

NOTICE SEEKING PUBLIC COMMENT ON PROPOSED UNIFORM TRIAL COURT RULES CHANGES FOR 2023

I. INTRODUCTION

This notice is provided pursuant to Uniform Trial Court Rule (UTCR) 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 UTCR Committee makes recommendations to the Chief Justice of the Oregon Supreme Court and to the full Supreme Court where required by rule, statute, or the constitution. At its fall meeting on October 20, 2022, the committee made preliminary recommendations on proposed changes and voted to send out other proposals for public comment without committee recommendation of approval or disapproval. No proposed changes were preliminarily recommended for disapproval.

In general, proposals recommended for final approval by the committee at its spring meeting and adopted by the Chief Justice or the Supreme Court become effective on August 1. However, several of the proposals considered at the fall meeting were preliminarily recommended for adoption with immediate, contingent, or delayed effective dates.

Out-of-cycle amendments with immediate effective dates:

- The recommended amendments to UTCR 2.010 were adopted by Chief Justice Order (CJO) effective November 21, 2022. **See item C.1.**
- The recommended amendments to UTCR 3.180 were adopted out-of-cycle by Supreme Court Order (SCO), effective November 15, 2022. **See item C.2.**

Three additional amendments were preliminarily recommended with delayed or contingent effective dates:

- The amendments to UTCR 19.020 and UTCR 21.070 related to remedial contempt proceedings were recommended for effective date October 1, 2023, contingent on corresponding legislative action in the 2023 legislative session. **See related items A.9 and A.10.**
- The amendment to UTCR 1.050, moving SLR forms to local court websites, was recommended for effective date February 1, 2024, to align with the effective date of 2024 SLR. **See item B.1.**

The committee encourages you to submit comments on these proposals, the recommendations (whether for approval or without recommendation), and any other UTCR action taken by the committee, the Chief Justice, or the Supreme Court. In order to be considered by the committee, public comment must be received by the UTCR Reporter by 11:59:59 p.m. on March 3, 2023. The committee will review public comment and make final recommendations at its next meeting on March 17, 2023.

SUBMISSION OF WRITTEN COMMENTS

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

utcr@ojd.state.or.us

or

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

If you wish to appear at the spring meeting, please contact the UTCR Reporter at utcr@ojd.state.or.us, or Aja T. Holland at 503-986-5500 to schedule a time for your appearance.

Following adoption, the rules will be posted on the Oregon Judicial Department (OJD) website listed above. Additional information on the UTCR process can be found at the same web address.

II. FUTURE MEETINGS

The committee plans to meet twice in 2023.

SPRING MEETING: March 17, 2023, at 9:00 a.m., at the OJD Enterprise Technology Services Division, Salem, Oregon. The committee will review public comment on the proposals and preliminary recommendations described in this notice and will make final recommendations to the Chief Justice on changes to the UTCR to take effect August 1, 2023 (unless otherwise noted). The committee may reconsider these proposals, the corresponding recommendations, and any other committee action.

FALL MEETING: October 19, 2023, at 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, 2024. 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 2022 ACTIONS

A. RECOMMENDATIONS OF APPROVAL

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

1. 1.050 – PROMULGATION OF SLR; REVIEW OF SLR; ENFORCABILITY OF LOCAL PRACTICES
Amend to require each court to post all required forms to the court’s website and to include a link to that website in the court’s SLR.
2. 1.080 – FORMAT AND LOCATION OF COURT RULES
Amend to remove requirements that apply only to printed copies of the rules.
3. 2.010 – FORM OF DOCUMENTS
Amend to exempt statewide forms from certain formatting requirements.
4. 3.010 – PROPER APPAREL
Amend to require persons attending court by remote means to ensure that their screen does not detract from the dignity of court.
5. 5.140 – FOREIGN DISCOVERY
Amend the rule to require a petition to seek discovery under ORCP 38 C in place of a declaration, and to allow a petition for discovery in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration in lieu of an affidavit.
6. 7.090 – EXPRESSION OF MILK
Adopt a new rule to allow persons to request accommodation for expression of milk.
7. 8.030 – JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR ACTIONS UNDER ORS 109.103
Adopt a new rule governing joint petitions in certain domestic relations actions.
8. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL
Amend to allow courts to accept oral Informal Domestic Relations Trial (IDRT) related waivers and to allow a party to opt in or out at any time prior to trial.
9. 19.020 – INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS
Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item A.10.**
10. 21.070 – SPECIAL FILING REQUIREMENTS
Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item A.9.**
11. 21.040 – FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY
Remove the requirement that electronically filed documents be submitted in a text searchable format.

B. PROPOSALS SENT OUT FOR PUBLIC COMMENT WITHOUT RECOMMENDATION

These are brief descriptions of the UTCR proposals the committee has sent out for public comment without recommendation (see Section IV.B for a detailed explanation).

1. 4.010 – TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES
Amend the rule to set timelines for the response, reply, and hearing on pretrial motions in criminal cases. **See related items B.2 – B.6.**
2. 4.020 – SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES
Adopt a new rule governing status appearance in criminal cases. **See related items B.1 and B.3 – B.6.**
3. 4.040 – PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES
Adopt a new rule governing the request and scheduling of certain appearances. **See related items B.1 – B.2 and B.4 – B.6.**
4. 4.060 – MOTION TO SUPPRESS EVIDENCE
Repeal the rule governing motions to suppress. **See related items B.1 – B.3 and B.5 – B.6.**
5. 4.130 – REMOTE APPEARANCE IN LIEU OF TRANSPORTATION
Adopt a new rule requiring a defendant to appear remotely to resolve cases outside of the court with jurisdiction over the county where the defendant is incarcerated. **See related items B.1 – B.4 and B.6.**
6. 7.010 – PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES
Amend the rule to add discovery timelines in criminal cases and to require the prosecution to make an initial plea offer. **See related items B.1 – B.5.**

C. OUT-OF-CYCLE AMENDMENTS

These are brief descriptions of UTCR changes that were adopted out-of-cycle by the Chief Justice or the Supreme Court following the October 20, 2022, UTCR Committee meeting (see Section IV.C for a detailed explanation).

1. 2.010 – FORM OF DOCUMENTS
Amended subsection (12) to indicate how and when nonprecedential memorandum opinions may be cited in trial courts.
2. 3.180 – ELECTRONIC RECORDING AND WRITING
Amended the rule to clarify application to remote proceedings.

D. OTHER ACTIONS

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

1. **UTCR Reporter Notice of Correction**
Received notice of UTCR Reporter corrections.
2. **SLR Assignment**
Discussed future SLR assignment method.
3. **Case Initiation Changes**
Discussed upcoming case initiation changes and the impact on electronic filing.
4. **Committee Membership**
The Committee received an update on membership.
5. **Committee Membership Cycle**
The Committee discussed a proposal to adjust future membership term beginning and end dates to coincide with the UTCR rules cycle.
6. **Spring 2023 Meeting**
Scheduled spring meeting (March 17, 2023).
7. **Fall 2023 Meeting**
Scheduled fall meeting (October 19, 2023).

IV. DESCRIPTION OF FALL 2022 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. In instances when the text of a proposed amendment was not submitted for committee consideration, the absence of a proposed amendment is noted following the explanation.

A. RECOMMENDATIONS OF APPROVAL

1. 1.050 – PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

Amend to require each court to post all required forms to the court's website and to include a link to that website in the court's SLR.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe on behalf of the OJD Law & Policy Workgroup. The proposal amends UTCR 1.050 and would require courts to post any forms required by Supplementary Local Rule (SLR) on the local court's website, as opposed to being incorporated in the SLR itself. This change mirrors the change that was recently made to UTCR forms (effective August 1, 2021) that requires UTCR forms to be posted on the OJD website, in the online Forms Center, instead of being included in the UTCR Appendix of Forms.

