

## **NOTICE SEEKING PUBLIC COMMENT ON PROPOSED UNIFORM TRIAL COURT RULES CHANGES FOR 2022**

### **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 15, 2021, 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 will go into effect 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 1, 2022.

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 11, 2022.

### **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](mailto: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](mailto:utcr@ojd.state.or.us) or Aja T. Holland at 503-986-5500 to schedule a time for your appearance.

Unless otherwise noted, rule changes adopted by the Chief Justice will take effect August 1, 2022. Following adoption, the rules will be posted on the Oregon Judicial Department (OJD) 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 2022.

**SPRING MEETING:** April 1, 2022, at 9:00 a.m. This meeting location has yet to be determined due to COVID-19 and may be held at the OJD Enterprise Technology Services Division, Salem, Oregon, or online via WebEx. 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, 2022. The committee may reconsider these proposals, the corresponding recommendations, and any other committee action.

**FALL MEETING:** October 20, 2022, 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, 2023. 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 2021 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. 1.020(6)  
Amend to allow the UTCR Reporter to correct inaccurate citations in Uniform Trial Court Rules. See related item A.2.
2. 1.050(2)  
Amend to allow the UTCR Reporter to authorize correction of inaccurate citations in Supplementary Local Rules. See related item A.1.
3. 1.110  
Amend to add a definition of “remote means” and “remote proceeding.” See related items A.4 – A.17.
4. 2.010(5)  
Amend the rule to remove the prohibition on backing sheets in subsection (5). See related items A.3 and A.5 – A.17.
5. 3.010  
Amend to clarify application to remote proceedings. See related items A.3 – A.4 and A.6 – A.17.
6. 3.020  
Amend to clarify application of the rule to remote proceedings. See related items A.3 – A.5 and A.7 – A.17.

7. 3.040  
Amend to clarify application of the rule to remote proceedings. See related items A.3 – A.6 and A.8 – A.17.
8. 3.180  
Amend the title and the rule to clarify application of the rule to remote proceedings. See related items A.3 – A.7 and A.9 – A.17.
9. 4.050  
Amend to replace references to “telecommunication” with “remote means;” require a party requesting a hearing by remote means to include email addresses for all parties; and clarify that a party is not required to request a hearing by remote means if a Chief Justice Order or Presiding Judge Order has the effect of suspending that requirement. See related items A.3 – A.8 and A.10 – A.17.
10. 4.080  
Amend to modernize terms referring to modes of communication permitted for Simultaneous Electronic Transmission (SET) proceedings. See related items A.3 – A.9 and A.11 – A.17.
11. 5.050  
Amend to replace references to “telecommunication” with “remote means;” require a party requesting a hearing by remote means to include email addresses for all parties; and clarify that a party is not required to request a hearing by remote means if a Chief Justice Order or Presiding Judge Order has the effect of suspending that requirement. See related items A.3 – A.10 and A.12 – A.17.
12. 6.010  
Amend the rule to refer to hearings held by “remote means” instead of “telecommunication.” See related items A.3 – A.11 and A.13 – A.17.
13. 7.060  
Amend the rule to require a person in need of an accommodation to notify the court whether the proceeding will be held in person in the courthouse, or by remote proceeding. See related items A.3 – A.12 and A.14 – A.17.
14. 7.070  
Amend the rule to require a person in need of an interpreter to notify the court whether the proceeding will be held in person in the courthouse, or by remote proceeding. See related items A.3 – A.13 and A.15 – A.17.
15. 10.070  
Amend to remove the distance requirement for requests that a hearing be held by remote means and clarify application of the rule to remote proceedings. See related items A.3 – A.14 and A.16 – A.17.
16. 21.070  
Amend to allow exhibits to be filed or submitted as permitted or directed by Chief Justice Order. See related items A.3 – A.15 and A.17.

17. 24.070  
Amend to clarify that, when used in the rule, “in person” refers to proceedings held at the courthouse. See related items A.3 – A.16.
18. 1.110  
Amend to add definitions of “authenticated signature,” “electronic signature” and “original signature.” See related items A.19 and A.20.
19. 2.010(6)  
Amend section (6) to allow conventional filing of a document containing an electronic signature. See related items A.18 and A.20.
20. 21.090  
Amend to clarify the signature requirements of the rule. See related items A.18. and A.19.
21. 2.100  
Remove unnecessary citation to ORS chapter 416. See related items A.22 and A.23.
22. 2.130  
Remove unnecessary citation to ORS chapter 416. See related items A.21 and A.23.
23. 8.020  
Add a citation to ORS chapter 25 and remove unnecessary citation to ORS chapter 416. See related items A.21 and A.22.
24. 4.120  
Adopt a new rule governing post-judgment motions to reduce or modify financial obligations in criminal cases.
25. 7.020  
Amend the rule to clarify that failure to serve a defendant will only result in the dismissal of the unserved defendant.
26. 8.090(4)  
Amend the rule to mirror the wording used in other rules to refer to forms on the OJD Forms website.
27. Chapter 12  
Adopt new rules governing court-connected mediator qualifications.
28. 21.070(3)  
Amend the rule to add foreign subpoena documents under UTCR 5.140(1) to the list of documents that must be conventionally filed.
29. 21.070(6)  
Amend to require documents that are confidential by statute, rule, or court order to be designated as “confidential” in the eFiling system.

## **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. 5.050  
Amend the rule to give the court discretion to decide any civil motion without oral argument.
2. 21.110  
Amend the rule to prohibit use of hyperlinks.

## **C. OUT-OF-CYCLE AMENDMENTS**

These are brief descriptions of UTCR changes that were adopted out-of-cycle by the Chief Justice following the October 15, 2021, UTCR Committee meeting (see Section IV.C for a detailed explanation).

1. 3.030  
Amended the rule to require jurors to be addressed by number instead of by last name, in response to 2021 Oregon Laws, chapter 295 (HB 2539 (2021)).
2. 3.190  
Repealed the rule to avoid duplication or conflict with 2021 Oregon Laws, chapter 550 (HB 3265 (2021)).
3. 21.050(2)  
Amended the rule to allow an application for waiver or deferral of court fees and costs to be filed electronically. See related item C.4.
4. 21.070(3)  
Amended the rule to remove case initiating documents that are accompanied by an application for waiver or deferral of a required fee from the list of documents that must be conventionally filed. See related item C.3.

## **D. OTHER ACTIONS**

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

1. 3.170  
Reviewed public comment on out-of-cycle amendment.
2. 5.130  
Reviewed public comment on out-of-cycle amendment. See related items D.3 – D.5.
3. 9.180  
Reviewed public comment on out-of-cycle amendment. See related items D.2 and D.4 – D.5.

4. 9.410  
Reviewed public comment on out-of-cycle repeal. See related items D.2 – D.3 and D.5.
5. 10.010  
Reviewed public comment on out-of-cycle amendment. See related items D.2 – D.4.
6. 21.080  
Reviewed section (5) for conflict with ORS 21.100, considering the ruling by the Supreme Court in *Otnes v. PCC Structural, Inc.*, 367 Or 787 (2021).
7. Committee Membership  
Update.
8. Spring 2022 Meeting  
Scheduled spring meeting (April 1, 2022).
9. Fall 2022 Meeting  
Scheduled fall meeting (October 20, 2022).

## IV. DESCRIPTION OF FALL 2021 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. 1.020(6)

Amend to allow the UTCR Reporter to correct inaccurate citations in Uniform Trial Court Rules. See related item A.2.

#### ACTION TAKEN

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

#### EXPLANATION

This proposal was submitted by Aja Holland, UTCR Reporter, on November 12, 2020. The proposal amends UTCR 1.020(6) to allow the UTCR Reporter to correct inaccurate citations in Uniform Trial Court Rules without recommendation by the UTCR Committee or approval by the Chief Justice if the correction does not change the substance of the rule.

Existing UTCR 1.020(6) already allows the UTCR Reporter to correct typographical errors, grammatical errors, and inaccurate website addresses if the correction does not change the substance of the rule. In recent years, the committee has frequently been asked to correct citations in the rules. This proposal will allow the UTCR Reporter to make the corrections in a timelier manner and, if those corrections are necessary as a result of a planned renumbering of a statute or an ORCP, to coincide the correction date with the effective date of the renumbering instead of waiting for a future committee meeting or an out-of-cycle amendment.

#### PROPOSED AMENDMENT

1.020 AMENDMENT OF THESE RULES; EFFECTIVE DATE

(1) \* \* \*

\* \* \* \* \*

(6) The UTCR Reporter may correct typographical errors, grammatical errors, {**inaccurate citations,**} and inaccurate website addresses if the correction does not change the substance of the rule. The UTCR Reporter shall give appropriate notice of corrections to the public.

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2. **1.050(2)**

Amend to allow the UTCR Reporter to authorize correction of inaccurate citations in Supplementary Local Rules. See related item A.1.

**ACTION TAKEN**

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

**EXPLANATION**

This proposal was submitted by Aja Holland, UTCR Reporter, on November 12, 2020. The proposal amends UTCR 1.050(2)(i) to allow the UTCR Reporter to authorize correction of inaccurate citations in Supplementary Local Rules without approval by the Chief Justice if the correction does not change the substance of the rule. Existing UTCR 1.050(2)(i) already allows the UTCR Reporter to authorize correction of typographical errors, grammatical errors, and inaccurate website addresses if the correction does not change the substance of the rule. See explanation for related item A.1.

**PROPOSED AMENDMENT**

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

(1) \* \* \*

\* \* \* \* \*

(2) Review of SLR

(a) \* \* \*

\* \* \* \* \*

(i) The UTCR Reporter may authorize correction of typographical errors, grammatical errors, **{inaccurate citations,}** 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) \* \* \*

\* \* \* \* \*

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3. **1.110**

Amend to add a definition of “remote means” and “remote proceeding.” See related items A.4 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

Items A.3 through A.17 were proposed by Supreme Court Appellate Legal Counsel Lisa Norris-Lampe and UTCR Reporter Aja Holland on September 1, 2021. These related items clarify application of existing rules to remote proceedings and update terminology used throughout the affected rules, especially as it relates to the use of technology. Parties and judges have identified a variety of benefits and efficiencies resulting from remote proceedings (beyond minimizing the risk of exposure to COVID-19), including but not limited to decreased travel time and shorter hearing times. For these reasons, it is anticipated that the number of remote hearings post-pandemic will continue to exceed pre-pandemic levels. The UTCR Committee discussed that the UTCRs have always been intended to include all modes of court proceedings, but in some cases, the rules have become outdated or could reasonably be amended to clarify application to remote proceedings. Items A.3 through A.17 make these needed updates and clarifications to rules throughout the UTCRs.

**PROPOSED AMENDMENT**

1.110      **DEFINITIONS**

As used in these rules:

(1)      \* \* \*

\* \* \* \* \*

**{(7) “Remote means” or “remote proceeding” means the use of telephone, telecommunication, video, other two-way electronic communication device, or simultaneous electronic transmission, in a manner that permits all participants to hear and speak with each other.}**

**{(8)}[(7)]** “Trial Court Administrator” means the court administrator, the administrative officer of the records section of the court, and where appropriate, the trial court clerk.

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4. **2.010(5)**

Amend the rule to remove the prohibition on backing sheets in subsection (5).  
See related items A.3 and A.5 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**2.010 FORM OF DOCUMENTS**

Except where a different form is specified by statute or rule, the form of any document, including pleadings and motions, filed in any type of proceeding must be as prescribed in this rule.

(1) \* \* \*

\* \* \* \* \*

[(5) *Backing Sheets*

*The use of backing sheets is prohibited.]*

(~~5~~)[6] Party Signatures and Electronic Court signatures

\* \* \* \* \*

(~~6~~)[7] Attorney or Litigant Information

\* \* \* \* \*

(~~7~~)[8] Distinct Paragraphs

\* \* \* \* \*

(~~8~~)[9] Exhibits

\* \* \* \* \*

(~~9~~)[10] Information at Bottom of Each Page

\* \* \* \* \*

(~~10~~)[11] Caption

\* \* \* \* \*

(~~11~~)[12] Orders, Judgments or Writs

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\* \* \* \* \*

(**{12}**[ 13]) Citation of Oregon Cases

\* \* \* \* \*

(**{13}**[ 14]) Notice of Address or Telephone Number Change

\* \* \* \* \*

(**{14}**[ 15]) Application to Court Forms

\* \* \* \* \*

5. **3.010**

Amend to clarify application to remote proceedings. See related items A.3 – A.4 and A.6 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**3.010 PROPER APPAREL**

- (1) All persons attending [*the*] court{, **whether in person or by remote means,**} must be dressed so as not to detract from the dignity of court. A person may wear a religiously{ }[-]required head covering unless the court orders otherwise. Members of the public not dressed in accordance with this rule may be removed from the courtroom.
- (2) When appearing {**before the**}[*in*] court, {**whether in person or by remote means,**}all attorneys and court officials must wear appropriate attire.

