

**NOTICE SEEKING PUBLIC COMMENT ON
PROPOSED UNIFORM TRIAL COURT RULES CHANGES FOR 2020**

I. INTRODUCTION

This notice is provided pursuant to Uniform Trial Court Rule (UTCRC) 1.020(3), which requires official notice of proposed rule changes to be posted on the Oregon Judicial Department website (<http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>) for at least 49 days to allow submission of public comment.

The UTCRC Committee makes recommendations to the Chief Justice of the Oregon Supreme Court. At its fall meeting on October 18, 2019, the committee made preliminary recommendations on several proposed changes. The Chief Justice adopted some of the proposals considered at the fall meeting by Chief Justice Order (CJO). These changes, and one other, were adopted out-of-cycle with various effective dates. See Section IV.C for detailed explanations on out-of-cycle changes. The committee will review public comment and make final recommendations at its next meeting on April 3, 2020.

The committee encourages you to submit comments on these proposals, the recommendations (whether for approval or disapproval), and any other action taken by the committee or Chief Justice. In order to be considered by the committee, public comment must be received by the UTCRC Reporter by 5:00 p.m. on March 20, 2020.

SUBMISSION OF WRITTEN COMMENTS

You can submit written comments by clicking on the button next to the item of interest. You can also submit written comments by email or traditional mail:

utcr@ojd.state.or.us

or

UTCRC Reporter
Supreme Court Building
1163 State Street
Salem, Oregon 97301-2563

If you wish to appear at the spring meeting, please contact the UTCRC Reporter at utcr@ojd.state.or.us or Bruce C. Miller at 503-986-5500 to schedule a time for your appearance.

Unless otherwise noted, rule changes adopted by the Chief Justice will take effect on August 1, 2020. Following adoption, the rules will be posted on the Oregon Judicial Department website listed above. Additional information on the UTCRC process can be found at the same web address.

II. FUTURE MEETINGS

The committee plans to meet twice in 2020.

SPRING MEETING: April 3, 2020, 9:00 a.m., at the OJD Enterprise Technology Services Division, Salem, Oregon. The committee will review public comment on the proposals and preliminary recommendations described in this notice and will make final recommendations to the Chief Justice on changes to the UTCR to take effect August 1, 2020. The committee may reconsider these proposals, the corresponding recommendations, and any other committee action.

FALL MEETING: October 2, 2020, 9:00 a.m., at the OJD Enterprise Technology Services Division, Salem, Oregon. The committee will review existing and proposed Supplementary Local Rules (SLR) and may make recommendations to the Chief Justice on disapproval of SLR pursuant to UTCR 1.050. The committee will also consider proposals for changes to the UTCR to take effect August 1, 2021. This is the only meeting at which the committee intends to accept proposals for that cycle. Committee meeting dates for the following year will be scheduled at this meeting.

III. SYNOPSIS OF FALL 2019 ACTIONS

A. RECOMMENDATIONS OF APPROVAL

These are brief descriptions of UTCR changes the committee has preliminarily recommended for approval (see Section IV.A. for detailed explanations).

1. 1.050
Amend subsection (2) to allow the UTCR Reporter to authorize the correction of certain non-substantive errors in SLR.
2. 2.010
Amend section (12) to require orders, judgments and writs to clearly state the substance of the court's ruling. See related item B.2.
3. 5.030
Amend to clarify that a motion must be filed at the time of service.
4. 8.010
Amend to clarify when a Uniform Support Declaration (USD) must be filed and to make stylistic and clarifying changes to improve readability. See related items A.5, A.6, and A.7.
5. 8.040
Amend to make stylistic and clarifying changes to improve readability. See related items A.4, A.6, and A.7.
6. 8.050
Amend to clarify when a Uniform Support Declaration (USD) must be filed. See related items A.4, A.5, and A.7.
7. 8.060
Amend to clarify that DCS child support worksheets must be filed in cases where a modification of support is requested. See related items A.4, A.5, and A.6.

8. 21.090
Amend to allow electronic signatures on declarations. See related item A.9.
9. 21.120
Repeal to conform to the proposed amendments to UTCR 21.090. See related item A.8.

B. RECOMMENDATIONS OF DISAPPROVAL

These are brief descriptions of the UTCR proposals the committee has preliminarily recommended for disapproval (see Section IV.B. for a detailed explanation).

1. 2.010
Delete the “submitted by” requirement, section (12)(b).
2. 2.010
Amend section (12) to prohibit the use of an attorney’s footers and stationery on judgments, orders, and writs. See related item A.2.
3. 4.060
Amend to require the State to file a response with points and authorities before the hearing on the motion to suppress.
4. 5.100
Amend section (3) to clarify that *ex parte* orders for provisional process need not be served prior to submission to the court.
5. 6.140
Amend to expand the definition of “hazardous substance” in section (2).

C. OUT-OF-CYCLE AMENDMENTS

These are brief descriptions of UTCR changes that were adopted out-of-cycle by the Chief Justice (see Section IV.C. for a detailed explanation).

1. 1.050
Amended subsection (2)(d) to allow judicial districts to submit a final electronic certified PDF copy of SLR in lieu of a paper copy.
2. 3.190
Adopted a new rule prohibiting civil arrests in a courthouse or courthouse environs without a judicial order or judicial warrant.
3. 6.050
Amended to add an exception for PCR exhibits. See related items C.4, C.5, C.6, C.7, C.8, C.9, and C.10.

4. 21.040
Amended to add an exception for PCR exhibits. See related items C.3, C.5, C.6, C.7, C.8, C.9, and C.10.
5. 21.070
Moved section (1)(c) to UTCR 24.030 and amended to add an exception for PCR exhibits to section (3)(p). See related items C.3, C.4, C.6, C.7, C.8, C.9, and C.10.
6. 24.030
Moved current 21.070(1)(c) to UTCR 24.030. See related items C.3, C.4, C.5, C.7, C.8, C.9, and C.10.
7. 24.040
Adopted a new rule governing the filing of PCR exhibits. See related items C.3, C.4, C.5, C.6, C.8, C.9, and C.10.
8. 24.050
Renumbered current 24.040 to 24.050. See related items C.3, C.4, C.5, C.6, C.7, C.9, and C.10.
9. 24.060
Renumbered current 24.050 to 24.060. See related items C.3, C.4, C.5, C.6, C.7, C.8, and C.10.
10. 24.110
Adopted a new rule designating SLR 24.111 for SLR regarding challenges to court appointed counsel (*Church v. Gladden* claims). See related items C.3, C.4, C.5, C.6, C.7, C.8, and C.9.
11. 21.070
Amended section (3) to require conventional filing of a victim's request for an USCIS certification authorized by Senate Bill 962 (2019).

D. OTHER ACTIONS

These are brief descriptions of other committee actions (see Section IV.D. for detailed explanations).

1. 1.120
Reviewed public comment on out-of-cycle amendment.
2. 21.080
Reviewed section (5) for potential conflict with ORS 21.100 considering rulings by the Appellate Commissioner and the Court of Appeals in *Otnes v. PCC Structural, Inc.*, A167525.
3. Committee Membership
Update

4. Spring 2020 Meeting
Scheduled spring meeting (April 3, 2020).
5. Fall 2020 Meeting
Scheduled fall meeting (October 2, 2020).

IV. DESCRIPTION OF FALL 2019 ACTIONS

Proposed deletions are in *[brackets and italics]*. Proposed additions are in **{braces, underline, and bold}**. A proposed revision (in lieu of a simpler amendment) consists of a complete rewriting of a rule or form so there is no use of *[brackets and italics]* or **{braces, underline, and bold}**. The same is true of a new rule or form. In instances when the text of a proposed amendment was not submitted for committee consideration, the absence of a proposed amendment is noted following the explanation.

A. RECOMMENDATIONS OF APPROVAL

1. **1.050**
Amend subsection (2) to allow the UTCR Reporter to authorize the correction of certain non-substantive errors in SLR.

