

**NOTICE SEEKING PUBLIC COMMENT ON UTCR CHANGES:
PROPOSED 2.150, NEW 4.110, AND AMENDED 19.020
(Comment Period Closes at 5:00 p.m. on September 29, 2017)**

I. INTRODUCTION

We are seeking public comment on the following changes to the Uniform Trial Court Rules (UTCR):

- Proposed 2.150 (confidential financial information) for possible out-of-cycle adoption, with related Forms 2.150.1 and 2.150.2, and with conforming amendments to 2.100 and 2.110
- New 4.110 adopted out-of-cycle by Chief Justice Order [17-039](#), effective August 1, 2017
- 19.020 amended out-of-cycle by Supreme Court Order [17-028](#), effective June 6, 2017

II. HOW TO SUBMIT COMMENTS

You may submit your comments by:

- Click on the blue button next to the description of the change below
- 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 September 29, 2017. Comments will be reviewed by the UTCR committee at its next meeting, currently scheduled for October 20, 2017.

III. DESCRIPTIONS

For the convenience of the reader, deletions are in [*brackets and italics*], and additions are in {**braces, underline, and bold**} for rule amendments. There is no use of [*brackets and italics*] or {**braces, underline, and bold**} for a new rule or form.

1. 2.150

EXPLANATION

This proposal was first discussed at the UTCR meeting on October 14, 2016. It includes two new forms and conforming amendments to UTCR 2.100 and 2.110 (all are set out below). It was sent out for public comment without a committee recommendation. The committee received no public comment, but did discuss the proposal again at the spring meeting on March 10, 2017. It amended the proposal to add a provision stating that judges and court staff are not required to review documents for compliance with the rule. The committee also requested further outreach to the Bar and the courts in an effort to generate public comment on the proposal. The committee is particularly interested in comments on workload issues this rule may create for parties and court staff. Here is additional information on the proposal:

Origin. The proposal was submitted by Joshua Nasbe, Oregon Judicial Department Staff Counsel, on October 11, 2016. The proposal is directly modeled on several existing rules, including UTCR 2.100 and 2.130. This latter rule currently requires litigants in specified case types to separately file “confidential personal information” and note on the primary document filed with the court that the information has been separately filed.

October 14, 2016, meeting summary. The proponent explained that the instant proposal takes a nearly identical stance towards “protected financial information,” which is defined to include Social Security numbers, credit card numbers, bank account numbers, driver license numbers, and the like.

The proponent described the concern animating the proposal as a practical one: while remote electronic access to court documents provides benefits to practitioners and the public alike, this transparency has the potential to be abused when court documents contain financial information. This is particularly true in the modern era, where both individuals and state-sponsored actors have the ability to harvest electronic information in bulk for malevolent purposes.

As part of its transition to an electronic court environment, the Oregon Judicial Department has worked for several years on various proposals intended to navigate those competing concerns of transparency and abuse. The instant proposal narrowly focuses on one area – financial information – proposing, to treat this information as confidential online and, absent a court order, confidential at the courthouse. This approach is largely consistent with the approach taken by UTCR 2.130. Earlier proposals have addressed financial and other information, proposing to limit online access while retaining current access rules at the courthouse. Independent of these proposals, the Oregon Judicial Department will continue to study ways to protect a range of personal information.

The committee discussed the approach taken in other jurisdictions including the state of Washington, where entire documents are filed under seal. One committee member opined that the inconsistent use by Oregon litigants of UTCR 2.100 – a rule that permits parties to confidentially file “protected personal information” – was improving. Other committee members expressed concern about the application of the proposed rule in criminal cases, where numerous documents necessarily contain identifying information (e.g., Social Security numbers), including warrants and release agreements.

Recognizing that any proposal would have a very real impact on the workloads of attorneys, parties and the court, the proponent described the instant proposal as initiating a conversation intended to identify the appropriate balance for financial information. With the express caveat that the proposal is intended as an effort to collaboratively explore potential solutions with the bench, bar and public, the committee was comfortable posting the proposal for public comment without recommendation.

March 10, 2017, meeting summary. The committee was provided with a summary of current court processes regarding the handling and availability of confidential information to parties and the public and the potential need for amendments. There were some aspects of the proposal that committee members thought required more study, especially in light of the fact that there was no public comment received.

There was a concern that judges and court staff might feel obligated to reject documents for filing if the documents were not in compliance with the rule. In answer to those concerns the UTCR Reporter proposed an amendment stating, “(6) Judges and court staff are not required to review documents for compliance with this rule.” The amendment was adopted by a consensus of the committee. There were also concerns that the wording requiring an opposing party to obtain a court order to see Confidential Financial Form (CFF) information filed by another party was based on the family court rule and may not be necessary in all civil cases.