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6. **3.020**

Amend to clarify application of the rule to remote proceedings. See related items A.3 – A.5 and A.7 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

By consensus, the committee amended the proposal to change each reference to “incarcerated witnesses and defendants” to “in-custody witnesses and defendants.” The committee also considered using the term adults in custody (AICs), as that term is defined in statute and frequently used by the Oregon Department of Corrections (ODOC), however, the committee declined to use that term because it would not include juveniles in custody. This change from the original proposal is reflected in the proposed amendment below. See explanation for related item A.3.

**PROPOSED AMENDMENT**

3.020 PROPER APPAREL FOR IN{~~-CUSTODY~~}[CARCERATED]  
WITNESSES AND DEFENDANTS APPEARING IN CRIMINAL  
PROCEEDINGS

In{~~-custody~~}[carcerated] witnesses and defendants appearing for trial{whether in person or by remote means,} must be dressed in neat, clean civilian clothing, unless otherwise ordered by the court.

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7. **3.040**

Amend to clarify application of the rule to remote proceedings. See related items A.3 – A.6 and A.8 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

3.040      **ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES**

Attorneys must advise their clients and witnesses of the formalities of the court{, **whether attending in person or by remote means,**} and must encourage their cooperation. Self-represented parties must similarly advise their witnesses and encourage their cooperation.

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8. **3.180**

Amend the title and the rule to clarify application of the rule to remote proceedings. See related items A.3 – A.7 and A.9 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

The committee noted that this rule was adopted by Supreme Court Order and therefore must be amended by the full Supreme Court. See explanation for related item A.3.

**PROPOSED AMENDMENT**

3.180 ELECTRONIC RECORDING AND WRITING[ *ON COURTHOUSE PREMISES*]

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(1) As used in this rule:

- (a) “Electronic recording” includes video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, tape recorder, or any other means. “Electronic recording” does not include “electronic writing.”
- (b) “Electronic writing” means the taking of notes or otherwise writing by electronic means and includes but is not limited to the use of word processing software and the composition of texts, emails, instant messages, and postings to social media and networking services.

(2) Upon request made prior to the start of a proceeding, and after notice to all parties, electronic recording shall be allowed in any courtroom{, **or during a remote proceeding,**} except as provided under this rule. The court shall permit one video camera, one still camera and one audio recorder. The court may permit additional electronic recording consistent with this rule.

(3) \* \* \*

\* \* \* \* \*

(5) Except with the express prior permission of the court, a person may not:

- (a) Electronically record any court proceeding;
- (b) Electronically record in any area under the control and supervision of the court;
- (c) Engage in electronic writing;
- (d) Even if granted permission to record, send any electronic recording from within a courtroom{ **or during a remote proceeding**}; or

- (e) Even if granted permission to engage in electronic writing, send any electronic writing from within a courtroom{ **or during a remote proceeding**}.

(6) \* \* \*

\* \* \* \* \*

NOTE: UTCR 3.180 was adopted by the entire Oregon Supreme Court, and any changes to the rule will be made only with the consent of the Supreme Court.



9. **4.050**

Amend to replace references to “telecommunication” with “remote means;” require a party requesting a hearing by remote means to include email addresses for all parties; and clarify that a party is not required to request a hearing by remote means if a Chief Justice Order or Presiding Judge Order has the effect of suspending that requirement. See related items A.3 – A.8 and A.10 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

By consensus, the committee amended the proposal to change subsection (3) of the rule, which now states: “Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO, has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.” This change from the original proposal is reflected in the proposed amendment below. See explanation for related item A.3.

**PROPOSED AMENDMENT**

**4.050 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES**

- (1) \* \* \*
- (2) Counsel for either the state or the defense may request that a motion not requiring testimony be heard by **{remote means}***[telecommunication]*. The following apply to a request for oral argument by **{remote means}***[telecommunication]*:
- (a) A request must be **{set out}** in the caption of the motion or response. If oral argument by **{remote means}***[telecommunication]* is requested, the first paragraph of the motion or response must include the names**{, email addresses,}** and telephone numbers of all parties served with the request, the position of opposing counsel, and whether the defendant has waived in writing the right to appear at the hearing.
  - (b) A request by counsel for defense must be granted if counsel for defense represents that the defendant agrees to **{a hearing by remote means}***[the procedure]* and provides a signed waiver of **{in-person}***[personal]* appearance.
  - (c) A request by the state must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.
  - (d) **{If the mode of hearing is by conference call, the requesting party}***[The party requesting telecommunication]* must initiate the conference call at its expense unless the court directs otherwise.

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- (3) {Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.}*["Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other.]*

**10. 4.080**

Amend to modernize terms referring to modes of communication permitted for Simultaneous Electronic Transmission (SET) proceedings. See related items A.3 – A.9 and A.11 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

By consensus, the committee amended the proposal to change “Television” (uppercase) to “television” (lowercase). This change from the original proposal is reflected in the proposed amendment below. See explanation for related item A.3.

**PROPOSED AMENDMENT**

**4.080 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF  
SIMULTANEOUS ELECTRONIC TRANSMISSION**

- (1) A court may conduct an appearance in a criminal proceeding at any circuit court location by the following types of simultaneous electronic transmission, as defined in ORS 131.045, if the transmission complies with the requirements of ORS 131.045, 135.030, 135.360, 135.767, 137.040, and 137.545:
  - (a) Telephone;
  - (b) **{Closed-circuit t}**[ T]elevision; **{and}**
  - (c) Video conference{, **whether via internet or other platform**}[; and
  - (d) *Internet*].
- (2) SLR 4.081 is reserved for judicial districts to adopt a local rule regarding appearance at criminal proceedings by means of simultaneous electronic transmission.

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11. **5.050**

Amend to replace references to “telecommunication” with “remote means;” require a party requesting a hearing by remote means to include email addresses for all parties; and clarify that a party is not required to request a hearing by remote means if a Chief Justice Order or Presiding Judge Order has the effect of suspending that requirement. See related items A.3 – A.10 and A.12 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

By consensus, the committee amended the proposal to change subsection (4) of the rule to state: “Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO, has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.” The committee also approved amending the proposal to change two references to “telecommunication in (2)(c) of the rule to “conference call.” These changes from the original proposal are reflected in the proposed amendment below. See explanation for related item A.3.

**PROPOSED AMENDMENT**

5.050 ORAL ARGUMENT ON MOTIONS IN CIVIL CASES;  
APPEARANCE AT NONEVIDENTIARY HEARINGS AND  
MOTIONS BY [*TELECOMMUNICATION*]{**REMOTE MEANS**}

(1) \* \* \*

(2) A party may request that a nonevidentiary hearing or a motion not requiring testimony be heard by {**remote means**}[*telecommunication*].

(a) A request for a nonevidentiary hearing or oral argument by {**remote means**}[*telecommunication*] must be {**set out**} in the caption of the pleading, motion, response, or other initiating document.

(b) If appearance or argument by {**remote means**}[*telecommunication*] is requested, the first paragraph of the pleading, motion, response, or other initiating document must include the names{, **email addresses**,} and telephone numbers of all parties served with the request. The request must be granted.

(c) {**If the mode of hearing is by conference call, t**}[*T*]he first party requesting {**conference call**}[*telecommunication*] must initiate the conference call at its expense unless the court directs otherwise.

(3) [*“Telecommunication” must be by telephone or other electronic device that permits all participants to hear and speak with each other and permits official court reporting when requested.* ]*When recording is requested, {a remote proceeding}[telecommunications hearings] must*

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be recorded by the court if suitable equipment is available; otherwise, it will be provided at the expense of the party requesting recording.

**{(4) Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.}**

**12. 6.010**

Amend the rule to refer to hearings held by “remote means” instead of “telecommunication.” See related items A.3 – A.11 and A.13 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**6.010 CONFERENCES IN CIVIL PROCEEDINGS**

(1) \* \* \*

\* \* \* \* \*

(2) All conferences may be by personal appearance except that any party may **{request}***{apply}*, or the court may arrange for, a conference by **{remote means}***{telecommunication}*.

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**13. 7.060**

Amend the rule to require a person in need of an accommodation to notify the court whether the proceeding will be held in person in the courthouse, or by remote proceeding. See related items A.3 – A.12 and A.14 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**7.060 AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION**

- (1) If an accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.
- (2) Notification to the court must provide:
- (a) The name of the person needing accommodation;
  - (b) The case number;
  - (c) Charges (if applicable);
  - (d) The nature of the proceeding;
  - (e) The person's status in the proceeding;
  - (f) The time, date, and estimated length of the proceeding;
  - {(g) Whether the proceeding is scheduled to be conducted in person at the courthouse or by remote means, and, if by remote means, the type of remote means proceeding (e.g., by telephone, particular mode of video conference, etc.)};**
  - [(g){h}]** The type of disability needing accommodation; and
  - [(h){i}]** The type of accommodation, interpreter, or auxiliary aid needed or preferred.

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**14. 7.070**

Amend the rule to require a person in need of an interpreter to notify the court whether the proceeding will be held in person in the courthouse, or by remote proceeding. See related items A.3 – A.13 and A.15 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**7.070 FOREIGN LANGUAGE INTERPRETERS**

- (1) If a foreign language interpreter is needed for a court proceeding, the party in need of an interpreter must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.
- (2) Notification to the court must include:
- (a) The name of the person needing an interpreter;
  - (b) The case number;
  - (c) Charges (if applicable);
  - (d) The nature of the proceeding;
  - (e) The person's status in the proceeding;
  - (f) The time, date, and estimated length of the proceeding; *[and]*
  - {(g) Whether the proceeding is scheduled to be conducted in person at the courthouse or by remote means, and, if by remote means, the type of remote means proceeding (e.g., by telephone, particular mode of video conference, etc.); and}**
  - [(g){h}]** The language to be interpreted.

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**15. 10.070**

Amend to remove the distance requirement for requests that a hearing be held by remote means and clarify application of the rule to remote proceedings. See related items A.3 – A.14 and A.16 – A.17.

**ACTION TAKEN**

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

**EXPLANATION**

By consensus, the committee amended the proposal to change subsection (4) of the rule to state: “Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO, has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.” The committee also amended the proposal to replace references to “telecommunication in (2)(b) of the rule to “conference call” and replace one reference to “conference call” with “call.” These changes from the original proposal are reflected in the proposed amendment below. See explanation for related item A.3.

**PROPOSED AMENDMENT**

**10.070 SETTING HEARING DATE**

- (1) Unless waived in writing by both parties, the court shall schedule the hearing within 35 days of the filing of the petitioner’s memorandum of points and authorities or the settlement of the record, whichever occurs later. The court shall notify the parties of the date at least ten days before the scheduled hearing.
- (2) A party may request that the hearing be conducted by **{remote means}***[a conference call between the court and the opposing parties. The request must be granted if the office making the request is located more than 25 miles from the courthouse. UTCR 10.090 and all applicable rules of decorum in proceedings must be observed by the parties and enforced by the court during the conduct of a conference call hearing.]*
- {(a) A request must be in writing, be copied or served on the other party, and must include the names, email addresses, and telephone numbers of all parties. The request must be granted.}**
- {(b) If the mode of hearing is by conference call, the first party requesting the conference call must initiate the call at its expense unless the court directs otherwise.}**
- (3) UTCR 10.090 and all applicable rules of decorum in proceedings must be observed by the parties and enforced by the court during a remote means proceeding.**
- (4) Subsection (2) does not apply if an applicable Chief Justice Order (CJO) or Presiding Judge Order (PJO) issued pursuant to such a CJO has the effect of suspending the requirement that a party affirmatively request a hearing by remote means.}**

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**16. 21.070**

Amend to allow exhibits to be filed or submitted as permitted or directed by Chief Justice Order. See related items A.3 – A.15 and A.17.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**21.070 SPECIAL FILING REQUIREMENTS**

(1) \* \* \*

\* \* \* \* \*

(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){, **or as directed or permitted by Chief Justice Order**}.

