NOTICE SEEKING PUBLIC COMMENT ON
AMENDMENT OF UTCR 3.180, 4.010, and 7.010
(Comment Period Closes at 5:00 p.m. on September 22, 2023)

I. INTRODUCTION

We are seeking comment on amendment of Uniform Trial Court Rule (UTCR) 3.180, 4.010, and 7.010. These amendments were adopted by Chief Justice Order 23-020, effective August 1, 2023.

II. HOW TO SUBMIT COMMENTS

You may submit your comments by:

- Clicking on the button below, next to each rule;
- Email (utcr@ojd.state.or.us); or
- Traditional mail (UTCR Reporter, Supreme Court Building, 1163 State Street, Salem, Oregon, 97301-2563).

Please submit your comments so that we receive them by 5:00 p.m. on September 22, 2023. Comments will be reviewed by the UTCR committee at its next meeting on October 19, 2023.

III. REVISION AND AMENDMENTS

For the convenience of the reader, deleted wording is shown in [*brackets and italics*] and new wording is show in {**braces, underline, and bold**}. Revisions are shown without use of [*brackets and italics*] or {**braces, underline, and bold**}.

1. **3.180** – ELECTRONIC RECORDING AND WRITING

Revised the rule to reorder existing sections, correct a typo, add a definition of electronic transmission, and to require a person remotely observing or participating in a proceeding to obtain permission before transmitting an electronic writing directly and specifically to a witness, until the witness is excused.

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 for approval at the fall 2021 UTCR meeting. No public comment on the amendment was received following that meeting 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 amendments 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. In light of the comments received from members of the Bar Press Broadcasters Council at the October 20, 2022, meeting, Chief Justice Walters asked the UTCR Committee to reconsider its recommendation of approval.

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 Maalik 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 fall UTCR Committee meeting, the rule was then amended out-of-cycle by Supreme Court Order (SCO) 22-045, effective November 15, 2022.

The UTCR workgroup met and considered two alternative proposals:

- "Alternative A" would have added new definitions to the rule but would have otherwise maintained the "status quo" in that it would have continued to require a person to receive permission prior to sending an electronic writing during a remote proceeding.
- "Alternative B" included the definitional fixes from Alternative A but would not have required persons attending a remote proceeding to obtain permission before sending an electronic writing.

- Both Alternative A and Alternative B recommended reorganizing existing sections within the rule (including splitting the rule into new subsections where necessary), correcting a typo, and aligning the standards within the rule.

These two alternative proposals were presented to the Bar Press Broadcasters Council for consideration during its February 4, 2023, meeting. The Bar Press Broadcasters Council formed a small workgroup to further consider the alternatives. The Bar Press Broadcasters Council Workgroup recommended a modified version of Alternative B that creates a new definition of electronic transmission and requires a remote proceeding attendee to request prior permission to electronically transmit a communication only if the communication is directed specifically to a witness during a proceeding, and prior to the time that the witness is excused by the court.

At the Spring meeting on March 17, 2023, the committee discussed:

- The differences between attending a remote proceeding and attending an in-person proceeding;
- The proposal is narrowly tailored to prevent a remote attendee from sending a communication directly and specifically to a witness, but would allow a remote attendee to transmit other communications without prior permission;
- The revision is designed to prevent witness intimidation/witness tampering and to ensure that an excluded witness does not improperly receive communications relating to the proceeding; and
- Inclusion of the phrase “directly and specifically to a witness” is intended to allow a person to transmit electronic notes to the general public, but not directly and specifically to a witness.

The committee received one public comment inquiring whether the prior permission requirements for electronic writing apply to attorneys and their staff. The committee discussed that subsection (3) of the revised rule exempts attorneys and their staff from the requirements governing electronic writing.

Chief Justice Flynn adopted a modified version of UTCR 3.180(2)(f) (concerning permission in a remote proceeding). The modifications require prior permission, when a person is remotely observing or participating in a proceeding, before transmitting any electronic writing directly and specifically to a witness, until the witness is excused. The version recommended by the UTCR Committee would have required permission prior to sending any “communication,” but the rule does not define communication, only electronic writing. In addition, the modification adopted by the Chief Justice is intended to clarify that subsection (2)(f) applies to a person that is remotely observing or participating in a proceeding, regardless of whether the proceeding itself is in person, fully remote, or hybrid (where the judge attends in person but some participants or witnesses attend remotely).

