORMATION

The use of information contained in a document filed electronically or information accessed through the electronic filing system must be consistent with state and federal law.