In the Matter of Out-of-Cycle Amendment of UTCR 5.140 and Adoption of Form 5.140.1c	))))))	CHIEF JUSTICE ORDER No. 12-062 ORDER OF OUT-OF-CYCLE AMENDMENT OF UTCR 5.140 AND ADOPTION OF FORM 5.140.1c

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 consistency with ORCP 38 C.

2. UTCR 5.140, as shown in Attachment A to this order, is amended effective immediately. For the convenience of the reader, deleted wording is shown in [*brackets and italics*] and new wording is shown in **{braces, underline, and bold}**.

3. Form 5.140.1c, as shown in Attachment A to this order, is adopted effective immediately.

4. Form 5.140.1 is renumbered as Form 5.140.2.

5. 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.

6. This order takes effect immediately.

Dated this 10th day of September, 2012.

Thomas A. Balmer
Chief Justice

5.140 [*INTERSTATE DEPOSITION INSTRUMENTS—REGISTERING A FOREIGN COMMISSION IN OREGON*] {**OREGON DISCOVERY IN FOREIGN PROCEEDINGS**}

{**(1) To obtain discovery in the State of Oregon for a proceeding pending in another state pursuant to Oregon Rule of Civil Procedure (ORCP) 38 C, a party must submit to the court all of the following:**

(a) The foreign subpoena.

(b) An original and two copies of a fully completed subpoena that

(i) complies with the requirements of the ORCP, including ORCP 55; and

(ii) contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.

(c) A declaration and request for issuance of a subpoena pursuant to ORCP 38 C, substantially in the form specified in Form 5.140.1c in the UTCR Appendix of Forms, stating that

(i) the foreign subpoena was issued by a court of record of a state as "state" is defined in ORCP 38 C(1)(b);

(ii) the fully completed subpoena complies with the requirements of the ORCP, including ORCP 55; and

(iii) the fully completed subpoena contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.}

([*1*]{**2**}) To obtain discovery in the State of Oregon for [*an action*] {**a proceeding**} pending in [*another*] {**a foreign**} jurisdiction {**not subject to ORCP 38 C**}, a party [*shall*] {**must**} [*register*] {**file**} a writ, mandate, commission, letter rogatory, or order executed by the appropriate authority in the foreign jurisdiction with a circuit court of this state. The party in the foreign [*action*] {**proceeding**} or an active member in good standing of the Oregon State Bar [*shall*] {**must**} present in person at *ex parte* the original document or a certified copy from the foreign jurisdiction, a petition, and an order to register the document. (See Form [*5.140.1*] {**5.140.2**} in the UTCR Appendix of Forms.) If approved by the court, [*upon payment of the appropriate filing fee*] the matter will be assigned a circuit court case number and appropriate process may be issued by the Oregon attorney.

([*2*]{**3**}) In the event that a foreign jurisdiction {**not subject to ORCP 38 C**} has no procedure to issue a writ, mandate, commission, letter rogatory, or order to authorize a deposition to be taken in Oregon [*pursuant to ORCP 38 C*], at *ex parte* the party [*shall*] {**must**} present

a petition to compel the witnesses to appear and testify. The petition [*shall*] {**must**} be supported by an affidavit that contains all of the following:

(a) The name of the foreign jurisdiction in which the [*litigation*] {**proceeding**} is pending.

(b) The name of the court in which the [*litigation*] {**proceeding**} is pending.

(c) The caption or other relevant title of the [*litigation*] {**proceeding**}.

(d) The case number assigned by the foreign jurisdiction to the [*litigation*] {**proceeding**}.

(e) The date of filing of the [*litigation*] {**proceeding**} in the foreign jurisdiction.

(f) A statement that the foreign jurisdiction has no process to issue a writ, mandate, commission, letter rogatory, or order to compel a witness to appear and give testimony if the witness is located outside its jurisdictional boundary.

(g) A statement that the affiant seeks authorization from the court to proceed upon notice or agreement to take the testimony of witnesses in this state [*as provided by ORCP 38C (1)*].

(h) The identity of witnesses in this state to be compelled upon notice or agreement to appear and testify.

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

_____ Plaintiff	)	**Case No:** _____
v.	)	**DECLARATION AND REQUEST FOR ISSUANCE OF A SUBPOENA PURSUANT TO ORCP 38 C**
_____ Defendant	)	

Attach the following:

- ***foreign subpoena***
- ***original and two copies of a fully completed subpoena that complies with the requirements of the Oregon Rules of Civil Procedure (ORCP), including ORCP 55***

I, *(name)* _____, am a ☐ party ☐ attorney of record in the underlying foreign case. I request the court clerk to issue the completed subpoena that is attached to this declaration.

The foreign subpoena that is attached to this declaration was issued by a court of record of a state as "state" is defined in ORCP 38 C(1)(b).

The completed subpoena that is attached to this declaration complies with the requirements of the ORCP, including ORCP 55.

The completed subpoena that is attached to this declaration contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign case.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Dated _____

_____
Signature

_____
Print Name

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

_____, Plaintiff,	)	No. _____
v.	)	PETITION AND ORDER TO REGISTER FOREIGN DEPOSITION INSTRUMENT AND ISSUE SUBPOENAS
_____, Defendant.	)	

Petitioner certifies that:

The attached mandate, writ, commission, or letter rogatory was issued by _____ Court of the State or Country of _____ on the _____ day of _____, _____, in case no. _____, requiring testimony of a witness within the State of Oregon and the authority granted by the document is in full effect.

Therefore, petitioner requests that:

The mandate, writ, commission, or letter rogatory be approved by the court for filing so witnesses may be compelled by subpoena to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

Signed this _____ day of _____, _____.

_____
Signature

_____ _____
Name of Attorney Typed or Printed OSB No.

****

Petition granted. It is ordered that this petition and the attached mandate, writ, commission, or letter rogatory be filed, and upon filing, subpoena may be issued and served.

Signed this _____ day of _____, _____.

_____
Judge's Signature

_____
Judge's Name Typed or Printed