ACTION TAKEN

Motion to preliminarily recommend approval passed by consensus.

EXPLANATION

This proposal was submitted by Bruce C. Miller, UTCR Reporter, on September 12, 2019. The purpose of the proposal is to authorize the UTCR Reporter to correct typographical errors, grammatical errors, and inaccurate website addresses in the Supplementary Local Rules (SLR). Current UTCR 1.020(6) already authorizes the UTCR Reporter to make the same corrections to UTCR. The proposal will extend this streamlined process for non-substantive corrections to the SLR.

PROPOSED AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) * * *

* * * * *

(2) Review of SLR

(a) * * *

* * * * *

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{(h) The UTCR Reporter may authorize correction of typographical errors, grammatical errors, and inaccurate website addresses if the correction does not change the substance of the rule. The judicial district must follow the filing requirements of ORS 3.220(2)(b) for authorized corrections and give appropriate notice of authorized corrections to the public.}

(3) * * *

* * * * *

2. 2.010

Amend section (12) to require orders, judgments and writs to clearly state the substance of the court's ruling. See related item B.2.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed on a vote of 8-4.

EXPLANATION

This proposal was submitted by the Hon. Leslie Roberts, Multnomah County Circuit Court Judge, on April 25, 2019. Judge Roberts would like orders to be more fully self-contained and without reference to other pleadings and documents.

The committee discussed:

- The problems raised when an order grants relief but does not specifically identify the relief granted, for example an order to suppress that does not specify the evidence suppressed or an order to protect documents that does not identify the documents protected;
- Extensive revisions that would need to be made to OJD's statewide family law forms if references to other documents were prohibited;
- Similar issues that could arise with the Uniform Criminal Judgment;
- Whether the rule should more clearly identify the information required so that parties know how much information to put in the order; and
- Whether the rule needs more wordsmithing.

The committee modified the proposal to exclude the prohibition on references to other documents.

PROPOSED AMENDMENT

2.010 FORM OF DOCUMENTS

* * * * *

(12) Orders, Judgments or Writs

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{(a) The body of a proposed order, judgment, or writ must clearly state the substance of the court’s ruling.}

[(a)]{(b)} The judge’s signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Except for electronically filed documents subject to UTCR 21.040(3), orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

[(b)]{(c)} If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words “submitted by.” See the commentary to this subsection, located at the end of this rule.

[(c)]{(d)} A motion must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.

(13) * * *

* * * * *

1993 Commentary to section (12)(b):

Subsection [(b)]{(c)} of Section (12) requires that the information include the author’s name (signature not required), followed by an identification of party being represented, plaintiff or defendant.

Example: Submitted by:

A. B. Smith
Attorney for Plaintiff (or Defendant)

An exception to this style would be in cases where there is more than one plaintiff or one defendant. In those situations, the author representing one defendant or plaintiff, but not all, should include the last name (full name when necessary for proper identification) after the designation of plaintiff or defendant.

Example: Submitted by:

A. B. Smith
Attorney for Plaintiff Clarke

3. 5.030

Amend to clarify that a motion must be filed at the time of service.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed by consensus.

EXPLANATION

This proposal was submitted by Natalie Scott, Springfield Attorney, on January 11, 2019. Ms. Scott described a situation where opposing counsel served a motion, but did not file the motion with the court until much later. Since the time to file a response begins to run from the date of service, rather than the date of filing, this put Ms. Scott at a disadvantage. She could not file a response before the motion was filed and the time to respond had passed by the time the motion was filed. The committee felt that this was a sharp practice that should not be allowed. They modified the proposal to amend sections (1) and (2) to make the time to file a response and a reply begin from the date of service or the date of filing, whichever is later.

PROPOSED AMENDMENT

5.030 OPPOSING PARTY'S RESPONSE; TIME FOR FILING RESPONSE AND REPLY

In matters other than motions for summary judgment:

- (1) An opposing party may file a written memorandum of authorities in response to the matters raised in any motion not later than 14 days from the date of service **{or the date of filing}** of the motion**{, whichever is later}**.
- (2) A reply memorandum, if any, must be filed within 7 days of the service**{ or filing}** of the responding memorandum**{, whichever is later}**.

4. 8.010

Amend to clarify when a Uniform Support Declaration (USD) must be filed and to make stylistic and clarifying changes to improve readability. See related items A.5, A.6, and A.7.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed by consensus.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe, on behalf of the OJD Law & Policy Work Group (LPWG), on September 5, 2019. The purpose of the proposal is to streamline the rule, use consistent wording across the family law rules, and clarify when a Uniform Support Declaration (USD) must be filed. Generally, if a party is requesting support then they should file a USD. In that instance, when the other party appears in the case, they should also file a USD. There is an exception when the parties stipulate to a judgment or when a child is no longer entitled to support, but not when a party seeks a default judgment. Judges need the information contained in the USD to make a ruling on support. The committee modified the wording in section (4) regarding filing and service of a USD to make it consistent with other rules.

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PROPOSED AMENDMENT

8.010 ACTIONS FOR DISSOLUTION OF MARRIAGE, SEPARATE MAINTENANCE AND ANNULMENT, AND CHILD SUPPORT

(1) * * *

* * * * *

(3) In all contested dissolution of marriage, separate maintenance or annulment actions, each party must file [*with the trial court administrator*] and serve on the other party a statement listing all marital and other assets and liabilities, the claimed value for each asset and liability and the proposed distribution of the assets and liabilities. In the alternative, the parties may elect to file [*with the trial court administrator*] a joint statement containing this information.

(4) **{Except as provided in paragraph (c) of this subsection, i}** [In all proceedings under ORS chapter 107, 108, or 109 wherein child support or spousal support is **{requested by either party}** [*contested*], each party must file [*with the trial court administrator and serve on the other party*] a Uniform Support Declaration **{(USD)}** in the form specified at <http://www.courts.oregon.gov/forms/Pages/default.aspx> **{and serve it on the other party}**. A **{USD}** [*Uniform Support Declaration*] required by this subsection must be completed as follows:

- (a) In all such cases, the parties must complete the declaration and required attachments.
- (b) In all such cases, the parties must also complete the schedules and the attachments required by the schedules if:
 - (i) Spousal support is requested by either party, or
 - (ii) Child support is requested by either party in an amount that deviates from the uniform support guidelines.

{(c) A USD is not required if the parties have stipulated to all judgment terms.}

(5) If the Division of Child Support (DCS) of the Department of Justice or a district attorney child support office (DA) either initiates or responds to a proceeding under section (4) of this rule, the DCS or DA must be allowed to file and serve, in lieu of the **{USD}** [*Uniform Support Declaration*], an affidavit or a declaration under penalty of perjury that sets out the following information:

- (a) The name of the legal or physical custodian of the child(ren).
- (b) The name and date of birth of each child for whom support services is being sought.

- (c) A statement of the amount of public assistance being provided.
 - (d) A statement of the value of food stamp benefits being provided.
 - (e) A statement of whether medical insurance (Medicaid) is being provided.
 - (f) A statement of any other known income of the physical custodian.
 - (g) A statement concerning any special circumstances that might affect the determination of support.
- (6) **{(a) Unless}***[In the absence of]* an SLR **{provides}** to the contrary, the documents required to be filed under subsection (3) *[above]* must be filed and served not less than 14 days before the **{trial}***[hearing]* on the merits unless both parties stipulate otherwise, but in any event before the beginning of trial.
- {(b)}** Subject to the requirements of UTCR 8.040 or UTCR 8.050, when applicable, and **{unless}***[in the absence of]* an SLR **{provides}** to the contrary, the documents required to be filed under subsections (4) and (5) *[above]* must be filed and served within 30 days of service of a petition or other pleading that seeks child support or spousal support on other than a temporary basis.
- (7) No judgment under this chapter shall be signed, filed or entered **{unless}***[without the filing with the trial court administrator of]* all relevant documents **{have been filed}**, including all of the following:
- (a) An affidavit or a declaration under penalty of perjury of completed service.
 - (b) An affidavit or a declaration under penalty of perjury of nonmilitary service and the proposed order of default, if the respondent is in default.
 - (c) The affidavit or declaration under penalty of perjury described in ORS 107.095(4){,} if the matter is uncontested.
 - (d) A completed Oregon State Health Division Record of Dissolution of Marriage form.
 - (e) **{A USD}***[If child support or spousal support is an issue, a Uniform Support Declaration for each party, except where that issue is resolved by stipulation or default. A Uniform Support Declaration required by this paragraph must be completed]* as provided under subsection (4) of this rule.
 - (f) If child support is **{requested by either party}***[an issue]*, the Division of Child Support (DCS) **{worksheets}***[work sheets]* described **{in}***[under]* UTCR 8.060.

