

NOTICE SEEKING PUBLIC COMMENT ON PROPOSED UTCR CHANGES FOR 2005

I. INTRODUCTION

This notice is made pursuant to UTCR 1.020(3) which requires official notice of proposed changes to be posted on the Oregon Judicial Department website (<http://www.ojd.state.or.us>), allowing at least 49 days for public comment before final action is taken on the proposals. The proposed changes will also be published in the Oregon Appellate Courts Advance Sheets No. 5, February 28, 2005.

The Uniform Trial Court Rules (UTCR) Committee is authorized to make recommendations to the Chief Justice of the Oregon Supreme Court on proposed changes to the UTCR. At its fall meeting on October 8, 2004, the committee made preliminary recommendations on proposed changes to the UTCR. The committee will make final recommendations to the Chief Justice at the committee's next meeting on April 1, 2005.

The purpose of this notice is to solicit public comment on these proposals and the committee's preliminary recommendations. In order to be considered by the committee, public comment must be received by the UTCR Reporter before the start of the committee's spring meeting scheduled for April 1, 2005, 9:00 a.m. The committee encourages you to submit comments on the proposals, the recommendations (whether for approval or disapproval), and any other action taken by the committee. **PLEASE SUBMIT YOUR WRITTEN COMMENTS TO:**

<http://www.ojd.state.or.us/Web/UTCRWeb.nsf/UTCRCComments?OpenForm>

or

utcr@ojd.state.or.us

or

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

You may also deliver your comments in person and offer testimony at the committee's next meeting on April 1, 2005. Additional information on this committee and the UTCR process may be found at: <http://www.ojd.state.or.us/programs/utcr/index.htm>.

Final recommendations that are adopted by the Chief Justice will take effect August 1, 2005. They will be posted on the Oregon Judicial Department website (<http://www.ojd.state.or.us>) and published in the Oregon Appellate Courts Advance Sheets.

II. FUTURE MEETINGS

The committee has two meetings scheduled:

SPRING MEETING: April 1, 2005, 9:00 a.m., at the Office of the Oregon State Court Administrator, Salem. The committee will review public comment on the proposals and recommendations explained in this notice and will make final recommendations to the Chief Justice on changes to the UTCR to take effect August 1, 2005. The committee may also

reconsider any and all of these proposals, as well as the corresponding recommendations and the other committee actions.

FALL MEETING: October 14 and 15, 2005, 9:00 a.m., at the Office of the Oregon State Court Administrator, Salem. The committee will review existing and proposed Supplementary Local Rules (SLR) and make recommendations to the Chief Justice on disapproval of SLR pursuant to UTCR 1.050. This meeting is the only one in the 2005-2006 cycle at which the committee intends to accept proposals for changes to the UTCR to take effect August 1, 2006. Committee meeting dates for the following year will be scheduled at this meeting.

III. SYNOPSIS OF FALL 2004 ACTIONS

A. RECOMMENDATIONS OF APPROVAL. These are brief descriptions of UTCR changes the committee has preliminarily recommended for approval (more detailed explanations are contained in Section IV.A.):

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B. RECOMMENDATIONS OF DISAPPROVAL. These are brief descriptions of the UTCR proposals the committee has preliminarily recommended for disapproval (more detailed explanations are contained in Section IV.B.):

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9.	Chapter 6 - Adopt a new rule requiring parties to have foreign language written and recorded evidence translated prehearing by a certified/qualified interpreter	30
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11.	13.090 - Amend to require arbitrators to carry malpractice insurance	61

C. OTHER ACTIONS. These are brief descriptions of other committee actions (more detailed explanations are contained in Section IV.C.):

1.	2.100 - Out-of-cycle amendment (and new form) to add a process for segregating just social security numbers	61
2.	7.050(3) - Repeal section (3)	65
3.	Report from subcommittee on electronic filing issues	66

IV. DESCRIPTION OF FALL 2004 ACTIONS

FORMAT OF CHANGES: Wording proposed to be taken out of existing UTCR sections is in [*brackets and italics*]. Proposed new wording is **underlined and in bold**. Repealed UTCR are not set out. In some cases, no draft wording was submitted to the committee and so none is set out in the explanation.

A. RECOMMENDATIONS OF APPROVAL. These proposals are published to solicit public comment (see Section I. Introduction).

1. **1.150** - Amend to require SLR to state where information on business hours can be found and eliminate requirement that hours shall be listed in SLR.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 1, to recommend approval, passed by consensus.

REASON

The committee was concerned that SLR are not the best place to post the hours courts are open for business. In the recent past, budget difficulties have resulted in relatively frequent changes to court hours in various judicial districts. Posting hours on an official court website and in other specified locations, as listed in the SLR, will give the public quicker access to updated information on court hours.

PROPOSED AMENDMENT

1.150 [*SLR TO ANNOUNCE*] HOURS OF COURT OPERATION

Each judicial district must adopt an SLR to announce **where** the following **information can be found**: when each court location in the judicial district is open to conduct business; the hours when papers will be received and may be filed at each location, if different from when the court location is open to conduct business; **and** special arrangements, if any exist or may be made, for filing of documents at times when the court location is not open to conduct business. SLR 1.151 is reserved for SLR adopted under this section.

2. **Chapter 2** - Adopt a new rule stating that where the UTCR requires an affidavit, the affidavit does not have to be notarized unless required by statute. Make related UTCR Forms 2.100.4a, 2.100.4c, 2.100.8, 5.080, 8,010.5, 9.160, 15.010.1a, 15.010.1b, and 15.010.1c consistent.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 63, to recommend approval, passed by consensus.

REASON

This proposal would save time and money for attorneys and parties who do not have ready access to a notary. An affidavit executed under penalty of law (but not notarized) appears to be appropriate under the Oregon Constitution. This proposal is also consistent with action taken by the 2003 Legislative Assembly amending ORCP 1 to allow a declaration under perjury in various circumstances.

PROPOSED AMENDMENT

2.120 Affidavits

Unless otherwise mandated by statute, an affidavit required by the UTCR need not be notarized, but it must be signed by the affiant and must include a sentence, in prominent letters immediately above the signature of the affiant, that is in substantially the same form as the sentence for a declaration under penalty of perjury as specified in ORCP 1E.