The committee discussed that this change would allow courts to make more frequent updates to SLR forms, as needed to respond to statutory changes, for example, and to provide forms in alternative formats that are more accessible to court users in the future (such as fillable PDFs or interactive forms). The proposal would also allow courts to continue to append their forms to their SLR, for completeness and convenience, but those forms would not be required to be updated through the SLR amendment process.

PROPOSED AMENDMENT

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

(1) Promulgation of SLR

(a) * * *

* * * * *

(d) **{Each court must post} [A]{a}ll forms required by SLR {on its website and must include the link to that forms page in its**

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SLR{*must be submitted as part of the SLR. Such forms shall be placed in an appendix and organized by chapter and SLR number*}. SLR and related forms shall contain cross-references to one another. **{A court may attach to its SLR all forms that the SLR requires, for convenience. Chief Justice approval is not required to amend any form required by SLR.**

REPORTER'S NOTE: Any form required by SLR that is provided by the court is done so for convenience but is not part of the SLR.

2. **1.080 – FORMAT AND LOCATION OF COURT RULES**

Amend to remove requirements that apply only to printed copies of the rules.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Jenn McQuain from the OJD Office of the State Court Administrator (OSCA). The proposal amends UTCR 1.080 to remove requirements that pertain only to hard copy, printed versions of the rules.

The committee discussed that most court users now access the rules through electronic means and printing of the full rules set is unusual. When printing of the rules does occur, the printed rules do not need to comply with any additional format requirements.

PROPOSED AMENDMENT

1.080 **FORMAT AND LOCATION OF COURT RULES**

(1) All UTCR and SLR must include a table of contents[; *must be printed on paper measuring 8-1/2 x 11 inches; printing must be on both sides when practical; each sheet must be three-hole punched to fit a standard three-ring binder*].

(2) * * *

* * * * *



3. 2.010 – FORM OF DOCUMENTS

Amend to exempt statewide forms from certain formatting requirements.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Holly Rudolph, OJD Forms Manager. The proposal amends UTCR 2.010(14) to create two additional formatting exceptions for statewide forms. Specifically, to exempt statewide forms from the requirement that documents filed with the court identify the filing party in the title of the document, and show, in the document title, the name of the pleading against which the document is directed. See UTCR 2.010(10(a)(v) & (10)(c).

The proponent explained that these requirements are not workable for all statewide forms because some forms are designed so that they may be filed by either the plaintiff/petitioner or the defendant/respondent, or may be directed in response to multiple document types. Complying with these requirements would require the creation of additional forms, where the only difference between forms would be the party or pleading name.

The proposal also corrects internal citations within the rule and the 1993 commentary following the rule, which currently refer to incorrect section numbers. These incorrect citations were caused when subsections of UTCR 2.010 were renumbered or removed.

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) * * *

* * * * *

(14) Application to Court Forms

Forms created by the Oregon Judicial Department are not required to comply with the provisions of UTCR 2.010(4){,} [or] ([8]{7}){,} **(10)(a)(v), or (10)(c)** where the Oregon Judicial Department determines variation from those provisions will promote administrative convenience for courts or parties. Such forms and exact copies of such forms may be used and submitted to courts without challenge under UTCR 2.010(4){,} [or] ([8]{7}){,} **(10)(a)(v), or (10)(c)**.

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1993 Commentary to section (11)([b]{c}):

Subsection ([b]{c}) of section (11) requires that the information include the author's name (signature not required), followed by an identification of party being represented, plaintiff or defendant.

Example: Submitted by:

A. B. Smith

Attorney for Plaintiff (or Defendant)

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

Example: Submitted by:

A. B. Smith

Attorney for Plaintiff Clarke

1996 Commentary:

The UTCR Committee strongly encourages the use of recycled paper and strongly recommends that all original pleadings, motions, requested instructions, copies, and service copies be on recycled paper having the highest available content of postconsumer waste.

4. 3.010 – PROPER APPAREL

Amend to require persons attending court by remote means to ensure that their screen does not detract from the dignity of court.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by the Hon. Erin Kirkwood, Multnomah County Circuit Court.

The proposal would add a new subsection to UTCR 3.010, which would require participants attending court by remote means to ensure that the screen visible to other court participants does not detract from the dignity of court. This standard mirrors the standard for appropriate dress in 3.010 subsection (1) (“All persons attending court, whether in person or by remote means, must be dressed so as not to detract from the dignity of court...”).

Discussion leader Noah Gordon proposed an alternative to the version of 3.010 proposed by Referee Kirkwood that would have prevented artificial or virtual filters or backgrounds except blurred or static present backgrounds used for the purpose of maintaining privacy or the dignity of court.

The committee preliminarily recommended Referee Kirkwood’s proposal but modified it by removing the words “a background” and replacing them with “the screen” as shown in the proposed amendment below.

PROPOSED AMENDMENT

3.010 PROPER [APPAREL]{**APPEARANCE**}

- (1) All persons attending 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 court, whether in person or by remote means, all attorneys and court officials must wear appropriate attire.
- {(3) All persons attending court by remote means must ensure that the screen visible to other court participants, whether real or virtual, does not detract from the dignity of court.}**

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5. 5.140 – FOREIGN DISCOVERY

Amend the rule to require a petition to seek discovery under ORCP 38 C in place of a declaration, and to allow a petition for discovery in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration in lieu of an affidavit.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by OJD Forms Manager Holly Rudolph. The proposal amends UTCR 5.140 to require a petition to seek discovery under ORCP 38 (in lieu of a declaration to seek discovery). When the UTCR Forms Appendix was repealed (effective August 1, 2021) all forms that were previously part of the UTCR Forms Appendix were reviewed by the Law & Policy Workgroup's Statewide Forms Subgroup (SFSG). SFSG determined that, because the request for discovery is not filed into an existing Oregon Circuit Court Case, it should be titled as a petition rather than a declaration. This proposal would align the term used in the rule with the current form.

The proposed rule would also allow a petition to compel witnesses in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration in lieu of an affidavit. In recent years, the UTCR Committee has revised most rules to allow filers to choose a declaration in lieu of an affidavit if there is no particular need to require notarization. The committee did not identify a need for an affidavit in this circumstance.

PROPOSED AMENDMENT

5.140 OREGON DISCOVERY IN FOREIGN PROCEEDINGS

- (1) To obtain discovery in the State of Oregon for a proceeding pending in another state pursuant to Oregon Rule of Civil Procedure (ORCP) 38 C, a party must submit to the court all of the following:
 - (a) The foreign subpoena.
 - (b) An original and two copies of a fully completed subpoena that
 - (i) Complies with the requirements of the ORCP, including ORCP 55; and
 - (ii) Contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.
 - (c) A **{petition}***[declaration]* and request for issuance of a subpoena pursuant to ORCP 38 C, substantially in the form provided at www.courts.oregon.gov/forms, stating that

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- (i) The foreign subpoena was issued by a court of record of a state as “state” is defined in ORCP 38 C(1)(b);
 - (ii) The fully completed subpoena complies with the requirements of the ORCP, including ORCP 55; and
 - (iii) The fully completed subpoena contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.
- (2) * * *
- (3) In the event that a foreign jurisdiction not subject to ORCP 38 C has no procedure to issue a writ, mandate, commission, letter rogatory, or order to authorize a deposition to be taken in Oregon, at *ex parte* the party must present a petition to compel the witnesses to appear and testify. The petition must be supported by an affidavit{ **or declaration**} that contains all of the following:
- (a) The name of the foreign jurisdiction in which the proceeding is pending.
 - (b) The name of the court in which the proceeding is pending.
 - (c) The caption or other relevant title of the proceeding.
 - (d) The case number assigned by the foreign jurisdiction to the proceeding.
 - (e) The date of filing of the proceeding in the foreign jurisdiction.
 - (f) A statement that the foreign jurisdiction has no process to issue a writ, mandate, commission, letter rogatory, or order to compel a witness to appear and give testimony if the witness is located outside its jurisdictional boundary.
 - (g) A statement that the affiant{ **or declarant**} seeks authorization from the court to proceed upon notice or agreement to take the testimony of witnesses in this state.
 - (h) The identity of witnesses in this state to be compelled upon notice or agreement to appear and testify.