(q) \* \* \*

\* \* \* \* \*

(4) \* \* \*

\* \* \* \* \*

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**17. 24.070**

Amend to clarify that, when used in the rule, “in person” refers to proceedings held at the courthouse. See related items A.3 – A.16.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.3.

**PROPOSED AMENDMENT**

**24.070 APPEARANCE AT HEARINGS AND TRIAL**

- (1) Unless the court orders otherwise, a petitioner in custody shall appear by simultaneous electronic transmission.
- (2) Unless the court orders otherwise, if petitioner is not in custody, or is released from custody while the petition is pending, petitioner shall immediately notify the court, and petitioner shall appear [*in person*] at scheduled hearings and trial **{in person, at the courthouse}**.
- (3) Counsel may appear in person{ **at the courthouse**} or by [*simultaneous electronic transmission*]{**remote means**} in accordance with ORS 138.622.
- (4) Public access to the proceedings shall be provided at the circuit court in which the petition is pending, and the proceeding shall be deemed to take place at that location.
- (5) Unless otherwise ordered by the court, all witnesses, except original trial counsel, appellate counsel, and law enforcement officers, must appear at the circuit court in which the petition is pending.
- (6) Any party requiring the services of a court interpreter for a hearing or trial must request a court interpreter in accordance with UTCR 7.070 and any supplementary local rule enacted pursuant to that section. If a party fails to comply with UTCR 7.070 or any supplementary local rule enacted pursuant to that section, the party is responsible for obtaining court-certified interpreter services at the party’s own expense.

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**18. 1.110**

Amend to add definitions of “authenticated signature,” “electronic signature” and “original signature.” See related items A.19 and A.20.

**ACTION TAKEN**

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

**EXPLANATION**

Items A.18 – A.20 are related items submitted by Sam Dupree, OJD Assistant General Counsel. The proposed amendment to UTCR 2.010(6) was submitted on June 22, 2020, and allows a party to conventionally file a document containing an electronic signature.

At the October 2, 2020, meeting, the committee discussed:

- How the proposed amendment would apply to conventionally filed documents containing an “s/”;
- Whether the proposed amendment requires the filer to retain the electronic document, or an audit trail, as required for electronically filed documents containing an electronic signature;
- Public comments expressing confusion between electronic and digital signatures;
- Whether “electronic signature” and “digital signature” should be defined separately, and whether those definitions should be referenced in all UTCRs relating to electronic signatures; and
- Whether 2.010(6) should reference the existing provisions in 21.090(7) and (8) instead of restating those provisions in 2.010.

As a result of this discussion, the proponent agreed to consider the committee’s comments, as well as public comment received regarding clarification of digital and electronic signature requirements, and to present a revised proposal for consideration at the spring meeting.

At the spring meeting on March 5, 2021, the committee considered a proposal to further amend UTCR 2.010 and 21.090 and to add definitions of “authenticated signature,” “electronic signature,” and “original signature” to UTCR 1.110. The committee discussed that:

- Electronic signature is a broad term that includes digital signatures, which are a specific type of electronic signature that utilizes a mathematical algorithm to generate two “keys” one public and one private;
- UTCR 21.090 is not intended to require a digital signature, in part because most commercially available electronic signature products do not meet the “digital signature” requirements;
- Many available electronic signature products do meet the “security procedure” requirement in UTCR 21.090(6);
- The UTCR could be amended to define signature terms and consistently use those terms throughout the body of rules;

- The rules should not be amended without additional time for public comment and input.

These related proposals were then carried over to the agenda for the October 15, 2021, committee meeting to allow the proposals to be sent out for public comment prior to possible adoption.

At the October 15, 2021, committee meeting, the committee discussed that:

- The amendments to UTCR 1.110 define “authenticated signature,” “electronic signature,” and “original signature.” The substance of these definitions was taken from existing requirements in UTCR 21.090.
- The amendments to UTCR 2.010 allow a party to conventionally file a document containing an electronic or authenticated signature, as those terms are defined in proposed UTCR 1.110. The retention and certification requirements in proposed UTCR 2.010 mirror the requirements in UTCR 21.090 for electronic filing.
- The amendments to UTCR 21.090 refer to the signature types, as defined in proposed UTCR 1.110, and change references to whether the declarant is the same person as the filer to whether the document contains the signature of the filer. This change is intended to clarify that these requirements apply to signatures on all documents filed with the court, not just declarations. The amendments also consolidate the retention and certification requirements into the same subsection as the signature type requirement. This change is intended to improve the readability of the rule.

## PROPOSED AMENDMENT

### 1.110 DEFINITIONS

As used in these rules:

**{(1) “Authenticated Signature” means a specific type of electronic signature created using software that includes a security procedure designed to verify that a signature is that of a specific person. A security procedure is sufficient if it complies with the definition of “security procedure” in ORS chapter 84.}**

**{(2)[1] “Court contact information” means the following information about a person submitting a document: the person’s name, a mailing address, a telephone number, and an email address and a facsimile transmission number, if any, sufficient to enable the court to communicate with the person and to enable any other party to the case to serve the person under UTCR 2.080(1). Court contact information can be other than the person’s actual address or telephone or fax number, such as a post office box or message number, provided that the court and adverse parties can contact the person with that information.**

**{(3)[2] “Days” mean calendar days, unless otherwise specified in these rules.**

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(~~{4}~~)[3] “Defendant” or “Respondent” means any party against whom a claim for relief is asserted.

(~~{5}~~)[4] “Document” means any instrument filed or submitted in any type of proceeding, including any exhibit or attachment referred to in the instrument. Depending on the context, “document” may refer to an instrument in either paper or electronic form.

**{6} “Electronic Signature” means an electronic symbol intended to substitute for a signature, such as a scan of a handwritten signature or a signature block that includes the typed name 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**

**OSB #**

**Email address**

**Attorney for Plaintiff Smith Corporation, Inc.**

**{7} “Original Signature” means a handwritten signature on a printed document.}**

(~~{8}~~)[5] “Party” means a litigant or the litigant’s attorney.

(~~{9}~~)[6] “Plaintiff” or “Petitioner” means any party asserting a claim for relief, whether by way of claim, third-party claim, crossclaim, or counterclaim.

(~~{10}~~)[7] “Trial Court Administrator” means the court administrator, the administrative officer of the records section of the court, and where appropriate, the trial court clerk.

19. **2.010(6)**

Amend section (6) to allow conventional filing of a document containing an electronic signature. See related items A.18 and A.20.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.18.

**PROPOSED AMENDMENT**

**2.010 FORM OF DOCUMENTS**

Except where a different form is specified by statute or rule, the form of any document, including pleadings and motions, filed in any type of proceeding must be as prescribed in this rule.

(1) \* \* \*

\* \* \* \* \*

(6) Party Signatures and Electronic Court signatures

- (a) The name of the party or attorney signing any pleading or motion must be typed or printed immediately below the signature. All signatures must be dated.

**{(b) When a document to be conventionally filed contains the signature of the filer, the filer may sign the document using either an original signature, an electronic signature, or an authenticated signature, as those terms are defined in UTCR 1.110.**

**(c) When a document to be conventionally filed contains the signature of someone other than the filer, the document may be signed using either an original signature, or an authenticated signature as defined in UTCR 1.110. If the document contains an authenticated signature:**

**(i) The party certifies by filing that, to the best of the party's knowledge after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer.**

**(ii) Unless the court orders otherwise, the filer must retain the electronic document until entry of a general judgment or other judgment or order that conclusively disposes of the action.}**

**{(d)}[b])** The court may issue judicial decisions electronically and may affix a signature by electronic means.

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- (i) The trial court administrator must maintain the security and control of the means for affixing electronic{court} signatures.
- (ii) Only the judge and the trial court administrator, or the judge's or trial court administrator's designee, may access the means for affixing electronic{court} signatures.

(7) \* \* \*

\* \* \* \* \*



**20. 21.090**

Amend to clarify the signature requirements of the rule. See related items A.18. and A.19.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.18.

**PROPOSED AMENDMENT**

**21.090 ELECTRONIC SIGNATURES**

- (1) The use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required.
- [(2) *In addition to information that law or rule requires to be in the document, a document filed electronically must include 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  
OSB #  
Email address  
Attorney for Plaintiff Smith Corporation, Inc.*

- (3) *When more than one party joins in filing a document, the filer must show all of the parties who join by one of the following:*
- (a) *Submitting an imaged document containing the signatures of all parties joining in the document;*
- (b) *A recitation in the document that all such parties consent or stipulate to the document; or*
- (c) *Identifying in the document the signatures that are required and submitting each such party's written confirmation no later than 3 days after the filing.*
- (4) *When a document to be electronically filed contains the signature of a notary public, the document must be electronically filed in a format that accurately reproduces the signatures and contents of the document.]*
- (2)[5] **When {a document to be electronically filed contains the signature of }the filer[ is the same person as the declarant named in an electronically filed document for purposes of ORCP 1 E], the filer {may sign the document using either an electronic signature, or an**

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**authenticated signature, as those terms are defined in UTCR 1.110.***[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]*

**(3) [6] When {a document to be electronically filed contains the signature of someone other than the filer}[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{ an original signature or authenticated signature, as those terms are defined in UTCR 1.110. 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.}[.]**

(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]{If the document contains an authenticated signature, the filer must retain the electronic document until entry of a general judgment or other judgment or order that conclusively disposes of the action, unless the court orders otherwise.}*

(b) *{If the document contains a}[A]n original signature[ on a printed document. T]{, t}he 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{, and the filer must retain the document in the filer's possession in its original paper form for no less than 30 days, unless the court orders otherwise}.*

**(4) When more than one party joins in filing a document, the filer must show all of the parties who join by one of the following:**

**(a) Submitting an imaged document containing the signatures of all parties joining in the document;**

**(b) A recitation in the document that all such parties consent or stipulate to the document; or**

**(c) Identifying in the document the signatures that are required and submitting each such party's written confirmation no later than 3 days after the filing.**

**(5) When a document to be electronically filed contains the signature of a notary public, the document must be electronically filed in a**

**format that accurately reproduces the signatures 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.]*

**2011 Commentary:**

The Committee does not intend the requirement to include an email address in a signature block to constitute consent to receipt of service of documents by email. Electronic service of documents may only be accomplished as specified in UTCR 21.100.

**21. 2.100**

Remove unnecessary citation to ORS chapter 416. See related items A.22 and A.23.

**ACTION TAKEN**

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

**EXPLANATION**

This proposal and related items A.22 and A.23 were submitted by Hon. Maureen McKnight, Senior Judge, on July 6, 2021. Following the 2019 legislative session, Legislative Counsel renumbered some statutory provisions that were previously in ORS chapter 416 to ORS chapter 25. The statutory provisions that were moved from ORS chapter 416 to chapter 25 all relate to child support enforcement. Other provisions relating to personal injury claims by public assistance recipients remain in ORS chapter 416. The proposed amendments to UTCR 2.100, 2.130, and 8.020 all correct citations to ORS chapters 25 and 416 that are necessary due to the renumbering.

**PROPOSED AMENDMENT**

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

**(1) Purpose**

(a) \* \* \*

\* \* \* \* \*

(c) UTCR 2.130 establishes separate procedures and processes for protecting personal information in proceedings brought under ORS chapters 25, 106, 107, 108, 109, and 110[, and 416] or initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763.

**(2) \* \* \***

\* \* \* \* \*

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**22. 2.130**

Remove unnecessary citation to ORS chapter 416. See related items A.21 and A.23.

**ACTION TAKEN**

Motion to preliminarily recommend approval passed by consensus.

**EXPLANATION**

See explanation for related item A.21.