No other motions were made. The committee agreed that additional outreach to the bar and the courts should be conducted. The UTCR Reporter stated that out-of-cycle adoption may be needed depending on legislation passed by the 2017 Legislative Assembly.

PROPOSED RULE

2.150 CONFIDENTIAL FINANCIAL INFORMATION

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- (1) As used in this rule:
 - (a) “Confidential Financial Form” (CFF) means a document substantially in the form provided in UTCR Form 2.150.1.
 - (b) “Protected financial information” means Social Security numbers, employer identification numbers, credit card numbers, bank or other financial account numbers, bank or other financial account access numbers, or driver license, state identification or passport numbers.
- (2) (a) When protected financial information would otherwise be included in a document that is filed with the court, the party filing the document must:
 - (i) File the information in a CFF; and
 - (ii) Redact the information from any other document filed with the court. If the protected financial information is required by statute or rule to be included in the document, the party must note on the document that the information has been separately filed under UTCR 2.150.
- (b) A party must file a separate CFF for each person about whom the party provides confidential financial information.
- (3) (a) A party must file an amended CFF when filing a document that contains protected financial information that has changed or is not contained in a previous CFF.
- (b) A party filing an original or amended CFF must mail or deliver notice to all parties to the proceeding that a CFF or amended CFF has been filed and must file a certificate of mailing or delivery. The notice must be substantially in the form provided in UTCR 2.150.2.
- (4) (a) A party may inspect a CFF filed by the party.
- (b) A party may inspect a CFF filed by another party, upon filing an affidavit of consent, signed and dated by the party whose information is to be

inspected, that states the dates during which the consent is effective. Notwithstanding UTCR 2.120, a declaration under penalty of perjury may not be used in lieu of an affidavit required by this paragraph.

- (c) A person may inspect a CFF upon entry of a court order.
 - (d) Oregon Judicial Department personnel may have access to a CFF when required for court business. Courts may share a CFF with other governmental agencies as required or allowed by law for agency business.
- (5) This rule does not apply to:
- (a) Information required to be filed in a Confidential Information Form under UTCR 2.130.
 - (b) Information required in money award under ORS 18.042.
 - (c) Court-certified documents.
 - (d) Violation proceedings.
- (6) Judges and court staff are not required to review documents for compliance with this rule.

PROPOSED FORMS (see following pages)

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

_____)
_____)
_____) Petitioner/Plaintiff,
_____)
v. _____)
_____)
_____) Respondent/Defendant.
_____)
_____)
_____) Other _____)

Case No.: _____

UTCR 2.150 CONFIDENTIAL FINANCIAL FORM (CFF)
 Amended CFF

This document is not accessible to the public or other parties. Exceptions may apply. See UTCR 2.150.

ATTENTION COURT STAFF: THIS IS A RESTRICTED-ACCESS DOCUMENT.

The information below is about: Petitioner/Plaintiff Respondent/Defendant

Other: _____

Name (Last, First, Middle): _____

Social Security/Employer Identification Number:
Credit Card/Financial Account Number:
Driver License or Identification (Number and State):
Passport Number:

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 are subject to penalty for perjury.

Date: _____ Signature: _____

Type or Print Name: _____

COMPLETED AND SUBMITTED BY:

Petitioner/Plaintiff Respondent/Defendant Other _____

NOTE TO COURT STAFF: Unless ordered or authorized under UTCR 2.150, this Confidential Financial Form is not available to the opposing party or his/her attorney, or to the public; except for the state.

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

_____)
 _____)
 Petitioner/Plaintiff,)
 v.)
 _____)
 _____)
 Respondent/Defendant.)
 _____)
 Other _____)

Case No.: _____

NOTICE OF FILING OF
 CONFIDENTIAL FINANCIAL FORM (CFF)
 AMENDED CFF

NOTICE: Confidential Financial Form Has Been Filed

- Uniform Trial Court Rule (UTCR) 2.150 requires that parties place certain information about themselves and other parties in a CFF when the information is in a document filed with the court.
- The CFF is not available for public inspection except as authorized by law.
- A person may ask for permission from the court or the other party by following the procedures set out in UTCR 2.150.