(g) A proposed judgment.

(8) * * *

5. 8.040

Amend to clarify when a Uniform Support Declaration (USD) must be filed and to make stylistic and clarifying changes to improve readability. See related items A.4, A.6, and A.7.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed by consensus.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe, on behalf of the OJD Law & Policy Work Group (LPWG), on September 5, 2019. The purpose of the proposal is to streamline the rule, use consistent wording across the family law rules, and clarify when a Uniform Support Declaration (USD) must be filed. LPWG also explored whether the “14 days to respond” requirement in section (3)(b) should be lengthened. The State Family Law Advisory Council (SFLAC) also looked at the issue, but stakeholders offered conflicting viewpoints. Some favored the current timeframe because temporary support should happen quickly. LPWG decided against recommending a change.

The committee modified the proposal as follows:

- Section (3)(a), kept the current wording;
- Section (3)(b), changed “opposing party” to “other party” in two places; and
- Section (4)(a), changed “filing a motion for” to “seeking.”

PROPOSED AMENDMENT

8.040 PREJUDGMENT RELIEF UNDER ORS 107.095(1)

(1) * * *

* * * * *

- (3) Except as provided in subsection (4), when a party seeks temporary support under ORS 107.095(1), each party must file a Uniform Support Declaration (USD), as follows:
- (a) The party seeking temporary support must include a USD as a documentary exhibit to the motion.
 - (b) *[When support is to be an issue, t]{T}he {other}[opposing] party must file [and serve] a USD {and serve it} on the moving party. Unless an SLR provides to the contrary, the {other}[opposing] party must file and serve the USD within 14 days of service of the motion seeking temporary support.*

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- (c) Any USD must be completed as provided under UTCR 8.010(4), in the form specified at <http://www.courts.oregon.gov/forms/Pages/default.aspx>.
- (4) Exceptions to USD requirement:
- (a) A party **{seeking}***[filing a motion for]* temporary support, or the opposing party, need not file a USD under subsection (3) if~~{:}~~
- (i) The party is simultaneously filing a pleading under UTCR 8.010(4) that incorporates a USD; or
- (ii) Within the prior 30 days, the party already filed a pleading under UTCR 8.010(4) that incorporated a USD and the information therein has not changed.
- (b) If an exception applies, the motion **{for temporary support}** must:
- (i) Under subsection (4)(a)(i), identify the accompanying pleading and state that it includes a USD; or
- (ii) Under subsection (4)(a)(ii), identify the earlier pleading and state that it included a USD, that it was filed within the prior 30 days, and that the information therein has not changed.

6. 8.050

Amend to clarify when a Uniform Support Declaration (USD) must be filed. See related items A.4, A.5, and A.7.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed by consensus.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe, on behalf of the OJD Law & Policy Work Group (LPWG), on September 5, 2019. The purpose of the proposal is to streamline the rule, use consistent wording across the family law rules, and clarify when a Uniform Support Declaration (USD) must be filed.

The committee modified the proposal as follows:

- Section (2), changed “the moving” to “either;”
- Section (2)(a), changed “moving party” to “party seeking modification of support;”
- Section (2)(b), changed “moving” to “other;” and
- Section (2)(d), reworded to state: “A USD is not required from either party when the motion seeks to terminate child support solely because the child is no longer legally entitled to support.”

PROPOSED AMENDMENT

8.050 JUDGMENT MODIFICATION PROCEEDINGS

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- (1) Modification proceedings must be initiated by an order to show cause based on a motion supported by an affidavit **{or a declaration under penalty of perjury}** setting forth the factual basis for the motion or by other procedure established by SLR. The initiating documents must contain a notice to the served party, substantially in the form set out at ORCP 7. This notice may be a separate document or included in an Order to Show Cause or Motion. *[When support is to be an issue, a Uniform Support Declaration, as set out at <http://www.courts.oregon.gov/forms/Pages/default.aspx>, must also be filed with the motion and completed as provided under subsection (4) of UTCR 8.010.]*
- (2) **{Except as provided in paragraph (d) of this subsection, when support is requested by either party, each party must complete and file a Uniform Support Declaration (USD), as set out below.**
 - (a) **The party seeking modification to support must file a USD with the motion and serve it under subsection (3) of this rule**
 - (b) **If an order to show cause issues, the opposing party must file a USD and serve it on the other party. Unless an SLR provides to the contrary, the USD must be filed and served within 30 days of service of the order to show cause.**
 - (c) **Any USD must be completed as provided under UTCR 8.010(4), in the form specified at <http://www.courts.oregon.gov/forms/Pages/default.aspx>.**
 - (d) **A USD is not required from either party when the motion seeks to terminate child support solely because the child is no longer legally entitled to support.**
- {(3)}** Initiating documents must be served by delivering a certified copy of each document and **{USD}***[Uniform Support Declaration]*, if applicable, in the manner necessary to obtain jurisdiction.
- [(3) The opposing party also must serve and file a Uniform Support Declaration on the moving party, when support is to be an issue. The Uniform Support Declaration must be completed in the form specified at <http://www.courts.oregon.gov/forms/Pages/default.aspx> and as provided for completion of the declaration under subsection (4) of UTCR 8.010. The Uniform Support Declaration must be filed and served at the time designated in the relevant SLR. In the absence of an SLR to the contrary, the Uniform Support Declaration must be filed and served within 30 days of service of the order to show cause.]*
- (4) If the Division of Child Support (DCS) of the Department of Justice or a district attorney child support office (DA) either initiates or responds to a

support modification proceeding, the DCS or DA must be allowed to file and serve, in lieu of the {**USD**}[*Uniform Support Declaration*], an affidavit which sets out the following information:

- (a) The name of the legal or physical custodian of the child(ren).
 - (b) The name and date of birth of each child for whom support modification is being sought.
 - (c) A statement of the amount of public assistance being provided.
 - (d) A statement of the value of food stamp benefits being provided.
 - (e) A statement of whether medical insurance (Medicaid) is being provided.
 - (f) A statement of any other known income of the physical custodian.
 - (g) A statement concerning any special circumstances which might affect the determination of support.
- (5) A party who files an *ex parte* temporary custody or parenting time order pursuant to ORS 107.139 must file a motion for permanent modification of custody or have one pending at the time this application is made.

7. 8.060

Amend to clarify that DCS child support worksheets must be filed in cases where a modification of support is requested. See related items A.4, A.5, and A.6.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed by consensus.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe, on behalf of the OJD Law & Policy Work Group (LPWG), on September 5, 2019. The purpose of the proposal is to streamline the rule, use consistent wording across the family law rules, and clarify when worksheets must be filed.

The committee modified the proposal as follows:

- Changed “work sheets” to “worksheets” throughout the rule to be consistent with Department of Child Support usage; and
- Section (2), deleted the reference to financial affidavits.