6. 7.090 – EXPRESSION OF MILK

Adopt a new rule to allow persons to request accommodation for expression of milk.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Melissa Franz, Eugene Attorney. The proposal would create a process for court users (including parties, attorneys, witnesses, and others) to request accommodations to express milk. Examples of potential accommodations to express milk could include breaks from a trial or hearing or access to a room in the courthouse to express milk.

The committee discussed the fact that some courthouses are better equipped to accommodate a request for expression of milk than others. For instance, some newer courthouses already have a room dedicated to expression of milk that is located in a publicly accessible area. In other courthouses, providing a room to express milk may be logistically challenging. Some courthouses are short on space and while they may be able to provide a room for employees to express milk, those rooms may not be in areas that are open to the public, may not have locking doors, etc.

The committee discussed the fact that the proposal does not require a court to provide any particular accommodation for the expression of milk, it merely provides a process for a person to make the request.

The original proposal would have amended the Americans with Disabilities Accommodation Rule, UTCR 7.060. Prior to the UTCR Committee meeting, the UTCR Reporter solicited input from the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF) subcommittee which is currently assessing challenges to courthouse facility access. The OSCCIF subcommittee recommended that the UTCR Committee preliminarily recommend the proposed rule but noted that some subcommittee members were uncomfortable with including expression of milk in the ADA accommodation rule because expression of milk is not a disability. Members of the UTCR Committee modified the original proposal by recommending adoption of a new “expression of milk” rule separate from UTCR 7.060 (ADA Accommodations).

OSSCIF also recommended removing the four-day advance notice requirement from UTCR 7.060 because some court users may not know four days in advance that they will be attending a hearing or trial and will need ADA or expression of milk accommodations. The UTCR Committee modified the original proposal to omit the four-day notice requirement from the proposed expression of milk rule but retained the requirement in UTCR 7.060 because some ADA accommodations require advanced notice to provide, and because the rule already contains a good cause exception.

OSSCIF also recommended revision of the ADA accommodations form on the OJD website. The UTCR committee noted that the rule itself does not require use of the form, and that forms are no longer part of the UTCRs. Therefore,

revision of the form is outside of the UTCR Committee's scope, but this issue could be taken up by SFSG or the OJD Office of General Counsel.

NEW RULE

7.090 EXPRESSION OF MILK

- (1) A person requesting an expression of milk accommodation must notify the court as soon as possible. A request for an accommodation may be made by the person in need of the accommodation or by a party on behalf of the person.
- (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.); and
 - (h) The type of accommodation needed or preferred.

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7. 8.030 – JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR ACTIONS UNDER ORS 109.103

Adopt a new rule governing joint petitions in certain domestic relations actions.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe on behalf of the OJD Law & Policy Workgroup (LPWG). The proposal creates a new rule allowing parties to certain domestic relations actions to file as joint petitioners.

The proponent discussed that, before the eCourt system, courts utilized joint petitions and stipulated judgments when parties agreed to terms. However, system limitations on party designations in Odyssey make it difficult to have joint petitions. The LPWG and OJD have been receiving requests to offer joint petitions once again, so this rule attempts to work around the system limitations.

The proposed rule would allow parties to pay just one fee instead of separate fees for the petition and response. Parties will continue to appear in Odyssey as “petitioner” and “respondent” due to limitations in the system.

If the rule is recommended for final approval in the spring, the Oregon Department of Justice Division of Child Support (DCS) will create an email address for submission of copies of petitions and proposed stipulated judgments under section (3)(a).

The committee discussed whether some changes to the rule were required because case law now requires parties to submit the DCS worksheets described in UTCR 8.060 regardless of whether child support is requested by either party, and that the forms are required for all joint children (meaning children shared by the parties) who are under the age of 21.

The committee modified the proposal as follows:

- In subsection (2), changed “require” to “requires;”
- In subsection (3), deleted “minor children” and added “joint children under the age of 21;”
- In subsection (5)(c), deleted “child support is requested by either party” and added “the parties have joint children under the age of 21;” and
- In subsection (6), added “joint” before “children.”

These changes are reflected in the proposed new rule below.

NEW RULE

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8.030 JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR PROCEEDINGS UNDER ORS 109.103

- (1) In an action for dissolution of marriage or Registered Domestic Partnership, separation, or as set out under ORS 109.103, the parties may file a joint petition for relief and, regardless of whether a joint petition was filed, may submit a stipulated general judgment.
- (2) A joint petition filed under this rule requires payment of only one filing fee under ORS 21.155, payable by one initiating party.
 - (a) If parties jointly file under this rule but do not submit a stipulated judgment, a second filing fee under ORS 21.155 will be due from the other party before any hearing or trial will be scheduled.
 - (b) If a stipulated judgment entered under this rule becomes the subject of a contested modification action, the moving party must pay the filing fee due from a responding party under ORS 21.155.
- (3) Parties with joint children under the age of 21 who both file a joint petition and submit a stipulated judgment must also send a copy of the joint petition and proposed stipulated judgment to the Department of Justice, Division of Child Support, as follows:
 - (a) At least 3 business days before filing and submission if delivered by email to {placeholder email@DCS.gov} or hand-delivery to a child support enforcement office, or
 - (b) At least 10 business days before filing and submission if delivered by first class mail.
- (4) Parties seeking a stipulated general judgment under this rule must submit the appropriate completed stipulated general judgment and are not required to file a motion requesting entry of judgment.
- (5) A stipulated general judgment submitted under this rule must be accompanied by the following documents if not previously filed:
 - (a) The affidavit or declaration required under ORS 107.095(4), which may be included in the petition.
 - (b) If the judgment is for dissolution of either a marriage or a Registered Domestic Partnership, a completed Oregon State Health Division Record of Dissolution of Marriage, Annulment, or Registered Domestic Partnership form.
 - (c) If the parties have joint children under the age of 21, the Division of Child Support (DCS) worksheets described in UTCR 8.060.

- (6) If the parties submitting a stipulated general judgment under this rule have any joint children ages 18, 19, or 20, the parties must file a waiver of further appearance and consent to entry of judgment for each adult child. In the absence of such a waiver for any adult child, the submitted judgment must include the signature of that child. If any adult child chooses not to sign or execute a waiver, the parties may not submit a stipulated judgment under this rule.
- (7) This rule does not apply to supplemental or limited judgments.

8. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL

Amend to allow courts to accept oral Informal Domestic Relations Trial (IDRT) related waivers and to allow a party to opt in or out at any time prior to trial.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Salem Attorney Ryan Carty on behalf of the State Family Law Advisory Committee (SFLAC). The proposal would allow parties to opt in to the IDRT process more easily by allowing submission of an oral waiver at any time before trial commences. Currently, the rule requires submission of a written waiver. Due to the COVID-19 crisis, many proceedings are being conducted remotely, which makes submission of a written waiver more difficult, especially for self-represented parties. In an in-person proceeding, written waivers can be submitted during the hearing, but cannot be submitted during a remote proceeding unless the parties have access to a printer, scanner, etc., and many parties to domestic relations proceedings are self-represented. The proposal would make it easier for parties to select the IDRT process and to opt out of that process if desired.

The proponent discussed that:

- The proposal is intended to streamline court processes for family law litigants.
- Judges have been accepting oral waivers during COVID because of the difficulty to parties in providing written waivers during remote hearings.
- The proposed amendment makes clear that the judicial officer still needs to go over the terms of the waiver and IDRT process verbally with parties before accepting an oral waiver.
- The proposed rule removes the deadline for opting out of the IDRT process.

The committee discussed:

- Whether the deadline for opting out of the IDRT process is enforceable, since the IDRT requires parties to waive the rules of evidence;
- Whether the proposed rule could be weaponized by a party who opts out at the last minute and demands a regular bench trial, since the rules of evidence would then apply and the opposing party may be unprepared for an evidentiary trial;
- If a party opts out on the day of trial, the rule allows, but does not require, the judge to postpone trial. The judicial officer acts as a backstop to prevent any potential unfairness caused by the other party opting out at the last minute.

The committee modified subsection (5) for readability, as shown in the proposed amendment below.

PROPOSED AMENDMENT

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8.120 INFORMAL DOMESTIC RELATIONS TRIAL

- (1) Upon the consent of both parties, Informal Domestic Relations Trials may be held to resolve any or all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support, and child custody filed under ORS chapter 107, ORS chapter 108, ORS 109.103, and ORS 109.701 through 109.834.
 - (2) The parties may select an Informal Domestic Relations Trial [*within 14 days of a case subject to this rule being at issue (see UTCR 7.020(6)). The parties must file a Trial Process Selection and Waiver for Informal Domestic Relations Trial*]{**at any time before trial commences by filing either a Domestic Relations Trial Process Selection form (traditional or informal trial)**} in substantially the form provided at www.courts.oregon.gov/forms{ **or making such selection orally on the record. If the selection is made orally, the judicial officer accepting the parties' selection must ensure the parties agree to the items identified on the form provided at www.courts.oregon.gov/forms**}. This form must be accepted by all judicial districts. SLR 8.121 is reserved for the purpose of making such format mandatory in the judicial district and for establishing a different time for filing the form that is more consistent with the case management and calendaring practices of the judicial district.
 - (3) * * *
- * * * * *
- (5) **{To opt out, a}**[A] party who has previously agreed to proceed with an Informal Domestic Relations Trial **{must notify the parties and the court at any time before trial commences}**[*may file a motion to opt out of the Informal Domestic Relations Trial provided that this motion is filed not less than ten calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause*]. A change in the type of trial to be held may result in a change in the trial date.

9. 19.020 – INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS

Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item A.10.**

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, was approved by a 9-1 vote.

EXPLANATION

This proposal was submitted by Senior Judge Keith Raines on behalf of the OJD Contempt Workgroup.

The proponent discussed that:

This proposal is the product of a workgroup that met in 2018 to consider changes to remedial contempt case initiation. Currently, remedial contempt cases are initiated by filing a motion in the underlying case that contains the judgment or order to be enforced. Under the current rule, the case is then treated as a separate case in Odyssey with a separate case number. This can cause confusion for parties, judges, and the court because the party identifiers that are used in the underlying case are not necessarily the same for the contempt case and may not be properly reflected in the case caption. The contempt workgroup proposed correcting this issue by amending the rule to require the remedial contempt action to be initiated as a separate case so that parties are properly identified from the beginning of the case. This would also help to more clearly define the record for appeal of the contempt proceeding, if one occurs.

In drafting the amendment, a question arose about whether the remedial contempt action should be initiated by a petition or a complaint. The proponents determined that a “complaint” makes more sense since the statute refers to the alleged contemnor as the “defendant.”

The committee discussed that the changes to the rule would also require several statutory changes, both to the contempt statute, ORS 33.055, and the filing fee statutes, which refer to filing a “motion” to initiate a remedial contempt action. These changes have been proposed as part of OJD’s planned “omnibus bill” which will be introduced in the 2023 legislative session.

The committee voted 9-1 to preliminarily recommend adoption of the rule as modified, conditioned on passage of OJD’s planned “omnibus” bill. One member felt that approval of the proposal was premature, and that the committee should wait until after the legislation has passed (or failed) to consider these proposals.

The committee discussed that, given the UTCR committee cycle and the planned operative date of the measure, this is the best opportunity to receive public comment on the proposal, because, if the legislation passes, it will become operative on October 1, 2023, before the committee meets to consider changes proposed for the next UTCR cycle. If the legislation passes, the UTCR Reporter will seek out-of-cycle Supreme Court approval for the

amendments effective October 1, 2023, to align with the operative dates in the measure.

The committee modified the proposal for readability as reflected in the proposed amendment below.

PROPOSED AMENDMENT

19.020 INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS

- [(1) In addition to any other requirements for initiating instruments, the initiating instrument in a contempt proceeding under ORS 33.055 (remedial) or ORS 33.065 (punitive), must state:*
- (a) In the caption, the word “remedial” or “punitive,” as appropriate, and the words “violation of restraining order,” if appropriate.*
 - (b) In the instrument:*
 - (i) The maximum sanction(s) that the party seeks;*
 - (ii) Whether the party seeks a sanction of confinement; and*
 - (iii) As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive.*
- (2) If a party is initiating a contempt proceeding under ORS 33.055 (remedial) and a related circuit court case exists, the party must initiate the contempt proceeding by filing a motion in the related case.*
- (a) For purposes of the court’s electronic case management system, the trial court administrator will treat the contempt proceeding as a separate case.*
 - (b) Any subsequent filing by any party in the contempt proceeding must include both case numbers, with the contempt proceeding case number appearing first.*
- (3) An initiating instrument in a contempt proceeding under ORS 33.055 (remedial) that initiates a new circuit court case must state, in the first paragraph:*
- (a) If arising from a justice court or municipal court proceeding, the court name, the case name and number, and a description of the nature of that proceeding;*
 - (b) If arising from an agency proceeding other than a child support proceeding, the agency name, the agency case name and number, and a description of the nature of that proceeding; or*
 - (c) If arising from an agency proceeding that is a juvenile proceeding, the information required in paragraph (b) of this section as to any*

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applicable agency or department, and any applicable juvenile department petition number.]

([4]{1}) **{In addition to any other requirements for initiating instruments, a complaint in a contempt proceeding under ORS 33.055 (remedial) or an accusatory instrument in a contempt proceeding under ORS 33.065 (punitive) must state{ or include}, as applicable:**

(a) In the caption{;}, *if arising from an existing circuit court case, the words “Related to [Court Name] Case No. [Case Number].”*

{(i) The party seeking remedial or punitive sanctions must be designated as the plaintiff and the alleged contemnor must be designated as the defendant;

{(ii) the word “remedial” or “punitive,” as appropriate, and the words “violation of restraining order,” if appropriate; and

{(iii) If arising from an existing circuit court case, the words “Related to [Court Name] Case No. [Case Number].”}

(b) In the first paragraph:

(i) If arising from an existing circuit court case, the court name, the case name and number, and the nature of that case;

(ii) If arising from an existing juvenile court case, the court name, the case name and number, the juvenile department petition number, if any, and the nature of that case;

(iii) If arising from a justice court or municipal court proceeding, the court name, the court case name and number, and a description of the nature of that proceeding;

(iv) If arising from an agency proceeding **{other than a child support proceeding}**, the agency name, the agency case name and number, and a description of the nature of that proceeding; or

(v) If arising from a juvenile proceeding, the information required in paragraph (b)(iv) of this section as to any applicable agency or department, and any applicable juvenile department petition number.