Form 2.100.4a is changed in relevant part as follows:

* * * * *

[I knowingly give the information in this affidavit, the attached information sheet, and any attachments to the information sheet under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if I knowingly provide false information to the court.]

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

* * * * *

Form 2.100.4c is changed in relevant part as follows:

* * * * *

[I knowingly give the information in this affidavit and the attached information sheet under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if I knowingly provide false information to the court.]

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

* * * * *

Form 2.100.8 is changed in relevant part as follows:

* * * * *

[I knowingly give the information in this request under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if I knowingly provide false information to the court.]

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

* * * * *

Form 5.080 is changed in relevant part as follows:

* * * * *

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this _____ day of _____, 20__.

[SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

*Notary Public for Oregon
My commission expires: _____]*

Form 8.010.5 is changed in relevant part as follows:

* * * * *

This form is *[a SWORN] an AFFIDAVIT* (under *[oath] penalty of perjury*) required for support determinations. It must be signed *[before a notary public]*, filed with the court~~[,]~~ and served upon the other party (or their attorney). If no party seeks spousal support or a deviation (change) from the uniform child support guidelines, you need only complete the affidavit (pages 1 through 6) and any attachments requested on those pages. If any party seeks either spousal support or any deviation (change) from the uniform child support guidelines, you must complete not only the Affidavit (pages 1 through 6) and any attachments requested on those pages, but also the attached "Schedule 1 - Monthly Expenses and Rebutting Factors Required." In addition, certain documentation MUST be attached as indicated on page 2.

* * * * *

[I certify that my answers and the information on this affidavit and the attached schedules are true to the best of my knowledge and ability. I further certify that the information on the attached documents is true to the best of my knowledge and ability.]

Form 15.010.1a is changed in relevant part as follows:

* * * * *

[STATE OF OREGON

_____ COUNTY ss.

I, the above-named plaintiff, having been duly sworn, state that I have read the above claim and that it is true as I verily believe, and that I have made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.]

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: _____ Plaintiff _____

[SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

My Commission expires _____]

* * * * *

Form 15.010.1b is changed in relevant part as follows:

* * * * *

In furtherance of this request *[and being duly sworn]*, I state that:

* * * * *

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Plaintiff's Name (print)

DATED: _____ Authorized Signature _____

[SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

My Commission expires _____]

Form 15.010.1c is changed in relevant part as follows:

* * * * *

I hereby declare the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Plaintiff's Name (print)

DATED: _____

Authorized Signature

[SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

My Commission expires _____]

3. **2.110** - Adopt a new rule and form on procedures for protecting personal information in existing court files.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 66, to recommend approval, passed by consensus.

REASON

This proposal was originally placed on the April 9, 2004, agenda pursuant to Chief Justice Order 03-074, December 24, 2003. It was carried over to the meeting on October 8, 2004, to extend the opportunity for public comment. The proposal is made in anticipation of privacy concerns that may be explored by the 2005 Legislative Assembly. See related item III.A.4. below.

PROPOSED AMENDMENT

2.110 PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, PROCEDURES TO SEGREGATE WHEN INFORMATION ALREADY EXISTS IN A CASE FILE

(1) Purpose. This rule establishes:

(a) Procedures for a person to identify and segregate protected personal information when that information already exists in a document in a court case file and to request the information be kept from inspection by the general public.

(b) A process for a court, when it grants a request under this rule, to segregated and protected personal information from

nonprotected information in the case file in a uniform way with an appropriate record.

(2) Information covered. This rule may be followed to segregate and protect the same information already existing in a case file that could be segregated and protected at the time of submission under UTCR 2.100. The definitions in UTCR 2.100 apply to this rule.

(3) Relationship to other law. The following all apply to this rule:

(a) This rule is not the exclusive means for a court to protect personal information in case files from public inspection.

(b) Courts may use SLR to establish other procedures related to identifying and protecting information courts are allowed or required to keep confidential. But, SLR 2.111 is preserved for purposes of a court to:

(i) require use of forms or procedures under this rule to identify specific protected personal information so that a court can segregate the information and protect it from public inspection; and

(ii) establish requirements supplemental to this rule as necessary to help administer this rule.

(c) Nothing in this rule affects or applies to procedures for identifying and protecting contact information:

(i) Of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).

(ii) That can be made confidential under ORS 25.020(8)(d), 109.767(5), 110.375, or 192.445.

(4) Procedure to follow. A person may only request protected personal information be segregated under this rule when the information is already in a document that has become part of a court case file. To do so, a person must do all the following:

(a) Complete an affidavit in substantially the form provided in UTCR Form 2.110.4a. The affidavit:

(i) Need not be notarized but must be signed by the requestor and contain language that the person knowingly gives the information under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if the person provides false information to the court.

- (ii) Must describe generally the protected personal information and set out the legal authority for protecting the information.
- (iii) Must specifically identify the case file, document in the case file, and the page number of the page that is sought to be redacted.
- (iv) Must be accompanied by a copy of that page sought to be redacted showing specifically the protected personal information to be redacted.
- (b) Complete an information sheet in substantially the form provided in UTCR Form 2.100.4b to duplicate the protected personal information sought to be segregated and attach the information sheet to the affidavit.
- (c) File the completed forms and attachments with the court.
- (d) Pay the required fee set by Chief Justice Order. (Note: *Fiscal analysis has shown this fee will be need to be set at \$25.00 for each page sought to be redacted in order to recover court costs.*)
- (e) For purposes of UTCR 2.080, mail or deliver to parties a copy of the affidavit only, and not the information sheet or attachments to the information sheet.
- (5) Court response. When a completed request is filed under this rule and granted by the court, the court will do the following:

 - (a) Segregate and protect the specifically identified protected personal information from the specific location in the specific document that is the object of the request unless there is a question about the court's legal authority to keep the specific information from public inspection. The requestor need not obtain the signature of a judge. As official custodian of the case file under the OPRL, the trial court administrator will resolve any question about whether, or the extent to which, information may be kept from disclosure under this rule unless statute or court order expressly provides otherwise. A request under this rule to keep information confidential, segregated, or exempt from public inspection is not subject to challenge and hearing except as specifically provided by law.
 - (b) Separate and maintain the information sheet and any attachments as not subject to public inspection. Once the information sheet is separated, place the affidavit in the case file.