The revised rule, shown below, will be placed on the October 19, 2023, agenda for discussion.

REVISION

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3.180 ELECTRONIC RECORDING AND WRITING

(1) As used in this rule:

(a) "Electronic recording" includes video recording, audio recording, 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, and instant messages.

(c) "Electronic transmission" means to send an electronic recording or writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.

(2) Except with the express prior permission of the court, and except as provided in subsection (3) of this rule, a person may not:

(a) Electronically record in any area of the courthouse under the control and supervision of the court unless permitted by SLR pursuant to subsection (11)(a) of this rule;

(b) Electronically record any court proceeding;

(c) Electronically transmit any recording from within a courtroom during a proceeding;

(d) Engage in electronic writing within a courtroom;

(e) Electronically transmit any electronic writing from within a courtroom during a proceeding; or

(f) While remotely observing or participating in a proceeding, electronically transmit any electronic writing directly and specifically to a witness until the witness is excused by the court.

(3) Subsections (2)(d), (e), and (f) of this rule do not apply to attorneys or to agents of attorneys unless otherwise ordered by the court.

(4) (a) A request for permission to engage in electronic recording or writing must be made prior to the start of a proceeding. No fee may be charged.

(b) The granting of permission to any person or entity to engage in electronic recording or writing is subject to the court's discretion, which may include considerations of the need to preserve the solemnity, decorum, or dignity of the court; the protection of the parties, witnesses, or jurors; or whether the requestor has demonstrated an understanding of all provisions of this rule.

(c) If the court grants all or part of the request,

(i) The court shall provide notice to all parties, and electronic recording or writing thereafter shall be allowed in the proceeding, in any courtroom or during a remote proceeding, consistent with the court's permission.

(ii) The court shall permit one video camera, one still camera, and one audio recorder in the courtroom, and it may permit additional cameras and electronic recording in any courtroom or during a remote proceeding consistent with this rule.

(ii) The court may prescribe the location of and the manner of operating electronic equipment within a courtroom. Artificial lighting is not permitted.

(iv) Any pooling arrangement made necessary by limitations on equipment or personnel imposed by the court is the sole responsibility of the persons or entities seeking to electronically record.

(v) The court will not mediate disputes. If multiple persons or entities seeking to electronically record are unable to agree on the manner in which the recording will be conducted or distributed, the court may terminate any or all such recording.

(5) Except as otherwise provided in this rule:

(a) The court shall not wholly prohibit all electronic recording of a court proceeding unless the court makes findings of fact on the record setting forth substantial reasons that establish:

(i) A reasonable likelihood that the electronic recording will interfere with the rights of the parties to a fair trial or will affect the presentation of evidence or the outcome of the trial; or

(ii) A reasonable likelihood that the costs or other burdens imposed by the electronic recording will interfere with the efficient administration of justice.

(b) "Wholly prohibit all electronic recording" means issuing an order prohibiting all recording of a proceeding by all persons. The court's denial of a particular request under the factors in section (4)(b) does not constitute an order prohibiting all recording by all persons and does not require findings of fact on the record, even if the person whose request is denied is the only person who has requested permission to record a proceeding.

(6) The court has discretion to limit electronic recording of particular components of the proceeding based on one or more of the following factors:

(a) The limitation is necessary to preserve the solemnity, decorum, or dignity of the court or to protect the parties, witnesses, or jurors;

(b) The use of electronic recording equipment interferes with the proceedings;

(c) The electronic recording of a particular witness would endanger the welfare of the witness or materially hamper the testimony of the witness; or

(d) The requestor has not demonstrated an understanding of all provisions of this rule.

(7) Notwithstanding any other provision of this rule, the following may not be electronically recorded by any person at any time:

(a) Proceedings in chambers.

(b) Any notes or conversations intended to be private including but not limited to counsel and judges conferring at the bench and conferences involving counsel and their clients.

(c) Dissolution, juvenile, paternity, adoption, custody, visitation, support, civil commitment, trade secrets, and abuse, restraining, and stalking order proceedings.

(d) Proceedings involving a sex crime, if the victim has requested that the proceeding not be electronically recorded.

(e) *Voir dire*.

(f) Any juror anywhere under the control and supervision of the court during the entire course of the trial in which the juror sits.

(g) Recesses or any other time the court is off the record.