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PROPOSED AMENDMENT

8.060 FILING DCS WORK SHEETS REQUIRED IN CHILD SUPPORT CASES

Parties must submit the completed Division of Child Support (DCS) child support calculation **{worksheets}***[work sheets]* that are available at <http://www.doj.state.or.us/child-support/calculators-forms/forms/> as required by the following:

- (1) If child support is **{requested by either party}***[an issue]* at the time of trial, the UTCR 8.010**{(3)}** statement of each party must include the **{worksheets}***[work sheets]*.
- (2) If child support is awarded, the judgment must incorporate the **{worksheets}***[work sheef]* as an exhibit evidencing the basis for the court's award.
- {(2)}****{(3)}** In cases involving temporary child support, the moving party must serve the adverse party with the **{worksheets}***[work sheets, and financial affidavits filed by parties with the court must include the work sheets]*.
- (4) If child support is **{requested by either party}***[an issue]* at the time of hearing, each party must submit the **{worksheets}***[work sheets]* to the court.
- {(3)}****{(5)}** **{In cases involving modification of a judgment, if modification of child support is requested at the time of hearing, each party must submit the worksheets to the court.}** If an award of child support is modified, the amending judgment must incorporate the **{worksheets}***[work sheef]* as an exhibit evidencing the basis for the court's award.

8. 21.090

Amend to allow electronic signatures on declarations. See related item A.9.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal passed by consensus.

EXPLANATION

This proposal was originally submitted by Kristin LaMont, Salem Attorney, on August 31, 2018. It was studied by a workgroup after it was discussed at the UTCR Committee meeting on October 5, 2018. The workgroup pointed out that the use of electronic signatures is permissive, not mandatory. The proposal allows the use of software that includes an audit trail. An electronic filer will need to remove the audit trail when submitting these documents for filing because the electronic filing system will not accept them. An opposing party can challenge an electronic signature.

The workgroup proposed the following:

- Section (4), remove the reference to a declaration;
- Sections (6) and (7), move the text of UTCR 21.120 to these sections and repeal UTCR 21.120;
- Section (6)(a), tie the electronic signature to ORS Chapter 84;
- Section (6)(b), address the use of wet signatures;
- Section (8), set different retention times for electronic signatures and wet signatures, with the new and longer retention period applying to electronic signatures only.

The committee discussed:

- Some practitioners said they would never delete documents with electronic signatures, so the retention requirement should not be a problem;
- The Oregon Law Commission is studying a proposal to allow notaries to notarize documents remotely, so this rule may require future amendment.

PROPOSED AMENDMENT

21.090 ELECTRONIC SIGNATURES

(1) * * *

* * * * *

- (4) *[Except as provided in section (5) of this section, w]{W}*hen a document to be electronically filed requires *[a signature under penalty of perjury, or]* the signature of a notary public, the *[declarant or]*notary public shall sign a printed form of the document. The printed document bearing the original signatures must be imaged and electronically filed in a format that accurately reproduces the original signatures and contents of the document. *[The original document containing the original signatures and content must be retained as required in UTCR 21.120.]*
- (5) When the filer is the same person as the declarant named in an electronically filed document for purposes of ORCP 1 E, the filer must include in the declaration an electronic symbol intended to substitute for a signature, such as a scan of the filer’s handwritten signature or a signature block that includes the typed name of the filer preceded by an “s/” in the space where the signature would otherwise appear.

Example of a signature block with “s/”:

s/ John Q. Attorney
JOHN Q. ATTORNEY

{(6) When the filer is not the same person as the declarant named in an electronically filed document for purposes of ORCP 1E, the document may be signed using either:

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(a) Electronic signature software that includes a security procedure designed to verify that an electronic signature is that of a specific person. A security procedure is sufficient if it complies with the definition of “security procedure” in ORS ch. 84; or

(b) An original signature on a printed document. The printed document bearing the original signature must be imaged and electronically filed in a format that accurately reproduces the original signature and contents of the document.

(7) When a filer electronically files a document described in subsection (6) of this rule, the filer certifies by filing that, to the best of the filer’s knowledge after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer.

(8) Unless the court orders otherwise, if a filer electronically files:

(a) A declaration that contains an electronic signature of a person other than the filer, the filer must retain the electronic document until entry of a general judgment or other judgment or order that conclusively disposes of the action.

(b) An image of a document that contains the original signature of a person other than the filer, the filer must retain the document in the filer’s possession in its original paper form for no less than 30 days.}

9. 21.120

Repeal to conform to the proposed amendments to UTCR 21.090. See related item A.8.

ACTION TAKEN

Motion to preliminarily recommend approval of repeal of UTCR 21.120 passed by consensus.

EXPLANATION

See related item A.8.

PROPOSED AMENDMENT

[21.120 RETENTION OF DOCUMENTS BY FILERS AND CERTIFICATION OF ORIGINAL SIGNATURES

(1) Unless the court orders otherwise, if a filer electronically files an image of a document that contains the original signature of a person other than the filer, the filer must retain the document in the filer’s possession in its original paper form for no less than 30 days.

(2) When a filer electronically files a document described in section (1) of this rule, the filer certifies by filing that, to the best of the filer’s knowledge

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after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer.]

B. RECOMMENDATIONS OF DISAPPROVAL

1. 2.010

Delete the “submitted by” requirement, section (12)(b).

ACTION TAKEN

Motion to preliminarily recommend disapproval passed by consensus.

EXPLANATION

This proposal was submitted by Tara Narkon, Paralegal, on April 15, 2019. The proponent believes this requirement is redundant of information contained in the footers of documents filed by attorneys and is unnecessary. She was also concerned about a lack of consistency in enforcement of the requirement. The committee noted that the footer may include a law firm name, but not necessarily the name of the attorney submitting the document. The committee did not see a problem with the current rule and felt the requirement should be retained.

PROPOSED DELETION

2.010 FORM OF DOCUMENTS

* * * * *

(12) Orders, Judgments or Writs

- (a) The judge’s signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Except for electronically filed documents subject to UTCR 21.040(3), orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

[(b) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words “submitted by.” See the commentary to this subsection, located at the end of this rule.]

[(c)]{(b)} A motion must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.

(13) * * *

* * * * *

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[1993 Commentary to section (12)(b):

Subsection (b) of Section (12) requires that the information include the author's name (signature not required), followed by an identification of party being represented, plaintiff or defendant.

Example: Submitted by:

A. B. Smith

Attorney for Plaintiff (or Defendant)

An exception to this style would be in cases where there is more than one plaintiff or one defendant. In those situations, the author representing one defendant or plaintiff, but not all, should include the last name (full name when necessary for proper identification) after the designation of plaintiff or defendant.

Example: Submitted by:

A. B. Smith

Attorney for Plaintiff Clarke]

1996 Commentary:

* * * * *

2. 2.010

Amend section (12) to prohibit the use of an attorney's footers and stationery on judgments, orders, and writs. See related item A.2.

ACTION TAKEN

Motion to preliminarily recommend disapproval of the proposal passed on a vote of 8-4.

EXPLANATION

This proposal was submitted by the Hon. Leslie Roberts, Multnomah County Circuit Court Judge, on April 25, 2019. Judge Roberts wanted to prohibit the use of an attorney's footers and stationery on judgments, orders, and writs. The committee did not think this was necessary.

PROPOSED AMENDMENT

2.010 FORM OF DOCUMENTS

* * * * *

(12) Orders, Judgments or Writs

- (a) The judge's signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Except for electronically filed documents subject to UTCR 21.040(3), orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

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- (b) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words “submitted by.” **{The document must not include an attorney’s footers or stationery. }** See the commentary to this subsection, located at the end of this rule.
- (c) A motion must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.

(13) * * *

* * * * *

3. 4.060

Amend to require the State to file a response with points and authorities before the hearing on the motion to suppress.

ACTION TAKEN

No motion was made on this proposal. By committee convention, it is treated as preliminarily recommended for disapproval. The committee formed a workgroup to further study the proposal.

EXPLANATION

This proposal was submitted by Danny Lang, Sutherlin Attorney, on August 26, 2019.

The proponent stated:

- If the State is going to rely on legal authority in its opposition to the motion to suppress, then the prosecutor should file written points and authorities and serve them on the defendant;
- In his experience, the prosecution often appears at oral argument with specific appellate opinions in hand;
- The defense should not be blindsided at the hearing;
- This is a due process, effective counsel, and fairness issue;
- If the prosecution knows what precedent it will rely on, it should disclose that legal authority, similar to the reciprocal discovery requirement.