(c) Replace any page from which the specific information is removed with a redacted copy of the page and keep the original, unmodified page with the information sheet and its attachments. Any substitute page from which the specific information is removed will include a notation of the date and responsible individual and that the redacting was done under this rule. Courts will separate information and redact documents under this rule according to the State Court Administrator’s direction, or as otherwise specifically provided by law.

(d) Send a notice confirming completion of work, that work cannot be completed for some reason, or that a request is denied, only if the person includes a self-addressed, postage prepaid postcard that the court can use for that task. The postcard must also include the following text to be filled in as indicated for the court to mail:

“Dear _____ (*person requesting print your name here*), Your request of _____ (*insert date of request*) to segregate specific personal information from information the general public can inspect in the case file for case number _____ (*insert case number*) in the Circuit Court for _____ (*insert county*) County (*court will check and complete the appropriate following response*):

Was completed on _____ (*insert date*).
_____ (*initial of appropriate court employee*)

Could not be completed because (*explain and provide contact information for further action*):

Was denied because (*explain and provide contact information for further action*):

(6) Time limits, court authority to refuse request based on resources. This rule sets no time limit for courts to segregate information from existing court records when requested under this rule. Courts have a reasonable time given their ordinary workload and resources available. And, notwithstanding other parts of this rule, a court is not required to segregate information from existing court records based on a request under this rule if the workload created would adversely affect the resources available for a court to perform its ordinary duties.

(7) Parts of UTCR 2.100 that apply to this rule. The following subsections of UTCR 2.100 are applicable to this rule: (2), (5), (7), (8), and (9).

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

_____ Division - _____
(court's address and phone number)

Case name: _____)

CASE No. _____)

Plaintiff Name)

v.)

1ST Defendant Name)

**UTCRC 2.110 AFFIDAVIT, REQUEST TO
REDACT PROTECTED PERSONAL
INFORMATION FROM DOCUMENT EXISTING IN
CASE FILE**

IMPORTANT NOTE TO PERSON COMPLETING THIS AFFIDAVIT: Except as specifically ordered by a court, this affidavit and UTCR Form 2.100.4b **cannot be used for contact information** (addresses, telephone numbers, employer identification, and similar information that can be used to contact someone, see *UTCRC 2.110*). The type of information that can be protected by this form is limited to what is listed in UTCR 2.100.

To the court: By this affidavit under UTCR 2.110, I request that the protected personal information in the form attached to this affidavit be redacted from a document in the case file for the case noted above that the general public can see.

The protected personal information I request to be segregated is as follows:

A. The following is a general description of the protected personal information (<i>example description, "my social security number" or "father's bank account number"</i>). <u>Do not include specific protected personal information here.</u>	B. The following is the legal authority by which I believe this information may be exempt from public inspection (<i>cite to statute, rule, case, etc.</i>). <i>Row numbers correspond to those in column A. Add rows in both columns as necessary.</i>
1.	1.
2.	2.
3.	3.
4.	4.

PERSON MAKING REQUEST MUST COMPLETE ALL THE FOLLOWING AS INDICATED:

1. *(Initial to confirm)* _____. The specific protected personal information described above is provided on the attached UTCR 2.100 segregated information sheet.
2. The specific protected personal information is in the document in the case file that the following identifies:
 - a. Case file number where found: _____.
 - b. Description of document containing the information: _____.
 - c. Page number (*identification*) of the page(s) containing the information: _____.
 - d. A copy of the object page(s) showing specifically the information to be redacted is attached (*required*): Yes No
3. I have attached the required fee of \$_____ per page for all of the _____ (*number of pages*) pages I have requested be redacted for a total amount of \$_____ (*total amount of check or money order attached*).
 Yes No
4. I (*initial one*) _____ have OR _____ have not attached a self-addressed, stamped postcard with language required by UTCR 2.110 so that the court can inform me of its response to this request.
5. *(Initial to confirm)* _____. I understand that while the protected personal information may be withheld from the general public if this request is granted, it may still be available to some persons and government agencies for purposes described in UTCR 2.100.
6. *(Initial to confirm, write "NA" if not applicable)* _____. If this document was prepared by someone who is not an attorney, I have attached a completed document preparation certification that applies to both this affidavit and the attached form as required by UTCR 2.010(7).
7. *(Initial to confirm)* _____. I have mailed or delivered copies of this request (*not including the attached UTCR Form 2.100.4b and its attachments*) to people required by UTCR 2.080.

I knowingly give the information in this affidavit, the attached information sheet, and any attachments to the information sheet under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if I knowingly provide false information to the court.

Date _____
OSB# (*if applicable*) _____

Signature _____
Type or print name _____

For office use:

Segregation _____ granted OR _____ denied (*state reason*) _____

Date: _____

TRIAL COURT ADMINISTRATOR
By _____

4. 2.080 - Amend to reflect proposed new rule 2.110.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 67, to recommend approval, passed by consensus.

REASON

This proposal to amend is intended to make the rule consistent with proposed new rule 2.110. See related item III.A.3. above.

PROPOSED AMENDMENT

2.080 COMMUNICATION WITH COURT

(1) Except as exempted by statute [or] UTCR 2.100 , **or UTCR 2.110**, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing or delivery.

(2) All written communication to the court shall refer to the title of the cause and the case number.

5. 3.120 - Amend rule to allow court-supervised contact between jurors and trial counsel upon conclusion of a case.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 81, to recommend approval, passed 5-4.

REASON

The committee members in favor of the proposal felt that it would give attorneys an opportunity to get juror feedback on their courtroom skills. Some members were concerned about problems that could arise with pro se parties. When the matter has been considered in the past, some members have raised concerns about juror privacy and safety. As background, a similar proposal was considered by the committee in the fall of 2002 (as well as the spring of 2003) and recommended for approval. The Chief Justice raised that proposal at a regular Supreme Court public meeting on May 13, 2003. The full court discussed this matter and reached a consensus in opposition to the proposal. The Chief Justice then disapproved the proposed amendment. The UTCR Committee reconsidered the proposal in the fall of 2003, and the spring of 2004, at which time the committee rejected a revised amendment to the rule. This proposal was revisited by the Chief Justice and the Supreme Court at a public meeting held April 13, 2004. The court was again resolute in its opposition to the proposal.