**PROPOSED AMENDMENT**

**2.130 CONFIDENTIAL PERSONAL INFORMATION IN FAMILY LAW  
AND CERTAIN PROTECTIVE ORDER PROCEEDINGS**

(1) \* \* \*

\* \* \* \* \*

(2) **Mandatory Use of the CIF**

- (a) When confidential personal information is required by statute or rule to be included in any document filed in a proceeding initiated under ORS chapters 25, 106, 107, 108, 109, {or} 110, [or 416, ]or initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763, the party providing the information:
  - (i) Must file the information in a CIF[,]{;}
  - (ii) Must not include the information in any document filed with the court[,]{;}
  - (iii) Must redact the information from any exhibit or attachment to a document filed with the court, but must not redact the information from a court-certified document required to be filed by statute or rule.
- (b) This rule does not apply to:
  - (i) The information required in a money award under ORS 18.042[,]{;}
  - (ii) The former legal name of a party pursuant to a name change request under ORS 107.105(1)(h) [,]{;}
  - (iii) A document filed in an adoption proceeding initiated under ORS 109.309.
- (c) Documents filed in a contempt action filed in a proceeding under ORS chapters 25, 106, 107, 108, 109, {or} 110, [or 416, ]or a proceeding initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763, are also subject to this rule.

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(d) \* \* \*

\* \* \* \* \*

(3) \* \* \*

\* \* \* \* \*

**23. 8.020**

Add a citation to ORS chapter 25 and remove unnecessary citation to ORS chapter 416. See related items A.21 and A.22.

**ACTION TAKEN**

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

**EXPLANATION**

See explanation for related item A.21.

**PROPOSED AMENDMENT**

**8.020 SUPPORT ORDERS**

- (1) Every proposed order or judgment providing for the support of any person under ORS chapters {~~25~~}107, 108, 109, 110, [~~416~~] or 419A, 419B, or 419C, or modifying any order or judgment for support of any person under those chapters, must set forth the due date of the first support payment to be made thereunder, the means of payment and the person to whom payment must be made.
- (2) Every proposed order or judgment that includes a provision concerning child support must include notice that, if services are provided by the Division of Child Support, the obligor and obligee must inform the administrator, as defined in ORS 25.010(1), in writing of any change in private health insurance enrollment status within 10 days of the change.

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**24. 4.120**

Adopt a new rule governing post-judgment motions to reduce or modify financial obligations in criminal cases.

**ACTION TAKEN**

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

**EXPLANATION**

This proposal was submitted by Lindsey Detweiler, OJD Senior Assistant General Counsel, on behalf of the OJD Strategic Initiative 1.2 Fines and Fees Group, on October 12, 2021.

At the October 15, 2021, UTCR Committee meeting, the proponent discussed that:

- The proposed new rule governs motions to reduce or modify outstanding court-ordered financial obligations in criminal cases;
- Currently these requests are being submitted in a variety of formats – by letter, in person at the court counter, etc. The purpose of the rule is to establish a uniform process for litigants to submit these requests to the court;
- Typically, this type of request is made by a self-represented litigant and could be submitted years after a judgment was entered in the criminal case;
- If the rule is adopted, the Office of the State Court Administrator (OSCA) will likely create a form for these motions;
- Restitution or compensatory fines are excluded from the rule;
- The proponent does not envision that the rule would require the court to enter an amended Uniform Criminal Judgment (UCJ);
- The District Attorney's office would need to decide whether victim notification is required on a case-by-case basis;
- The intent was for this process to apply only to criminal cases and not to violation or contempt cases, and that may need to be clarified in the proposed rule; and
- The rule would cover only outstanding (unpaid) funds and would not allow the court to order a refund of already paid fines or fees.

The committee discussed:

- A concern that self-represented litigants may have difficulties documenting the legal authority for the motion, and that this concern could be addressed by a form with check-box options for the applicable legal authority;
- A suggestion that the applicable time limit in subsection (3) could be 28 days instead of 30 days, because seven-day increments make it easier for the court to schedule hearings;
- Whether a supplemental judgment Odyssey form could be created for use by judges and judicial assistants;



- Oral argument should not be required if the judge is inclined to grant the motion.

The committee recommended preliminary approval of the proposal, but the proponent and the OJD Strategic Initiative 1.2 Fines and Fees Group will continue to study the rule to determine whether additional changes are required, in advance of the UTCR Committee's Spring 2022 meeting.

#### PROPOSED AMENDMENT

##### 4.120 MOTIONS TO REDUCE OR MODIFY OUTSTANDING COURT-ORDERED FINANCIAL OBLIGATIONS

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- (1) As used in this rule:

"Reduction-eligible court-ordered financial obligations" means any fines, fees, costs, or court-appointed attorney fees imposed by the court in a criminal judgment that a defendant has failed to pay in full within 30 days of entry of the judgment of conviction, or as otherwise ordered by the court. Reduction-eligible court-ordered financial obligations does not include compensatory fines imposed pursuant to ORS 137.101 or restitution awards as defined in ORS 137.103.

- (2) A person with outstanding reduction-eligible court-ordered financial obligations may file a motion in the criminal case requesting that the court reduce, modify, or waive unpaid fines, fees, and costs, including court-appointed attorney fees, as provided in ORS 161.685(5), ORS 161.665(5), ORS 151.487(5), ORS 151.505(4)(a), or other applicable legal authority. Notice must be provided to the prosecuting attorney by service or first-class mail. The motion must include the following:

- (a) The statutory or other legal authority for the motion;
- (b) Information showing that the person's circumstances satisfy the legal criteria for the relief requested.

- (3) Any response to the motion must be served and filed not more than 30 days after notice under subsection (2) of this rule, or the date of filing the motion, whichever occurs latest. Upon good cause shown, the court may allow a late filing. Notwithstanding UTCR 4.050, the court may hold a hearing on the motion or decide the motion without a hearing.
- (4) If the court orders the reduction, modification, or waiver of some or all of the person's unpaid fines, fees, or costs, the court shall enter an appropriate supplemental judgment.

**25. 7.020**

Amend the rule to clarify that failure to serve a defendant will only result in the dismissal of the unserved defendant.

**ACTION TAKEN**

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

**EXPLANATION**

This proposal was submitted by Liz Rambo, Lane County Circuit Court Trial Court Administrator, on May 12, 2021. The proposed rule clarifies that in a civil case with multiple defendants where proof of service for at least one defendant has not been filed with the court at the expiration of 28 days after written notice has been provided to the plaintiff, UTCR 7.020(2) requires dismissal of only the unserved defendant.

The proposed amendment borrows from the phrasing of UTCR 7.020(3), which does clearly contemplate a case with multiple defendants, and indicates that if one or more defendants has not appeared by the 91st day following initiation of the case, only the case against the non-appearing defendant will be dismissed after the notice period.

**PROPOSED AMENDMENT**

**7.020 SETTING TRIAL DATE IN CIVIL CASES**

(1) \* \* \*

(2) If [~~no~~]{**any**} return or acceptance of service has {**not**} been filed by the 63rd day after the filing of the complaint, written notice shall be given to the plaintiff that the case will be dismissed {**against each unserved defendant**} for want of prosecution 28 days from the date of mailing of the notice unless {**one of the following occurs:**}

{**(a) P**}[p]roof of service is filed within the time period[.]{.}

{**(b) G**}[g]ood cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order[, or]{.}

{**(c) T**}[t]he defendant has appeared.

(3) If proof of service has been filed and any defendant has not appeared by the 91st day from the filing of the complaint, the case shall be deemed not at issue and written notice shall be given to the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution 28 days from the date of mailing of the notice unless one of the following occurs:

(a) An order of default has been filed and entry of judgment has been applied for.

(b) Good cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order.

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(c) The defendant has appeared.

(4) \* \* \*

\* \* \* \* \*

**26. 8.090(4)**

Amend the rule to mirror the wording used in other rules to refer to forms on the OJD Forms website.

**ACTION TAKEN**

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

**EXPLANATION**

This proposal was submitted by Lisa Norris-Lampe, Supreme Court Appellate Legal Counsel, on September 1, 2021. This proposal is a housekeeping amendment to standardize the reference to the OJD Forms website in UTCR 8.090(4).

Effective August 1, 2021, the UTCR Forms Appendix was repealed and rules containing references to UTCR forms were amended to remove those references and replace them with a link to the OJD Forms website. These amendments were adopted with “standard wording” i.e., each time a reference was made to the Forms website, substantially the same phrasing was used. Prior to the repeal of the Appendix, some forms had already been moved to the Forms website, and the phrasing that accompanied those links did not follow the later adopted standardized format in this instance.

**PROPOSED AMENDMENT**

**8.090 CERTIFICATE REGARDING PENDING CHILD SUPPORT PROCEEDINGS AND/OR EXISTING CHILD SUPPORT ORDERS AND/OR JUDGMENTS**

- (1) This rule applies to information about other pending child support orders, judgments, or proceedings, as required by ORS 107.085(3), 107.135(2)(b), 107.431(2)(b), 108.110(4), 109.100(3), 109.103(3), 109.165(3), and 125.025(4)(b), in any motion or petition filed pursuant to ORS 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, and 125.025.
- (2) In any motion or petition described in subsection (1), a filer must include a certificate stating whether any pending child support proceeding, or child support order or judgment, exists between the parties. The certificate must be placed at the end of the motion or petition, immediately above the declaration line.
- (3) The motion or petition also must include the name of the court or agency handling a pending proceeding, the case number, and date of any existing order or judgment. That information may be included in the certificate described in subsection (2) or may be set out elsewhere in the motion or petition. If set out elsewhere, the filer must specifically identify the information provided as involving a pending child support proceeding, or an existing order or judgment.
- (4) **{The information required by subsections (2) and (3) of this rule must be completed in substantially the form provided at }***[A model*

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*form containing the information required by this rule is available on OJD's website ([www.courts.oregon.gov/forms\[\]](http://www.courts.oregon.gov/forms[])).*

## **27. Chapter 12**

Adopt new rules governing court-connected mediator qualifications.

### **ACTION TAKEN**

Motion to preliminarily recommend adoption of the proposed new rules passed by consensus.

### **EXPLANATION**

This proposal was submitted by Aja Holland, UTCR Reporter and by Rudy Lachenmeier, Neskowin attorney, on October 7, 2021.

The proposal is based on CJO 05-028, which adopted OJD court-connected mediator qualifications in 2005. Prior to CJO 05-028, the court-connected mediator qualifications were located in UTCR chapter 12. The rules were moved to a Chief Justice Order with the idea that they would be revised by the OJD Court-Connected Mediator Qualifications Advisory Committee and a Statewide Appropriate Dispute Resolution Analyst. That advisory committee, and the Statewide Appropriate Dispute Resolution Analyst position were later disbanded, and the court-connected mediator qualifications have not been updated since 2005. Given this history, the Chief Justice asked the UTCR Committee to readopt the court-connected mediator qualifications as part of the UTCR, and to consider appropriate updates to the qualifications. Moving the rules from the CJO to the UTCR would allow a clearer pathway for public input and would ensure a more regular opportunity for review of the qualifications.

The proposed rules included below convert the rules in CJO 05-028 to the standard UTCR format, update cross references, and update the “grandfather” clause in proposed 12.030(6) to reflect the anticipated effective date of the rules.

At the UTCR Committee meeting on October 15, 2021, proponent Rudy Lachenmeier discussed:

- The belief that some additional amendments to the mediation qualifications may be needed;
- The Oregon State Bar Alternative Dispute Resolution (ADR) Board would like to be involved in the revision process, and has concerns about how much education should be required, who can be a mediator, whether the rules should be mandatory or advisory, and enforcement of the rules; and
- Whether factors inherent in the rules may be limiting the number of people of color who choose to be mediators.

The committee discussed:

- Whether the proposed rules could potentially be shortened;
- A concern about rural communities being able to attract enough mediators based on the existing mediator qualifications, and the availability of in-person trainings or observations in rural areas.

The Committee preliminarily recommended approval of the proposed rules and agreed to form a joint subcommittee with the OSB ADR Board to consider whether any changes to the existing mediator qualifications are needed.

