

CLACKAMAS COUNTY
CIVIL MOTION PANEL STATEMENT

Effective March 1, 2008

The Civil Motions Panel of the Clackamas County Circuit Court is a group of judges including pro tem judges who hear and decide regularly scheduled motions that are not assigned to a specific judge. Periodically, the judges confer regarding their prior rulings and have developed a consensus over time on particular issues.

This Statement does not have the force of law or court rule and the statements are not binding on any judge. The following is not a predetermination of any question presented on the merits to a judge in a particular action. The statement may be of assistance in guiding practitioners as to anticipated rulings on a specific question and may eliminate the time and expense of presenting the issues to the Court.

1. Arbitration

A. Motions - Once a case has been transferred to arbitration, all matters are to be heard by the arbitrator. UTCR 13.040(3). A party may show cause (by application to the Presiding Court) why a motion should not be decided by the arbitrator.

B. Punitive Damages - Where the actual damages alleged are less than \$50,000 the pleading of a punitive damages claim which may be in excess of the arbitration amount does not exempt a case from mandatory arbitration.

2. Discovery

A. Motions to Compel

1. Must set forth at the beginning of motion the items the moving party seeks to discover. ORCP 46A(2).

2. A motion to compel discovery may be denied if untimely. (ORCP 43 B (5).)

B. Medical Examinations (ORCP 44)

1. Vocational Rehabilitation Exams - Vocational rehabilitation exams have been authorized when the exam is performed as part of an ORCP 44 examination by a physician or psychologist.

2. Recording Exams and Presence of Third Persons - Audio recordings, video taping or presence of a third person are generally denied absent a showing of special need (e.g., young age of patient).

3. Pretrial Disclosure - Pretrial disclosure of an examiner's qualifications may be disclosed, however, the percentage of an examiner's income received from forensic work and the amount of charges is not discoverable.

C. Depositions

1. Attendance of Experts - Attendance of an expert at a deposition has generally been allowed, but has been reviewed on a case-by-case basis upon motion of a party.

2. Attendance of Others - Persons other than the parties and their lawyers are generally not allowed to attend a deposition. Upon a showing of need, exceptions have been granted.*

3. Out-of-State Parties - A non-resident plaintiff is normally required to appear at plaintiff's expense in Oregon for depositions. Upon a showing of undue burden or expense, the court has ordered, among other things, that plaintiff's deposition occur by telephone with a follow-up personal appearance in Oregon before trial.

Non-resident defendants normally have not been required to appear in Oregon for deposition at their own expense. The deposition of non-resident corporate defendants, through their agents or officers, normally occurs in the forum of the corporation's principle place of business. However, the court has ordered that a defendant travel to Oregon at either party's expense, to avoid undue burden and expense and depending upon such circumstances as whether the alleged conduct of the defendant occurred in Oregon, whether defendant was an Oregon resident at the time the claim arose, and whether defendant voluntarily left Oregon after the claim arose.

4. Videotaping - Videotaping of discovery depositions has been allowed with the requisite notice. The notice must designate the form of the official record. There is no prohibition against the use of BOTH a stenographer and a video, so long as the requirements are met.

5. Speaking Objections - Speaking objections are generally not approved. ORCP 39D(3)

D. Experts

Discovery under ORCP 36B(1) generally has not been extended to the identity of non-medical experts.

E. Insurance Claims Files

An insurance claim file “prepared in anticipation of litigation” has been held to be protected by the work product doctrine regardless of whether a party has retained counsel. Upon a showing of hardship and need pursuant to ORCP 36B(3) by a moving party, the court has ordered inspection of the file in camera and allowed discovery only to the extent necessary to offset the hardship (i.e. not for production of entire file).

F. Photographs

Photographs generally have been discoverable.

G. Tax Returns

In cases involving wage loss, impaired earning capacity or business losses, discovery of current or prior tax returns for a reasonable period is generally allowed.

H. Witnesses

1. Identity - the court has required production of documents, including those prepared in anticipation of litigation, reflecting the names, addresses and phone numbers of occurrence witnesses. To avoid having to produce documents which might otherwise be protected, attorneys have been allowed to provide a “list” of occurrence witnesses, including their addresses and phone numbers.

2. Statements - Witness statements, if taken by a claims adjuster or otherwise in anticipation of litigation, have been held to be subject to the work-product doctrine. Generally, witness statements taken within 24 hours of an accident, if there is an inability to obtain a substantially similar statement, have been discoverable.

ORCP 36B(3) specifies that any person, whether a party or not, may obtain his or her previous statement concerning the action or its subject matter.

I. Surveillance Tapes

Surveillance tapes of a plaintiff taken by defendant generally have been protected by the work-product privilege, and not subject to production under a hardship or need argument.

3. Venue

A change of venue forum non-conveniens (ORS 14.110) is granted or denied depending on the circumstances presented in support of the motion.

4. Motion Practice

A. Complying with the Certification Requirement. UTCR 5.010(3) specifies that the certificate of compliance is sufficient if it states either that the parties conferred or contains the **facts** showing good cause for not conferring.

B. Copy of Complaint - The failure to attach a marked copy of the Complaint to a Rule 21 motion pursuant to UTCR 5.020(2) has resulted in denial of the motions. UTCR 1.090.

C. Timely Responses - Responses not timely received pursuant to UTCR 5.030 will not be considered.

D. Redundant matters - Irrelevant or redundant matters which are not ultimate facts to a claim will be stricken. (ORCP 21E.)

5. Set Aside Default Judgment/Reinstatement.

Motions to set aside a default judgment or reinstate a case that has been dismissed for want of prosecution are generally allowed when justice requires.