NOTICE SEEKING PUBLIC COMMENT ON
OUT-OF-CYCLE REVISION OF UTCR 1.050(2), AMENDMENT OF UTCR 21.090, AND
REPEAL OF UTCR 21.120
(Comment Period Closes at 5:00 pm on August 31, 2020)

I.   INTRODUCTION

We are seeking comment on out-of-cycle revision of Uniform Trial Court Rule (UTCR) 1.050(2), amendment of 21.090, and repeal of 21.120. Revision of 1.050(2) was adopted out-of-cycle by Chief Justice Order 20-015, effective May 12, 2020. Amendment to 21.090 and repeal of 21.120 were adopted out-of-cycle by Chief Justice Order 20-008, effective March 27, 2020.

II.   HOW TO SUBMIT COMMENTS

You may submit your comments by:

- clicking on the button below, next to each rule

- 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 August 31, 2020. Comments will be reviewed by the UTCR committee at its next meeting on October 2, 2020.

III.   OUT-OF-CYCLE CHANGES

For the convenience of the reader, deleted wording is shown in [*brackets and italics*] and new wording is show in {**braces, underline, and bold**}. Revision of 1.050(2) (in lieu of a simpler amendment) consists of a complete rewriting of a large section of this rule so there is no use of [*brackets and italics*] or {**braces, underline, and bold**}.

1.   1.050

EXPLANATION
The UTCR Reporter requested this revision to clarify SLR timelines and processes, including those for adopting changes and disapprovals recommended by the committee. The revision was adopted out-of-cycle by Chief Justice Order 20-015, effective May 12, 2020, so that it would apply to SLR changes under consideration now for adoption on February 1, 2021.

REVISED RULE

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

*Click Here
to Comment
on This Rule*

(1)   * * *

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(2) Review of SLR

    (a) The presiding judge must give written notice of proposed new rules and proposed changes to existing rules to the president(s) of the bar association(s) in the affected judicial district and allow the bar association(s) to provide public comment to the presiding judge. The presiding judge must give the written notice at least 49 days before the date of submission of the SLR to the Office of the State Court Administrator (OSCA) pursuant to subsection (b).

    (b) On or before September 1 of each year, the presiding judge or designee must submit to OSCA a complete set of SLR, including proposed new rules and proposed changes to existing rules, if any. The submission must include a written explanation of each proposed new rule and each proposed change of an existing rule. Absent a showing of good cause, proposed new rules and proposed changes to existing rules will be considered by the UTCR Committee and the Chief Justice or designee not more often than once each year.

    (c) SLR submitted to OSCA must show proposed changes as follows: new wording and new rules must be in bold and underlined and have braces placed before and after the new wording ({**...**}), wording to be deleted and rules to be repealed must be in italics and have brackets placed before and after the deleted wording ([*...*]). When final SLR are submitted to OSCA pursuant to subsection (g), changes shall not be indicated in the manner required by this subsection.

    (d) The UTCR Committee will conduct an annual review of existing rules, proposed new rules, and proposed changes to existing rules. The UTCR Committee may suggest rule changes to a presiding judge, and recommend disapprovals to the Chief Justice, regarding existing rules, proposed new rules, and proposed changes to existing rules.

    (e) The Chief Justice or designee shall issue any disapprovals on or before December 15 of the same year. If a local rule is disapproved, notice of that action shall be given to the presiding judge of the judicial district submitting the rule.

    (f) A presiding judge may include in the final SLR, submitted pursuant to subsection (g), changes suggested by the UTCR Committee. A presiding judge must address in the final SLR any disapprovals made by the Chief Justice. Subsection (a) does not apply to these changes or disapprovals.

    (g) Judicial districts must file with OSCA a final certified electronic copy of their SLR in PDF and send a copy to the president(s) of the bar association(s) in the affected judicial district. The final certified electronic copy must be received by OSCA no later than January 1 of the next year. Those SLR become effective on February 1 of the next year. SLR filed after January 1 become effective 30 days after the date received by OSCA.

    (h) The Chief Justice may waive the time limits established in this section upon a showing of good cause.

(3) * * *

2. **21.090**

EXPLANATION

On August 31, 2018, Salem Attorney Kristin Lamont submitted a proposal to allow electronic signatures on declarations. The concept was studied by a workgroup after discussion at the fall 2018 UTCR Committee meeting. At the UTCR committee meeting on October 18, 2019, the committee preliminarily recommended changes to the proposed rule recommended by the workgroup that tie the rule to ORS Chapter 84, address the use of wet signatures, and set different retention time for electronic and wet signatures. At the fall meeting on October 18, 2019, the committee noted that:

- The rule allows the use of electronic signature software that includes an audit trail;

- An electronic filer will need to remove the audit trail when submitting documents for filing because the electronic filing system will not accept them;

- An opposing party can challenge an electronic signature; and

- Use of electronic signatures is voluntary, not mandatory.

- The Oregon Law Commission is studying a proposal to allow notaries to notarize documents remotely, so this rule may require future amendment.

Prior to the UTCR committee meeting on April 3, 2020, this rule was adopted out-of-cycle by Chief Justice Order 20-008, effective March 27, 2020. Chief Justice Walters adopted this rule out-of-cycle to assist attorneys and litigants in maintaining social distance during the COVID-19 pandemic.

AMENDED RULE

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:**}

(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.**}

3. **21.120**

EXPLANATION
Prior to the UTCR committee meeting on April 3, 2020, this rule was repealed out-of-cycle by Chief Justice Order 20-008, effective March 27, 2020. Repeal of the rule was preliminarily recommended for approval by the UTCR committee at the fall meeting on October 18, 2019. The Chief Justice repealed the rule out-of-cycle to assist litigants in maintaining social distance during the COVID-19 pandemic. See explanation for the related amendment to UTCR 21.090, above.

REPEALED RULE

21.120   RETENTION OF DOCUMENTS BY FILERS AND CERTIFICATION OF ORIGINAL SIGNATURES {**(Repealed)**}

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

{**REPORTER's NOTE: UTCR 21.120 was repealed effective March 27, 2020. See UTCR 21.090 for retention and certification requirements.**}