## PROPOSED NEW RULES

### CHAPTER 12—Mediation

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*[REPORTER'S NOTE: UTCR 12.500 - 12.760, Form 12.540.1a, and Form 12.540.2 were repealed effective August 1, 2005. Replacement rules were adopted by Chief Justice Order No. 05-028 as stand-alone mediation rules, effective August 1, 2005. These replacement rules are not part of the UTCR, nor are they subject to the UTCR process.]*

*The order can be viewed here:*

<https://www.courts.oregon.gov/rules/Other%20Rules/05cER001sh.pdf>

*State Court Administrator Guidelines can be viewed here:*

<https://www.courts.oregon.gov/rules/Other%20Rules/05cER002sh.pdf>

<https://www.courts.oregon.gov/rules/Other%20Rules/05cER003sh.pdf>

<https://www.courts.oregon.gov/rules/Pages/other.aspx> (under "Court-Connected Mediator Qualifications")]

#### 12.010 APPLICABILITY

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UTCR chapter 12:

- (1) Establishes minimum qualifications, obligations, and mediator disclosures, including education, training, experience, and conduct requirements, applicable to:
  - (a) General civil mediators as provided by ORS 36.200(1).
  - (b) Domestic relations custody and parenting mediators as provided by ORS 107.775(2).
  - (c) Domestic relations financial mediators as provided by ORS 107.755(4).
- (2) Provides that a mediator approved to provide one type of mediation may not mediate another type of case unless the mediator is also approved for the other type of mediation.
- (3) Does not:
  - (a) In any way alter the requirements pertaining to personnel who perform conciliation services under ORS 107.510 to 107.610.
  - (b) Allow mediation of proceedings under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040, or 163.738, as provided in ORS 107.755(2).
  - (c) In any way establish any requirements for compensation of mediators.
  - (d) Limit in any way the ability of mediators or qualified supervisors to be compensated for their services.

## 12.020 DEFINITIONS

As used in UTCR chapter 12:

- (1) “Approved mediator” means a mediator who a circuit court or judicial district of this state officially recognizes and shows by appropriate official documentation as being approved within that court or judicial district as a general civil mediator, domestic relations custody and parenting mediator, or domestic relations financial mediator for purposes of the one or more mediation programs operated under the auspices of that court or judicial district that is subject to UTCR 12.010.
- (2) “Basic mediation curriculum” means the curriculum set out in UTCR 12.100.
- (3) “Continuing education requirements” means the requirements set out in UTCR 12.140.
- (4) “Court-system training” means a curriculum or combination of courses set out in UTCR 12.130.
- (5) “Determining authority” means an entity that acts under UTCR 12.030 concerning qualification to be an approved mediator.
- (6) “Domestic relations custody and parenting mediation curriculum” means the curriculum set out in UTCR 12.110.
- (7) “Domestic relations custody and parenting mediation supervisor” means a person who is qualified at the level described in UTCR 12.070.
- (8) “Domestic relations custody and parenting mediator” means a mediator for domestic relations, custody, parenting time, or parenting plan matters in circuit court under ORS 107.755 who meets qualifications under UTCR 12.070.
- (9) “Domestic relations financial mediation supervisor” means a person who is qualified at the level described in UTCR 12.080.
- (10) “Domestic relations financial mediation training” means a curriculum or combination of courses set out in UTCR 12.120.
- (11) “Domestic relations financial mediator” means a mediator for domestic relations financial matters in circuit court under ORS 107.755 who meets qualifications under UTCR 12.080.
- (12) “General civil mediator” means a mediator for civil matters in circuit court under ORS 36.185 to 36.210, including small claims and forcible entry and detainer cases, who meets qualifications under UTCR 12.060.
- (13) “General civil mediation supervisor” means a person who is qualified at the level described in UTCR 12.060.



- (14) “Independent qualification review” means the process described in UTCR 12.090.
- (15) “Mediation” is defined at ORS 36.110.

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12.030 DETERMINING AUTHORITY, DETERMINING MEDIATOR QUALIFICATIONS, OTHER RESPONSIBILITIES AND AUTHORITY

- (1) The determining authority:
- (a) Is the entity within a judicial district with authority to determine whether applicants to become an approved mediator for courts within the judicial district meet the qualifications as described in these rules and whether approved mediators meet any continuing qualifications or obligations required by these rules.
  - (b) Is the presiding judge of the judicial district unless the presiding judge has delegated the authority to be the determining authority as provided or allowed by statute. Delegation under this paragraph may be made to an entity chosen by the presiding judge to establish a mediation program as allowed by law or statute. A delegation must be in writing and, if it places any limitations on the presiding judge’s ultimate authority to review and change decisions made by the delegatee, must be approved by the State Court Administrator before the delegation can be made.
- (2) Authority over qualifications. Subject to the following, a determining authority, for good cause, may allow appropriate substitutions, or obtain waiver, for any of the minimum qualifications for an approved mediator.
- (a) Except as provided in paragraph (b) of this subsection, a determining authority that allows a substitution must, as a condition of approval, require the applicant to commit to a written plan to meet the minimum qualifications within a specified reasonable period of time. A determining authority that is not a presiding judge must notify the presiding judge of substitutions allowed under this subsection.
  - (b) For good cause, a determining authority, other than the presiding judge for the judicial district, may petition the presiding judge for a waiver of specific minimum qualification requirements for a specific person to be an approved mediator. A presiding judge may waive any of the qualifications to be an approved mediator in an individual case with the approval of the State Court Administrator.
- (3) The determining authority may revoke a mediator’s approved status at his or her discretion, including in the event that the mediator no longer meets the requirements set forth in these rules.

- (4) The determining authority may authorize the use of an evaluation to be completed by the parties, for the purpose of monitoring program and mediator performance.
- (5) In those judicial districts where a mediator is assigned to a case by the court, or where mediators are assigned to a case by a program sponsored or authorized by the court, the determining authority shall ensure that parties to a mediation have access to information on:
  - (a) How mediators are assigned to cases.
  - (b) The nature of the mediator's affiliation with the court.
  - (c) The process, if any, that a party can use to comment on, or object to the assignment or performance of a mediator.
- (6) The minimum qualifications of these rules have been met by an individual who is an approved mediator at the time these rules become effective if the individual has met the minimum requirements of Chief Justice Order 05-028, in effect prior to August 1, 2022.
- (7) The State Court Administrator may approve the successful completion of a standardized performance-based evaluation to substitute for formal degree requirements under UTCR 12.070 or 12.080 upon determining an appropriate evaluation process has been developed and can be used at reasonable costs and with reasonable efficiency.

#### 12.040 MEDIATOR ETHICS

An approved mediator, when mediating under ORS 36.185 to 36.210 or ORS 107.755 to 107.795, is required to:

- (1) Disclose to the determining authority and the participants at least one of the relevant codes of mediator ethics, standards, principles, and disciplinary rules of the mediator's relevant memberships, licenses, or certifications. It is not the court's responsibility to enforce any relevant codes of mediator ethics, standards, principles, and/or rules;
- (2) Comply with relevant laws relating to confidentiality, inadmissibility, and nondiscoverability of mediation communications including, but not limited to, ORS 36.220, 36.222, and 107.785; and
- (3) Inform the participants prior to or at the commencement of the mediation of each of the following:
  - (a) The nature of mediation, the role and style of the mediator, and the process that will be used;
  - (b) The extent to which participation in mediation is voluntary and the ability of the participants and the mediator to suspend or terminate the mediation;

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- (c) The commitment of the participants to participate fully and to negotiate in good faith;
- (d) The extent to which disclosures in mediation are confidential, including during private caucuses;
- (e) Any potential conflicts of interest that the mediator may have, i.e., any circumstances or relationships that may raise a question as to the mediator's impartiality and fairness;
- (f) The need for the informed consent of the participants to any decisions;
- (g) The right of the parties to seek independent legal counsel, including review of the proposed mediation agreement before execution;
- (h) In appropriate cases, the advisability of proceeding with mediation under the circumstances of the particular dispute;
- (i) The availability of public information about the mediator pursuant to UTCR 12.050; and
- (j) If applicable, the nature and extent to which the mediator is being supervised.

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#### 12.050 PROVIDING AND MAINTAINING PUBLICLY AVAILABLE INFORMATION

- (1) Information for court use and public dissemination: all approved mediators must provide the information required to the determining authority of each court at which the mediator is an approved mediator. Reports must be made in substantially the form provided at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms), or any substantially similar form authorized by the determining authority.
- (2) All approved mediators must update the information provided in UTCR 12.050 at least once every two calendar years.
- (3) The information provided in UTCR 12.050 must be made available to all mediation parties and participants upon request.

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#### 12.060 QUALIFICATION AS AN APPROVED GENERAL CIVIL MEDIATOR, ONGOING OBLIGATIONS

To become an approved general civil mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described:

- (1) Training. An applicant must have completed training, including all the following:

- (a) The basic mediation curriculum described in UTCR 12.100, or substantially similar training; and
  - (b) Court-system training in UTCR 12.130, or substantially similar training or education.
- (2) Experience. An applicant must have:
  - (a) Observed three actual mediations; and
  - (b) Participated as a mediator or co-mediator in at least three cases that have been or will be filed in court, observed by a person qualified as a general civil mediation supervisor under this section and performed to the supervisor's satisfaction.
- (3) Continuing Education.
  - (a) During the first two calendar years beginning January 1 of the year after the mediator's approval by the determining authority, general civil mediators must complete at least 12 hours of continuing education as follows:
    - (i) If the approved mediator's basic mediation training was 36 hours or more, 12 hours of continuing education as described in UTCR 12.140.
    - (ii) If the approved mediator's basic mediation training was between 30 and 36 hours, then one additional hour of continuing education for every hour of training fewer than 36 (i.e., if basic mediation training was 30 hours, then 18 hours of continuing education; if the basic mediation training was 32 hours, then 16 hours of continuing education).
  - (b) Thereafter, as an ongoing obligation, an approved general civil mediator must complete 12 hours of continuing education requirements every two calendar years as described in UTCR 12.140.
- (4) Conduct. An applicant and, as an ongoing obligation, an approved general civil mediator must subscribe to the mediator ethics in UTCR 12.040.
- (5) Public information. An applicant and, as an ongoing obligation, an approved general civil mediator must comply with requirements to provide and maintain information as provided in UTCR 12.050.
- (6) Supervision. A qualified general civil mediation supervisor is an individual who has:
  - (a) Met the qualifications of a general civil mediator as defined in this section, and

- (b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of an approved general civil mediator in this section.

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#### 12.070 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATOR, ONGOING OBLIGATIONS

To become an approved domestic relations custody and parenting mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described.

- (1) Education. An applicant must possess at least one of the following:
  - (a) A master's or doctoral degree in counseling, psychiatry, psychology, social work, marriage and family therapy, or mental health from an accredited college or university.
  - (b) A law degree from an accredited law school with course work and/or Continuing Legal Education credits in family law.
  - (c) A master's or doctoral degree in a subject relating to children and family dynamics, education, communication, or conflict resolution from an accredited college or university, with coursework in human behavior, plus at least one year full-time equivalent post-degree experience in providing social work, mental health, or conflict resolution services to families.
  - (d) A bachelor's degree in a behavioral science related to family relationships, child development, or conflict resolution, with coursework in a behavioral science, and at least seven years full-time equivalent post-bachelor's experience in providing social work, mental health, or conflict resolution services to families.
- (2) Training. An applicant must have completed training in each of the following areas:
  - (a) The basic mediation curriculum in UTCR 12.100;
  - (b) The domestic relations custody and parenting mediation curriculum in UTCR 12.110; and
  - (c) Court-system training in UTCR 12.130, or substantially similar training.
- (3) Experience. An applicant must have completed one of the following types of experience:
  - (a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or co-mediated with a person qualified as a domestic relations custody and

parenting mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases must be in domestic relations custody and parenting mediation. At least three of the domestic relations custody and parenting mediation cases must have direct observation by the qualified supervisor; or

- (b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:
  - (i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 50 hours of domestic relations custody and parenting mediation, and
  - (ii) An understanding of court-connected domestic relations programs.
- (4) Continuing education. As an ongoing obligation, an approved domestic relations custody and parenting mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in UTCR 12.140.
- (5) Conduct. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must subscribe to the mediator ethics in UTCR 12.040.
- (6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must comply with requirements to provide and maintain information in UTCR 12.050.
- (7) Supervision. A qualified domestic relations custody and parenting mediation supervisor is an individual who has:
  - (a) Met the qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.070;
  - (b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in this section; and
  - (c) An understanding of court-connected domestic relations programs.

#### 12.080 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS FINANCIAL MEDIATOR, ONGOING OBLIGATIONS

To become an approved domestic relations financial mediator, an individual must establish, to the satisfaction of the determining authority, that the

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individual meets or exceeds all the following qualifications and will continue to meet all ongoing requirements as described.

