NOTICE SEEKING PUBLIC COMMENT ON
PROPOSED UNIFORM TRIAL COURT RULES CHANGES FOR 2024

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 (OJD) website for at least 49 days to allow submission of public comment (http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx).

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 19, 2023, the committee made preliminary recommendations of approval on proposed changes to the UTCRs. The committee did not issue any preliminary recommendations of 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 January 1 effective dates to align with legislation already in effect and legislation becoming effective on January 1, 2024.

Out-of-cycle amendments with January 1, 2024, effective dates are:

- **Items B.1 – B.21** (relating to licensed paralegals) adopted by Chief Justice Order (CJO) 23-052.
- UTCR 5.140 (foreign subpoenas relating to gender affirming and reproductive healthcare) adopted by CJO 23-052. **See item B.22.**
- UTCR 7.100 (relating to judicial disqualification) adopted by CJO 23-052. **See item B.23.**

The committee encourages you to submit comments on these proposals, the recommendations, and any other UTCR action taken by the committee or the Chief Justice. 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 29, 2024. The committee will review public comment and make final recommendations at its next meeting on April 12, 2024.

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 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 2024.

SPRING MEETING: Friday, April 12, 2024, 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, 2024 (unless otherwise noted). The committee may reconsider these proposals, the corresponding recommendations, out-of-cycle amendments, and any other committee action.

FALL MEETING: Thursday, October 10, 2024, 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, 2025. 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 2023 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. 2.090 – FILINGS FOR CONSOLIDATED CASES
   Amend the rule to remove the requirement to deliver multiple copies if the document is not electronically filed.

2. 5.070 – MOTION FOR LEAVE TO AMEND PLEADING
   Amend the rule to allow use of word processing redlining features to show proposed pleading amendments.

3. 6.120 – JUROR REQUEST TO REVIEW RECORD OF ORAL TRIAL TESTIMONY
   Adopt a new rule allowing a judge to grant a juror request to review a portion of the audio record of oral trial testimony during jury deliberation.

B. OUT-OF-CYCLE AMENDMENTS

These are brief descriptions of UTCR changes that were adopted out of cycle by the Chief Justice following the October 19, 2023, UTCR Committee meeting (see Section IV.B for a detailed explanation).

1. 1.050 – PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES
   Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.2 – B.21.**

2. 1.210 – APPLICATION OF UTCRS TO LICENSED PARALEGALS
   Adopted a new rule applying UTCRs to licensed paralegals representing a party within the scope of the Oregon Supreme Court Rules for Licensing Paralegals, unless the context requires otherwise. **See related items B.1 and B.3 – B.21.**

3. 2.010 – FORM OF DOCUMENTS
   Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.2 and B.4 – B.21.**

4. 2.100 – PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, REQUIREMENTS AND PROCEDURES TO SEGREGATE WHEN SUBMITTING
   Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.3 and B.5 – B.21.**

5. 2.130 – CONFIDENTIAL PERSONAL INFORMATION IN FAMILY LAW AND CERTAIN PROTECTIVE ORDER PROCEEDINGS
   Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.4 and B.6 – B.21.**

6. 3.180 – ELECTRONIC RECORDING AND WRITING
   Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.5 and B.7 – B.21.**

7. 5.100 – SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS
   Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.6 and B.8 – B.21.**

8. 6.030 – POSTPONEMENT OF TRIAL
   Changed references from “counsel” to “attorney” to align with proposed the new definition of attorney. **See related items B.1 – B.7 and B.9 – B.21.**

9. 6.040 -- RESOLVING SCHEDULING CONFLICTS
   Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.8 and B.10 – B.21.**

10. 6.080 – MARKING EXHIBITS
    Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.9 and B.11 – B.21.**

11. 6.120 – DISPOSITION OF EXHIBITS
Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.10 and B.12 – B.21.**

12. 6.200 – PRETRIAL SETTLEMENT CONFERENCES
Changed reference from “lawyers” to “attorneys” to align with the proposed new definition of attorney. **See related items B.1 – B.11 and B.13 – B.21.**

13. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL
Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.12 and B.14 – B.21.**

14. 12.040 – MEDIATOR ETHICS
Changed references from legal “counsel” to legal “advice.” **See related items B.1 – B.13 and B.15 – B.21.**

15. 12.120 – DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING
Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.14 and B.16 – B.21.**

16. 12.130 – COURT-SYSTEM TRAINING
Changed references from “lawyers” to “attorneys” to align with the proposed new definition of attorney. **See related items B.1 – B.15 and B.17 – B.21.**

17. 13.090 – ARBITRATORS
Amended to clarify that arbitrators must be active attorney members of the bar and that, for purposes of this rule, “attorney” does not include licensed paralegals. **See related items B.1 – B.16 and B. 18 – B.21.**

18. 13.130 – RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES, AND ATTORNEYS
Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.17 and B.19 – B.21.**

19. 13.150 – SUBPOENA
Changed reference from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.18 and B.20 – B.21.**

20. 21.010 – DEFINITIONS
Changed reference from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.19 and B.21.**

21. 21.100 – ELECTRONIC SERVICE
Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.20.**

22. 5.140 – FOREIGN DISCOVERY
Amended the rule to conform to HB 2002 (2023) to include limitations on foreign subpoenas relating to gender affirming and reproductive healthcare.

23. 7.100 – DISQUALIFICATION MOTIONS UNDER ORS 14.260(7)
Adopted a new rule governing disqualification motions under ORS 14.260(7) in criminal and juvenile delinquency cases.

C. REVIEWED PUBLIC COMMENT ON AMENDMENTS FOLLOWING THE SPRING MEETING

These are brief descriptions of UTCRs that were adopted with Chief Justice changes to UTCR Committee recommendations following the March 17, 2023, UTCR Committee meeting (see Section IV.C for a detailed explanation). Because these rules were heard by the committee in the regular UTCR cycle and adopted for the normal implementation date (August 1), these are not true "out-of-cycle" changes.

1. 3.180 – ELECTRONIC RECORDING AND WRITING
   Reviewed public comment.

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

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

D. OTHER ACTIONS

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

1. Criminal Case Scheduling Form
   Update on criminal case scheduling form.

2. Case Center
   Update on Case Center.

3. Committee Membership
   The Committee received an update on membership.

4. Committee Chair Selection
   The Committee elected a new chair.

5. Spring 2024 Meeting
   Scheduled spring meeting (April 12, 2024).

6. Fall 2024 Meeting
   Scheduled fall meeting (October 10, 2024).

IV. DESCRIPTION OF FALL 2023 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.

A. RECOMMENDATIONS OF APPROVAL

1. **2.090** – FILINGS FOR CONSOLIDATED CASES

Amend the rule to remove the requirement to deliver multiple copies if the document is not electronically filed.