PROPOSED AMENDMENT

3.120 COMMUNICATION WITH JURORS

(1) Except as necessary during trial, and except as provided in subsections (2) and (3), parties, witnesses or court employees must not initiate contact with any juror concerning any case which that juror was sworn to try.

- (2) After a sufficient showing to the court and on order of the court, a party may have contact with a juror in the presence of the court and opposing parties when:
- (a) there is a reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict; or
 - (b) there is a reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.
- (3) **The court may allow a party's attorney to have contact with jurors**

upon discharge of the jury, provided:

(a) **each juror is given the opportunity to decline such contact**

and to leave the premises before contact with other jurors begins;

(b) **all parties' attorneys are given the opportunity to participate**

in the contact; and

(c) **the contact occurs only in the presence of the court.**

6. **4.050** - Amend to state that the court is not required to grant oral argument on a motion to postpone trial.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 71, to recommend approval, passed by consensus.

REASON

The purpose of the proposal is to promote efficient use of court time by removing the mandate of oral argument on motions to postpone trial. Most often, oral argument on these motions is unnecessary. The court would retain its discretion to grant oral argument in appropriate cases.

PROPOSED AMENDMENT

4.050 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

- (1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response, **except that the court is not required to grant oral argument on a motion to postpone trial.** The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.

- (2) * * *

* * * * *

7. **Chapter 5** - Adopt a new rule establishing a form for notice to the Department of Justice, Crime Victims' Assistance Section, of punitive damages.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 68, to recommend approval, passed by a vote of 8-1.

REASON

The Oregon Department of Justice, Crime Victim's Assistance Section, made this proposal in order to promote better compliance with ORS 31.735(3) which requires a prevailing party to give notice to the Department of Justice of entry of a verdict that includes an award of punitive damages and entry of a judgment based on a verdict that includes an award of punitive damages. Currently, the department receives approximately ten such notices per year.

PROPOSED RULE AND FORM

5.120 NOTICE TO THE DEPARTMENT OF JUSTICE, CRIME VICTIMS' ASSISTANCE SECTION, OF PUNITIVE DAMAGES

(1) The notices required by ORS 31.735(3), concerning verdicts and judgments that include punitive damages, shall substantially be in the form specified in Form 5.120.1 in the UTCR Appendix of Forms.

(2) The prevailing party shall promptly file with the court a copy of each notice and the proof of service.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

Case name:

_____ ,

Case No. _____

Plaintiff,

**UNIFORM NOTICE OF ENTRY OF
VERDICT/JUDGMENT INCLUDING AN AWARD
OF PUNITIVE DAMAGES**

v.

_____ ,

Defendant.

Written notification hereby is given to the Department of Justice, Crime Victims'

**Assistance Section, 1162 Court St NE., Salem, Oregon 97301, that a [check appropriate
box]**

verdict that includes an award of punitive damages

judgment based on a verdict that includes an award of punitive damages

was entered in favor of _____, plaintiff/defendant/other [circle

appropriate designation] in the above-captioned matter, on

_____ **[insert date]. This notice is given pursuant to ORS 31.735(3)**

and UTCR 5.120.

Date

Signature

OSB# (if applicable)

Type or print name

**FORM 5.120.1 - UNIFORM NOTIFICATION OF ENTRY OF VERDICT/ENTRY OF JUDGMENT INCLUDING AN AWARD OF
PUNITIVE DAMAGES - UTCR 5.120(1)**

8. **5.100** - Amend to require prevailing party to serve the Victims Assistance Program with any proposed judgment containing a punitive damages award.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 68, to recommend approval, passed by a vote of 8-1.

REASON

The Oregon Department of Justice, Crime Victim's Assistance Section made this proposal in order to promote better compliance with 31.735(3) which requires a prevailing party to give notice to the Department of Justice of an award of punitive damages. Currently, the Department receives approximately ten such notices per year.

PROPOSED AMENDMENT

5.100 SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

- (1)** Any proposed judgment, except those subject to UTCR 10.090, or proposed order submitted in response to a ruling of the court must be:
- [(1)](a)** served on opposing counsel not less than [*three*] **3** days prior to submission to the court, or
 - [(2)](b)** accompanied by a stipulation by opposing counsel that no objection exists as to the form of the judgment or order, or
 - [(3)](c)** mailed to an unrepresented party at the party's last known address not less than 7 days prior to submission to the court, or
 - [(4)](d)** presented in open court with the parties present.
- (2)** **Any proposed judgment containing an award of punitive damages shall be served on the Director of the Oregon Department of Justice, Crime Victim's Assistance Section, 1162 Court Street NE, Salem, OR 97301, not less than 3 days prior to submission to the court.**

9. **9.160(3)(f)** - Amend to correct inaccurate reference to another UTCR.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 73, to recommend approval, passed by consensus.

REASON

The rule contains an incorrect reference to UTCR 9.060(2).

PROPOSED AMENDMENT

9.160 FORM OF ACCOUNTINGS

* * * * *

(1) * * *

* * * * *

(3) Receipts and Disbursements. The accounting of receipts and disbursements shall meet the following requirements for each depository account:

(a) * * *

* * * * *

(f) Any difference between the closing balance shown for the account in the accounting and the closing balance shown for the account in a depository statement filed [*under UTCR 9.060(2)*] **in accordance with these rules** shall be reconciled.

(g) * * *

* * * * *

(4) * * *

* * * * *

10. **15.010** - Amend rule and adopt a new form entitled "Notice of Defendant's Election"

ACTION TAKEN

Preliminarily recommended for approval.

Motion 75, to recommend approval, passed by consensus.

REASON

Other uniform forms have been adopted for the convenience of plaintiffs. This change would provide a uniform form for the convenience of defendants.