(8) For the purpose of determining whether this rule or other requirements imposed by the court have been violated, or to ensure the effective administration of justice, a person engaged in electronic recording under this rule must, upon request and without expense to the court, provide to the court, for *in camera* review, an electronic recording in a format accessible to the court. The copy may be retained by the court and may be sealed if necessary for the further administration of justice.

(9) If a person violates this rule or any other requirement imposed by the court, the court may order the person, and any organization with which the person is affiliated, to terminate electronic recording or electronic writing.

(10) This rule does not:

(a) Limit the court's contempt powers;

(b) Operate to waive ORS 44.510 to 44.540 (media shield law); or

(c) Apply to court personnel engaged in the performance of official duties.

(11) A judicial district may, by SLR:

(a) Designate areas outside a courtroom and under the control and supervision of the court, including hallways or entrances, where electronic recording is allowed without prior permission, unless otherwise ordered in a particular instance.

(b) Adopt procedures to obtain permission for electronic recording or electronic writing.

(c) SLR 3.181 is reserved for any SLR adopted under this subsection.

2. 4.010 – TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Amended the rule to allow a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause.

EXPLANATION
This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). OCDLA explained that their proposals 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 7 days before trial (unless the court finds good cause, or the parties agree otherwise).

At the UTCR Committee meeting on October 20, 2022, 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;
- 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.

At the spring meeting on March 17, 2023, the proponent discussed:

- Some courts hold omnibus hearings prior to trial; omnibus hearings can be an efficient way to resolve cases in advance of trial – if a pretrial motion is dispositive, omnibus hearings can save both parties (and witnesses, victims, and the court) time in preparing for trial.

The committee discussed:

- The OJD Criminal Justice Advisory Committee (CJAC) recommendations on UTCR 4.010 and report;
- The original proposal requires hard and fast filing deadlines, trying to get compliance from all parties may be difficult;
- One member noted that trying to get all pretrial motions submitted in advance of trial would require a culture shift, especially in Multnomah County;

- The proposal suggests a one-size-fits-all solution to what may not be a statewide problem;
- Whether this proposal is appropriate for inclusion in the Uniform Trial Court Rules, versus another solution (such as a statewide criminal code);
- One member noted that not holding an omnibus hearing in advance of trial requires attorneys to prepare to try the case in multiple ways, with multiple strategies, depending on the outcome of pretrial motions heard on the morning of or day before trial;
- In general, inefficiencies are not helping the public defense shortage crisis;
- Multnomah has a pilot project for pretrial omnibus hearings, but it has been used in only a handful of cases since November 2022;
- Whether Supplementary Local Rules could solve this problem on a local level, in the courts where it is an issue;
- Whether subsection (4), which sets 7- and 14-day deadlines for the motion and response, (in the CJAC report) is necessary or redundant of subsection (3), which would allow the court to impose a briefing schedule;
- One member noted that in complex cases, omnibus hearings are already held far in advance of trial in his court;
- One member noted that trial dates can be moving targets and any procedure that counts days from the trial date should consider that fact;
- Another member noted that if the trial date moves, the omnibus hearing date also moves; and
- One member asked how courts would be expected to enforce the filing deadlines if they are not complied with.

The committee also discussed the three public comments received:

- Two of the comments noted a belief that this is not a statewide issue, and therefore a statewide rule would be inappropriate; and
- One comment noted the Oregon District Attorneys Association's (ODAA) opposition to the rule as well as a concern that pretrial omnibus hearings may not preclude relitigation of pretrial motions if a trial date is reset.

A motion was made to recommend approval of the proposed version of UTCR 4.010 considered by the CJAC with the following modifications: adding a good cause exception to subsection (2) and deleting subsection (4) (which would have set a specific briefing schedule for the response). The motion failed by a vote of 4-5.

By consensus, the committee recommended that CJAC continue to consider proposed UTCR 4.010, in light of any insights gained from Multnomah County Circuit Court's Omnibus Hearings Pilot project.

Following the spring UTCR meeting, the CJAC Case Processing Subcommittee met again on March 23, 2023, and May 25, 2023, in part to continue discussion of UTCR 4.010 and hearings on pretrial motions. Based on feedback received from the CJAC Case Processing Subcommittee and others, Chief Justice Flynn adopted a modified

version of UTCR 4.010, which is intended to accomplish the proponents' aims by allowing early resolution of pretrial motions in appropriate cases, including motions which may be dispositive or which, once ruled upon, may assist parties in reaching tentative plea agreements prior to trial.