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

EXPLANATION
This proposal was submitted by Lisa Norris-Lampe, Supreme Court Appellate Legal Counsel. The committee recommended removing the portion of the rule that requires a filing party to provide the court with additional copies when a filing in a consolidated case is not electronically filed. This requirement appears to be a holdover from the early days of eCourt when electronic filing was not yet mandatory. The current business practice is for courts to scan a conventionally filed document into Odyssey (the courts' electronic filing system), therefore, additional hard copies are no longer necessary.

PROPOSED AMENDMENT

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2.090 FILINGS FOR CONSOLIDATED CASES

(1) Cases that are consolidated are consolidated for purposes of hearing or trial only. A party filing any pleading, memorandum, or other document applicable to more than one case must file the document in each case using existing case numbers and captions unless otherwise ordered by the court or provided by SLR. [*If such a document is not electronically filed, the filing party must provide the trial court administrator with sufficient copies.*]

(2) A court order or SLR under this rule may permit designation of a lead case and require that parties file documents using only the case number and caption of the lead case.

(3) Unless otherwise ordered by the court, a party filing a document applicable to only one case must file only in that case.

2. **5.070** – MOTION FOR LEAVE TO AMEND PLEADING

Amend the rule to allow use of word processing redlining features to show proposed pleading amendments.

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

EXPLANATION
This proposal was submitted by Noah Gordon (UTCR Committee member). The amendments allow parties to utilize a word processing software's redlining features to show proposed changes to a pleading when a pleading is attached as an exhibit to a motion to amend a pleading. The proponent explained that the current formatting requirements are cumbersome and time consuming and that word processing software should be utilized to make the task of showing proposed changes easier.

The UTCR Reporter noted that the Committee heard similar proposals to allow the use of "track changes" or similar word processing features in 2010 and 2015 and those proposals were rejected by the committee due to accessibility concerns. Namely, that screen readers were unable to read track changes aloud for the visually impaired. Some screen reading software is now able to read track changes aloud which may resolve the previous accessibility concerns. One committee member also noted that this proposal is consistent with Oregon Supreme Court efforts to leverage technology to reduce the cost of litigation and improve access to justice.

PROPOSED AMENDMENT

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5.070 MOTION FOR LEAVE TO AMEND PLEADING

(1) Except as provided in section (2) of this rule, whenever a motion for leave to amend a pleading, including a motion to amend to assert a claim for punitive damages, is submitted to the court, it must include, as an exhibit attached to the motion, the entire text of the proposed amended pleading. The text of the {**proposed amended** }pleading must be [*formatted*]{**displayed**} in {**one of** }the following [*manner*]{**ways**}:

(a) Any material to be added to the pleading must be underlined and in bold with braces at each end{**, and any material to be deleted from the pleading must be italicized with brackets at each end; or**}[.]

(b) [*Any material to be deleted from the pleading must be italicized with brackets at each end.*]{**The proposed changes may be shown using a word processing software's redlining feature.**}

(2) If the motion to amend is for a pleading that was composed using preprinted forms that have been completed by filling in the blanks, the moving party may comply with this rule by making a copy of the filed pleading and formatting the text of the pleading in the following manner:

(a) Any material to be added to the pleading must be interlineated and underlined with braces at each end[.]{**; and**}

(b) Any material to be deleted from the pleading must have brackets at each end.

3. **6.120** – JUROR REQUEST TO REVIEW RECORD OF ORAL TRIAL TESTIMONY

Adopt a new rule allowing a judge to grant a juror request to review a portion of the audio record of oral witness testimony during jury deliberation.

ACTION TAKEN
Motion to preliminarily recommend approval of the new rule passed by a vote of 5-4.

EXPLANATION
This proposal was submitted by Thomas Branford (Senior Judge). The proposed rule would allow a judge to consider a request by a juror to rehear a portion of oral trial testimony.

The proponent discussed that:

- Jurors frequently request to rehear portions of testimony and there is no specific legal authority that allows judges to grant a request to rehear portions of the testimony;
- Jurors are already allowed to take other evidence, such as video and documentary exhibits, to the jury room to review as frequently or as much as jurors deem necessary during deliberations, and an opinion that witness testimony should not be treated differently than documentary evidence;
- People don't always remember everything that they have heard and reviewing the record could help resolve doubt or ambiguity and could prevent hung juries in some cases;
- The judge should have discretion over what portions of the record to allow the jury to rehear; and
- This rule would increase public confidence in the courts and in jury decisions.

The committee discussed that:

- Washington state courts already have a rule that allows jurors to request to rehear portions of the trial and that rule provides a lot of guidance to judges (i.e., the judge should allow the request in a way that is least likely to be seen as a comment on the evidence, that is not unfairly prejudicial and that minimizes the possibility that jurors will give undue weight to such evidence);
- The Ninth Circuit also allows portions of the trial testimony to be replayed in open court;
- West Virginia has case law that explains West Virginia's process for replaying portions of the trial record in detail;
- These requests are tricky because if a judge grants one juror's request, one party's version of the case could be unduly emphasized, yet if the judge expands on the request, that could constitute improper comment on the evidence;
- These concerns could be difficult to balance;

- The judge should have discretion to grant or deny the request (in part or in entirety);
- The rule could create appealable errors;
- Rehearing one portion of testimony could lead to requests to rehear other portions of testimony;
- Concerns that the FTR (For the Record) recording will not reflect important nonverbal cues (such as gestures or eyerolls) that would be present during live testimony;
- One member opined that existing Oregon case law suggests that while requests to rehear testimony should not be encouraged, if a juror requests that testimony be repeated, discretion to decide that request rests with the trial court. See *State v. Jennings*, 131 Or 455 (1929) and *State v. Miller*, 2 Or App 353 (1975);
- Concerns about the practical procedures for replaying an FTR recording for the jury and how the court would ensure that only admissible portions of testimony are replayed;
- Jury instructions may need to be rewritten to inform jurors that they can request to rehear testimony if this becomes rule;
- The business process implementing the rule should address how the record will reflect what portions of the audio were replayed for the jury (and may need to require that portion to be saved as a separate audio file in case of future appellate review); and
- Editing of the audio may be required so that the jury does not rehear sidebars or inadmissible portions of testimony.