PROPOSED AMENDMENT AND FORM

15.010 SMALL CLAIMS FORMS

(1) The following small claims documents shall be accepted, when the proper fee is tendered, by all judicial districts that accept small claims filings:

(a) * * *

* * * * *

(e) Notice of Defendant's Election substantially in the form specified in Form 15.010.1e in the UTCR Appendix of Forms as a form for use to respond to a claim and notice of claim in a small claims action pursuant to ORS 46.455.

(2) Forms in these formats may be made mandatory by SLR. SLR 15.011 is reserved for making such formats mandatory in the judicial district.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

Small Claims Division - _____
(court's address and phone number)

Plaintiff

CASE No. _____

V.

**NOTICE OF DEFENDANT'S
ELECTION**

Defendant(s)

**EACH DEFENDANT LISTED ABOVE MUST SIGN AND FILE A SEPARATE NOTICE OF DEFENDANT'S
ELECTION.**

1. ___ I ADMIT the plaintiff's claim. I will pay the amount of the claim or return any property claimed, together with the filing fees and service expenses, directly to the plaintiff and mail proof of that delivery and payment to the court within 14 calendar days of the date of service of the claim.

2. ___ I DENY the claim and demand a Small Claims hearing. Enclosed is \$40.00 if amount claimed is \$1,500.00 or less or \$77.00 if amount claimed is over \$1,500.00.

3. ___ I DENY the claim, demand a Small Claims hearing, and wish to file a COUNTERCLAIM arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim for \$5,000.00 or less. If the amount or value claimed by the plaintiff is \$1,500.00 or less and defendant's counterclaim is \$1,500.00 or less, enclose \$40.00. Enclose \$77.00 if the amount or value claimed by the plaintiff is \$1,500.01 to \$5,000.00 or defendant's counterclaim is \$1,500.01 to \$5,000.00. I claim that the plaintiff owes me \$ _____ because:

4. ___ I DENY the claim and demand a JURY TRIAL. (Applicable only if the claim exceeds \$750.00.) Enclosed is the defendant's appearance fee of \$111.00 and a jury fee of \$130.00. This election requires the plaintiff to file a formal complaint in circuit court. In the event the plaintiff does not file a formal complaint, I request that my JURY FEE (in the amount of \$130.00) be refunded to me. The plaintiff is authorized to mail a copy of the formal complaint to me at:

Street/Apt. No. / PO Box No. City State Zip Code

I have read and understand the above. I have chosen one of the four alternatives and have enclosed the appropriate fee.

DATED: _____

SIGNED: _____

Print Full Name

Mailing Address

City State Zip Code

Phone No.

- 11. Form 15.010.1b** - Amend default judgment/defendant status form to change wording pertaining to defendant's military status.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 77, to recommend approval, passed by consensus.

REASON

The proposed change requires the party requesting a default judgment to set out facts supporting the assertion that the defaulting party is not currently in the military service, as required by the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 to 593.

PROPOSED AMENDMENT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

Small Claims Division - _____
(court's address and phone number)

Plaintiff _____

CASE No. _____

v.

REQUEST FOR DEFAULT JUDGMENT;
DEFENDANT STATUS AFFIDAVIT

Defendant(s) _____

(NOTE: Complete this and attach a completed Judgment you propose)

I, _____ request default judgment against _____
Name Other Party's Name
for the following :

- A total judgment award of \$ _____, which total includes:
1. A money award of \$ _____,
2. Prejudgment interest of \$ _____,
3. Accrued arrearages of \$ _____, if any,
4. Costs and service expenses of \$ _____,
5. A prevailing party fee under ORS 20.190 of \$ _____

I request judgment include postjudgment interest at a rate of _____% per _____ based on _____
(authority for interest)

And, I request the following terms in addition to or in lieu of a money award: NONE, or _____

I have attached a completed proposed small claims judgment for purposes of this request.

In furtherance of this request and being duly sworn, I state that:

- 1. The above-named defendant(s) was duly and regularly served with a copy of the claim and failed to pay the claim or demand a hearing or trial within 14 days;
2. To the best of my knowledge and belief, [N] no person against whom I seek judgment by this request is [I, to the best of my knowledge and belief] :
(a) one of the following defined by ORS 125.005 and protected by ORCP 69B: a minor, incapacitated, a protected person, or a respondent;
(b) a person protected by the [Soldiers' and Sailors' Civil Relief Act or 1940, as amended (50 App.USC 501 to 593).] Servicemembers Civil Relief Act (50 U.S.C. App. 501 to 596). The facts that support this statement are: _____

Plaintiff's Name (print) _____

DATED: _____

Authorized Signature _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 200__.

NOTARY PUBLIC FOR OREGON

Form 15.010.1b – REQUEST FOR DEFAULT JUDGMENT; DEFENDANT STATUS AFFIDAVIT; – UTCR 15.010(1)(b)

- 12. Form 15.010.1d** - Amend judgment form to add check boxes to identify type of judgment (general, limited, or supplemental) sought.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 76, to recommend approval, passed by consensus.

REASON

This proposal makes the form consistent with ORCP 18.038(2) which states that the title of a judgment document must indicate whether the judgment is “limited,” “general,” or “supplemental.”

PROPOSED AMENDMENT

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

Small Claims Division - _____
(court's address and phone number)

Plaintiff _____

CASE No. _____

V.

**SMALL CLAIMS JUDGMENT;
MONEY AWARD**

General **Limited** **Supplemental**

Defendant(s) _____

Submitted by: _____ Plaintiff
 Defendant

JUDGMENT. I hereby give judgment in this case for the Judgment Creditor named in the money judgment/money award below and against the judgment debtor(s) named therein.