- (1) Education. An applicant must meet the education requirements under UTCR 12.070 applicable to an applicant to be approved as a domestic relations custody and parenting mediator.
- (2) Training. An applicant must have completed training in each of the following areas:
  - (a) The basic mediation curriculum in UTCR 12.100;
  - (b) The domestic relations custody and parenting mediation curriculum in UTCR 12.110;
  - (c) Domestic relations financial mediation training in UTCR 12.120; and
  - (d) Court-system training in UTCR 12.130, or substantially similar training.
- (3) Experience. An applicant must have completed one of the following types of experience:
  - (a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or co-mediated with a person qualified as a domestic relations financial mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases in this paragraph must be in domestic relations financial mediation. At least three of the domestic relations financial mediation cases must have direct observation by the qualified supervisor; or
  - (b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:
    - (i) Participated as a mediator or co-mediator in a total of at least ten cases including a total of at least 50 hours of domestic relations financial Mediation; and
    - (ii) An understanding of court-connected domestic relations programs.
- (4) Continuing education. As an ongoing obligation, an approved domestic relations financial mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in UTCR 12.140.

- (5) Conduct. An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must subscribe to the mediator ethics in UTCR 12.040.
- (6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must comply with requirements to provide and maintain current information in UTCR 12.050.
- (7) Insurance. As an ongoing obligation, an approved domestic relations financial mediator shall have in effect at all times the greater of:
  - (a) \$100,000 in malpractice insurance or self-insurance with comparable coverage; or
  - (b) Such greater amount of coverage as the determining authority requires.
- (8) Supervision. A qualified domestic relations financial mediation supervisor is an individual who has:
  - (a) Met the qualifications of a domestic relations financial mediator as defined in this section;
  - (b) Completed at least 35 domestic relations cases including a total of at least 350 hours of domestic relations financial mediation beyond the experience required in this section; and
  - (c) Malpractice insurance coverage for the supervisory role in force.

#### 12.090 INDEPENDENT QUALIFICATION REVIEW

- (1) In programs where domestic relations financial mediators are independent contractors, the determining authority must appoint a panel consisting of at least:
  - (a) A representative of the determining authority;
  - (b) A domestic relations financial mediator; and
  - (c) An attorney who practices domestic relations law locally.
- (2) The panel shall interview each applicant to be an approved domestic relations financial mediator solely to determine whether the applicant meets the requirements for being approved or whether it is appropriate to substitute or waive some minimum qualifications. The review panel shall report its recommendation to the determining authority in writing.
- (3) Nothing in this section affects the authority under UTCR 12.030 to make sole and final determinations about whether an applicant has fulfilled the requirements to be approved or whether an application for substitution should be granted.

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## 12.100 BASIC MEDIATION CURRICULUM

The basic mediation curriculum is a single curriculum that is designed to integrate the elements in this section consistent with any guidelines promulgated by the State Court Administrator. The basic mediation curriculum shall:

- (1) Be at least 30 hours, or substantially similar training or education.
- (2) Include training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees, including, but not be limited to, at least six hours participation by each trainee in role plays with trainer feedback to the trainee and trainee self-assessment.
- (3) Include instruction to help the trainee:
  - (a) Gain an understanding of conflict resolution and mediation theory;
  - (b) Effectively prepare for mediation;
  - (c) Create a safe and comfortable environment for the mediation;
  - (d) Facilitate effective communication between the parties and between the mediator and the parties;
  - (e) Use techniques that help the parties solve problems and seek agreement;
  - (f) Conduct the mediation in a fair and impartial manner;
  - (g) Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations; and
  - (h) Conclude a mediation and memorialize understandings and agreements.
- (4) Be conducted by a lead trainer who has:
  - (a) The qualifications of a general civil mediator as defined in UTCR 12.060, except the requirement in UTCR 12.060(1)(a) to have completed the basic mediation curriculum;
  - (b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of a general civil mediator in UTCR 12.060; and either
  - (c) Served as a trainer or an assistant trainer for the basic mediation curriculum outlined in this section at least three times; or
  - (d) Have experience in adult education and mediation as follows:

- (i) Served as a teacher for at least 1000 hours of accredited education or training for adults; and
- (ii) Completed the basic mediation curriculum outlined under this section.

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#### 12.110 DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATION CURRICULUM

The domestic relations custody and parenting mediation curriculum shall:

- (1) Include at least 40 hours in a domestic relations custody and parenting mediation curriculum consistent with any guidelines promulgated by the State Court Administrator.
- (2) Include multiple learning methods and training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees.
- (3) Provide instruction with the goal of creating competency sufficient for initial practice as a family mediator and must include the following topics:
  - (a) General Family Mediation Knowledge and Skills;
  - (b) Knowledge and Skill with Families and Children;
  - (c) Adaptations and Modifications for Special Case Concerns; and
  - (d) Specific Family, Divorce, and Parenting Information.
- (4) Be conducted by a lead trainer who has all of the following:
  - (a) The qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.070;
  - (b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in UTCR 12.070;
  - (c) Served as a mediation trainer or an assistant mediation trainer for the domestic relations custody and parenting mediation curriculum outlined in this section at least three times; and
  - (d) An understanding of court-connected domestic relations programs.

#### 12.120 DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING

- (1) Domestic relations financial mediation training shall include at least 40 hours of training or education that covers the topics relevant to the financial issues the mediator will be mediating, including:

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- (a) Legal and financial issues in separation, divorce, and family reorganization in Oregon, including property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, and joint and several liability for family debt;
  - (b) Basics of corporate and partnership law, retirement interests, personal bankruptcy, ethics (including unauthorized practice of law), drafting, and legal process (including disclosure problems); and
  - (c) The needs of self-represented parties, the desirability of review by independent counsel, recognizing the finality of a judgment, and methods to carry out the parties' agreement.
- (2) Of the training required in subsection (1) of this section:
- (a) Twenty-four of the hours must be in an integrated training (a training designed as a single cohesive curriculum that may be delivered over time);
  - (b) Six hours must be in three role plays in financial mediation with trainer feedback to the trainee; and
  - (c) Fifteen hours must be in training accredited by the Oregon State Bar.

#### 12.130 COURT-SYSTEM TRAINING

When court-system training under this section is required, the training shall include, but not be limited to:

- (1) At least six hours including, but not limited to, the following subject areas:
- (a) Instruction on the court system including, but not limited to:
    - (i) Basic legal vocabulary;
    - (ii) How to read a court file;
    - (iii) Confidentiality and disclosure;
    - (iv) Availability of jury trials;
    - (v) Burdens of proof;
    - (vii) Basic trial procedure;
    - (viii) The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability;
    - (ix) Agreement writing;

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- (x) Working with interpreters; and
    - (xi) Obligations under the Americans with Disabilities Act.
  - (b) Information on the range of available administrative and other dispute resolution processes.
  - (c) Information on the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable.
  - (d) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.
- (2) For mediators working in contexts other than small claims court, at least two additional hours including, but not limited to, all of the following:
- (a) Working with represented and unrepresented parties, including:
    - (i) The role of litigants' lawyers in the mediation process;
    - (ii) Attorney-client relationships, including privileges;
    - (iii) Working with lawyers, including understanding of Oregon State Bar disciplinary rules; and
    - (iii) Attorney fee issues.
  - (b) Understanding motions, discovery, and other court rules and procedures;
  - (c) Basic rules of evidence; and
  - (d) Basic rules of contract and tort law.

#### 12.140 CONTINUING EDUCATION REQUIREMENTS

- (1) Of the continuing education hours required of approved mediators every two calendar years:
  - (a) If the mediator is an approved general civil mediator:
    - (i) One hour must relate to confidentiality;
    - (ii) One hour must relate to mediator ethics; and
    - (iii) Six hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation.

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- (b) If the mediator is an approved domestic relations custody and parenting or domestic relations financial mediator:
  - (i) Two hours must relate to confidentiality;
  - (ii) Two hours must relate to mediator ethics;
  - (iii) Twelve hours must be on the subject of either custody and parenting issues or financial issues, respectively;
  - (iv) Twelve hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation; and
  - (v) The hours required in subparagraphs (i) and (ii) can be met in the hours required in subparagraph (iii) if confidentiality or mediator ethics is covered in the context of domestic relations.
- (2) Continuing education topics may include, but are not limited to, the following examples:
  - (a) Those topics outlined in UTCR 12.100, 12.110, and 12.120;
  - (b) Practical skills-based training in mediation or facilitation;
  - (c) Court processes;
  - (d) Confidentiality laws and rules;
  - (e) Changes in the subject matter areas of law in which the mediator practices;
  - (f) Mediation ethics;
  - (g) Domestic violence;
  - (h) Sexual assault;
  - (i) Child abuse and elder abuse;
  - (j) Gender, ethnic, and cultural diversity;
  - (k) Psychology and psychopathology;
  - (l) Organizational development;
  - (m) Communication;
  - (n) Crisis intervention;
  - (o) Program administration and service delivery;

- (p) Practices and procedures of state and local social service agencies; and
  - (q) Safety issues for mediators.
- (3) Continuing education shall be conducted by an individual or group qualified by practical or academic experience. For purposes of this section, an hour is defined as 60 minutes of instructional time or activity and may be completed in a variety of formats, including but not limited to:
  - (a) Attendance at a live lecture or seminar;
  - (b) Attendance at an audio or video playback of a lecture or seminar with a group where the group discusses the materials presented;
  - (c) Listening or viewing audio, video, or internet presentations;
  - (d) Receiving supervision as part of a training mentorship;
  - (e) Formally debriefing mediation cases with mediator supervisors and colleagues following the mediation;
  - (f) Lecturing or teaching in qualified continuing education courses; and
  - (g) Reading, authoring, or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation.
- (4) Continuing education classes should enhance the participant's competence as a mediator and provide opportunities for mediators to expand upon existing skills and explore new areas of practice or interest. To the extent that the mediator's prior training and experience do not include the topics listed above, the mediator should emphasize those listed areas relevant to the mediator's practice.
- (5) Where applicable, continuing education topics should be coordinated with, reported to, and approved by the determining authority of each court at which the mediator is an approved mediator and reported at least every two calendar years via the electronic Court-Connected Mediator Continuing Education Credit Form available on the Oregon Judicial Department's webpage or other reporting form authorized by the appropriate determining authority.

**28. 21.070(3)**

Amend the rule to add foreign subpoena documents under UTCR 5.140(1) to the list of documents that must be conventionally filed.

**ACTION TAKEN**

Motion to preliminarily recommend approval passed by consensus.

**EXPLANATION**

This proposal was submitted by Lisa Norris-Lampe, Chair of the OJD Law & Policy Work Group (LPWG), on behalf of LPWG. The proposed amendment adds one category of documents, foreign subpoena documents filed under UTCR 5.140(1), to the list of documents that are required to be conventionally filed under UTCR 21.070(3).

The proponent discussed that UTCR 5.140 sets out the process for obtaining discovery in Oregon for a proceeding pending in another state, per ORCP 38 C. Among other things, subsection (1) requires submission of the foreign subpoena and an original and two copies of a fully completed subpoena. The LPWG discussed that current wording, in light of efforts over the last several years to eliminate “copy” requirements from the UTCR, as the Oregon courts have transitioned to an electronic environment. Following that discussion, the LPWG also sought feedback from the Trial Court Administrators (TCAs), who reported that filings under UTCR 5.140 are rare, but that conventional submission (original and two copies, as provided in that rule) is preferred – using that process, the court completes the submitted original subpoena and then issues it. Based largely on both the TCA feedback and the earlier suggestion that the mode of filing documents under UTCR 5.140(1) is not entirely clear, the LPWG proposed adding that category of documents to the list of documents that must be conventionally filed and cannot be eFiled.

**PROPOSED AMENDMENT**

**21.070 SPECIAL FILING REQUIREMENTS**

(1) \* \* \*

\* \* \* \* \*

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) \* \* \*

\* \* \* \* \*

(f) **{A foreign subpoena, with an accompanying original subpoena and two copies, submitted under UTCR 5.140(1)}***[Reserved for future use]*.

(g) \* \* \*

\* \* \* \* \*

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(4) \* \* \*

\* \* \* \* \*



**29. 21.070(6)**

Amend to require documents that are confidential by statute, rule, or court order to be designated as “confidential” in the eFiling system.