By motion, the committee made changes to the proposed rule to limit the scope of the rule to testimony (as opposed to all trial proceedings), to ensure that parties have an opportunity to object, and to give the judge discretion to grant or deny the request (in whole or in part). The committee voted 5-4 to preliminarily recommend the proposed new rule below.

PROPOSED NEW RULE

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6.120 JUROR REQUEST TO REVIEW AUDIO RECORD OF ORAL TRIAL TESTIMONY

During jury deliberations, a juror may request to review one or more portions of oral trial testimony from the trial proceedings. The court shall afford the parties the opportunity to object to the request outside the presence of the jury. The judge shall have discretion to grant or deny the request in whole or in part. The entire jury panel must be allowed to listen to the portion that the judge approves for review.

B. OUT-OF-CYCLE AMENDMENTS

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

Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.2 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION

The Oregon Supreme Court adopted Rules for Licensing Paralegals (RLP), which first went into effect on July 1, 2023. See SCO 22-033. Amendments to the rules were adopted effective August 1, 2023. See SCO 23-013. On January 1, 2024, Senate Bill (SB) 306 (Oregon Laws 2023, chapter 72) will take effect. SB 306 makes statutory changes to allow the Oregon State Bar to license nonattorney members.

Together, the RLP and SB 306 will allow nonattorney members of the bar to perform limited-scope legal services in family law and landlord tenant law with the purpose of increasing access to justice by advancing opportunities for low- and moderate-income Oregonians to receive legal assistance. Landlord-tenant and family law were chosen by the Oregon State Bar as these are areas with high rates of self-representation—parties to these cases often proceed without the benefit of attorney representation.

On October 19, 2023, the UTCR Committee considered amendments intended to apply UTCRs to licensed paralegals operating within their scope of practice under the RLP. The committee ultimately recommended adoption of a new rule that provides that, unless the context requires otherwise, or unless otherwise stated, when the UTCRs refer to an attorney, they also apply to a licensed paralegal representing a party within the scope of the Oregon Supreme Court Rules for Licensing Paralegals. The committee preferred this approach over an alternative approach that would have created a definition of “attorney” within the rules and that would have included licensed paralegals practicing within the scope of the RLPs within that definition unless the context required otherwise. **See related item B.2.**

The UTCR Committee recommended amendment of UTCR 13.090 to clarify that arbitrators must be active attorney members of the bar and that, for purposes of this rule, “attorney” does not include licensed paralegals. **See related items B.1 – B.16 and B.18 – B.21.**

The committee preliminarily recommended conforming changes to UTCRs to standardize use of the term “attorney” in rules that may also apply to licensed paralegals, in place of the terms “counsel” and “lawyer.” **See related items B.1 and B.3 – B.16 and B.18 – B.21.**

The committee recommended that changes in related items B.1 – B.21 be made out-of-cycle effective January 1, 2024, to align with the effective date of SB 306.

AMENDMENT

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

(1) Promulgation of SLR

(a) Pursuant to ORS 3.220, a court may make and enforce local rules consistent with and supplementary to these rules for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court.

(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement ("local practice") with which the court expects or requires parties and attorneys to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, Chief Justice Orders, Supreme Court Orders, disciplinary rules for [*lawyers*]{**attorneys**}, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that do not create requirements or have potential consequences for parties or attorneys.

(c) * * *

(2) * * *

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2. **1.210** – APPLICATION OF UTCRS TO LICENSED PARALEGALS

Adopted a new rule applying UTCRs to licensed paralegals representing a party within the scope of the Oregon Supreme Court Rules for Licensing Paralegals, unless the context requires otherwise. **See related items B.1 and B.3 – B.21.**

ACTION TAKEN
Adoption of the new rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then adopted out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

NEW RULE

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1.210 APPLICATION OF UTCRS TO LICENSED PARALEGALS

Unless the context requires otherwise, or unless otherwise stated, when these rules refer to an attorney, they also apply to a licensed paralegal representing a party within the scope of the Oregon Supreme Court Rules for Licensing Paralegals.

3. **2.010** – FORM OF DOCUMENTS

Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.2 and B.4 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

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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) * * *

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(5) Party Signatures and Electronic Court Signatures

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

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

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

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

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

(d) The court may issue judicial decisions electronically and may affix a signature by electronic means.

(i) The trial court administrator must maintain the security and control of the means for affixing electronic court signatures.

(ii) Only the judge and the trial court administrator, or the judge's or trial court administrator's designee, may access the means for affixing electronic court signatures.

(6) * * *

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(8) Exhibits

(a) When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the bottom right-hand side of the exhibit, followed by an Arabic numeral identifying the exhibit. Each page number of the exhibit must appear in Arabic numerals immediately below the exhibit number; e.g.: "Exhibit 2
Page 10"

(b) Exhibits appended to a pleading may be incorporated by reference in a later pleading.

(c) Except where otherwise required by statute, an exhibit appended to a document must be limited to only material, including an excerpt from another document, that is directly and specifically related to the subject of, and referred to in, the document. A responding party may timely file an additional excerpt or the complete document that the party believes is directly and specifically related. The court may require a party to file an additional excerpt or the complete document.

(d) A party shall not file a nondocumentary exhibit without prior leave of the court. A nondocumentary exhibit consisting of an electronic recording may be transcribed and filed in documentary format consistent with this rule. If the court grants leave to file a nondocumentary exhibit, the exhibit must be conventionally filed on a medium, including appropriate software where necessary, that allows the exhibit to be played or viewed on existing court equipment. Nondocumentary exhibits may be returned to the custody of [*counsel*]{**the attorney**} for the submitting party pursuant to UTCR 6.120. The court may charge a reasonable fee to restore or clean, pursuant to Judicial Department policy and standards, court equipment used to play or view a nondocumentary electronic exhibit. This rule does not apply to evidence submitted in electronic format pursuant to UTCR 6.190.

(9) * * *

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4. **2.100** – PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, REQUIREMENTS AND PROCEDURES TO SEGREGATE WHEN SUBMITTING

Changed references from "lawyer" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.3 and B.5 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

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

(1) * * *

* * * * *

(8) Inspecting or Copying Protected Personal Information.

