SECOND NOTICE SEEKING PUBLIC COMMENT ON PROPOSED OUT-OF-CYCLE REVISION OF UTCR 5.100

I. INTRODUCTION

We are seeking comment on the following proposed out-of-cycle change to Uniform Trial Court Rule (UTCR) 5.100 -- SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS. A proposed revision previously was circulated in March 2015 for public comment that closed April 30, 2015; the version now being circulated has been updated in response to comments received during the earlier circulation.

II. HOW TO SUBMIT COMMENTS

You may submit your comments by:

- website (http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx) – click on the button next to the proposed amendment
- email (utcr@ojd.state.or.us)
- traditional mail (UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, Oregon, 97301-2563)

Please submit your comments so that we receive them by 5:00 p.m., on August 17, 2015.

III. PROPOSED REVISION

For amended rules, proposed deletions are in [*brackets and italics*], and proposed additions are in {**braces, underline, and bold**}.

1. 5.100

EXPLANATION
This proposal initially was submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair, on March 13, 2015, and previously circulated for public comment in March 2015. The proposal has been updated in response to public comment, and this explanation also has been updated.

The proposal is in response to concerns expressed by circuit court judges who sign proposed orders and judgments using the new Oregon eCourt system although, if the revision is adopted, it would apply to all Oregon circuit courts, not just those using the Oregon eCourt system. The revision is intended to address several procedural issues that have arisen as the circuit courts transition to the Oregon eCourt system and that otherwise persist with proposed orders and judgments, namely, (1) the need for efficiency in judicial determination, within the Oregon eCourt system, as to whether a proposed order or judgment indeed is ready for judicial signature; (2) the need to provide a sufficient and uniform time period to object to a proposed order or judgment, regardless of whether a party is represented; (3) the need to clarify objection instructions and timelines for the opposing party; and (4) the need to ensure that the parties first work to resolve any objection before submitting a disputed proposed order or judgment to the court.

The proposed revision to UTCR 5.100 would break the current rule into three parts: service, objection, and submission. Set out below is a description of the key changes to each part, including changes made since the previous circulation for public comment.

As amended, the service component (subsection (1)) requires service on the opposing party, and an opportunity for objection, as to any proposed order or judgment unless an exception applies. The rule is no longer limited to only those proposed orders and judgments submitted "in response to a ruling of the court." The purpose of the updated wording is to ensure that the opposing party has a reasonable opportunity to object. The service component also sets out specific notice requirements and lengthens the time between service and submission, to 10 days from 3 days (current, if opposing party represented) or from 7 days (current, if opposing party not represented). The previous circulation provided for a 14-day period before submission of the proposed order or judgment to the court, which -- in response to comments received and as just noted -- has been shortened to 10 days. Also in response to public comment received, the notice requirement specifies that an opposing party has 7 days to object, with an additional 3 days for mailing, consistently with ORCP 10 C. Additionally, the service component retains the exceptions-to-service provisions currently set out in 5.100(1)(d) and (3), and adds additional exceptions.

The objection component (subsection (2)) is new and is intended to clarify the objection process for a proposed order or judgment that falls within the scope of subsection (1). The objection component requires service of a written, dated, and signed objection within 7 days of the date that the proposed order or judgment was sent to the opposing party. The 7-day period was shortened from 14 days in response to public comment. Also in response to public comment, the objection component now clarifies that the drafting party may submit the opposing party's objection to the court or the opposing party may file an objection by an identified date.

The submission component (subsection (3)) retains the current certificate of service requirement and also clarifies that a proposed order or judgment subject to subsection (1) may be submitted sooner than the 7-day period for objection, if the opposing party has stipulated to or approved the order or judgment, or the opposing party has objected and the objections are resolved or ready for resolution. Most notably, the submission component requires, for any proposed order or judgment submitted to the court, that a "certificate of readiness" be included, certifying that the proposed order or judgment is ready for judicial signature or that objections are ready for resolution, and also stating the "readiness" reason. Currently, in the Oregon eCourt system, a judge must access multiple electronic files and records to ensure that a proposed order or judgment is ready for signature; the "certificate of readiness" requirement will serve to more efficiently assure the court that the document is ready for signature, which in turn will lessen the potential for disputes, benefitting both the parties and the courts.

PROPOSED REVISION

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5.100 {**SERVICE AND**} SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

(1) {**Service of Proposed Order or Judgment**}[*Any proposed judgment or proposed order submitted in response to a ruling of the court must be:*]

(a) {**Except as provided in subsections (1)(c) and (3)(a) of this rule, a proposed order or judgment must be served on the opposing party, together with the notice described in subsection (1)(b) of this rule, and may not be submitted to the court less than 10 days after the date that the drafting party sent the proposed order or judgment to the opposing party.**}[*served on opposing counsel not less than 3 days prior to submission to the court, or*]

(b) {**The accompanying notice must inform the opposing party that the opposing party may:**}[*accompanied by a stipulation by opposing counsel that no objection exists as to the form of the judgment or order, or*]

