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 was adopted out-of-cycle by Chief Justice Order 15-058, effective January 1, 2016, and was circulated for public comment that closed on March 18, 2016; the version now being circulated contains proposed amendments 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 May 31, 2016.

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
UTCR 5.100 was amended out-of-cycle in 2015 based on a proposal submitted on behalf of the Oregon eCourt Law & Policy Work Group by Lisa Norris-Lampe, Chair. The original 2015 proposal was circulated twice for public comment before being adopted by Chief Justice Order, 15-058, effective January 1, 2016.

The 2015 amendment was intended to address 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 to ensure that self-represented parties are notified of their opportunity to object to a proposed order or judgment; and (2) the need for efficiency in judicial determination, within the Oregon eCourt system, whether a proposed order or judgment indeed is ready for judicial signature.

Because the 2015 amendment was adopted out-of-cycle, the amendment was sent out for a public comment period that ended March 18, 2016. In addition to receiving public comment, various Oregon Judicial Department (OJD) staff received informal questions and suggestions regarding the amendment. A work group within OJD evaluated all comments and questions received and proposed the amended version of UTCR 5.100, set out below, to the Uniform Trial Court Rules Committee. The Committee approved

that version to be sent out for public comment. If adopted, the amendment would be adopted out-of-cycle, with a projected effective date of August 1, 2016.

The proposed amendment would make the following changes to UTCR 5.100:

Service Requirement: In paragraph (1)(c), the proposed amendment replaces the current requirement that a proposed order or judgment be "mailed to" a self-represented party at the party's last known address with a clarified requirement that the document must be "served on" such a party.

Certificates of Service and Readiness, Placement: In subsection (2), the proposed amendment clarifies that the required certificates of service and readiness should be included in the proposed order or judgment document (not an attachment).

Certificate of Readiness, Reasons: In paragraph (2)(b), the proposed amendment clarifies that the purpose of the certificate of readiness is to identify the reason that the proposed order or judgment is ready for judicial action. The proposed amendment also eliminates the "default" reasons from the model certificate, which had been based on concepts of *ex parte* service and so are subsumed by the "service not required" reason. The proposed amendment also adds a new, "other," reason why the proposed order or judgment is ready for judicial action.

Service Requirement, Exceptions: In subsection (3), the proposed amendment rewords the current service exception for proposed orders or judgments submitted "*ex parte* by law or rule," to state that the service requirement does not apply when "service is not required by statute, rule, or otherwise." The proposed amendment then would delete the current service exceptions based on default, which in turn had been based on concepts of *ex parte* service.

Certificate of Readiness Requirement, Exceptions: In subsection (4), the proposed amendment creates an exception to the certificate of readiness requirement, for a proposed order or judgment that is both submitted and signed in open court with the parties present.

New Reporter's Note: The proposed amendment adds a Reporter's Note that clarifies the types of cases to which the rule does not apply and further notes that the computation of UTCR time requirements is subject to ORCP 10.

Other Minor Wording Changes: Throughout, the proposed amendment incorporates some minor wording changes and eliminates unnecessary wording.

PROPOSED REVISION

Click Here to Comment on This Rule

5.100 SERVICE AND SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

(1) Except as provided in subsection (3) of this rule, any proposed judgment or proposed order submitted to the court must be:

(a) Served on opposing counsel not less than 3 days prior to submission to the court, or

(b) Accompanied by a stipulation by opposing counsel that no objection exists as to the judgment or order, or

(c) {**Served on**}[*Mailed to*] a self-represented party [*at the party's last known address*]not less than 7 days prior to submission to the court and be accompanied by notice of the time period to object.

(2) [*The drafting party must attach to a*]{**Except as provided in subsection (4) of this rule, a**}ny proposed judgment or order {**submitted to the court must include, following the space for judicial signature,** }a dated and signed certificate that describes:

(a) The manner of compliance with any applicable service requirement under this rule; and

(b) The reason that the submission is ready for judicial signature or otherwise states that any objection is ready for resolution, {**identifying the reason** }in substantially the following form:

"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 {**each opposing party's** }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 {**each opposing party**}[*all parties*] entitled to service and:

"a. [ ] No objection has been served on me.

"b. [ ] I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed 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 independently file any remaining objection.

"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 (3) of this rule, or by statute, rule, or otherwise.

"{**5**}[*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 ({**5**}[*4*]) of this rule.["]

{**"6. [ ] Other: _____."**}

(3) The requirements of subsection (1) of this rule do not apply to:

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

(b) A proposed order or judgment {**for which service is not required by statute, rule, or otherwise**}[*that may be presented ex parte by law or rule and is so submitted*];

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

({**c**}[*d*]) A proposed judgment subject to UTCR 10.090;

({**d**}[*e*]) Uncontested probate and protective proceedings; and

({**e**}[*f*]) Matters certified to the court under ORS 416.422, ORS 416.430, ORS 416.435, and ORS 416.448.

(4) {**The requirements of subsection (2) of this rule do not apply to a proposed order or judgment presented and signed in open court with the parties present:**}[*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.*]

({**5**}[*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.**}

{**REPORTER'S NOTE (x-xx- 2016): This rule does not apply in the following types of cases: criminal; contempt cases seeking punitive sanctions; juvenile under ORS chapter 419A, 419B, or 419C; or violations, parking violations, or small claims (see UTCR 1.010(3)). Nothing in this rule prohibits a court from adopting an SLR that applies this rule to matters under SLR chapters other than chapter 5.**

Pursuant to UTCR 1.130, computation of Uniform Trial Court Rule time requirements is subject to ORCP 10.}

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04/15/2016