{(c) In the instrument or the body of the complaint:

{(i) The maximum sanction(s) that the party seeks;

{(ii) Whether the party seeks a sanction of confinement;

{(iii) As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive; and

(iv) If the party is seeking remedial sanctions, a notice substantially in the form set out at ORCP 7.

([5]{2}) Maximum Sanction Imposed

The court shall not impose a sanction greater than the sanction sought. A punitive sanction is presumed greater than a remedial sanction. A punitive sanction of confinement is presumed greater than other punitive sanctions. A remedial sanction of confinement is presumed greater than other remedial sanctions.

10. 21.070 – SPECIAL FILING REQUIREMENTS

Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item A.9.**

ACTION TAKEN

Motion to preliminarily recommend approval of the proposal, as modified by the committee, was approved by a 9-1 vote.

EXPLANATION

See explanation for related item A.9.

The committee voted 9-1 to preliminarily recommend adoption of the rule as modified, final approval is conditioned on passage of OJD’s planned “omnibus” bill which will be introduced in the 2023 legislative session. One member felt that approval of the proposal was premature and should wait until after it is known whether the legislation will succeed. The committee discussed that, given the UTCR committee cycle and the planned operative date of the measure, this is the best opportunity to receive public comment on the proposal, because, if the legislation passes, it will become operative on October 1, 2023, before the committee meets to consider changes proposed for the next UTCR cycle. If the legislation passes, the UTCR Reporter will seek out-of-cycle Supreme Court approval for the amendments effective October 1, 2023, to align with the operative dates in the measure.

The committee modified the proposal to refer to the initiating document in a remedial contempt proceeding as a complaint, as reflected in the proposed amendment below.

PROPOSED AMENDMENT

21.070 Documents that Must be Filed Conventionally

(1) * * *

* * * * *

(3) The following documents must be filed conventionally:

(a) * * *

* * * * *

(d) A[*n initiating instrument*] {**complaint**} in a contempt proceeding **{seeking remedial sanctions under ORS 33.055 or an initiating instrument in a contempt proceeding seeking punitive sanctions under ORS 33.065, including documentation supporting that instrument or complaint}** [*for purposes of this rule a motion and supporting documentation filed contemporaneously with the motion under ORS 33.055 (remedial) or an accusatory instrument that initiates a contempt proceeding and supporting documentation filed contemporaneously with the initiating instrument under ORS 33.065 (punitive)*].

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(e) * * *

* * * * *

11. 21.040 – FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

Remove the requirement that electronically filed documents be submitted in a text-searchable format.

ACTION TAKEN

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

EXPLANATION

This proposal was submitted by Sam Dupree, OJD Assistant General Counsel. The proposal removes the requirement that electronically filed documents be submitted in a text-searchable format that allows copying and pasting into another document. Recent updates to File & Serve ensure that all PDFs are text searchable, so this requirement is no longer needed and if not removed, could result in the unnecessary rejection of documents.

PROPOSED AMENDMENT

21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) A document submitted electronically to the court must be in the form of a [*text-searchable*] Portable Document Format (PDF) or a [*text-searchable*] Portable Document Format/A (PDF/A) file that does not exceed 25 megabytes. [*The PDF or PDF/A document must allow copying and pasting text into another document, as much as practicable.*] A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. A filer submitting separate files under this section must include in the Filing Comments field for each submission a description that clearly identifies the part of the document that the file represents, for example, “Motion for Summary Judgment, part 1 of 2.”

(2) * * *

* * * * *

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B. PROPOSALS SENT OUT FOR PUBLIC COMMENT WITHOUT RECOMMENDATION

1. 4.010 – TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Amend the rule to set timelines for the response, reply, and hearing on pretrial motions in criminal cases. **See related items B.2 – B.6.**

ACTION TAKEN

The committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney's Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. OCDLA explained that their proposals (related items B.1 through B.6) are intended to increase public defense capacity by increasing court efficiency. Specifically, the proposed amendment to 4.010 would create deadlines for filing motion responses and replies and would require the court to hold omnibus hearings at least seven days before trial (unless the court finds good cause, or the parties agree otherwise).

At the UTCR Committee meeting, the proponents discussed:

- That the proposals were developed by the OCDLA Public Defense Reform Task Force and are intended to provide clarity to the parties and the court;
- The proposal mirrors the response and reply timelines that already apply in civil cases;
- That some courts hold the omnibus hearing on the morning before trial which makes it difficult for practitioners to efficiently prepare for trial without knowing which evidence will be admitted or which witnesses will need to be subpoenaed;
- The proposed rule would require the omnibus hearing to be held at least seven days prior to trial and moving the omnibus hearing earlier would reduce work done on cases that ultimately will not proceed to trial (where the omnibus hearing is dispositive);
- Multnomah County Circuit Court has a Friday Omnibus Hearing pilot program that appears to be working well and is a big improvement; and

- Moving the omnibus hearing earlier also gives public defense clients an opportunity to see their attorneys advocate for them before trial and build trust between the attorney and client.

PROPOSED AMENDMENT

4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

{(1)} In the absence of a showing of good cause or an SLR to the contrary, motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later.

{(2) For any motion other than a motion to suppress, the opposing party may file a written memorandum of authorities in response to the matters raised in the motion not later than 14 days from the date of service or the date of filing the motion, whichever is later.

{(3) A reply memorandum, if any, must be filed within 7 days of the service or filing of the responding memorandum, whichever is later.

{(4) Notwithstanding subsections (2) and (3) above, the hearing on all motions subject to ORS 135.037 must be set at least 7 judicial days prior to the date set for trial, except for good cause shown or upon agreement of the parties.}

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2. 4.020 – SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES

Adopt a new rule governing status appearance in criminal cases. **See related items B.1 and B.3 – B.6.**

ACTION TAKEN

The committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney's Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. The proposal would allow the parties to file a form, at least two judicial days before a status conference, in lieu of holding the status appearance. The rule would also allow parties to attend a criminal status appearance via remote means as long as the technology to do so is available.

The proponents discussed that:

- The rule would reduce the time burden for attorneys to attend status conferences – some courts utilize mass scheduling dockets where parties may be required to attend in person for a long block of time when the actual appearance is very short;
- The rule would encourage cross-jurisdictional practice by allowing one attorney to be present in multiple courts on the same day, thereby building attorney capacity within the existing public defense system; and
- The proposal would require OJD to create a statewide form similar to the one already utilized in Lane County Circuit Court.

PROPOSED NEW RULE

4.020 SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES

- (1) When a case is set for appearance solely for the purpose of reporting on the status or progress of the case, 2 judicial days before the hearing, the parties may file a form reporting on the status of the case and requesting settlement conference, ready for change of plea/sentencing, unopposed setover request, or opposed setover request.

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- (2) Unless the technology is not available where the appearance is to take place, the court must allow parties to appear by remote means.