{**(i) Stipulate to the proposed order or judgment by signature or approve the proposed order or judgment by signature or written confirmation of approval sent to the drafting party before the 10-day period expires; or**

(ii) Object to the proposed order or judgment in writing within 7 days from the date that the drafting party sent the proposed order or judgment to the opposing party. The information required by this paragraph must be in substantially the following form: "Any objection to this proposed order or judgment must be served on me within 7 days from [date the drafting party sent the proposed order or judgment to the opposing party]. You must date and sign any objection."}

(c) {**The requirements of subsection (1)(a) of this rule do not apply to:**} [*mailed to a self-represented party at the party's last known address not less than 7 days prior to submission to the court, or*]

{**(i) A proposed order or judgment presented in open court with the parties present;**

(ii) A proposed order or judgment that may be presented ex parte by law or rule and is so submitted;

(iii) A proposed judgment when an order of default already has been entered or is simultaneously being requested against the opposing party;

(iv) A proposed judgment subject to UTCR 10.090;

(v) Uncontested probate and protective proceedings; and

(vi) Matters certified to the court under ORS 416.422, ORS 416.430, ORS 416.435, and ORS 416.448.}

(d) {**A proposed judgment containing an award of punitive damages must be served on the Director of the Crime Victims' Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, not less than 10 days prior to submission to the court**}[*presented in open court with the parties present*].

(2) {**Objection to Proposed Order or Judgment**}[*A certificate describing the manner of compliance with subsection (1)(a) or (1)(c) of this rule must be attached to a proposed judgment or order submitted to the court.*]

{**(a) If the opposing party objects to the proposed order or judgment, the opposing party must:**

(i) Date and sign a written objection; and

(ii) Serve the objection on the drafting party within 7 days from the date that the drafting party sent the proposed order or judgment to the opposing party.

(b) After receiving an objection, the drafting party must make a reasonable effort to resolve the objection before submitting the proposed order or judgment to the court. If the parties are unable to resolve the objection after a reasonable effort, the drafting party must either

(i) File with the court, as part of submitting the proposed order or judgment under section (3) of this rule, a copy of any objection received and indicate any objection that remains unresolved; or

(ii) Include in the certificate required under section (3) of this rule a statement that the parties have conferred about objections and agreed that the opposing party intends to file any remaining objection with the court by a date that predates the drafting party's submission to the court and that is specified in the certificate.

(c) The opposing party may independently file objections with the court. If the opposing party does so, then:

(i) The objection is due either by the date agreed upon under subparagraph (b)(ii) of this subsection or, if subparagraph (b)(ii) does not apply, within 7 days from the date that the drafting party sent the proposed order or judgment to the opposing party.

(ii) The caption of the objection must state "Objection to Proposed [Order/Judgment]" and must describe the nature of the proposed order or judgment.

(iii) If the opposing party requests oral argument, the request must be stated in the caption.}

(3) {**Submission of Proposed Order or Judgment**}[*The requirements of subsection (1) of this rule do not apply to:*]

(a) {**The drafting party may submit to the court a proposed order or judgment that is subject to subsection (1)(a) of this rule before**

expiration of the 10-day submission period set out in subsection (1)(a) of this rule if the opposing party:}[*proposed judgments subject to UTCR 10.090, and*]

{**(i) Stipulates to the proposed order or judgment by signature or approves the proposed order or judgment by signature or written confirmation to the drafting party before the 10-day submission period expires; or**

(ii) Objects before the 10-day submission period expires, and all objections are resolved by agreement or are ready for court for resolution at the time of submission.}

(b) {**Every proposed order or judgment submitted to the court that is subject to subsections (1)(a) or (1)(d) of this rule must include a Certificate of Service describing the manner of compliance with the service requirement set out in that subsection**}[*uncontested probate and protective proceedings*].

{**(c) Every proposed order or judgment submitted to the court must include on its last page a Certificate of Readiness that includes the date and signature of the drafting party and that certifies that the proposed order or judgment is ready for judicial signature or that any objection is ready for resolution. The Certificate must be in substantially the following form:**

"Certificate of Readiness (Check all that apply):

"This proposed order or judgment is ready for judicial signature because:

"1. [ ] Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.

"2. [ ] Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

"3. [ ] I have served a copy of this order or judgment on all parties entitled to service and provided written notice of the 7-day objection period set out in subsection (2)(a)(ii) of this rule and:

"a. [ ] No objection has been served on me within that time frame.

"b. [ ] I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.

"c. [ ] After conferring about objections, [role and name of opposing party] agreed to file any remaining objection with the court by [date], which predated my submission.

"4. [ ] The relief sought is against an opposing party who has been found in default.

"5. [ ] An order of default is being requested with this proposed judgment.

"6. [ ] Service is not required pursuant to subsection (1)(c) of this rule, or by statute, rule, or otherwise.

"7. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (1)(d) of this rule."}

[*(4) Any proposed judgment containing an award of punitive damages shall be served on the Director of the Crime Victims' Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, not less than 3 days prior to submission to the court.*]

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