**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, Chair of the OJD Law & Policy Work Group (LPWG), on behalf of LPWG. The proposed amendment clarifies that only documents that are confidential by statute, rule, or court order may be designated as “confidential” in the eFiling system. The proponent discussed that UTCR 21.070(6) sets out several requirements for eFiling documents in confidential cases, as well as confidential documents in nonconfidential cases. The LPWG learned earlier this year that filers sometimes designate certain filings as “confidential” when they eFile the documents into nonconfidential cases, even if no statute, rule, or court order requires the filing to be treated as confidential. This typically occurs when the filing contains information that, in the filer’s view, is sensitive and thus should be treated as something other than a fully “public” document. The “confidential” designation option, however, was intended to be used only when a statute, rule, or court order requires the filing to be “confidential.”

The committee discussed:

- That there is an issue with documents being incorrectly submitted as confidential, which creates a problem for court staff who have to change the filing designation of those documents. Also, some documents that should be submitted as confidential are not being designated, so court staff have to take the time to go in and designate the documents as confidential.
- When parties incorrectly designate documents as “confidential” and the error is not noticed until a hearing where parties are trying to offer exhibits that have been incorrectly marked as confidential, the error may not be able to be fixed quickly, which can cause the need to reschedule the hearing.
- That the rule could be further amended to add labels to the subsections of the rule improve readability.

By consensus, the committee approved modification of the proposal to label the subsections of the rule and to add a new subsection (d) stating that if neither the case type nor the document is confidential, the document may not be marked as confidential. These changes from the original proposal are reflected in the proposed amendment below.

**PROPOSED AMENDMENT**

**21.070 SPECIAL FILING REQUIREMENTS**

(1) \* \* \*

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\* \* \* \* \*

(6) Filings in Confidential Cases Made Confidential by Statute or Rule, and Other Confidential Filings

- (a) **{Confidential case type.}** Except as provided in subsection (b) of this section, if a case is confidential by statute or rule, a filer submitting a document in the case through the eFiling system must not designate the document as confidential, because the case itself already is designated as confidential.
- (b) **{Confidential case type, confidential document type.}** Notwithstanding subsection (a) of this section, and as additionally provided in section (7) of this rule, if a particular document type is deemed confidential by statute or rule within a case type deemed confidential by statute or rule, a filer submitting such a document through the eFiling system must designate the document as confidential.
- (c) **{Non-confidential case type, confidential document type.}** If a [confidential] document **{that is confidential by statute, rule, or court order}** is being submitted in a case that is not confidential by statute or rule, a filer submitting such a document through the eFiling system must designate the document as confidential.
- {(d) Non-confidential case type, non-confidential document type. If a particular document type is not deemed confidential by statute or rule, and the case type is also not deemed confidential by statute or rule, a filer submitting such a document through the eFiling system may not designate the document as confidential.}**

(7) \* \* \*

\* \* \* \* \*

## B. RECOMMENDATIONS OF DISAPPROVAL

### 1. 5.050

Amend the rule to give the court discretion to decide any civil motion without oral argument.

#### ACTION TAKEN

No motion was made to approve the proposal. By committee convention, the proposal is preliminarily disapproved.

#### EXPLANATION

This proposal was submitted by Julia Follansbee, Bend attorney, on June 27, 2021. The proposed amendment would allow the court discretion to decide any civil motion without oral argument. At the UTCR Committee meeting on October 15, 2021, the proponent discussed a concern that the COVID-19 pandemic could result in delays between the submission of a motion and a date for oral argument and a belief that many more motions could be adequately resolved without oral argument.

The committee discussed:

- Whether other practitioners are experiencing delays, and whether allowing the court to resolve motions without oral argument, notwithstanding a request for oral argument by one of the parties is the best way to resolve any potential delays.
- Practitioners can already request an expedited hearing where necessary based on the urgency of the circumstances.
- UTCR 5.050 was recently amended (effective August 1, 2021) to allow the court to decide a motion without oral argument when the court receives documents that resolve the pending motion before the time set for hearing and this amendment may partially resolve some of the concerns presented by proponent.

#### PROPOSED AMENDMENT

##### 5.050 ORAL ARGUMENT ON MOTIONS IN CIVIL CASES; APPEARANCE AT NONEVIDENTIARY HEARINGS AND MOTIONS BY TELECOMMUNICATION

- (1) Oral argument may be requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested. *[The court must allow oral argument unless the court receives documents which resolve the pending motion before the time set for hearing.]* **If the motion for oral argument is granted, the court will schedule oral argument and provide notice to the parties. If the motion for oral argument is denied, the court will decide the underlying motion after the time for filing a reply has elapsed under UTCR 5.030(2) or ORCP 47 C.**

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(2) \* \* \*

\* \* \* \* \*

## 2. 21.110

Amend the rule to prohibit use of hyperlinks.

### ACTION TAKEN

No motion was made to approve the proposal. By committee convention, the proposal is preliminarily disapproved.

### EXPLANATION

This proposal was submitted by Hon. Daniel Hill, Umatilla County Circuit Court, on June 3, 2021. The proposed amendment would prohibit the use of hyperlinks in emails or documents submitted to the court. Judge Hill noted that the use of hyperlinks creates a potential security issue and may make OJD vulnerable to malicious software and costly ransomware attacks.

At the UTCR Committee meeting on October 15, 2021, the committee discussed:

- Other ways to address the potential security concerns, including court staff security training and education and the ability of the OJD Enterprise Technology Services Division (ETSD) to block access to malicious websites and to scan email attachments and court filings for potential malware;
- The usefulness of hyperlinks and bookmarks, especially when trying to navigate within a multipage document;
- In some cases, parties could include the material from the link as an attachment to the main document, e.g., instead of linking to a court opinion, the party could attach the opinion as an exhibit. In other cases, parties and attorneys may need to link to information that frequently changes that could not necessarily be included as an exhibit or attachment;
- The proposed amendment would prohibit the inclusion of email addresses when included as a hyperlink in a pleading or email, which could be an unintended consequence. The proposed rule also appears to prohibit non-parties from sending emails containing hyperlinks to court employees;
- The Oregon Rules of Appellate Procedure, specifically ORAP 16.50, and federal practice encourage the use of hyperlinks.

The committee agreed to ask OJD's Security and Emergency Preparedness Advisory Committee (SEPAC) to look at the proposed rule and determine whether the rule could be more narrowly tailored instead of blanketly prohibiting the use of all hyperlinks, and what other measures could be taken by OJD to address potential security concerns.

### PROPOSED AMENDMENT

#### 21.110 HYPERLINKS

**{An electronic communication, including an email to the court or a document that is filed electronically, may not contain hyperlinks.}**

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- [(1) A document that is filed electronically may contain hyperlinks to other parts of the same document or hyperlinks to a location on the Internet that contains a source document for a citation or both.*
- (2) A hyperlink to cited authority does not replace standard citation format. A filer must include the complete citation within the text of the document. Neither a hyperlink, nor any site to which it refers, is part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in a document filed electronically.*
- (3) The Oregon Judicial Department neither endorses nor accepts responsibility for any product, organization, or content at any hyperlinked site, or to any site to which that site refers.]*

## C. OUT-OF-CYCLE AMENDMENTS

### 1. 3.030

Amended the rule to require jurors to be addressed by number instead of by last name, in response to 2021 Oregon Laws, chapter 295 (HB 2539 (2021)).

#### ACTION TAKEN

Amendment of the rule was preliminarily recommended for approval by the UTCR Committee at the fall meeting on October 15, 2021. This rule was amended out-of-cycle by [Chief Justice Order 21-054](#), effective January 1, 2022.

#### EXPLANATION

This proposal was submitted by Aja Holland, UTCR Reporter, on September 1, 2021. The proposed amendment requires jurors to be addressed by number instead of by last name, in response to legislation. In 2021, the Legislative Assembly enacted 2021 Oregon Laws, chapter 295 (2021 House Bill (HB) 2539), effective January 1, 2022. HB 2539 § 2 prohibits a juror from being identified by name in an open court proceeding. Existing UTCR 3.030 prohibits addressing a juror by first name, but by implication, allows a litigant or a litigant's attorney to refer to a juror by last name, which will be prohibited when HB 2539 (2021) takes effect.

At the October 15, 2021, UTCR Committee meeting, the committee recommended out-of-cycle amendment of UTCR 3.030 to conform the rule with HB 2539. Chief Justice Walters subsequently approved the out-of-cycle amendment in CJO 21-054, effective January 1, 2022.

#### AMENDMENT

##### 3.030 MANNER OF ADDRESS

During trial, the litigants and litigants' attorneys must not address adult witnesses[, *jurors*] or opposing parties by their first names, and, except in *voir dire*, must not address jurors individually. { **Jurors may not be addressed by name but may be addressed by number or by another means ordered by the court.** }

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2. **3.190**

Repealed the rule to avoid duplication or conflict with 2021 Oregon Laws, chapter 550 (HB 3265 (2021)).

**ACTION TAKEN**

Repeal of the rule was preliminarily recommended by the UTCR Committee at the fall meeting on October 15, 2021. The rule was then amended out-of-cycle by [Chief Justice Order 21-049](#), effective October 27, 2021.

**EXPLANATION**

This proposal was submitted by Aja Holland, UTCR Reporter, on September 1, 2021. The proposal repeals existing UTCR 3.190, the prohibition on civil arrests in a courthouse or within the environs of a courthouse. In 2021, the Legislative Assembly enacted Oregon Laws 2021, chapter 550 (HB 3265 (2021)), effective July 19, 2021. HB 3265 § 5 codifies in statute the prohibition of civil arrests in court facilities in existing UTCR 3.190, and expands the protection to include individuals traveling to or from the court facility. The UTCR's Committee's practice is generally not to adopt or maintain rules that merely duplicate statute.

At the October 15, 2021, UTCR Committee meeting, the committee recommended out-of-cycle amendment of UTCR 3.190 to avoid duplication or conflict with HB 3265. Chief Justice Walters subsequently approved the out-of-cycle amendment in CJO 21-049, effective October 27, 2021.

**AMENDMENT**

3.190 CIVIL ARRESTS{ **(Repealed)**}

**{REPORTER'S NOTE: UTCR 3.190 was repealed to avoid conflict or duplication with Oregon Laws 2021, chapter 550, effective July 19, 2021.}**

- [(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.]*

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**3. 21.050(2)**

Amended the rule to allow an application for waiver or deferral of court fees and costs to be filed electronically. See related item C.4.

**ACTION TAKEN**

Amendment of the rule was preliminarily recommended for approval by the UTCR Committee at the fall meeting on October 15, 2021. This rule was amended out-of-cycle by [Chief Justice Order 21-051](#), effective February 1, 2022.

**EXPLANATION**

This proposal, and related item C.4, were submitted by Sam Dupree, OJD Assistant General Counsel, on July 28, 2021. The proposed amendment to UTCR 21.050(2) allows an application for waiver or deferral of court fees and costs to be filed electronically. Related item C.4 amends UTCR 21.070(3) to remove case initiating documents that are accompanied by an application for waiver or deferral of a required fee from the list of documents that must be conventionally filed.

Prior to amendment, UTCR chapter 21 permitted fee waiver and deferral applications to be eFiled unless accompanying a case-initiating document. When eFiling began, a variety of technical and other limitations prevented OJD from accepting or processing any type of eFiled fee waiver or deferral application, so the Chief Justice issued an order – CJO 14-036 – that prohibits all such filings using the eFiling system.

OJD's Office of the State Court Administrator has been working to develop a process that will allow applications for fee waivers or deferrals to be electronically filed. The challenge has been creating a process that (1) is not overly cumbersome for the filer or the court but still complies with ORS 21.100 – which requires all statutory filing fees to be paid, waived, or deferred *before* a pleading can be *filed* (when the waiver/deferral determination may occur on a subsequent business day); and (2) does not run the risk that any applicable statute of limitations could expire between when the application is electronically submitted and the time when the filing is officially filed with the court.

*Katrina Otnes v. PCC Structural, Inc.*, 367 Or 787 (2021) (S067165), alleviated those concerns by clarifying that ORS 21.100 does not prevent a court from granting a request for relation back of the filed date under UTCR 21.080(5), when the reason for an initial rejection was nonpayment of a required fee. Simply stated, under *Otnes*, nothing about the text of ORS 21.100 prevents the filed date for a pleading previously rejected for nonpayment of a required fee from relating back to the date of initial submission (upon request) once the fee is paid. It follows that a pleading that is *initially* accompanied by a fee waiver or deferral application likewise can receive the “filed date” of the date that the application and pleading were initially submitted – even if the application is granted on a subsequent day.