I am the (check one box):

Petitioner/Plaintiff Respondent/Defendant Other: _____

I filed Confidential Financial Forms with the court about the following parties to this case
(complete a section for each party for whom you have filled out a CFF):

1) Name (Last, First, Middle): _____
 Petitioner/Plaintiff Respondent/Defendant Other: _____

Confidential Financial Information contained in CFF (check all that apply):

social security/employer identification number, credit card number, bank or other financial account number, bank or other financial account location or access number, passport, driver license, or identification number, other _____

2) Name (Last, First, Middle): _____
 Petitioner/Plaintiff Respondent/Defendant Other: _____

Confidential Financial Information contained in CFF (check all that apply):

social security/employer identification number, credit card number, bank or other financial account number, bank or other financial account location or access number, passport, driver license, or identification number, other _____ .

3) Name (Last, First, Middle): _____
 Petitioner/Plaintiff Respondent/Defendant Other: _____

Confidential Financial Information contained in CFF (check all that apply):

social security/employer identification number, credit card number, bank or other financial account number, bank or other financial account location or access number, passport, driver license, or identification number, other _____ .

4) Name (Last, First, Middle): _____
 Petitioner/Plaintiff Respondent/Defendant Other: _____

Confidential Financial Information contained in CFF (check all that apply):

social security/employer identification number, credit card number, bank or other financial account number, bank or other financial account location or access number, passport, driver license, or identification number, other _____ .

Dated this _____ day of _____, 20____

Signature

Print Name

Contact Address

City, State, Zip

Contact Telephone

PROPOSED CONFORMING AMENDMENTS

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2.100 PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, REQUIREMENTS AND PROCEDURES TO SEGREGATE WHEN SUBMITTING

(1) Purpose

- (a) This rule establishes procedures for a person to identify and segregate protected personal information when submitting a document to a court in a case and to request the information be kept from inspection by the general public.
- (b) This rule establishes a process for a court, when it grants a request under this rule, to protect the segregated, protected personal information from nonprotected information in a uniform way with an appropriate record.
- (c) UTCR 2.130 [*establishes*] **{and 2.150 establish}** separate procedures and processes for protecting **{confidential financial information and,}** [*personal information*] in proceedings brought under ORS chapters 25, 106, 107, 108, 109, 110, and 416 or initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763{, **confidential personal information**}.

(2) Information Covered. As used in this rule:

- (a) “Protected personal information” means specific individual facts that, unless segregated, would otherwise be in a submitted document to identify a person submitting the document or another person beyond that person’s name or to identify the financial activities of either and which the court is allowed or required by law to keep confidential.
- (b) “Protected personal information” includes, but is not limited to:
 - (i) [*Social Security numbers, credit card numbers, bank or other financial account numbers, bank or other financial account locations, driver license numbers, financial account access numbers, or similar information that is used for financial transactions and can be kept confidential under ORS 192.502(2).*]
 - (ii) Maiden names, birth dates, [*and*] places of birth{, **and any other information**} that can be kept confidential under ORS 192.502(2).
 - [(iii)]{(ii)} Facts about a person’s identity or the identity of the person’s financial activities that is other than contact information and that can be exempt from public inspection under the Oregon Public Records Law (OPRL, ORS 192.410 to 192.505).
 - [(iv)]{(iii)} Facts other than contact information that can otherwise be protected under specific law, including, but not limited to, information protected by existing court orders.
- (c) “Protected personal information” does not include{:}

{(i)} Entire documents, contact information, or, except as ordered by a court, information that is not both personal and related to a person’s identity beyond their name or their financial activities.

{(ii) “Confidential personal information” that is required to be filed in accordance with UTCR 2.130 or “confidential financial information” that is required to be filed in accordance with UTCR 2.150.}

(d) “Contact information” means: the name of a person submitting a document or of a person on whose behalf a document is being submitted; telephone numbers; personal or business addresses; email addresses; employer identification and address; or similar facts that make it possible for another to contact a person who is named in a document.

(3) Relationship to Other Law. The following all apply to this rule:

(a) *[Parties to proceedings under ORS 107.085 or 107.485 must segregate all Social Security numbers from all documents they submit related to the proceedings in the manner provided by UTCR 2.130. These Social Security numbers are confidential in the custody of the court as ORS 107.840 provides. Other than as this paragraph, UTCR 2.130, or SLR 2.101 of a court provides, this rule is not the exclusive means for a court to protect personal information from public inspection.*

(b) All judicial districts must allow requests to segregate protected personal information under this rule as a way to keep it separate from information subject to public inspection. However, courts may use SLR to establish other procedures related to identifying and protecting information courts are allowed or required to keep confidential. But, SLR 2.101 is preserved for purposes of a court to:

- (i) require use of forms or procedures under this rule as the exclusive way to identify specific protected personal information so a court can segregate the information and protect it from public inspection; and
- (ii) establish requirements supplemental to this rule as necessary to help administer this rule.