In addition to or in lieu of the money award below, this judgment establishes the following requirements: NONE, OR _____

MONEY JUDGMENT/MONEY AWARD

1. Judgment Creditor: _____
Name(s)/Address

2. Judgment Creditor's Attorney: None, OR _____
Name/Address/Phone No. _____ in this case.

3. Judgment Debtor(s). Information for any additional debtor(s) is provided in attachments and incorporated herein by reference:

4a. Name: _____ 4b. Name: _____

5a. Address: _____ 5b. Address: _____

6a. DOB: _____ 6b. DOB: _____

7a. SSN or Tax ID: _____ 7b. SSN or Tax ID: _____

8a. Dr Lic. No./State: _____ 8b. Dr Lic. No./State: _____

9. Judgment Debtor's Attorney: None, OR _____
Name _____ in this case.

10. I know the following person or public body is entitled to a portion of the money award: NO ONE, OR _____
Name _____

11. Judgment is for a total judgment award of \$ _____, which includes the following money amounts (and postjudgment interest at rate shown):

12. Money award of \$ _____

15. Accrued arrearages of \$ _____

13. Prejudgment interest of \$ _____

16. Costs and service expenses of \$ _____

14. Postjudgment interest on "11" will be at _____% per _____.

17. Prevailing party fee of \$ _____

DATED SIGNED: _____

Circuit Court Judge

Print Judge's Name

13. **Various** - Amend to implement various nonsubstantive grammatical and typographical changes.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 82, to recommend approval, passed by consensus.

REASON

Mary Bauman, editor-composer for the Oregon Judicial Department Publications Section, suggested various grammatical and typographical corrections to improve the appearance of the rules.

PROPOSED AMENDMENTS

The proposed changes are numerous, but are not substantive, so they will not be set out here to save space and paper. The changes occur at:

2.100

2.110 (proposed)

3.170 (this change will require approval of the Oregon Supreme Court)

8.010

12.600

12.760

Form 2.100.4a

Form 2.100.4b

Form 2.100.8

Form 2.110.4a (proposed)

Form 8.010.5

Forms for Chapter 12

- B. RECOMMENDATIONS OF DISAPPROVAL.** These proposals are published to solicit public comment (see Section I. Introduction).

1. **Chapter 2** - Adopt new provisions to specify what constitutes a mailing for service of legal documents.

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.

No motion made.

REASON

This proposal was originally added to the fall 2003 agenda two days before that meeting. It was submitted by Kristen S. David, an Oregon City attorney. The committee felt it did not have enough information or time to properly consider the matter and carried the item over to the spring 2004 meeting. At the spring meeting the committee decided to carry the matter over to the October 8, 2004, meeting to allow Ms. David additional time to develop the concept. The committee decided, at the most recent meeting, that there was not enough new information to warrant action on this proposal.

PROPOSED AMENDMENT

A draft proposal was not submitted.

2. **Chapter 2** - Adopt a new rule and form requiring use of a mandatory uniform certificate of service.

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
No motion made.

REASON

This proposal was originally added to the fall 2003 agenda two days before that meeting. It was submitted by Kristen S. David, an Oregon City attorney. The committee felt it did not have enough information or time to properly consider the matter and carried the item over to the spring 2004 meeting. At the spring meeting the committee decided to carry the matter over to the October 8, 2004, meeting to allow Ms. David additional time to develop the concept. The committee decided, at the most recent meeting, that there was not enough new information to warrant action on this proposal.

PROPOSED AMENDMENT

A draft proposal was not submitted.

3. **4.050(1)** - Amend to allow a judge to deny oral argument when a motion is, on its face, without merit

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
Motion 78 to recommend preliminary approval died for lack of a second to the motion.

REASON

The proposal, from The Honorable Garry L. Reynolds, Umatilla County Circuit Court, was intended to eliminate oral argument on frivolous motions (especially those made by pro se defendants in postconviction proceedings) to improve efficient use of court time. The committee discussed the purpose underlying the oral argument requirement and the effect on pro se parties.

PROPOSED AMENDMENT

A draft proposal was not submitted.

4. **Chapter 5** - Adopt a new rule concerning anticipatory collection fees in default judgments

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
No motion made.

REASON

This item was proposed by Rudy M. Murgo, former Umatilla County Circuit Court judge. The committee received no information on the nature of the underlying problem nor on a proposed solution.

PROPOSED AMENDMENT

A draft proposal was not submitted.

5. **5.010(1) & (2)** - Amend to more closely resemble United States District Court LR 7.1(a) regarding counsel conferring on motions

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
No motion made.

REASON

UTCR 5.010 requires parties to make a good faith effort to confer on the dispute underlying the motion. LR 7.1(a) requires parties to confer in person or by telephone. The committee did not see any significant difference between the rules nor was any information presented to indicate that there is a problem in this area. This item was proposed by The Honorable Edwin J. Peterson.

PROPOSED AMENDMENT

A draft proposal was not submitted.

6. **5.030** - Amend to require an opposing party that wants oral argument to request oral argument.

ACTION TAKEN

Preliminarily recommended for disapproval.
Motion 70, to recommend disapproval, passed by consensus.

REASON

This proposal, by The Honorable Claudia M. Burton, Marion County Circuit Court, addresses the situation where a moving party requests oral argument, the other party does not file opposition to the motion, the court rules without oral argument, and the other party then objects to the lack of oral argument. The committee discussed the proposal with the proponent and concluded there was not sufficient reason to amend the rule. The committee also discussed case law on oral argument.

PROPOSED AMENDMENT

A draft proposal was not submitted.

7. **5.050** - Amend to make oral argument mandatory only when there is opposition to a motion

ACTION TAKEN

Preliminarily recommended for disapproval.
Motion 70, to recommend disapproval, passed by consensus.

REASON

This proposal, by The Honorable Claudia M. Burton, Marion County Circuit Court, addresses the situation where a moving party requests oral argument, the other party does not file opposition to the motion, the court rules without oral argument, and the other party then objects to the lack of oral argument. The committee discussed the proposal with the proponent and concluded there was not sufficient reason to amend the rule. The committee also discussed case law on oral argument.

PROPOSED AMENDMENT

A draft proposal was not submitted.

8. **5.080** - Amend rule and adopt form for affidavit supporting request for attorney fees.

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
No motion made.

REASON

This proposal, by Kristen S. David, an Oregon City attorney, was originally added to the fall 2003 agenda two days before that meeting. The committee felt it did not have enough information or time to properly consider the matter and carried the item over to the spring 2004 meeting. At the spring meeting the committee decided to carry the matter over to the October 8, 2004, meeting to allow Ms. David additional time to develop the concept. The committee decided, at the most recent meeting, that there was not enough new information to warrant action on this proposal.