The committee discussed:

- The desire of judges to be presented with the proper cases at the hearing so they can make the correct ruling;
- Parties occasionally find cases at the last minute;
- Both sides are under significant caseload and time pressures and a 7-day requirement may not be feasible;

- Judges can address due process issues by giving the defense extra time to research and reply to the State’s response, even if it arises during the hearing;
- Not all judges will give the defendant extra time to reply to the prosecution’s response to the motion;
- This proposal may not be workable considering the Court of Appeals’ opinion in *State v. Oxford*, 287 Or App 580 (2017);
- Often the motion to suppress does not give the prosecution sufficient information to direct the response;
- The general difficulty in meeting the UTCR 4.010 time requirements;
- Often the issue does not get narrowed until the hearing, sometimes during examination of the officer; and
- A boilerplate response from the prosecution would not be helpful to the judge or the defense.

The committee formed a workgroup to study the proposal.

PROPOSED AMENDMENT

4.060 MOTION TO SUPPRESS EVIDENCE

- (1) All motions to suppress evidence:
 - (a) Must cite any constitutional provision, statute, rule, case, or other authority upon which it is based; and
 - (b) Must include in the motion document the moving party’s brief, which must sufficiently apprise the court and the adverse party of the arguments relied upon.
- (2) Any response to a motion to suppress:
 - (a) Together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed, absent a showing of good cause, not more than 7 days after the motion to suppress has been filed;
 - (b) Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and
 - (c) Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.
 - {(d) Not less than seven days prior to date set for a hearing on the merits; must submit written citations to any constitutional**

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provision, statute, rule, case, or other authority upon which the opposing party relies or intends to rely.

- (3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.
- (4) Failure to file a written response shall not preclude a hearing on the merits.

1991 Commentary:

The Committee proposes these amendments to clarify its intent in originally adopting this rule that a written response not be required.

4. 5.100

Amend section (3) to clarify that *ex parte* orders for provisional process need not be served prior to submission to the court.

ACTION TAKEN

Motion to preliminarily recommend disapproval of the proposal passed by consensus.

EXPLANATION

This proposal was submitted by David Gray, Beaverton Attorney, on February 20, 2019. The committee discussed:

- There may be no need for this change since there is no requirement to submit an order with the motion for provisional process;
- This probably already falls under the exception in section (3)(b);
- There was an effort, when drafting the revision of the rule a few years ago, to avoid listing every possible exception.

PROPOSED AMENDMENT

The proponent did not submit specific wording for amendment of the rule.

5. 6.140

Amend to expand the definition of “hazardous substance” in section (2).

ACTION TAKEN

No motion was made on this proposal. By committee convention, it is treated as preliminarily recommended for disapproval. Committee member Hukari volunteered to further study the proposal with the OJD Marshal’s Office and the Security and Emergency Preparedness Advisory Committee (SEPAC).

EXPLANATION

This proposal was submitted by Ramona Hern, Umatilla County Circuit Court staff, on June 5, 2019. The proponent stated that she was concerned about proper staff training regarding hazardous substances. She found that the

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sources listed in the rule cite to other agencies, which tend to change their definitions with some regularity. Additionally, these agency definitions may be difficult to find online. She favors the Federal Aviation Administration definitions.

The committee discussed:

- The difficulty in training staff when the definitions are fluid;
- The rule deals with evidentiary motions and orders, but what is brought into the courthouse is governed by courthouse security plans;
- The possibility of eliminating the definition from the rule; and
- The desire to further study the proposal; committee member Hukari volunteered for that task.

PROPOSED AMENDMENT

6.140 PROCEDURES FOR USE OF HAZARDOUS SUBSTANCE

- (1) If a party intends to offer into evidence any hazardous substance at an evidentiary hearing or trial, the party must file a motion no later than 28 days prior to the hearing or trial seeking an order from the court regulating the handling, use and disposition of the hazardous substance.
- (2) “Hazardous substance” in this rule is defined as any substance listed or hereafter added to the [*Department of Transportation Hazardous Substances List and the Oregon State Police List of Chemicals and Precursors for Methamphetamine Production and any other hazardous substance designated by SLR*]{**Federal Aviation Authority Regulations on Hazardous Substances, any provisions of the United States Code defining hazardous substances, or the Federal Controlled Substances Act; or is any potentially dangerous or contaminated substance capable of inflicting death or serious physical injury either immediately or over the course of time. A hazardous substance shall include any device or implement which carries, contains, or exhibits such characteristics.**}.
- (3) The court, in its discretion, may issue an order concerning any of the following matters:
 - (a) A jury view and/or photograph in lieu of transportation of the hazardous substance to the courthouse;
 - (b) Appointment of a custodian;
 - (c) Appointment of a disposition expert;
 - (d) Appointment of a medical expert;
 - (e) The amount to be transported or viewed;
 - (f) The container in which the hazardous substance is to be stored;

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- (g) The location and duration of handling and storage of the hazardous substance;
 - (h) The disposition of the hazardous substance; and
 - (i) Other matters intended by the court to safeguard the public and the evidentiary record.
- (4) Failure to file a timely motion under subsection (1) of this rule may be grounds for excluding any hazardous substance from the courthouse.

1989 Commentary:

To prevent hardship or injustice, relief from application of this rule in an individual case may be sought under UTCR 1.100.

C. OUT-OF-CYCLE AMENDMENTS

1. 1.050

Amended subsection (2)(d) to allow judicial districts to submit a final electronic certified PDF copy of SLR in lieu of a paper copy.

ACTION TAKEN

This amendment was not considered by the committee at the fall meeting. After the UTCR Committee meeting held on October 18, 2019, the rule was amended out-of-cycle in [Chief Justice Order 19-096](#) effective November 18, 2019.

EXPLANATION

The Office of the State Court Administrator changed its submission process for SLR. This amendment replaced the requirement that judicial districts submit both a hard copy of their final certified SLR and a PDF version with the requirement that judicial districts submit only a certified, electronic version of final SLR. This change simplifies the SLR submission process and reduces paper usage and mailing costs.

AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

- (1) Promulgation of SLR
 - (a) Pursuant to ORS 3.220, a court may make and enforce local rules consistent with and supplementary to these rules for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court.
 - (b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement (“local practice”) with which the court

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expects or requires parties and attorneys to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, Chief Justice Orders, Supreme Court Orders, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that do not create requirements or have potential consequences for parties or attorneys.

- (c) Every court must promulgate an SLR governing the scheduling and notification of parties for criminal trials, show cause hearings, and motions. A temporary rule may be issued for a specified period of time with Chief Justice approval if the procedures are under revision or study by the affected court.
- (d) All forms required by SLR must be submitted as part of the SLR. Such forms shall be placed in an appendix and organized by chapter and SLR number. SLR and related forms shall contain cross-references to one another.

(2) Review of SLR

- (a) The presiding judge must give written notice of any new rules and changes to existing rules to the president(s) of the bar association(s) in the affected district and allow the bar association(s) at least 49 days before the date of submission of the rules to the Office of the State Court Administrator (OSCA) to provide the presiding judge with public comment. Subsequent changes made to those SLR in response to recommendations from the UTCR Committee do not need to be submitted to the president(s) of the bar association(s) in the affected district.
- (b) Proposed local rules will be considered by the Chief Justice or designee not more often than once each year. To be considered, the proposed rules and a written explanation of each proposed new rule and change to an existing rule must be received by OSCA on or before September 1.
- (c) The Chief Justice or designee shall issue any disapprovals on or before December 15 of the same year.
- (d) Judicial districts shall file with OSCA a final certified **{electronic}** copy [*and a final electronic copy*] in PDF which must be received by OSCA no later than January 1 of the next year. Those SLR shall become effective on February 1 of the next year.
- (e) Proposed local rules submitted to the Chief Justice for review under subsection (2)(b) of this rule must show the proposed changes to the local rule as follows: proposed new wording in the SLR and proposed new SLR will be in bold and underlined and have braces placed before and after the new wording (**{...}**), wording proposed to be deleted and SLR proposed to be repealed will be in italics and

have brackets placed before and after the deleted wording ([...]). When final SLR are submitted to the State Court Administrator after review under subsection (2)(b) of this rule, changes shall not be indicated as required by this subsection.