3. **4.040 – PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES**

Adopt a new rule governing the request and scheduling of certain appearances. **See related items B.1 – B.2 and B.4 – B.6.**

ACTION TAKEN

The committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee’s spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney’s Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. The proposed new rule would allow parties to request certain hearing types without filing a formal motion and proposed order. In lieu of filing a motion with the court, the proposal would allow a party to send an email to the court requesting the hearing. The rule would require the party requesting the hearing to include opposing counsel as a recipient on the email. The rule would also require the court to set the hearing as soon as practicable after receipt of the request, or on the date stipulated by parties if that date is available on the court calendar.

The proponents discussed that the proposal could save parties time in requesting hearings because it takes less time to send an email than to draft a motion and proposed order.

The committee discussed that the rule would require court staff to ensure that the email is added to the court record as some courts do not assign one judge for the life of the case and the case record needs to be preserved.

PROPOSED NEW RULE

4.040 **PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES**

In lieu of a formal Motion and Order, and upon appropriate notice to opposing counsel, either party may request a Release Hearing, Release Revocation Hearing, Request to Modify Terms of Release, Change of Plea and/or Sentencing, or similar appearance.

- (1) The request may be made by email, with opposing counsel included as a recipient of the communication. If the request is made in writing or orally,

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the requesting party shall provide opposing counsel's position, or, if unknown, certify that opposing counsel has been notified and indicate how and when that notification was conveyed.

- (2) Upon receipt of the request for hearing, the court must set the hearing as soon as practicable, or on the date the parties stipulate to if the court is available.

4. 4.060 – MOTION TO SUPPRESS EVIDENCE

Repeal the rule governing motions to suppress. **See related items B.1 – B.3 and B.5 – B.6.**

ACTION TAKEN

The committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney's Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. The proposal would repeal the rule regarding motions to suppress evidence. The proponents discussed that the new timelines proposed in UTCR 4.010 would include motions to suppress evidence, so a standalone rule covering only motions to suppress would not be necessary.

PROPOSED AMENDMENT

4.060 MOTION TO SUPPRESS EVIDENCE

{UTCR 4.060 was repealed effective August 1, 2023.}

[(1) All motions to suppress evidence:

- (a) Must cite any constitutional provision, statute, rule, case, or other authority upon which it is based; and*
- (b) Must include in the motion document the moving party's brief, which must sufficiently apprise the court and the adverse party of the arguments relied upon. If the evidence sought to be suppressed was obtained without a warrant, it is sufficient for the moving party to so state.*

(2) Any response to a motion to suppress:

- (a) Must, in the absence of a showing of good cause or an SLR to the contrary, be served and filed, together with opposing affidavits, if any, upon which it is based, not more than 7 days after the motion to suppress has been filed;*

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- (b) *Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and*
 - (c) *Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.*
- (3) *When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.*
 - (4) *Failure to file a written response shall not preclude a hearing on the merits.*

1991 Commentary:

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

5. **4.130 – REMOTE APPEARANCE IN LIEU OF TRANSPORTATION**

Adopt a new rule requiring a defendant to appear remotely to resolve cases outside of the court with jurisdiction over the county where the defendant is incarcerated. **See related items B.1 – B.4 and B.6.**

ACTION TAKEN

The committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee’s spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney’s Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. The proposed new rule would require the court to hold a remote hearing when, as a result of negotiations, an incarcerated defendant intends to resolve cases in more than one jurisdiction (also referred to as “global case resolution”) unless the parties agree otherwise.

The proponents discussed that:

- This would save law enforcement agencies time because the defendant would not need to be transported;
- It could encourage some jail and prison facilities to adopt newly available technology; and
- The proponents acknowledged that this change may require some statutory or other system changes because each county has a separate public defense contract and there may need to be a change to allow a judge to resolve a case filed in another county.

Oregon District Attorneys Association (ODAA) representative Michael Wu discussed that:

- If this rule is adopted, it should be clearly limited to stipulated resolutions;
- Many of the transportation issues come up in the context of parole violations, and it’s not clear how the rule would apply in that context; and
- Transportation is not solely within the district attorney’s authority, OJD would need to work with the Department of Corrections (DOC) to hammer out any issues and create appropriate sideboards and safety valves in the rule.

The committee discussed that the proposed rule could be problematic if the defendant would prefer not to appear remotely, since the rule appears to require the hearing to be held remotely and would not require transportation of the defendant. One judge member noted that Lane County Circuit Court currently works with the Department of Corrections to schedule remote hearings.

PROPOSED NEW RULE

4.130 REMOTE APPEARANCE IN LIEU OF TRANSPORTATION

When, as a result of negotiations, an incarcerated defendant intends to resolve cases in more than one jurisdiction, any appearance required in a court other than the court of jurisdiction in the county in which the defendant is incarcerated, must be by remote means unless the parties agree otherwise.

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6. **7.010 – PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES**

Amend the rule to add discovery timelines in criminal cases and to require the prosecution to make an initial plea offer. **See related items B.1 – B.5.**

ACTION TAKEN

The Committee received a letter from the Chief Justice requesting that the committee discuss and consider the amendments proposed by the Oregon Criminal Defense Lawyers Association (OCDLA) (items B.1 – B.6), but refrain from making either a recommendation of approval or disapproval until the proposals can be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC), which will work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee’s spring meeting on March 17, 2023. Based on this request from the Chief Justice, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. The committee also appointed the following members to work with CJAC: Judge David Hoppe (Jackson County Circuit Court), attorney Jeffrey Howes (Multnomah County District Attorney’s Office), attorney Peter Klym (OPDS), and Judge Randy Miller (Deschutes County Circuit Court). By consensus, the committee agreed to send the proposals out for public comment in their proposed form.

EXPLANATION

This proposal was submitted by OCDLA. The proposal would create discovery timelines in criminal cases and would require the state to provide an initial plea offer at the first appearance or within the first 30 days of a case. If no initial offer is made, the proposed amendment would require the state to communicate to defense counsel in writing an individualized reason why an offer was not made.

The proponents discussed:

- That responses to discovery requests can be delayed, which can result in delayed trials and case disposition;
- Michigan has timely discovery rules that require parties to receive discovery within 48 hours of the first appearance, or within 10 days of discovery coming into the prosecution’s possession;
- Having an initial plea offer is essential to moving a case forward and it’s difficult for defense attorneys to properly counsel their clients without having an initial plea offer from the prosecution;
- In some counties, there is a “plea deadline” before trial that prevents last minute negotiations; and
- A statewide OJD eDiscovery program with a project manager would be helpful to parties in standardizing how discovery is handled.

Oregon District Attorneys Association (ODAA) representative Michael Wu discussed that:

- CJAC has a large group of criminal justice stakeholders, jail partners, and sheriffs and may be a good forum for consideration of these proposals;

- Overall, the proposals appear to fall into two categories, finding ways to use new electronic means and technology and more profound substantive changes and plea conditions, and that ODAA has some strong concerns and objections about the second category of changes;
- Some of the proposed rules may present separation of power issues or wade into the territory reserved for prosecutorial discretion, in that the rule would require district attorneys and deputy district attorneys to offer pleas, which no statute requires;
- The rule could violate victims' rights, since victims are entitled to notice of a plea offer;
- Requiring an initial plea offer could impact the defendant's ability to participate in specialty courts; and
- Some of the proposed rules could create resource and staffing issues for district attorneys' offices; ODAA would prefer that those proposals be taken up by the legislature because the legislature has the ability to provide additional funding resources, while the UTCR Committee does not.