PROPOSED AMENDMENT

A draft proposal was not submitted.

9. **Chapter 6** - Adopt a new rule requiring parties to have foreign-language written and recorded evidence translated prehearing by a certified/qualified interpreter.

ACTION TAKEN

Preliminarily recommended for disapproval.
Motion 79, to recommend disapproval, passed by consensus.
Motion 80, the committee recommends the Oregon Judicial Department form a committee of judges, attorneys, and interpreters to study the issues raised by this proposal.

REASON

This proposal, by James B. Comstock, Oregon Judicial Department Interpreter Services Program Manager, is meant to prevent situations where a party presents written or recorded foreign-language evidence at a hearing and requests immediate translation. The committee was concerned that the "certified" translator requirement may be too stringent. They were also concerned that quality control issues were for the judges and attorneys to address, not the interpreters. The committee questioned whether this proposal was necessary at this time, and they were concerned about the effect it could have on smaller judicial districts.

PROPOSED AMENDMENT (sic)

UTCRC 6.21 Presentation of written or recorded evidence in languages other than English.

(1) If a party intends to offer recorded (e.g. audio, video, DVD, streaming media, etc.) or written evidence containing a language other than English at an evidentiary hearing or trial, prior to presentation of the item the party must:

(a) Have the non English portions of any written evidence translated into English prior to the hearing by one of the following:

A translator certified by the American Translator's Association for translation from the source language into English.

An interpreter certified at the Master Level by the Oregon Judicial Department, who also has a minimum of three years of experience in translation work (or equivalent as determined by Court Interpreter Services).

For languages not certified by the American Translator's Association or the Oregon Judicial Department a translator or interpreter deemed qualified by the Oregon Judicial Department's Court Interpreter Services program.

-
- (b) Have any recorded evidence (video or audio) transcribed and translated prior to the hearing in accordance with the transcription and translation format below by one of the following:

A translator certified by the American Translator's Association for translation from the source language into English.

An interpreter certified at the Master Level by the Oregon Judicial Department, who also has a minimum of three years of experience in translation work (or equivalent as determined by Court Interpreter Services).

For languages not certified by the American Translator's Association or the Oregon Judicial Department a translator or interpreter deemed qualified by the Oregon Judicial Department's Court Interpreter Services program.

-
- (c) If evidence in the form of written material is submitted in a language other than English and accompanied by a translation, copies of both the original and the translation must be provided to the other parties in the proceeding in the manner provided by the statutes and rules relating to service, notice and discovery of writings in civil and criminal proceedings in courts of justice of this state and before judicial officers.

-
- (d) If an audio or video recording is submitted in a language other than English and accompanied by a transcription and translation, copies of the audio or video recording and the transcription and translation must be provided to the other parties in the proceeding in the manner provided by the statutes and rules relating to service, notice and discovery of

writings in civil and criminal proceedings in courts of justice of this state and before judicial officers.

(e) The interpreter/translator shall sign and certify the transcription and translation as having been performed to the best of his or her ability.

(f) When a team of translators and/or interpreters work on a recording or document, one person shall act as the certifying interpreter and translator, signing and certifying the transcription and translation.

(g) Interpreters/translators who have provided transcription and/or translation services on a case may not work as interpreters for the court on the same case.

(h) Staff interpreters of the Judicial Department may not provide transcription and/or translation services on a case without a specific waiver from an Interpreter Supervisor.

(2) Format of Transcription and Translation of Audio or Video Recordings

(a) All transcriptions must be completed in the source language, with an accompanying translation into English in accordance with the format protocol established by Court Interpreter Services.

10. **Chapter 12 (Mediation)** - Adopt numerous substantive changes to the entire chapter, including changes regarding mediator qualifications.

ACTION TAKEN

Preliminarily recommended for disapproval.

Motion 74, to recommend disapproval, passed by consensus.

REASON

The draft of the proposal presented to the committee by the Court-Connected Mediator Qualifications Advisory Committee was a work in progress. The committee did not feel it could recommend approval without first reviewing the final draft of the proposal. The proponents were hopeful that a final draft could be provided to the committee before its next meeting on April 1, 2005. The committee was concerned about the proposed qualifications and training required for mediators and the effect on smaller judicial districts where there are already few mediators available. Discussion on other substantive issues was not undertaken since a final draft was not available.

PROPOSED AMENDMENT

CHAPTER 12—MEDIATION

GENERAL REQUIREMENTS FOR ALL COURT-CONNECTED MEDIATORS

12.500 APPLICABILITY

The rules in UTCR 12.500 to **12.750** [12.760]:

- (1) Establish minimum qualifications, **obligations and mediator disclosures**, including education, training, experience, and conduct requirements, applicable to:
 - (a) General civil mediators as provided by ORS 36.200(1).
 - (b) Domestic relations custody and parenting mediators as provided by ORS 107.775(2).
 - (c) Domestic relations financial mediators as provided by ORS 107.755(4).
- (2) **Provide that a mediator approved to provide one type of mediation may not mediate another type of case unless the mediator is also approved for the other type of mediation.** *[Do not allow persons listed as qualified for one type of mediation to perform another type of mediation which requires a different qualification unless the mediator is also listed as qualified for the other type of mediation.]*
- (3) Do not:
 - (a) In any way alter the requirements pertaining to personnel who perform conciliation services under ORS 107.510 to 107.610.
 - (b) Allow mediation of proceedings under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040, or 163.738, as provided in ORS 107.755(2).
 - (c) In any way establish any requirements for compensation of mediators.
 - (d) Limit in any way the ability of mediators or qualified supervisors to be compensated for their services.

[NOTE: CJO 03-058 which adopts these rules, provides as follows: “Although the attached adopted UTCR change the format and modify what currently exists to be consistent with the form and tone of the UTCR and the structure of the Oregon Judicial Department, they are drafted to incorporate all specific requirements and are to be interpreted as to not change existing practice under the replaced Oregon Administrative Rules (OAR) until August 1, 2004, at which time these UTCR will be interpreted according to their plain language.”]