- (f) The Chief Justice may waive the time limits in this section upon a showing of good cause.
- (g) If a local rule is disapproved, notice of that action shall be given to the presiding judge of the court submitting the rule.

(3) Enforceability of Local Practices Not Contained in SLR

When any local practice is not contained in a court's SLR, the court may not enforce such local practice or impose any sanction therefore, unless the court has first afforded the party or attorney a reasonable opportunity to cure the violation by complying with the local practice.

1987 Commentary:

Subsection (2) renumbered as paragraph (1)(c) as of August 1, 1994: This subsection requires a court to promulgate local rules governing the scheduling and notification of counsel for trials, show cause hearings, and for motions. The purpose of this subsection is to give counsel, everywhere in the state, notice of how critical case events are scheduled by each local court. The purpose of this subsection, therefore, is not to promote any particular calendaring procedure, but rather to eliminate unwritten rules of court.

2. 3.190

Adopted a new rule prohibiting civil arrests in a courthouse or courthouse environs without a judicial warrant or judicial order.

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, passed on a vote of 10-1. After the UTCR Committee meeting held on October 18, 2019, the proposed rule was further modified by the Chief Justice and that version of the rule was adopted out-of-cycle in [Chief Justice Order 19-095](#), effective November 14, 2019.

EXPLANATION

This proposal was submitted by ACLU of Oregon, Adelante Mujeres, Causa Oregon, Immigration Counseling Service, Innovation Law Lab, Metropolitan Public Defender, Northwest Workers' Justice Project, Stoll Berne, Unite Oregon, and Victim Rights Law Center on September 3, 2019.

At the committee meeting on October 18, 2019, the proponents discussed:

- ACLU efforts, FOIA, and other litigation to get information on ICE activities;
- ICE incidents in Oregon circuit courts;

- The impact of ICE activities on court processes;
- Fear in certain communities that keeps them from going to a courthouse;
- The increase in ICE courthouse arrests;
- The administrative procedure nature of ICE civil warrants;
- Questions over whether ICE has obtained a civil warrant in all instances;
- Court rules and legislation in other states limiting ICE activity in courthouses;
- The common law privilege against civil arrest;
- Supremacy Clause issues;
- The desire to prevent civil arrest when a person is going to or coming from a courthouse;
- Writs of protection;
- Enforcement of the proposed prohibition in the immigration case by way of a motion to suppress;
- Enforcement of the proposed prohibition through litigation against ICE;
- The need for the courts to have this rule, either in lieu of or in addition to state legislation, in light of comity and sovereign immunity;
- The broad applicability of the rule to parties, witnesses, family members, and people engaging in courthouse business;
- That they don't want to pit state law enforcement agencies and court security personnel against federal officers;
- That they don't expect judges to order an arrest or initiate a confrontation with ICE; and
- Compliance by ICE with rules in other states.

At the committee meeting on October 18, 2019, the committee discussed:

- Judges' concerns over how to enforce the proposed rule and the difficulties in enforcing it against federal officials;
- Whether this matter is better suited for the Legislature;
- Whether the "going to or coming from a courthouse" part of the proposed rule is too broad and too difficult to enforce;
- Concern about implementing a court rule that governs activity away from the courthouse;
- Whether the proposed rule should include a remedies or enforceability section;
- Issues with imposing contempt orders against ICE;
- Concern over a rule that is aspirational with no clear enforcement mechanism;

- Concern over the risk of a state judicial officer being charged with obstruction of justice;
- Concern over the court staff role in responding to ICE activity in the courthouse;
- The need to have people participate in court proceedings and the urgency of the ICE situation, which deters participation; and
- Concern over whether this is appropriate for a state trial court rule and whether it might better be addressed by Chief Justice Order.

The committee modified the proposal to:

- Strike the “going to or coming from a courthouse” section;
- Add “environs of the courthouse” to the first section of the proposed rule; and
- Recommend addition of a provision clarifying the parameters of sanctions and enforcement of the rule.

The Chief Justice further modified the proposed rule after the October 18, 2019, UTCR Committee meeting and adopted a final version in [Chief Justice Order 19-095](#), effective November 14, 2019.

NEW RULE

3.190 CIVIL ARRESTS

- (1) No person may subject an individual to civil arrest without a judicial warrant or judicial order when the individual is in a courthouse or within the environs of a courthouse.
- (2) “Courthouse” means any building or space used by a circuit court of this state.
- (3) “Environs of a courthouse” means the vicinity around a courthouse, including all public entryways, driveways, sidewalks, and parking areas intended to serve a courthouse.

3. 6.050

Amended to add an exception for PCR exhibits. See related items C.4, C.5, C.6, C.7, C.8, C.9, and C.10.

ACTION TAKEN

At the fall committee meeting on October 18, 2019, the motion to preliminarily recommend approval of the amendment out-of-cycle passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

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EXPLANATION
See related item C.7.

AMENDMENT

6.050 SUBMISSION OF TRIAL MEMORANDA AND TRIAL EXHIBITS

- (1) A party must file any trial memorandum. The court also may require that a party submit a copy of the trial memo, in the manner and time that the court specifies.
- (2) All trial memoranda must be served on the opposing party.
- (3) Trial exhibits must be delivered or submitted as ordered by the assigned judge and not filed with the court except as required by UTCR 11.110{**or UTCR 24.040(3)(a)**}.

4. 21.040

Amended to add an exception for PCR exhibits. See related items C.3, C.5, C.6, C.7, C.8, C.9, and C.10.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION
See related item C.7.

AMENDMENT

21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

- (1) A document submitted electronically to the court must be in the form of a text searchable Portable Document Format (PDF) or a text-searchable Portable Document Format/A (PDF/A) file that does not exceed 25 megabytes. The PDF or PDF/A document must allow copying and pasting text into another document, as much as practicable. A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. A filer submitting separate files under this section must include in the Filing Comments field for each submission a description that clearly identifies the part of the document that the file represents, for example, "Motion for Summary Judgment, part 1 of 2."
- (2) Except as provided in subsections (a) or (b) of this section,{**or in UTCR 24.040(3)(a)**} when a document to be electronically filed incorporates a documentary exhibit, an affidavit, a declaration, a certificate of service, or another document, the electronic filing must be submitted as a unified single PDF file, rather than as separate electronically filed documents, to

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the extent practicable. An electronic filing submitted under this section that exceeds 25 megabytes must comply with section (1) of this rule.

* * * * *

5. 21.070

Moved section (1)(c) to UTCR 24.030 and amended to add an exception for PCR exhibits to section (3)(p). See related items C.3, C.4, C.6, C.7, C.8, C.9, and C.10.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION

See related item C.7.

AMENDMENT

21.070 SPECIAL FILING REQUIREMENTS

(1) Courtesy Copies and Other Copies

(a) The court may require that a filer submit, in the manner and time specified by the court, a copy of the document that was filed electronically and a copy of the submission or acceptance email from the electronic filing system.

(b) When a filer submits a document for conventional filing or electronic filing, the filer need not submit for filing additional copies of that document unless otherwise required by the court.

[(c) If the petitioner in a post-conviction relief proceeding filed under ORS 138.510 intends to rely on the contents of the underlying circuit court criminal case file to support the allegations in the petition filed under ORS 138.580, then the petitioner must so state in the petition. If the petitioner intends to rely on some, but not all, of the contents of the underlying case file, then the petitioner must identify with reasonable specificity the materials on which the petitioner intends to rely. The petitioner need not attach to the petition, as part of evidence supporting the allegations, any document from the underlying case file.