(a) Except as specifically provided in subsection (7) of this rule, any person who seeks to inspect or copy information segregated and kept from public inspection under this rule must make the request by using a form substantially like the Request to Inspect Redacted or Segregated Information Sheet provided at www.courts.oregon.gov/forms and copy the requestor shown on the request and parties to the case as required by UTCR 2.080. The Request to Inspect must include a declaration under penalty of perjury, in substantially the same form as specified in ORCP 1E. A court will only grant a request if the person requesting has a right by law, including this rule, to see the information. The court will indicate on the form its response to the request and maintain a copy of all the request forms, with its response, in the case file as a public record.

(b) Any person inspecting information segregated and kept from public inspection under this rule must not further disclose the information, except:

(i) Within the course and scope of the client-[*lawyer*]{**attorney**} relationship, unless limited or prohibited by court order;

(ii) As authorized by law; or

(iii) As ordered by the court.

(c) Violation of subsection (b) of this section may subject a person to contempt of court under ORS 33.015 to 33.155.

(9) * * *

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5. **2.130** – CONFIDENTIAL PERSONAL INFORMATION IN FAMILY LAW AND CERTAIN PROTECTIVE ORDER PROCEEDINGS

Changed references from "lawyer" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.4 and B.6 – B.21**.

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

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

(1) * * *

* * * * *

(6) Access and Confidentiality

(a) A party may inspect a CIF that was filed by that party.

(b) A party to a proceeding may inspect a CIF filed by another party:

(i) Upon filing an affidavit of consent, signed and dated by the party whose information is to be inspected, that states the dates during which the consent is effective; or

(ii) Upon entry of an order allowing inspection under UTCR 2.130(10)(a); or

(iii) If the CIF sought to be inspected contains only the inspecting party's confidential personal information.

(c) A person other than a party to the proceeding may inspect a CIF upon filing an affidavit of consent, signed and dated by the party whose information is to be inspected, that states the dates during which the consent is effective.

(d) Notwithstanding UTCR 2.120, a declaration under penalty of perjury may not be used in lieu of an affidavit required by this subsection.

(e) This rule does not limit a person's legal right to inspect a CIF as otherwise allowed by statute or rule.

(f) Oregon Judicial Department personnel may have access to a CIF when required for court business.

(g) Courts will share a CIF with the entity primarily responsible for providing support enforcement services under ORS 25.080 or 42 USC 666. A person receiving information under this section must maintain its confidentiality as required by ORS 25.260(2) and 192.355(10).

(h) Courts will share a CIF with other government agencies as required or allowed by law for agency business. Those agencies must maintain the confidentiality of the information as required by ORS 192.355(10).

(i) Any person inspecting a CIF must not further disclose the confidential personal information except:

(i) Within the course and scope of the client-[*lawyer*]{**attorney**} relationship, unless limited or prohibited by court order;

(ii) As authorized by law; or

(iii) As ordered by the court.

(j) An order entered under UTCR 2.130(10)(d) may further limit disclosure of confidential personal information.

(k) Violation of subsection (i) or (j) in this section may subject a person to contempt of court under ORS 33.015 to 33.155.

(7) * * *

* * * * *

6. **3.180** – ELECTRONIC RECORDING AND WRITING

Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.5 and B.7 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

3.180 ELECTRONIC RECORDING AND WRITING

(1) * * *

* * * * *

(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*]{**attorneys**} and judges conferring at the bench and conferences involving [*counsel*]{**attorneys**} 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) * * *

* * * * *

7. **5.100** – SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

Changed references from "counsel" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.6 and B.8 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

5.100 SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

(1) Except as provided in subsection (3) of this rule, any proposed judgment or proposed order submitted to the court for signature must be:

(a) Served on each [*counsel*]{**attorney**} not less than three days prior to submission to the court, or

(b) Accompanied by a stipulation by each [*counsel*]{**attorney**} that no objection exists as to the judgment or order, or

(c) Served on a self-represented party not less than seven days prior to submission to the court and be accompanied by notice of the time period to object.

(2) * * *

* * * * *

8. **6.030** – POSTPONEMENT OF TRIAL

Changed references from “counsel” to “attorney” to align with proposed the new definition of attorney. **See related items B.1 – B.7 and B.9 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

6.030 POSTPONEMENT OF TRIAL

(1) * * *

(2) A motion to postpone a trial must be signed by the attorney of record and contain a certificate stating that [*counsel*]{**the attorney**} has advised the client of the request and must set forth:

(a) The date scheduled for trial;

(b) The reason for the requested postponement;

(c) The dates previously set for trial;

(d) The date of each previous postponement; and

(e) Whether any parties to the proceeding object to the requested postponement.

(3) * * *

* * * * *

9. 6.040 – RESOLVING SCHEDULING CONFLICTS

Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.8 and B.10 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

6.040 RESOLVING SCHEDULING CONFLICTS

(1) * * *

(2) In resolving scheduling conflicts, the following must be considered:

(a) Statutory preference;

(b) The custodial status of a criminal defendant;

(c) The filing date of the case;

(d) The dates on which the courts sent notices of the trial date;

(e) The relative complexity of the cases;

(f) The availability of {**a** }competent, prepared substitute [*counsel*]{**attorney**}; and

(g) The inconvenience to the parties, the witnesses, or the court.

(3) * * *

10. 6.080 – MARKING EXHIBITS

Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.9 and B.11 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

6.080 MARKING EXHIBITS

(1) * * *

* * * * *

(5) At the time of trial or hearing involving a covered offense, a party introducing an exhibit that contains biological evidence must provide the court in writing with the name, agency, mailing address, and telephone number for the custodian responsible for each exhibit that contains biological evidence. [*Counsel*]{**The attorney**} also must indicate whether the biological evidence was collected by the defense. For a trial, this information must be submitted with the list of premarked exhibits required under subsection (3) of this rule.

(6) * * *

* * * * *

11. 6.120 – DISPOSITION OF EXHIBITS

Changed references from "counsel" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.10 and B.12 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

6.120 DISPOSITION OF EXHIBITS

(1) Unless otherwise ordered or except as otherwise provided in ORS 133.707 and 419A.255(1)(a), all exhibits shall be returned to the custody of [*counsel*]{**the attorney**} for the submitting parties upon conclusion of the trial or hearing. Such [*counsel*]{**an attorney**} must sign an acknowledgment of receipt for the exhibits returned. [*Counsel*]{**An attorney**} to whom any exhibits have been returned must retain custody and control until final disposition of the case unless the exhibits are returned to the trial court pursuant to subsections (2) or (3) of this rule. Both documentary and nondocumentary exhibits submitted by parties not represented by [*counsel*]{**an attorney**} shall be retained by the trial court, subject to subsection (4) of this rule.