The committee discussed:

- Whether "plea negotiation end dates" are being enforced by the courts, or by district attorneys' offices;
- Whether having a rule requiring initial plea offers would result in meaningful offers or "boilerplate" offers, and whether courts could meaningfully enforce such a requirement;
- Whether these proposals should be addressed through legislation;
- One member noted that in his court, plea negotiation end dates are set the Friday before trial because the county is small and the court needs to know whether the case will proceed to trial; if plea negotiation end dates were prohibited, that court would need to double book trials for the same date in the event one case does not proceed to trial;
- Expiration dates on offers is common in civil case negotiations and is not intended as an absolute deadline for negotiations, but is instead designed to create prompt action on the offer;
- There has been a proliferation of remote appearances, electronic discovery, and body camera footage issues and there should be some attempt at standardization and working through these issues with the appropriate stakeholders;
- Concern about a one-size-fits-all approach that doesn't work for small courts; and
- One member suggested modifying UTCR 7.010(2)(a)(ii) to add, "or 7 days prior to trial, whichever is earlier" and adding a provision indicating the court must not prohibit negotiations from continuing (at any time prior to trial).

PROPOSED AMENDMENT

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7.010 PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES

(1) At the time of arraignment, the court may either accept a not guilty plea and set a trial date or set a date for entry of a plea in accordance with subsection ~~(s)~~ (2) **and (3)** of this section.

{(2) Disclosures must proceed as follows, unless otherwise agreed by the parties or as ordered by the court pursuant to subsection (5) of this section:

(a) Disclosures required by ORS 135.815 through 135.835:

(i) Initial disclosure: The state shall provide a copy of all discovery in the state's possession, custody, or control no later than the first appearance after any charging instrument is filed in the case.

(ii) Supplemental disclosure: Materials that enter into the state's possession, custody, or control after the first appearance must be disclosed within 10 days from when they enter into the state's possession, custody, or control.

(iii) Responsive disclosure: Additional discovery must be disclosed within 14 days of the request by either party, or alternatively, if the materials are not in the parties' possession within the 14-day deadline, the party should respond with a reasonable timeline for disclosure. The parties must make a good faith effort to disclose the materials within the 14-day deadline.

{(2){3} At the first appearance following the filing of an accusatory instrument that commences a prosecution, the state must provide an initial plea offer. If there is no offer extended within the first 30 days of a case, the state is required to communicate to defense counsel in writing an individualized reason why an offer is not made.} Plea agreements, {and } negotiations {shall be allowed to continue up to, and including, the day of trial. D}{d}discovery, and investigations must be concluded by a date as set by the court which is:

(a) For defendants in custody, not less than 21 days after arraignment but, in any event, not later than [21]{35} days prior to the trial date; and

(b) For defendants who are not in custody, not less than 35 days after arraignment, but not later than the 35th day prior to the trial date.

{(3){4} Not later than the date set pursuant to subsection (2), trial counsel must report the following:

(a) Whether a jury trial is requested;

- (b) The probable length of trial;
- (c) The need for a pretrial hearing; and
- (d) Any other matter affecting the case.

(~~4~~**5**) Relief from the dates set pursuant to subsection~~s~~ (2) **and (3)** of this rule shall be granted for good cause shown. **{For purposes of this rule, good cause may include agreement of the parties.}**

(6) Upon the stipulation of the parties, any court appearance required under this rule or SLR may be continued to an agreed upon future date by notification to the court not less than one judicial day prior to the appearance. The court may reschedule the future appearance to accommodate the court's calendar upon notice to the parties.

C. OUT-OF-CYCLE AMENDMENTS

1. 2.010 – FORM OF DOCUMENTS

Amended subsection (12) to indicate how and when nonprecedential memorandum opinions may be cited in trial courts.

ACTION TAKEN

Amendment of the rule was preliminarily recommended, as modified by the committee, by a vote of 9-2 at the UTCR Committee's fall meeting on October 20, 2022. The rule was then amended out of cycle by [Chief Justice Order \(CJO\) 22-033](#), effective November 21, 2022.

EXPLANATION

This proposal was submitted by UTCR Committee member Judge Lung Hung (Malheur County Circuit Court). Following the October 20, 2022, meeting, the Chief Justice approved the amendment out of cycle (effective November 21, 2022). The amendment outlines how and when a nonprecedential opinion issued by the Oregon Court of Appeals pursuant to ORAP 10.30(1) may be cited in circuit court.

The committee discussed that:

- Nonprecedential opinions are already being issued by the Oregon Court of Appeals;
- This rule mirrors a temporary rule that was recently adopted by the Oregon Court of Appeals (ORAP 10.30(1)), governing citation of nonprecedential opinions, and would apply similar parameters to citation of nonprecedential memorandum opinions in the circuit courts;
- Coos/Curry Circuit Courts have proposed a very similar SLR which would become effective on February 1, 2023, accordingly, the committee recommended out-of-cycle adoption of amendment to UTCR 2.010, so that this rule will be in place statewide, and Coos/Curry Circuit Courts will not need to adopt an otherwise redundant SLR;
- The proposal is necessary because circuit court judges should not consider a different set of legal authorities than the appellate courts that will affirm or reverse circuit court decisions; and
- The proposal should be modified to apply only to nonprecedential opinions issued by Oregon's Court of Appeals under ORAP 10.30(1); the modification adopted by the committee is shown in the amendment below.

Two members voted against recommending the amendment, as modified or otherwise, because the ORAP is only a temporary rule and there's no certainty that the ORAP will become permanent. Those members were also concerned that the rule could prohibit citation of some nonprecedential opinions that could be helpful to the court.

Following the UTCR Committee meeting, Chief Justice Walters approved out-of-cycle amendment of UTCR 2.010, effective November 21, 2022, as modified by the committee, and preliminarily recommended by the majority of committee members.

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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) * * *

* * * * *

(12) Citation of Oregon Cases

{(a)} In all matters submitted to the circuit courts, Oregon cases must be cited by reference to the Oregon Reports as: *Blank v. Blank*, Or (year) or as *State v. Blank*, Or App (year). Parallel citations may be added.

{(b)} A nonprecedential memorandum opinion issued by the Oregon Court of Appeals under ORAP 10.30(1) may not be cited unless the opinion is relevant under the law of the case doctrine, the rules of claim preclusion or issue preclusion, or if no precedent addresses the issue before the court. A citation to a nonprecedential memorandum must include a parenthetical indicating that the case is a “nonprecedential memorandum opinion” and explaining the reason for citing the opinion and how it is relevant to the issues presented.

(13) * * *

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2. 3.180 – ELECTRONIC RECORDING AND WRITING

Amended the rule to clarify application to remote proceedings.

ACTION TAKEN

Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 20, 2022. The rule was then amended out-of-cycle by [Supreme Court Order \(SCO\) 22-045](#), effective November 15, 2022.

EXPLANATION

This proposal was originally submitted by Aja Holland, UTCR Reporter, and Lisa Norris-Lampe, Supreme Court Legal Counsel, for UTCR Committee consideration in the last UTCR cycle (2021-2022). The proposal was intended to clarify application of the rule to remote proceedings and was preliminarily recommended at the fall 2021 UTCR meeting. No public comment on the amendment was received and the amendments were recommended for final approval at the spring 2022 UTCR meeting.

When the recommended amendments were added to the Supreme Court public meeting agenda for June 2022, Chief Justice Walters expressed concern, prior to the meeting, that the Bar Press Broadcasters Council had not submitted any public comment on the proposed changes to the rule and that the committee had not reached out to the Bar Press Broadcasters Council. Chief Justice Walters reached out to the Bar Press Broadcasters Council to solicit feedback on the proposed amendments, and comments were received prior to the June 2022 public meeting. The Chief Justice asked the UTCR Committee to reconsider its recommendation of approval in light of the comments received from members of the Bar Press Broadcasters Council at the October 20, 2022, meeting.