(i) This subsection applies only if the underlying criminal case was filed on or after the date that the circuit court in which the conviction was entered began using the Oregon eCourt Case Information system.

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- (ii) The date that each circuit court began using the Oregon eCourt Case Information system is available at <http://www.courts.oregon.gov/programs/ecourt/Pages/Implementation-Map-2011-2016.aspx>.]

* * * * *

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

- (a) * * *

* * * * *

- (p) Trial exhibits, which must be submitted or delivered as provided in UTCR 6.050, except as provided in UTCR 11.110{ **or UTCR 24.040(3)(a)**}.

* * * * *

6. **24.030**

Moved current 21.070(1)(c) to UTCR 24.030. See related items C.3, C.4, C.5, C.7, C.8, C.9, and C.10.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION

See related item C.7.

AMENDMENT

24.030 [THIS RULE INTENTIONALLY LEFT BLANK]{**RELIANCE ON UNDERLYING CIRCUIT COURT CRIMINAL CASE**}

- (1) If petitioner intends to rely on the contents of the underlying circuit court criminal case file to support the allegations in the petition, then petitioner must so state in the petition. If petitioner intends to rely on some, but not all, of the contents of the underlying case file, then petitioner must identify with reasonable specificity the materials on which petitioner intends to rely. Petitioner need not attach to the petition, as part of evidence supporting the allegations, any document from the underlying case file.**

- (a) This subsection applies only if the underlying criminal case was filed on or after the date that the circuit court in which the**

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conviction was entered began using the Oregon eCourt Case Information system.

(b) The date that each circuit court began using the Oregon eCourt Case Information system is available at <http://www.courts.oregon.gov/programs/ecourt/Pages/Implementation-Map2011-2016.aspx> }

7. 24.040

Adopted a rule governing the filing of PCR exhibits. See related items C.3, C.4, C.5, C.6, C.8, C.9, and C.10.

ACTION TAKEN

Motion to remove the requirement that an exhibit submitted as a confidential exhibit must be clearly designated as a “confidential exhibit” and consolidate the subparts in (3)(a) passed by consensus. Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION

This proposal, and the related amendments in items C.3, C.4, C.5, C.6, C.8, C.9, and C.10 were submitted by the Post-Conviction Relief (PCR) Exhibits Work Group on September 5, 2019. At the spring meeting on March 8, 2019, the UTCR committee issued a final recommendation of approval of new rules in UTCR Chapter 24 (PCR), including a rule regarding the filing of exhibits. Following conclusion of the spring meeting, the committee received feedback from Ramona Hern, Court Analyst at Umatilla County Circuit Court, identifying some aspects of the exhibit filing rule that required clarification. As a result, the exhibits rule recommended at the spring 2019 committee meeting was not approved by Chief Justice Walters. The committee formed the PCR Exhibits Work Group with the goal of improving the exhibit filing rule and recommending other related changes to PCR rules.

The purpose of this rule, and the related amendments, is to establish exhibit filing requirements that account for the unique needs of PCR cases. PCR cases differ from typical civil cases in the following ways:

- PCR cases are often exhibit intensive and rely heavily on the underlying criminal case record and the trial transcript;
- PCR trials are often conducted remotely by Plan B or *pro tem* judges who may only have access to the electronic file in Odyssey; and
- PCR cases are often appealed, and preparing PCR exhibits for transmission to the Court of Appeals can be time consuming for court staff if the exhibits are not well organized.

To account for these unique aspects of PCR cases, the amended rule requires submission of PCR exhibits as follows:

- Each exhibit submitted into the PCR case must be numbered sequentially with no duplication. This requirement aids the judge in finding and referring to exhibits in the electronic file;
- Each exhibit must be submitted only one time unless the filer is submitting a corrected exhibit. This requirement eliminates redundant exhibits and reduces the burden of electronically storing documents on OJD servers;
- Each exhibit must be filed as a separate electronic document. This requirement aids court staff in preparing the exhibits for transmission in the event of an appeal;
- eFilers must submit all documentary exhibits, other than video and audio exhibits, electronically. This requirement allows *pro tem* and Plan B judges to access the exhibits remotely and reduces the burden on court staff who would otherwise need to scan the exhibits into Odyssey; and
- Non-eFilers will continue to file exhibits conventionally, pursuant to UTCR 6.050(3). Court staff will continue to scan these exhibits into Odyssey.

The committee recommended that the proposal and the related amendments be adopted out-of-cycle, effective February 1, 2020, to correspond with changes to the supplementary local rules.

Items C.3, C.4, C.5, C.6, C.8, C.9, and C.10 are related amendments:

- Item C.3 creates an exception to the general exhibit filing rule in UTCR 6.050 to allow an eFiler to submit PCR exhibits electronically;
- Item C.4 creates an exception to the general rule in UTCR 21.040(2) to allow an eFiler to submit each PCR exhibit as a separate file;
- Item C.5 exempts PCR exhibits submitted by an eFiler from the list of documents in UTCR 21.070(3)(p), which must be filed conventionally;
- Items C.5 and C.6 move UTCR 21.070(1)(c), regarding filing documents from the underlying criminal case, to 24.030;
- Item C.8 renumbers UTCR 24.040 to 24.050;
- Item C.9 renumbers UTCR 24.050 to 24.060; and
- Item C.10 designates SLR 24.111 for supplementary rules regarding challenges to court appointed counsel.

AMENDMENT

24.040 [ADDITIONAL MOTIONS, BRIEFING, AND]EXHIBITS

[Unless otherwise ordered by the court:

- (1) *All substantive pretrial motions must be filed at least 60 days before trial. The court may allow a late filing for good cause shown.*

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- (2) *Petitioner's trial memoranda, including legal memoranda, and any additional exhibits not already filed with the court, must be filed not later than 30 days before trial.*
- (3) *Defendant's trial memoranda, including any legal memoranda, and any additional exhibits not already filed with the court must be filed not later than 20 days prior to trial.*
- (4) *Not later than 10 days before trial, petitioner may respond to defendant's memoranda and exhibits with a further memorandum and additional exhibits.]*

{(1) Only the portions of the trial transcript or other documents that are directly relevant to petitioner's claims must be attached to the petition or amended petition as an exhibit, or, if UTCR 24.030 applies, identified in the petition.

(2) (a) A pleading that relies on a previously filed exhibit must expressly describe the exhibit, the earlier pleading with which it was filed, and the date that earlier pleading was filed.

(b) Each exhibit submitted must be numbered sequentially with no duplication, regardless of when the exhibit is submitted or what document the exhibit relates to.

(c) An exhibit may not be submitted more than one time unless the filer is submitting a corrected exhibit.

(3) Unless UTCR 24.030 or UTCR 21.070(3)(g) apply, all documentary exhibits must be submitted as follows:

(a) If the filer is an authorized eFiler under UTCR 21.030(1)(a), the filer must submit the exhibits electronically unless the exhibit is an audio or video recording or the court orders otherwise. UTCR 21.040 applies to this subsection, except that each exhibit must be submitted as a separate electronically filed document.

(b) If the filer is not an authorized eFiler under UTCR 21.030(1)(a), the filer must submit the documentary exhibits pursuant to UTCR 6.050(3).}

8. 24.050

Renumbered current 24.040 to 24.050. See related items C.3, C.4, C.5, C.6, C.7, C.9, and C.10.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

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EXPLANATION
See related item C.7.

AMENDMENT

24.050 [DISCLOSURE OF WITNESSES PURSUANT TO ORS 138.615]{**ADDITIONAL MOTIONS, BRIEFING, AND EXHIBITS**}

[Unless otherwise ordered by the court for good cause shown, the disclosure of witness information required under ORS 138.615 must be made no later than 60 days before trial.]