(2) Upon the filing of a notice of appeal by any party, the trial court administrator promptly shall notify all [*counsel*]{**attorneys**} that they are required to return all documentary exhibits in their custody to the trial court within 21 days of receipt of the trial court's request. All [*counsel*]{**attorneys**} are required to comply with the notice. The trial court promptly will transmit the documentary exhibits to the appellate court, when requested to do so by the appellate court, under ORAP 3.25.

(3) * * *

* * * * *

12. 6.200 – PRETRIAL SETTLEMENT CONFERENCES

Changed reference from “lawyers” to “attorneys” to align with the proposed new definition of attorney. **See related items B.1 – B.11 and B.13 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

6.200 PRETRIAL SETTLEMENT CONFERENCES

(1) Each judicial district may adopt an SLR 6.012, or an SLR in chapter 12 if that chapter is dedicated to alternative dispute resolution, providing for a uniform pretrial settlement conference procedure for use in all circuit court civil cases, including dissolution of marriage and post-judgment modification proceedings. The SLR shall be designed to most effectively meet the needs of the judges, [*lawyers*]{**attorneys**}, and litigants in each district and to promote early pretrial settlements.

(2) * * *

* * * * *

13. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL

Changed references from "counsel" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.12 and B.14 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

8.120 INFORMAL DOMESTIC RELATIONS TRIAL

(1) * * *

* * * * *

(3) The Informal Domestic Relations Trial will be conducted as follows:

(a) At the beginning of an Informal Domestic Relations Trial the parties will be asked to affirm that they understand the rules and procedures of the Informal Domestic Relations Trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the Informal Domestic Relations Trial process.

(b) The Court may ask the parties or their [*lawyers*]{**attorneys**} for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party [*is not questioned by counsel*]{**may not be questioned by an attorney**}, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the nonmoving party or their [*counsel*]{**attorney**} whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon the request of either party, the expert will be sworn and subjected to questioning by [*counsel,*]the parties, {**their attorneys,** }or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.

(h) The parties or their [*counsel*]{**attorneys**} will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their [*counsel*]{**attorneys**} will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issue prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

(4) * * *

* * * * *

14. 12.040 – MEDIATOR ETHICS

Changed references from legal "counsel" to legal "advice." **See related items B.1 – B.13 and B.15 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

12.040 MEDIATOR ETHICS

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

(1) * * *

* * * * *

(3) Inform the participants prior to or at the commencement of the mediation of each of the following:

(a) The nature of mediation, the role and style of the mediator, and the process that will be used;

(b) The extent to which participation in mediation is voluntary and the ability of the participants and the mediator to suspend or terminate the mediation;

(c) The commitment of the participants to participate fully and to negotiate in good faith;

(d) The extent to which disclosures in mediation are confidential, including during private caucuses;

(e) Any potential conflicts of interest that the mediator may have, i.e., any circumstances or relationships that may raise a question as to the mediator's impartiality and fairness;

(f) The need for the informed consent of the participants to any decisions;

(g) The right of the parties to seek independent legal [*counsel*]{**advice**}, including review of the proposed mediation agreement before execution;

(h) In appropriate cases, the advisability of proceeding with mediation under the circumstances of the particular dispute;

(i) The availability of public information about the mediator pursuant to UTCR 12.050; and

(j) If applicable, the nature and extent to which the mediator is being supervised.

15. 12.120 – DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING

Changed references from "counsel" to "attorney" to align with the proposed new definition of attorney. **See related items B.1 – B.14 and B.16 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

12.120 DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING

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

(a) Legal and financial issues in separation, divorce, and family reorganization in Oregon, including property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, and joint and several liability for family debt;

(b) Basics of corporate and partnership law, retirement interests, personal bankruptcy, ethics (including unauthorized practice of law), drafting, and legal process (including disclosure problems); and

(c) The needs of self-represented parties, the desirability of review by independent [*counsel*]{**attorneys**}, recognizing the finality of a judgment, and methods to carry out the parties' agreement.

(2) * * *

16. 12.130 – COURT-SYSTEM TRAINING

Changed references from “lawyers” to “attorneys” to align with the proposed new definition of attorney. **See related items B.1 – B.15 and B.17 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

12.130 COURT-SYSTEM TRAINING

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

(1) * * *

(2) For mediators working in contexts other than small claims court, at least two additional hours including, but not limited to, all of the following:

(a) Working with represented and unrepresented parties, including:

(i) The role of [*litigants’ lawyers*]{**parties’ attorneys**} in the mediation process;

(ii) Attorney-client relationships, including privileges;

(iii) Working with [*lawyers*]{**attorneys**}, including understanding of Oregon State Bar disciplinary rules; and

(iv) Attorney fee issues.

(b) Understanding motions, discovery, and other court rules and procedures;

(c) Basic rules of evidence; and

(d) Basic rules of contract and tort law.

17. 13.090 – ARBITRATORS

Amended to clarify that arbitrators must be active attorney members of the bar and that, for purposes of this rule, "attorney" does not include licensed paralegals. **See related items B.1 – B.16 and B.18 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

13.090 ARBITRATORS

(1) Unless otherwise ordered or stipulated, an arbitrator must be an active {**attorney** }member in good standing of the Oregon State Bar, who has been admitted to any Bar for a minimum of five years, or a retired or senior judge. The parties may stipulate to a nonlawyer arbitrator.

(2) An arbitrator who is not a retired or senior judge or stipulated nonlawyer arbitrator must be an active {**attorney** }member in good standing of the Oregon State Bar at the time of each appointment. During any period of suspension from the practice of law or in the event of disbarment, an arbitrator will be removed from the court's list of arbitrators and may reapply when the attorney is reinstated or readmitted to the bar.

(3) Arbitrators will conduct themselves in the manner prescribed by the Code of Judicial Conduct.

{**(4) As used in this rule, "attorney" does not include licensed paralegals.**}

18. 13.130 – RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES, AND ATTORNEYS

Changed references from “counsel” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.17 and B.19 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

13.130 RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES, AND ATTORNEYS

Unless all parties otherwise agree, no disclosure of any offers or settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither [*counsel*]{**an attorney**} nor a party may communicate with the arbitrator, regarding the merits of the case, except in the presence of, or on reasonable notice to, all other parties.

Except for Rules 1, 4.1 to 4.3, 4.5 to 4.10, and 5 of the Code of Judicial Conduct, all rules of professional conduct concerning Bench and Bar apply in the arbitration process.