At the October 20, 2022, meeting, the committee discussed:

- Whether the requirement to obtain permission to electronically write, and separately, whether the requirement to obtain advance permission to send an electronic writing, should apply to attendees watching a hearing remotely;
- A person taking electronic notes at home is unlikely to disrupt a proceeding, however, when it comes to transmission of the electronic writing – it's difficult to distinguish the effects of an electronic writing sent remotely versus an electronic writing sent from inside the courtroom;
- One member proposed revising the rule to differentiate transmittal/sending of an electronic writing to the public versus sending an electronic writing privately in the rule, so that a reporter may send electronic notes to their editor during the proceeding without obtaining advance permission from the court;
- Presumably, the witnesses to the proceeding should be separately ordered not to view any news footage or other coverage of the proceeding;
- Whether the rule should be amended out of cycle, given that remote hearings are already occurring;

- There was consensus that, because remote hearings are already occurring, and because proposed revisions to the rule were already circulated for public comment in the previous rule cycle, the rule should be amended out of cycle to clarify application to remote proceedings;
- Whether the court or the requestor should be required to inform parties of the request, given that the rule was previously silent as to who must inform the parties;
- Some courts require the requestor to provide advance notice to the parties by SLR, this is difficult for reporters to comply with if they are not given advance notice of the proceeding (such as a Monday morning arraignment) or if the reporter is not assigned to the case or proceeding in advance;
- In other courts, the request is submitted to the Trial Court Administrator and the judge notifies the parties of the request at the beginning of the proceeding (for example, in Lane County Circuit Court);
- In cases where public access coverage is anticipated in advance of trial or another proceeding, the judge may currently issue an order in advance defining the scope of electronic recording or writing;
- One member was concerned about attorneys having an opportunity to object to remote recording if notice is not provided to the parties prior to the proceeding – the committee discussed that this is already occurring (for example during arraignments) and that because the standard favors allowing the recording and the grounds for objecting are very narrow, advance notice to the parties should not be required; parties and attorneys can object when they are notified of the request (which may be at the beginning of the proceeding);
- Whether Supreme Court approval of amendments to the rule should be required going forward;
- There was consensus that, because the rule is no longer a judicial ethical rule, there is no constitutional or statutory requirement that amendments to the rule be amended out of cycle;
- The committee recommended removal of the “note” following the rule to reflect this change;
- The current definitions of “electronic writing” and “electronic recording” conflate the action of electronic writing or recording with the sending of the electronic writing; and
- There was consensus that the committee should form a workgroup to recommend changes to these definitions (including the creation of new definitions), and to consider other changes to the rule (including exploring the possibility of differentiating the standards for obtaining permission to transmit or send an electronic writing to the public versus sending an electronic writing privately) in the rule for consideration by the committee at its spring meeting.

By consensus, the committee recommended modification of the previously recommended amendments to the rule to allow a person attending a court proceeding remotely to write electronically without obtaining prior permission from the court. The amended rule also makes clear that the court is

responsible for notifying parties of a request to electronically record and that the court may allow additional cameras and recording equipment. The committee also recommended removal of the “note” requiring Supreme Court approval of amendments to the rule and recommended that these changes be made out of cycle. Finally, the committee formed a workgroup to consider additional changes to the rule for consideration by the committee at the spring meeting. Workgroup members include Judge Miranda Summer (Washington County Circuit Court), Jeff Howes (Multnomah County District Attorney’s Office), Therese Bottomly (Bar Press Broadcasters Council Member), Lisa Norris-Lampe (Supreme Court Legal Counsel), and Aja Holland (UTCR Reporter).

Following the UTCR Committee meeting, the Supreme Court approved amendment of the rule out of cycle, effective November 15, 2022, as shown below.

AMENDMENT

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

- (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{ **by the court**}, 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{ **in the courtroom**}. The court may permit additional {**cameras and**} electronic recording{ **in any courtroom or during a remote proceeding**} 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{ **within a courtroom**};

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- (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.]

D. OTHER ACTIONS

1. UTCR Reporter Notice of Correction

Received notice of UTCR Reporter corrections.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

Committee members were given notice of UTCR Reporter's corrections to UTCR, made effective August 1, 2022, pursuant to UTCR 1.020(6):

- Corrected grammar in UTCR 1.090(2)(a) and (2)(b) (changed "attorneys fees" to "attorney fees").
- Corrected the citation to UTCR 1.110 in UTCR 2.010(6) to account for the renumbering of subsections in UTCR 1.110.
- Corrected and updated the citation in UTCR 3.140 1991 Commentary from DR 2-110 to ORPC 1.16.

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2. SLR Assignment

Discussed future SLR assignment method.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

Currently, SLR assignments are assigned to committee members by chapter number, and each member is assigned three chapters to review. The UTCR Reporter opened discussion on whether the SLR assignment process should be changed to assign multiple courts' SLR to each member to allow for a more holistic review of each court's SLR. Committee members expressed a strong preference for the current assignment method and noted that it's easier to compare SLR within the same subject matter chapter. One committee member requested that members be assigned to SLR chapters within their respective areas of expertise. Another member noted that new members should be more clearly informed that members are tasked with reviewing both existing SLR and proposed new SLR. Based on the discussion, SLR review will continue to be assigned by chapter.

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3. Case Initiation Changes

Discussed upcoming case initiation changes and the impact on electronic filing.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

The committee received an update on criminal case initiation from Sam Dupree (OJD Assistant General Counsel). Currently, Odyssey does not have the capability to allow case-initiating documents in criminal, delinquency, and contempt cases to be electronically filed; however, OJD is working with Tyler Technologies to develop this capability and anticipates that it may be available within the next year. If the capability to electronically file these case initiating documents becomes available, some out-of-cycle amendments to UTCR 21.070(3) or other rules may be needed. No specific amendments to UTCRs were discussed.

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4. Committee Membership

The Committee received an update on membership.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

Judges Bushong (Multnomah County Circuit Court), Hung (Malheur County Circuit Court), and Zennaché (Lane County Circuit Court), and Bryan Francesconi's (Criminal Defense Attorney, Portland) terms will expire on December 31, 2022. Member Gene Hallman (Civil Attorney, Pendleton) retired from the committee prior to the October 20, 2022, meeting. These committee positions will be filled prior to the March 17, 2023, meeting.

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5. Committee Membership Cycle

The committee discussed a proposal to adjust future membership term beginning and end dates to coincide with the UTCR rules cycle.

ACTION TAKEN

By consensus, the committee recommended adjusting future membership terms to coincide with the UTCR rules cycle.

EXPLANATION

The UTCR cycle starts in August of each year. Judges, attorneys, court users, and other community members submit UTCR suggestions by the end of August for consideration at the October committee meeting. At the October meeting, committee members make preliminary recommendations on UTCR amendments. Currently, new committee members start their terms in January—in the middle of the UTCR cycle—and their first meeting is a spring meeting, where the committee makes final recommendations on items that were considered at the previous fall meeting. This means that currently, the members approving items at the spring meeting may be different than the members who made preliminary recommendations at the fall meeting. The proposal would be for new members to start their terms effective August 1, to align with the UTCR cycle. Existing members' terms would be extended by 7 months and would end on July 31. This proposal was discussed at the October 20, 2022, meeting and members expressed general agreement with the proposal.

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6. Spring 2023 Meeting

Scheduled spring meeting

ACTION TAKEN

The spring meeting was scheduled for March 17, 2023.

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7. Fall 2023 Meeting

Scheduled fall meeting.

ACTION TAKEN

The fall meeting was scheduled for October 19, 2023.