{(c)} **{(b)}** Nothing in this rule precludes a court from protecting information by appropriate court order.

{(d)} **{(c)}** Nothing in this rule affects or applies to procedures for identifying and protecting contact information:

- (i) Of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).
- (ii) That can be made confidential under ORS 25.020(8)(d), 109.767(5), 110.575, or 192.445.

(4) * * *

* * * * *

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2.110 PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, PROCEDURES TO SEGREGATE WHEN INFORMATION ALREADY EXISTS IN A CASE FILE

(1) * * *

* * * * *

(2) Information Covered. This rule may be followed to segregate and protect the same information already existing in a case file that could be segregated and protected at the time of submission under UTCR 2.100{,} [and] UTCR 2.130{, or **UTCR 2.150**}. The definitions in UTCR 2.100 apply to this rule.

(3) * * *

* * * * *

2. 4.110

EXPLANATION

UTCR 4.110 was requested by Lindsey Detweiler, Oregon Judicial Department Assistant Legal Counsel. It was adopted out of cycle pursuant to Chief Justice Order [17-039](#), dated July 24, 2017, and effective August 1, 2017.

The rule is in response to *Nelson v. Colorado*, 581 US ___, 137 S Ct 1249, 197 L Ed 2d 611 (April 19, 2017). That case affirms a criminal defendant's entitlement to reimbursement of certain moneys paid pursuant to a criminal judgment when the criminal conviction has been reversed and the defendant will not be retried or has been retried and acquitted. The court also held that under due process protections a state may not require more than minimal procedures for a defendant to seek a refund. Unlike many states, Oregon does not have a statutory process to address this situation. This rule is intended to establish a uniform, statewide process, in compliance with *Nelson*, for a defendant to seek a refund. The rule does not preclude a court from taking similar action on the court's own motion.

NEW RULE

4.110 DEFENDANT MOTION FOR REIMBURSEMENT

(1) As used in this rule, "reviewing court" means an appellate court or a post-conviction relief court.

(2) A defendant may request reimbursement of costs, fines, fees, and restitution imposed by the court as a result of conviction and paid by the defendant to the court pursuant to a criminal judgment if:

(a) The criminal judgment has been reversed or vacated by a reviewing court; and

(b) All opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor.

(3) A defendant seeking reimbursement must file and serve on the prosecutor a motion in the criminal case that states:

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- (a) Information showing that the criminal judgment has been reversed or vacated by a reviewing court;
 - (b) The name of the reviewing court, the reviewing court case number, and the date of the reviewing court decision;
 - (c) Information showing that all opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor; and
 - (d) The itemized amounts that the defendant has paid to the court in costs, fines, fees, and restitution.
- (4) This rule does not apply to fees imposed by the court on a defendant independent of conviction or acquittal, including indigent defense application fees, contribution fees, and attorney's fees.

3. 19.020

EXPLANATION

Amendment of UTCR 19.020 was requested by Lisa Norris-Lampe, on behalf of the Oregon eCourt Law and Policy Work Group, and Bruce C. Miller, UTCR Reporter. It was amended out-of-cycle pursuant to Supreme Court Order [17-028](#), dated June 6, 2017, and effective on the same date. The amendment is in response to Senate Bill 489 (2017).

Senate Bill 489 (2017) amended ORS 33.055 regarding motions to initiate remedial contempt proceedings. The bill had an emergency clause and took effect on June 6, 2017. The amended statute requires parties to file these motions in accordance with rules adopted by the Oregon Supreme Court.

The Oregon eCourt Law and Policy Work Group identified the original statutory filing requirement as problematic given the capabilities of the circuit court electronic case management system. That system processes contempt cases by creating a new case for the contempt (whether remedial or otherwise) and then, if a related proceeding exists, “relating” it in the system to the existing case.

This amendment to UTCR 19.020(2) is consistent with amended ORS 33.055 and with current electronic court processes.

AMENDED RULE

19.020 **INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS**

(1) * * *

* * * * *

(2) If a party is initiating a contempt proceeding under ORS 33.055 (remedial) and a related circuit court case exists, the party must initiate the contempt proceeding by filing a motion in the related case.

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- (a) For purposes of the court's electronic case management system, the trial court administrator will treat the contempt proceeding as a separate case[, *but the motion and filings pertaining to the motion are deemed to have been filed in the related case within the meaning of ORS 33.055*].
- (b) Any subsequent filing by any party in the contempt proceeding must include both case numbers, with the contempt proceeding case number appearing first.

(3) * * *

* * * * *