19. 13.150 – SUBPOENA

Changed reference from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.18 and B.20 – B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

13.150 SUBPOENA

In accordance with the Oregon Rules of Civil Procedure, [*a lawyer*]{**an attorney**} of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing.

20. 21.010 – DEFINITIONS

Changed reference from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.19 and B.21.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

21.010 DEFINITIONS

The following definitions apply to this chapter:

(1) * * *

* * * * *

(7) “Other Service Contact” means any person associated with the filer for purposes of an action whom the filer wishes to receive email notification from the electronic filing system of documents electronically served in the action. An “other service contact” includes another [*lawyer*]{**attorney**}, administrator, or staff from the filer’s place of business, or another person who is associated with the filer regarding the action or otherwise has a legitimate connection to the action.

(8) * * *

21. 21.100 – ELECTRONIC SERVICE

Changed references from “lawyer” to “attorney” to align with the proposed new definition of attorney. **See related items B.1 – B.20.**

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee’s fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
See explanation for related item B.1.

AMENDMENT

Click Here to Comment on This Rule

21.100 ELECTRONIC SERVICE

(1) Consent to Electronic Service and Withdrawal of Consent

(a) A filer who electronically appears in the action by filing a document through the electronic filing system that the court has accepted is deemed to consent to accept electronic service of any document filed by any other registered filer in an action, except for any document that requires service under ORCP 7 or that requires personal service.

(b) A filer who is dismissed as a party from the action or withdraws as [*a lawyer*]{**the attorney**} of record in the action may withdraw consent to electronic service by removing the filer’s contact information as provided in subsection (2)(a) of this rule.

(c) Except as provided in subsection (b) of this section, a filer may withdraw consent to electronic service only upon court approval based on good cause shown.

(2) Contact Information

(a) At the time of preparing the filer’s first electronic filing in the action, a filer described in section (1) of this rule must enter in the electronic filing system the name and service email address of the filer, designated as a service contact on behalf of an identified party in the action. If the filer withdraws consent to electronic service under subsection (1)(b) or (1)(c) of this rule, then the filer must remove the filer’s name and service email address as a designated service contact for a party.

(b) A filer described in subsection (1)(a) of this rule may enter in the electronic filing system, as an other service contact in the action:

(i) An alternative email address for the filer; and

(ii) The name and email address of any additional person whom the filer wishes to receive electronic notification of documents

electronically served in the action, as defined in UTCR 21.010(7). If [*a lawyer*]{**an attorney**} enters a client's name and contact information as an other service contact under this subsection, then the [*lawyer*]{**attorney**} is deemed to have consented for purposes of Rule of Professional Conduct 4.2 to delivery to the client of documents electronically served by other filers in the action.

(c) A filer is responsible for updating any contact information for any person whom the filer has entered in the electronic filing system as either a service contact for a party or as an other service contact in an action.

(d) A filer may seek court approval to remove a person entered by another filer as an other service contact in an action if the person does not qualify as an other service contact under UTCR 21.010(7).

(3) * * *

* * * * *

22. 5.140 – FOREIGN DISCOVERY

Amended the rule to conform to House Bill (HB) 2002 (2023) to include limitations on foreign subpoenas relating to gender affirming and reproductive healthcare.

ACTION TAKEN
Amendment of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

EXPLANATION
HB 2002, which became effective on July 13, 2023 (Oregon Laws 2023, chapter 228), is a comprehensive bill intended to clarify a statutory right in Oregon for every individual to make decisions about that individual's reproductive health (with related provisions about services) and also to require coverage for gender-affirming treatment (and to prohibit denying or limiting gender-affirming treatment if certain criteria are met). Section 48 relates to subpoenas sought in the state of Oregon in connection with out-of-state lawsuits and requires a person seeking a foreign subpoena to make certain declarations to ensure that foreign subpoenas are not used to advance outcomes sought in out-of-state actions that are prohibited under the bill. OJD already made changes to the "Petition to Register Foreign Deposition Instrument and/or Issue Subpoenas" form to comply with HB 2002; however, the committee considered whether to make changes to UTCR 5.140 so that the rule reflects the requirements from the bill, given that these requirements will only apply to a very small number of cases and parties may not otherwise be aware of the requirements.

The committee agreed by consensus to recommend amendment of UTCR 5.140 out of cycle, given that HB 2002 became effective on July 13, 2023. The UTCR Committee also recommended changes to the proposal to add cross references to subsection (1)(c) of UTCR 5.140 and to Oregon Laws 2023, chapter 228, section 48 (HB 2002). This citation will need to be updated when the measure is codified in the ORS, which should occur in spring 2024.

AMENDMENT

Click Here to Comment on This Rule

5.140 OREGON DISCOVERY IN FOREIGN PROCEEDINGS

(1) * * *

* * * * *

{**(4) In addition to the requirements in subsection (1), (2), and (3) of this rule, a party seeking a subpoena under subsection (1)(c) of this rule that is related to gender-affirming treatment or reproductive health care services that are permitted under the laws of this state must submit a declaration pursuant to Oregon Laws 2023, chapter 228, section 48 (House Bill 2002), that the subpoena relates to either:**

(a) An out-of-state action founded in tort, contract, or statute, for which a similar claim would exist under the laws of this state,

brought by a patient or the patient's authorized legal representative, for damages suffered by the patient; or

(b) An out-of-state action founded in contract, and for which a similar claim would exist under the laws of this state, brought or sought to be enforced by a party with a contractual relationship with the person that is the subject of the subpoena.}

23. 7.100 – DISQUALIFICATION MOTIONS UNDER ORS 14.260(7)

Adopted a new rule governing disqualification motions under ORS 14.260(7) in criminal and juvenile delinquency cases.

ACTION TAKEN
Adoption of the rule was preliminarily recommended by consensus at the UTCR Committee's fall meeting on October 19, 2023. The rule was then amended out of cycle by CJO 23-052, effective January 1, 2024.

The Chief Justice adopted the rule with some changes from the version recommended by the UTCR Committee. In comparison to the version recommended by the UTCR Committee, the adopted rule:

- Reduces the overall time to disposition by making the following changes,
  - (2)(a) will require the challenged judge to submit a request for hearing to the Presiding Judge within two judicial days (instead of seven days);
  - In subsection (6), decreases the deadline to hold a hearing from 45 days after entry of the notice of assignment of the disinterested judge to 30 days;
  - In subsection (7), reduces the time for filing the supplemental affidavit from 14 days to 7 days; and
  - In subsection (8), reduces the time for filing any response from 14 days to 7 days.
- Provides, in subsection (4), that the Chief Justice or designee will assign a disinterested judge from a predetermined list; and
- Clarifies, in subsection (4), that the disinterested judge must not have held a judicial seat in the judicial district where the subject disqualification motion was filed.

