

CIRCUIT COURT OF OREGON
ELEVENTH JUDICIAL DISTRICT
DESCHUTES COUNTY JUSTICE BUILDING
1100 NW BOND STREET
BEND, OREGON 97701
(541) 388-5300

A. MICHAEL ADLER, *Judge*
WELLS B. ASHBY, *Judge*
BETH M. BAGLEY, *Judge*

ALTA J. BRADY, *Presiding Judge*
BETHANY P. FLINT, *Judge*
STEPHEN P. FORTE, *Judge*
WALTER R. MILLER, Jr, *Judge*

June 1, 2016

TO: Criminal Defense attorneys
Deschutes County DA's Office
Deschutes County Bar Association

FROM: Alta J. Brady
Presiding Judge

RE: Criminal cases
UTCRCs, court procedures, and making Odyssey work for you

*You can't always get what you want
But if you try sometimes well you just might find
You get what you need**

The 11th Judicial District is coming up on its one year anniversary of the implementation of Odyssey. Over the course of the last year we have updated and revised policies and procedures. There have also been changes to the Supplementary Local Rules and the Uniform Trial Court rules. This memo identifies some of the rules that will contribute to the timely processing of pleadings and scheduling of hearings and trials.

1. UTCR 4.050

If you are filing a motion that requires a hearing, the caption needs to include a statement that oral argument is requested. The first paragraph of the motion must include an estimate of the time required for argument. When you include this required information, the motion is routed directly to the scheduling department to set a hearing date. If you do not, the motion is not scheduled. Note that the court is not required to grant oral argument on a motion to postpone trial.

If you file a motion that is contested, do not file a proposed order. The filing of a proposed order causes the file to be routed to a judge's queue. The judge will determine that it is a contested motion, the order will be crossed through, and the file will be routed for scheduling (assuming the information required by UTCR 4.050 is included). This causes an unnecessary delay in scheduling a hearing.

If the motion is not contested, the affidavit or declaration in support of the motion should so indicate. If it is an uncontested motion, a proposed order can be filed concurrently.

2. Motions to continue hearings/trials

An affidavit or declaration filed in support of a motion to continue a hearing or trial must include specific reason(s) for the need to continue the date, an estimate of the length of delay needed, and the position of the other party. If defendant is in custody and defendant is moving for the continuance, there must be a statement as to whether defendant is waiving his/her right to a trial within 60 days. Failure to include the above information can result in delay in decision.

With the conversion to Odyssey, motions and orders are separate documents so the orders must be fully self-contained. UTCR 21.040(2)(a). This means that the order must identify the underlying motion (e.g. motion to continue hearing, motion to continue trial readiness/trial) and specify the date(s) sought to be continued. The proposed order needs to include both a 'granted' and 'denied' option.

Note that the Court previously drafted and distributed three sample forms last July: (1) Motion to Continue Hearing, (2) Declaration in Support of Motion to Continue Hearing, and (3) Order on Motion to Continue Hearing. The forms contain blanks for the necessary information. The forms were drafted for use by both sides. The forms can be found on the Deschutes County Circuit Court website under the Materials & Resources tab.

If a proposed order is not signed due to insufficient form, do not file an 'amended' order. File another proposed order.

3. Plea petitions and orders

The plea petition and the order accepting plea need to be two separate documents. Two documents are necessary regardless of whether the charge is a felony or misdemeanor. ***The single page plea form will no longer be provided or accepted by the court.*** The Court will accept a plea petition form consistent with the form on the Oregon Judicial Department website at <http://courts.oregon.gov/OJD>.

4. UTCR 2.120 Affidavits

Unless otherwise mandated by statute, an affidavit or declaration need not be notarized but must be signed by the affiant or declarant and must include a sentence in prominent letters immediately above the signature that is in substantially the same form as required by ORCP 1E(2) as follows:

"I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY."

This statement is required regardless of the nature of the motion supported thereby.

5. Waiver of extradition/modification of release agreement

It has become a more common occurrence that a waiver of extradition is signed by defendant and filed with the court. It is clear that the intent of the waiver is to allow defendant to leave the state. A waiver of extradition, by itself, does not modify the release condition that defendant not leave the State of Oregon without advance permission from the court. A motion for modification must be filed with a supporting affidavit that includes the time period defendant will be out of state, the reason for the need to leave the state, and where defendant will be residing. The affidavit should also state whether the district attorney objects. If the district attorney does not object, include a proposed order modifying release and the file will be routed to a judge for decision without oral argument. If the district attorney does object, the motion must include the requisite UTCR 4.050 information and a hearing will be scheduled. Do not include a proposed order if the motion is contested; if you do, there will be a delay in scheduling the hearing.

6. Miscellaneous

- a) Motions for warrants filed by the district attorney based upon a defendant's failure to appear, indictment on charges, or violation of probation do not require a concurrent order issuing a warrant. The district attorney should file a motion, affidavit and proposed warrant. The warrant needs to include all of the identifiers and the extradition request before it can be signed.
- b) UTCR 4.030 addresses the requirements for the procedure for order of transportation for a person held in custody in a location other than the Deschutes County jail. The motion must be accompanied by a separate proposed court order that contains all of the information set forth in UTCR 4.030(2). This is the required procedure regardless of whether the motion is filed by the district attorney or the defense.
- c) As of January 1, 2016, the 11th Judicial District adopted ORS 14.260 as the applicable statutory provision for filing a motion supported by affidavit to disqualify a judge. The deadline for doing so is within five (5) days after a case is at issue. For criminal cases, 'at issue' is at the time a plea is entered.

**really? You don't know the source of this quote?*