The changes to UTCR 4.010 adopted by Chief Justice Flynn are shown below. The amended rule will be placed on the October 19, 2023, agenda for discussion. The Chief Justice intends to carefully consider all feedback received and may make further modifications to the rule based on parties' and courts' observations about whether the amended rule is working as intended.

AMENDMENT

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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) A party filing a motion under subsection (1) of this rule may request that a pretrial hearing be held prior to the date of trial. Such a request must be specified in the caption of the motion.**

(3) If a party requests a pretrial hearing under subsection (2), absent good cause, the hearing must be held at least 7 days prior to the trial date.}

3. 7.010 – PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES

Amended the rule to remove plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines.

EXPLANATION
This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The original proposal would have created discovery deadlines in criminal cases and would have required 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 was made, the proposed amendment would have required the state to communicate to defense counsel in writing an individualized reason why an offer was not made. The initial proposal would have also removed the deadline for plea agreements and negotiations from the rule.

Prior to the fall meeting on October 20, 2022, the committee received a letter from Chief Justice Walters requesting that the committee discuss and consider the amendments proposed by the OCDLA, but to refrain from making either a recommendation of approval or disapproval until the proposals could be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC). Chief Justice Walters directed CJAC to 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 Chief Justice Walters, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. By consensus, the committee agreed to send the proposals out for public comment in their proposed form. Attorneys Jeffrey Howes (Multnomah County District Attorney's Office) and Peter Klym (Office of Public Defense Services) volunteered to work with CJAC on behalf of the UTCR Committee.

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).

At the spring meeting on March 17, 2023, the committee discussed:

- Proposed Discovery Deadlines:
    - Delayed discovery causes problems for parties and results in trial resets;

    - Whether discovery deadlines should be dealt with in UTCR or whether this is a more appropriate topic for the legislature or whether Oregon should develop a uniform criminal code;
    - Some cases may have different discovery needs, for instance, in complex cases with multiple defendants, it may be more necessary for the court to set a discovery order; and
    - The discovery deadline issues addressed by the proposed rule may exist in only a few counties.
- Plea Negotiation Deadlines:
    - Trial dates resolve cases – it's important for parties to be able to reach a plea negotiation up to the day of trial;
    - This rule is intended to supersede SLR that require parties to end plea negotiations prior to trial;
    - The plea deadline issue addressed by the rule may exist in only a few counties.

The committee received three public comments on the rule:

- Each of the three comments expressed opposition to the proposed rule and expressed a belief that any issues with discovery and plea negotiation deadlines are local issues and should not be resolved with a statewide rule; the comments also emphasized a belief that statutes already sufficiently govern discovery deadlines and that the constitution and existing statutes prevent courts from adopting rules governing plea negotiations.

A member made a motion to modify the proposed amendment to UTCR 7.010(2) to state, "The parties shall be allowed to present plea agreements to the court up to, and including, the day of trial;" to renumber the remainder of the rule; and to recommend approval. By consensus, the committee recommended adoption of the rule as modified by the committee.

A second motion was made to modify the proposed discovery deadlines (as set out in the CJAC report), but to amend each reference to evidence in the "state's possession" to "district attorney's possession" and to recommend approval. However, that motion failed without a vote as it did not receive a second.

Following the spring UTCR meeting, Chief Justice Flynn solicited additional input on that proposal from courts, including from Presiding Judges, Trial Court Administrators, and court staff members. That inquiry revealed concerns that, if the rule expressly allowed plea agreements to be presented up to the day of trial, parties could be encouraged to delay negotiations and agreement, which in turn could result in the need for the court to schedule multiple trials on the same dates – in anticipation that more cases would be settled immediately before trial.

Based on that feedback, Chief Justice Flynn adopted a modified version of UTCR 7.010(2), which more simply removes plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. That modified rule is intended to accomplish the proponents' goals, by in effect removing the deadlines that currently apply to plea negotiations and agreements, but without inadvertently encouraging parties to delay resolving cases.

The changes to UTCR 7.010 adopted by Chief Justice Flynn are shown below. The amended rule will be placed on the October 19, 2023, agenda for discussion.

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 (2) of this section.

(2) [*Plea agreements, negotiations*]{**D**}[*d*]iscovery[*,*] 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 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) 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) Relief from the dates set pursuant to subsection (2) of this rule shall be granted for good cause shown.