EXPLANATION
In the 2023 legislative session, the legislature passed Senate Bill (SB) 807 (relating to judicial disqualification). SB 807 will go into effect on January 1, 2024.

SB 807 creates new provisions in ORS 14.260 that apply when a disqualification motion, or a series of disqualification motions, effectively denies an elected judge assignment to a criminal or juvenile delinquency docket. The measure specifically allows the Chief Justice to adopt rules implementing ORS 14.260(7). When an elected judge believes that a disqualification motion, or a series of disqualification motions, effectively denies the judge assignment to a criminal or juvenile delinquency docket, ORS 14.260(7) requires assignment of a disinterested judge from outside the judicial district to hear the motion. UTCR 7.100 creates a process for a challenged judge to request a hearing, a process for the Office of the State Court Administrator to assign a judge from outside of the judicial district, and sets out deadlines applicable to the moving party and the challenged judge.

The committee discussed:

- Whether the scope of the rule should be expanded to address existing disqualification motions under ORS 14.260(1);
- Ultimately the committee did not recommend expanding the scope of the rule to address “one-off” disqualification motions;
- Whether the underlying criminal case should be assigned to another judge upon filing of the motion (either on a temporary or permanent basis), or whether reassignment will occur only if the disinterested judge grants the disqualification motion;
- Some members felt that the case should be reassigned to prevent potential speedy trial issues caused by delay in resolving the disqualification motion; others felt that since the proposed rule is silent, it would be up to each judicial district to decide whether to reassign the case while the motion was pending;
- Whether the rule should require the challenged judge and the moving party to stipulate to mediation, and whether the rule should address mediation at all since it is not addressed in SB 807;
- Committee members felt that the rule should not include any authority for mediation, both because SB 807 does not include mediation and because mediation could create an ethical quandary for the judge conducting the mediation;
- Others felt that mediation doesn’t make sense in the disqualification context and should not be part of the rule for that reason;
- One member expressed concern about the potential of the parties to a mediation reaching an agreement that could affect other criminal defendants or victims who are not parties to the mediation, for instance, if the parties reach a compromise that the challenged judge will continue to preside over misdemeanors but not felonies;
- The committee preliminarily recommended approval of a version of the rule that does not include explicit authority for mediation;
- Whether an earlier timeline should be built into the rule for a disinterested judge to decide the first inquiry (whether the motion or series of motions effectively denies the challenged judge assignment to a criminal or juvenile docket);
- Committee members recommended that both questions be decided at the same time as a matter of judicial efficiency;
- Whether earlier disqualification motions (outside of the timeline for challenge on the present motion) can still be challenged, or included in a challenge, if it has become apparent that the earlier disqualification motions were part of a series of motions that effectively denies a judge assignment to a criminal or juvenile delinquency docket;
- While the committee did believe that earlier motions could be evidence in the present disqualification motion, they didn’t feel that any change to the rule was needed to reflect that belief;

- The committee didn't see any need to allow a challenge to previously filed motions because only the present motion is at issue and SB 807 doesn't provide for a remedy for previously filed motions;
- One member felt that the proposed wording indicated that the disinterested judge could not be an elected or appointed judge. The committee recommended a change to make it clear that the disinterested judge must not have been elected or appointed to serve in the judicial district where the motion is pending;
- The committee felt that if the presiding judge is the subject of the challenge there should be an alternative procedure that allows the presiding judge's designee (either another judge or the TCA) to communicate with the Office of the State Court Administrator and enter a notice assigning the disinterested judge on the register of actions;
- Some members felt that the due dates in the proposal were not clear and preferred a due date for a response by the challenged judge that was tied to the due date for a supplemental affidavit (since a supplemental affidavit is not mandatory the committee felt that the deadline could not be tied to the actual date of filing, since failure to file a supplemental affidavit does not preclude a written response by the challenged judge);
- The committee thought that a judge should have the same amount of time to file a response that the moving party has to file the supplemental affidavit;
- The committee also wanted to clarify that only the challenged judge can file a response as they did not feel that the nonmoving party will have any reason to file a response;
- Whether the rule should be adopted as one rule in chapter 7 (Case Management and Calendaring), which generally applies to all case types, or adopted as two rules in chapter 4 (Proceedings in Criminal Cases) and chapter 11 (Juvenile Court Proceedings);
- The committee felt that the rule should be adopted as one rule in chapter 7 to avoid unnecessary duplication; and
- A public commenter from the Oregon Criminal Defense Lawyers Association felt that the rule should be adopted as two rules (in the criminal and juvenile chapters) to clarify that the rule does not apply in civil cases; however, a committee member responded that the text of the rule is clear that it only applies in criminal and juvenile delinquency cases and that this should not be a concern.

NEW RULE

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7.100 DISQUALIFICATION MOTIONS UNDER ORS 14.260(7)

(1) A motion to disqualify a judge and supporting affidavit must be submitted in the manner described in ORS 14.260(1) through (6).

(2) A challenged judge who believes that the disqualification motion, or a series of disqualification motions, filed under ORS 14.260(1) or ORS 14.270, effectively denies the judge assignment to a criminal or juvenile

delinquency docket pursuant to ORS 14.260(7), may request a hearing by submitting a request for hearing form. The request for hearing form must:

(a) Be submitted to the presiding judge (or the presiding judge's designee, if the presiding judge is the subject of the challenge) within two judicial days of the filing of the disqualification motion;

(b) State that the request for hearing is being submitted under ORS 14.260(7), regarding effective denial of judicial assignment to a criminal or juvenile delinquency docket; and

(c) Be served on each party to the case.

(3) Within two judicial days of receipt of a judge's request under this subsection, the presiding judge (or the presiding judge's designee, if the presiding judge is the subject of the challenge) will submit a request for assignment of a disinterested judge to the Office of the State Court Administrator (OSCA).

(4) Within three judicial days of receipt of a presiding judge's or the presiding judge's designee's request under this subsection, the Chief Justice or designee will assign a disinterested judge from a predetermined list. The disinterested judge must not have held a judicial seat in the judicial district where the subject disqualification motion was filed.