Additionally, if a waiver or deferral is not granted and the pleading is rejected, the filer could resubmit the pleading along with the required fee and request under UTCR 21.080(5) that the date of filing relate back to the date of the original submission.

The new process requires applicants to electronically submit both the application and the pleading at the same time. If a waiver or deferral is not granted, court staff would contact the filer to provide an opportunity for the filer to pay the required fee. If the fee is not paid, then the pleading would be rejected.

At the October 15, 2021, UTCR Committee meeting, the committee recommended out-of-cycle amendment of UTCR 21.050(2) and UTCR 21.070(3) to allow applications for waiver or deferral of court fees and costs to be filed electronically. Chief Justice Walters subsequently approved the out-of-cycle amendment in CJO 21-051, effective February 1, 2022.

## AMENDMENT

### 21.050 PAYMENT OF FEES

#### (1) Payment Due on Filing

A filer must pay the filing fees for filing a document electronically at the time of electronic filing.

#### (2) Fee Waivers and Deferrals

[(a) *Except as provided in subsection (b) of this rule, a*~~]~~**A** *filer may apply for a waiver or deferral of court fees and costs, as provided in ORS 21.682 and ORS 21.685, when submitting for electronic filing a document that constitutes an appearance, motion, or pleading for which a fee is required, with an accompanying application for a waiver or deferral of a required fee. The document will not be accepted for filing unless the court grants the fee waiver or deferral,*  
**or the required fee is paid***].*

[(b) *A filer may not electronically apply for a waiver or deferral of court fees when submitting a document that initiates an action, as provided in UTCR 21.070(3)(f).*]

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4. **21.070(3)**

Amended the rule to remove case initiating documents that are accompanied by an application for waiver or deferral of a required fee from the list of documents that must be conventionally filed. See related item C.3.

**ACTION TAKEN**

Amendment of the rule was preliminarily recommended for approval by the UTCR Committee at the fall meeting on October 15, 2021. The rule was then amended out-of-cycle by [Chief Justice Order 21-051](#), effective February 1, 2022.

**EXPLANATION**

See explanation for related item C.3.

**AMENDMENT**

21.070 SPECIAL FILING REQUIREMENTS

(1) \* \* \*

\* \* \* \* \*

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) \* \* \*

\* \* \* \* \*

(f) *[A document that initiates an action that is accompanied by an application for a waiver or deferral of a required fee]***Reserved for future use**.

(g) \* \* \*

\* \* \* \* \*

(4) \* \* \*

\* \* \* \* \*

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## D. OTHER ACTIONS

### 1. 3.170

Reviewed public comment on out-of-cycle amendment.

#### ACTION TAKEN

No action was needed nor taken.

#### EXPLANATION

Amendment of UTCR 3.170(9) was adopted out-of-cycle by [Supreme Court Order 21-008](#), effective March 11, 2021. These amendments were necessary due to HB 4214 (2020 1<sup>st</sup> Special Session). HB 4214 created the Oregon Indian Child Welfare Act (ORICWA) and changed the status of an Indian tribe in a child welfare proceeding. Prior to HB 4214, an Indian tribe was required to intervene in a child welfare proceeding in order to become a party to the case. Under HB 4214, the Indian tribe becomes a party to the case when there is reason to know that the child involved in the proceeding is an Indian child.

The out-of-cycle amendments to UTCR 3.170(9):

- Added citations to ORICWA to the rule where appropriate;
- Removed the affidavit requirement; and
- Removed references to the tribe as an intervenor.

The committee received one public comment pertaining to the out-of-cycle amendment. The public comment did not identify a need for further amendment of the rule.

#### AMENDMENT

### 3.170 ASSOCIATION OF OUT-OF-STATE COUNSEL (*PRO HAC VICE*)

(1) \* \* \*

\* \* \* \* \*

(9) An applicant is not required to associate with local counsel pursuant to subsection (1)(c) of this section or pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that:

- (a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 USC §1903, pursuant to the Indian Child Welfare Act of 1978, 25 USC §1901 et seq. **{ and the Oregon Indian Child Welfare Act, Oregon Laws 2020, chapter 14 (2020 1st Special Session House Bill 4214) }**;
- (b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 USC §1903 **{ and Oregon Laws 2020, chapter 14, section 2 (2020 1st Special Session House Bill 4214) }**; and

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- (c) **{An Indian tribe as defined in 25 USC §1903 or Oregon Laws 2020, chapter 14, section 2 (2020 1st Special Session House Bill 4214) has affirmed the child's eligibility for membership or citizenship in the tribe.}***[One of the following:*
- (i) If the applicant represents an Indian tribe, the Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; or*
  - (ii) If the applicant represents a parent or Indian custodian, the tribe has affirmed the child's membership or eligibility of membership under tribal law.]*

NOTE: UTCR 3.170 is adopted by the Oregon Supreme Court under ORS 9.241 and may be modified only by order of that Court.

**2. 5.130**

Reviewed public comment on out-of-cycle amendment. See related items D.3 – D.5.

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

This rule was amended out-of-cycle by [Chief Justice Order 21-020](#), effective August 1, 2021. Effective August 1, 2021, all forms in the UTCR Forms Appendix were repealed and moved to the OJD website, and all rules that formerly referred to forms in the UTCR Forms Appendix were amended to refer to the forms section on the OJD website. Now that the forms are no longer a part of the UTCR, all changes to the forms are approved by the Law & Policy Workgroup (LPWG) and the Statewide Forms Subgroup (SFSG).

Following notification that the UTCR Committee recommended repeal of the UTCR Forms Appendix and subsequent transfer of the forms to the OJD website, LPWG and SFSG recommended that some of the forms that were formerly part of the UTCR Forms Appendix be discontinued, either because the form had become obsolete, or due to non-use of the form. As a result, UTCR 5.130, 9.180, and 10.010 were amended, and UTCR 9.410 was repealed to reflect the repeal of the form formerly referenced in each rule.

The committee did not receive any public comments on the amendment.

**AMENDMENT**

**5.130 INTERSTATE DEPOSITION INSTRUMENTS—OBTAINING AN OREGON COMMISSION**

- (1) A party shall request a commission pursuant to ORCP 38 to permit a deposition to be taken in a foreign jurisdiction for an action pending in an Oregon circuit court by presenting a motion and declaration[, *in substantially the form available at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms),*] at *ex parte*. If the motion is allowed, the court shall issue the commission.
- (2) Unless otherwise requested by the party in its motion and ordered by the court, the commission shall be effective for 28 days from the date of issue.
- (3) The commission may also serve to authorize the issuance of Subpoenas *Duces Tecum* in a foreign jurisdiction.

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3. **9.180**

Reviewed public comment on out-of-cycle amendment. See related items D.2 and D.4 – D.5.

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

This rule was amended out-of-cycle by [Chief Justice Order 21-020](#), effective August 1, 2021. The committee did not receive any public comments on the amendment. See explanation for related item D.2.

**AMENDMENT**

**9.180 VOUCHERS AND DEPOSITORY STATEMENTS**

- (1) Unless otherwise provided by statute, SLR, or order of the court, a voucher for each disbursement reported in the accounting must accompany the accounting as a separate exhibit or shall be attached to a cover page showing the case caption. Vouchers required by statute or order of the court must be documents evidencing each disbursement and showing the name of the payee, date, and amount.
- (2) Unless the fiduciary is excused from the requirement of filing vouchers, the accounting shall include depository statements for each account. An opening depository statement must evidence the account beginning balance, unless one was submitted with a previous accounting. A closing depository statement must evidence the balance in the account within 30 days of the close of the accounting period or on the date of closing of an account closed during the accounting period.
- [(3)] *In a proceeding involving fiduciary accounts for which the depository does not issue regular statements, the court must accept a Depository Certification of Funds on Deposit that is substantially in the form provided at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms).*
- (4)[(3)] For purposes of this rule, a “depository” is an entity holding assets of the estate or conservatorship, including a bank, stock and bond broker, mutual fund, or similar entity.
- [(5)][(4)] Copies of vouchers and depository statements need not be served on persons entitled to copies of the accountings or on persons who have requested notice in the proceedings.

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4. **9.410**

Reviewed public comment on out-of-cycle repeal. See related items D.2 – D.3 and D.5.

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

This rule was repealed out-of-cycle by [Chief Justice Order 21-020](#), effective August 1, 2021. The committee did not receive any public comments on the repeal. See explanation for related item D.2.

**REPEALED RULE**

9.410 PROTECTIVE PROCEEDING – CONFIDENTIAL INFORMATION ORDER{ **(Repealed)**}

**{REPORTER’S NOTE: UTCR 9.410 was repealed effective August 1, 2021.}**

*[A person who submits to the court confidential and protected information from the Department of Human Services or the Oregon Health Authority pursuant to ORS 125.012 must serve a copy of the order signed by the court on all parties to the proceeding.]*

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**5. 10.010**

Reviewed public comment on out-of-cycle amendment. See related items D.2 – D.4.

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

This rule was amended out-of-cycle by [Chief Justice Order 21-020](#), effective August 1, 2021. The committee did not receive any public comments on the amendment. See explanation for related item D.2.

**AMENDMENT**

**10.010 PETITION FOR REVIEW OF ORDER OF SUSPENSION UNDER ORS 813.410**

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A petition for review of a final order of the Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV) must be filed with the trial court administrator. Copies of the petition must be served on the DMV and the Attorney General. The petition filed with the trial court administrator must contain a certificate of service of the above copies. The petition as filed and served must be accompanied by a copy of the final order of the DMV from which the appeal is taken. [*The petition for review and the certificate of service must be substantially in the form provided at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms).*]

**6. 21.080**

Reviewed section (5) for conflict with ORS 21.100, considering the ruling by the Supreme Court in *Otnes v. PCC Structural, Inc.*, 367 Or 787 (2021).

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

This issue first appeared on the UTCR Committee's fall 2018 agenda. At that time, review of 21.080(5)(a) was requested by committee member Janet Schroer on behalf of attorney Matthew Kalmanson. At the 2018 fall meeting, the UTCR Committee discussed the rule and the Appellate Commissioner's ruling in *Otnes v. PCC Structural, Inc.*, A167525. The Appellate Commissioner ruled that the trial court did not err when it refused to allow relation back of a document for which the filing fee had not been paid. Mr. Kalmanson felt that this ruling identified a conflict between ORS 21.100 and UTCR 21.080(5) and that some amendment to UTCR 21.080(5) might be necessary to notify litigants that relation back may not be granted if the filing fee has not been paid. The committee discussed these issues and felt that there is no clear conflict between UTCR 21.080(5) and ORS 21.100 because UTCR 21.080(5) does not guarantee that a request for relation back will be granted. Given that the Appellate Commissioner's decision was pending appeal, the committee decided to carry over this item on future agendas, awaiting final decision.

Subsequently, decisions were rendered at both the Court of Appeals and, following the spring 2021 UTCR Committee meeting, by the Oregon Supreme Court. The Oregon Supreme Court held that UTCR 21.080(5) permits relation back if the requirements of the rule are met and that there is no "good cause" requirement implied in the rule. The court also held that ORS 21.100 does not prevent a court from allowing relation back when the document was originally rejected for non-payment of the required fee. The Law and Policy Work Group examined the rule and the decision in *Otnes* and did not identify a need for a change to the rule. Similarly, the UTCR Committee discussed the holding in *Otnes* at its meeting on October 15, 2021, and did not identify a needed change to the rule.

**AMENDMENT**

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

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on This Rule](#)

**7. Committee Membership**

Update.

**ACTION TAKEN**

No action was needed nor taken.

**EXPLANATION**

The committee received an update on membership. Committee member Zack Mazer will complete his service on the committee on December 31, 2021.

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**8. Spring 2022 Meeting**

Scheduled spring meeting (April 1, 2022).

**ACTION TAKEN**

The committee scheduled its next meeting for Friday, April 1, 2022.

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to Comment](#)

**9. Fall 2022 Meeting**

Scheduled fall meeting (October 20, 2022).

**ACTION TAKEN**

The committee scheduled its fall meeting for Thursday, October 20, 2022. This year's fall meeting will be held on the Thursday following the Judicial Conference (usually held the Friday preceding the Judicial Conference) to avoid conflict with an annual Family Law Conference.