{Unless otherwise ordered by the court:

- (1) All substantive pretrial motions must be filed at least 60 days before trial. The court may allow a late filing for good cause shown.**
- (2) Petitioner’s trial memoranda, including legal memoranda, and any additional exhibits not already filed with the court, must be filed not later than 30 days before trial.**
- (3) Defendant’s trial memoranda, including any legal memoranda, and any additional exhibits not already filed with the court must be filed not later than 20 days prior to trial.**
- (4) Not later than 10 days before trial, petitioner may respond to defendant’s memoranda and exhibits with a further memorandum and additional exhibits.**

9. 24.060

Renumbered current 24.050 to 24.060. See related items C.3, C.4, C.5, C.6, C.7, C.8, and C.10.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION
See related item C.7.

AMENDMENT

24.060 [THIS RULE INTENTIONALLY LEFT BLANK]{**DISCLOSURE OF WITNESSES PURSUANT TO ORS 138.615**}

Unless otherwise ordered by the court for good cause shown, the disclosure of witness information required under ORS 138.615 must be made no later than 60 days before trial.

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10. **24.110**

Adopted a new rule designating SLR 24.111 for SLR regarding challenges to court appointed counsel (*Church v. Gladden* claims). See related items C.3, C.4, C.5, C.6, C.7, C.8, and C.9.

ACTION TAKEN

Motion to preliminarily recommend approval of the amendment out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-098](#), effective February 1, 2020.

EXPLANATION

See related item C.7.

NEW RULE

{24.110 CHALLENGES TO COURT APPOINTED COUNSEL

SLR 24.111 is reserved for judicial districts to adopt a local rule regarding challenges to court appointed counsel (*Church v. Gladden* claims).}

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11. **21.070**

Amended section (3) to require conventional filing of a victim's request for an USCIS certification authorized by Senate Bill 962 (2019).

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal and to amend the rule out-of-cycle, passed by consensus. After the UTCR Committee meeting held on October 18, 2019, the proposed amendment was adopted out-of-cycle in [Chief Justice Order 19-103](#), effective January 1, 2020.

EXPLANATION

This proposal was submitted by Matt Shoop, OJD Staff Counsel, on September 23, 2019. Federal law allows a victim to apply for a U visa when the victim has been helpful to law enforcement, prosecutors, or the courts. Oregon Laws 2019, chapter 472, section 1 (Senate Bill 962 (2019)) authorized a certification process allowing a victim to obtain certification from the courts documenting the victim's cooperation. The proposed amendment requires a victim to conventionally file a request for certification. A case generated by a request for certification must be confidential. OJD has an existing administrative case type that is confidential, so that is how these requests will be filed. Documents in an administrative case type cannot be electronically filed, so they must be conventionally filed. The proponents shared this proposal with stakeholders and the Marion County Sheriff supports this approach. These requests can arise in criminal cases, Family Abuse Prevention Act cases, and other scenarios. The proponents requested out-of-cycle adoption of the amendment so that the amended rule can go into effect at the same time as Senate Bill 962 (2019), which takes effect on January 1, 2020.

The committee discussed:

- Whether parties in an ongoing criminal case should and would be notified of a request;
- That the court won't know about an ongoing criminal case if it is not cited in the request;
- Whether a judge has an ethical obligation to notify all parties in an ongoing criminal case of a request;
- Whether there should be a requirement that the request identify any related, ongoing criminal cases;
- That the Multnomah District Attorney's office discloses requests to the defense, if the office is aware of the request;
- That this is an improvement because currently the requests are not filed in any case; and
- Concerns over the confidentiality of the requests.

AMENDMENT

21.070 SPECIAL FILING REQUIREMENTS

(1) * * *

* * * * *

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) * * *

* * * * *

{(r) A victim's request for a United States Citizenship and Immigration Services certification, and related documents, authorized by Oregon Laws 2019, chapter 472, section 1 (2019 Senate Bill 962).}

(4) * * *

* * * * *

D. OTHER ACTIONS

1. 1.120

Reviewed public comment on out-of-cycle amendment.

ACTION TAKEN

No action was needed nor taken.

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EXPLANATION

This rule was amended out-of-cycle by [Chief Justice Order 19-035](#), effective June 13, 2019. The amendment was requested by Lindsey Detweiler, Assistant General Counsel, Oregon Judicial Department. It clarifies the circumstances in which a filing fee is required when a person files a motion for disbursement of monies. As required by the order, the amended rule was posted for public comment and placed on the agenda of this meeting, so the committee could review any public comment submitted. The committee received one comment that was not germane to the amendment.

AMENDMENT

1.120 DISBURSING MONIES; MOTION AND ORDER

- (1) The trial court administrator will not disburse monies without order of the court in any instance where the trial court administrator is unable to determine any of the following:
 - (a) The amount to be disbursed including, but not limited to, instances where the trial court administrator is required to calculate interest, past payments, or proceeds remaining from a sale.
 - (b) The specific party or parties to whom the trial court administrator is to disburse monies.
- (2) In any instance described under subsection (1), the trial court administrator must give notice to the presiding judge and to any parties the trial court administrator can reasonably determine might have an interest in the monies. The following apply to notice under this subsection:
 - (a) Notice must be in writing.
 - (b) Notice must include all the following to the extent possible: an indication that it is being given under this section, the amount of the money in question, identification of the source from which the trial court administrator received the money, a copy of any document received with the money, a description of the circumstances of receiving the money, identification of any case to which the trial court administrator can determine the monies may be related, and a description of the reasons for not disbursing monies.
 - (c) The trial court administrator shall enter in the register the fact of giving the notice, the time of giving notice, the manner of giving notice, and the persons to whom notice was given.
- (3) At any time the trial court administrator does not disburse monies for reasons described under subsection (1) of this section or for any other reason, the court or any person with an interest in the money may submit a motion for an order to disburse the monies. The following apply to a motion under this subsection:

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- (a) Notice of the motion must be given to persons which the submitting party reasonably determines might have an interest in the money.
 - (b) The motion must indicate that it is being submitted under this section.
 - (c) The motion must include all the following: an explanation of the party's interest in the money, supporting mathematical calculations showing the amount of money that should be disbursed, any supporting documentation or affidavits that might assist the court in its determination, the name and address of the person to whom the monies should be disbursed, a proposed order to disburse.
 - (d) [*The motion is not a new filing or appearance but a continuation of an existing proceeding and*]{**If the person filing the motion has previously appeared in the proceeding,**} no fee is required for filing the motion. {**If the person filing the motion has not previously appeared in the proceeding, the person must pay the first appearance fee required by statute.**}
- (4) If the court determines money is to be disbursed, the court must enter an order to disburse directing specific amounts of money held by the trial court administrator to be disbursed and specific persons to whom the trial court administrator is to disburse the monies.
- (5) A trial court administrator must hold any monies subject to this section in the court trust account and follow the established accounting procedures until the trial court administrator receives the order to disburse.

1990 Commentary (statutory citations updated August 1, 2014):

Situations to which this section applies include, but are not limited to, a trial court administrator receiving and being unable to disburse monies under ORS 18.422(3), 18.872(2), 18.950, 87.475(3), or 88.100.

2. 21.080

Reviewed section (5) for potential conflict with ORS 21.100 considering rulings by the Appellate Commissioner and the Court of Appeals in *Otnes v. PCC Structural, Inc.*, A167525.

ACTION TAKEN

No action was taken. This item will be carried over to the next agenda.

EXPLANATION

This proposal was submitted by Janet Schroer, UTCR Committee Chair, on October 4, 2018. The case is pending possible review by the Oregon Supreme Court, so it is premature to discuss a proposed amendment to the rule.

PROPOSED AMENDMENT

The proponent did not submit specific wording for amendment of the rule.

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3. Committee Membership

Update

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

The committee received an update on membership. Committee members Hon. Wells Ashby, Hon. Andrew R. Erwin, Hon. Tracy Prall, and Craig Cowley will complete their service on the committee on December 31, 2019.

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4. Spring 2020 Meeting

Scheduled spring meeting.

ACTION TAKEN

The committee scheduled its next meeting for April 3, 2020.

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5. Fall 2020 Meeting

Scheduled fall meeting.

ACTION TAKEN

The committee scheduled its fall meeting for October 2, 2020.