(5) OSCA will immediately notify the presiding judge or the presiding judge's designee of an assignment made under subsection (4), and the presiding judge or designee will enter the notice of assignment within two judicial days of OSCA's notification on the register of actions.

(6) Upon entry of a notice of assignment of a disinterested judge, the disinterested judge will promptly schedule a hearing on the motion for disqualification. A hearing on the motion for disqualification will be held no more than 30 days after entry of the notice of assignment of the disinterested judge.

(7) Any supplemental affidavit must be submitted by the moving party within seven days after entry of the notice of assignment of the disinterested judge.

(8) Any response by the challenged judge to a motion for disqualification or supplemental affidavit must be filed within seven days after the due date for the supplemental affidavit.

C. REVIEWED PUBLIC COMMENT ON AMENDMENTS FOLLOWING THE SPRING MEETING

These are brief descriptions of UTCRs that were adopted with Chief Justice changes to UTCR Committee recommendations following the March 17, 2023, UTCR Committee meeting. Because these rules were heard by the committee in the regular UTCR cycle and adopted for the normal implementation date (August 1), these are not true "out-of-cycle" changes.

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

Reviewed public comment.

ACTION TAKEN
No action was needed nor taken.

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, then-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. Then-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, then-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 were already occurring;
- There was consensus that, because remote hearings were 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 made it 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 those 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 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 UTCR 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 was sent out for public comment following the spring 2023 UTCR Committee meeting and was placed on the October 19, 2023, UTCR Committee agenda for discussion of public comments. No public comments were received, and no action was needed nor taken.

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

Reviewed public comment.

ACTION TAKEN
No action was needed nor taken.

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 UTCR 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 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; 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.

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 adopted amendment was sent out for public comment and placed on the agenda for the October 19, 2023, UTCR Committee meeting. The Committee received three public comments on the rule. The UTCR Committee discussed that:

- The Multnomah County Circuit Court omnibus hearings pilot program receives very few requests for omnibus hearings in misdemeanor cases and a larger number in felony cases. One judge member finds it more pleasant to hold omnibus hearings rather than dealing with pretrial motions on the morning of trial;
- Some members noted that they understand the concerns raised by other jurisdictions and holding additional hearings;
- One member's view of the comments was that Lane County has already been holding omnibus hearings before the amendment of the rule and therefore the change was not that significant; the good cause language also allows a judge to deviate from the default time for holding the hearing set out in the rule;
- One member expressed surprise and disappointment that the Chief Justice had adopted a change that had not received majority support from the committee and a belief that use of the amended rule has been minimal; and
- One member responded that, if the rule has not been used frequently, that a middle ground has been reached, since parties can elect to make the request in an appropriate case, but courts have not been burdened by a large number of requests.

There were no motions to recommend a change to UTCR 4.010, therefore no action was taken by the committee.

AMENDED RULE

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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 seven 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 seven days prior to the trial date.

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

Reviewed public comment.

ACTION TAKEN
By consensus, the committee agreed to recommended removal of "negotiations" from the title of the rule.

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 then-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). Then-Chief Justice Walters directed CJAC to work in conjunction with selected members of the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on then-Chief Justice Walters's request, 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 seven 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, 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.

This rule was placed on the October 19, 2023, UTCR Committee agenda for discussion of public comments. No public comments were received. A motion was made to remove the word "negotiations" from the title of the rule since the rule no longer addresses negotiations. That motion received consensus and the recommended amendment is shown below.

PROPOSED AMENDMENT

Click Here to Comment on This Rule

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) 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 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.

D. OTHER ACTIONS

1. Criminal Case Scheduling Form

Update on criminal case scheduling form.

ACTION TAKEN
No action was needed nor taken.

EXPLANATION

Click Here to Comment

The UTCR Committee received an update on the criminal case scheduling form. At the spring 2023 UTCR meeting, the committee pre-recommended disapproval of an amendment to UTCR 4.040 that would have allowed a party to request scheduling of certain hearings by email (without submitting a formal motion and order to the court) and would have directed the court to set the hearing as soon as practicable upon receipt of the request, or on a date stipulated by the parties, if the court is available.

In lieu of that proposal, the UTCR Committee recommended that the Office of the State Court Administrator (OSCA) adopt a scheduling request form, which could accomplish some or all of the goals of the proposed rule (increased efficiencies for practitioners), while avoiding some of the concerns posed by email requests. The Criminal Justice Advisory Committee met in the interim to recommend changes to a draft form and additional internal discussions are underway.

2. Case Center

Update on Case Center.

ACTION TAKEN
No action was needed nor taken.

Click Here to Comment

EXPLANATION
The committee received an update on Case Center. Case Center is a cloud-based system for submitting exhibits to the court, including nondocumentary exhibits (such as video and audio) and has features allowing for the numbering and marking of exhibits, and the display of exhibits in a courtroom and to a jury. OJD has contracted with Thompson Reuters to make Case Center available in some courts on a pilot project basis. Linn and Deschutes counties will serve as the first pilot project courts. The UTCR Committee anticipates that some UTCR and SLR amendments may be needed to implement Case Center. More information will be forthcoming.

3. Committee Membership

The committee received an update on membership.

ACTION TAKEN
No action was needed nor taken.

Click Here to Comment

EXPLANATION
Judge Randy Miller (Deschutes County Circuit Court) resigned from the committee. In CJO 23-053, the Chief Justice appointed Judge Alycia Sykora (also Deschutes County Circuit Court) to serve the remainder of Judge Miller's term. Chair Dominic Campanella's (Attorney, Medford) and member Jeffrey Howes's (Multnomah County Deputy District Attorney) terms will expire on July 31, 2024. Those positions will be posted for recruitment in the spring of 2024.

4. Committee Chair Selection

The committee elected a new chair.

ACTION TAKEN
The committee elected Judge David Hoppe (Jackson County Circuit Court).

Click Here to Comment

EXPLANATION
Current chair Dominic Campanella (Medford attorney) will be retiring from the committee on July 31, 2024. The committee elected Judge Hoppe (Jackson County Circuit Court) as chair, beginning August 1, 2024.

5. Spring 2024 Meeting

Click Here to Comment

Scheduled spring meeting.

ACTION TAKEN
The spring meeting was scheduled for Friday, April 12, 2024.

6. Fall 2024 Meeting

Click Here to Comment

Scheduled fall meeting.

ACTION TAKEN
The fall meeting was scheduled for Thursday, October 10, 2024.