12.510 DEFINITIONS

As used in UTCR 12.500 to 12.750 [12.760]:

- (1) **“Approved mediator” means a mediator who a circuit court or judicial district of this state officially recognizes and shows by appropriate official documentation as being approved within that court or judicial district as a general civil mediator, domestic relations custody and parenting mediator, or domestic relations financial mediator for purposes of the one or more mediation programs operated under the auspices of that court or judicial district that is subject to UTCR 12.500.**
- (2[1]) “Basic mediation curriculum” means the curriculum set out in UTCR 12.710 [12.730].
- (3[2]) “Continuing education requirements” means the requirements set out in UTCR 12.750.
- (4[3]) “Court-system training” means a curriculum or combination of courses set out in UTCR 12.740.
- (5[4]) “Determining authority” means an entity that acts under UTCR 12.520 concerning qualification to be **an approved** [listed] mediator.
- (6) **“Domestic relations custody and parenting mediation curriculum” means the curriculum set out in UTCR 12.720.**
- (7) **“Domestic relations custody and parenting mediation supervisor” means a person who is qualified at the level described in UTCR 12.610.**
- (8[5]) “Domestic relations custody and parenting mediator” means a mediator for domestic relations, custody, parenting time, or parenting plan matters in circuit court under ORS 107.755 who meets qualifications under UTCR 12.610 as required by ORS 107.775(2).
- (9) **“Domestic relations financial mediation supervisor” means a person who is qualified at the level described in UTCR 12.620.**
- (10) **“Domestic relations financial mediation training” means a curriculum or combination of courses set out in UTCR 12.730.**
- (11[6]) “Domestic relations financial mediator” means a mediator for domestic relations financial matters in circuit court under ORS 107.755 who meets qualifications under UTCR 12.620 as required by ORS 107.755(4)[177.755(4)].
- [(7) “Experience requirement” means meeting requirements at a level described in UTCR 12.760.]

- [(8) *“Family or divorce curriculum” is a curriculum or combination of courses that includes at least four hours in each of the following areas:*
- (a) *mediation process;*
 - (b) *psychological issues;*
 - (c) *child development;*
 - (d) *family law; and*
 - (f) *family economics.]*
- [(9) *“Family studies course” means a seminar or graduate-level course or combination of courses which substantially covers each of the following:*
- (a) *child development;*
 - (b) *alcohol and drug abuse;*
 - (c) *domestic violence and child abuse;*
 - (d) *family financial planning and budgeting;*
 - (e) *family conflict theories and dynamics; and*
 - (f) *family law and divorce process.]*
- (12[10])** “General civil mediator” means a mediator for civil matters in circuit court under ORS **36.185** [36.189] to 36.210, including small claims and forcible entry and detainer cases, who meets qualifications under UTCR 12.600 as required by ORS 36.200(1).
- (13) “General civil mediation supervisor” means a person who is qualified at the level described in UTCR 12.600.**
- (14[11])** “Independent qualification review” means the process described in UTCR **12.700** [12.720].
- (15) “Mediation” is defined at ORS 36.110.**
- [(12) *“Lead trainer” means a person who is qualified at one of the levels described in UTCR 12.700.]*
- [(13) *“Listed mediator” means a mediator who a circuit court or judicial district of this state officially recognizes and shows by appropriate official documentation as being approved within that court or judicial district as a general civil mediator, domestic relations custody and parenting mediator, or domestic relations financial mediator for purposes of the one or more mediation programs operated under the auspices of that court or judicial district that is subject to UTCR 12.500.]*

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

- (1) The determining authority:
 - (a) Is the entity within a judicial district with authority to determine whether applicants to become an **approved [listed]** mediator for courts within the judicial district meet the qualifications *[for the appropriate listing]* as described in this chapter and whether **approved [listed]** mediators meet any continuing qualifications **or obligations** required by this chapter.
 - (b) Is the presiding judge of the judicial district unless the presiding judge has delegated the authority to be the determining authority as provided or allowed by statute. Delegation under this paragraph may be made to an entity chosen by the presiding judge to establish a mediation program as allowed by law or statute. A delegation must be in writing and, if it places any limitations on the presiding judge's ultimate authority to review and change decisions made by the delegatee, must be approved by the State Court Administrator before the delegation can be made.

- (2) Authority over qualifications. Subject to the following, a determining authority, for good cause, may allow appropriate substitutions, or obtain waiver, for any of the minimum qualifications for an **approved [listed]** mediator.
 - (a) Except as provided in (b) of this subsection, a determining authority that allows a substitution must, as a *[prehiring]* condition **of approval**, require the applicant to commit to a written plan to meet the minimum qualifications within a specified reasonable period of time. A determining authority that is not a presiding judge must notify the presiding judge of substitutions allowed under this section.
 - (b) For good cause, a determining authority, other than the presiding judge for the judicial district, may petition the presiding judge for a waiver of specific minimum qualification requirements for a specific person to be an **approved [listed]** mediator. A presiding judge may waive any of the qualifications to be an **approved [listed]** mediator in an individual case with the approval of the Oregon State Court Administrator.

- (3) **The determining authority may revoke a mediator's approved status in the event that the mediator no longer meets the requirements set forth in this chapter.** *[The State Court Administrator may approve the successful completion of a standardized performance-based evaluation to substitute for formal degree requirements under UTCR 12.610 or 12.620 upon determining an appropriate evaluation process has been developed and can be used at reasonable costs and with reasonable efficiency.]*

- (4) The determining authority may authorize the use of an evaluation to be completed by the parties, for the purpose of monitoring program and mediator performance. [Each determining authority that makes determinations for domestic relations financial mediators shall assure reasonably current lists of qualified supervisors, described in UTCR 12.710, are provided to each court for which it makes determinations. Each court shall assure that reasonably current lists of qualified supervisors working in programs for that court are provided to the Office of the State Court Administrator.]
- (5) In those judicial districts where a mediator is assigned to a case by the court, or where mediators are assigned to a case by a program sponsored or authorized by the court, the determining authority shall assure that parties to a mediation have access to information on:
- (a) How mediators are assigned to cases;
- (b) The nature of the mediator's affiliation with the court;
- (c) The process, if any, that a party can use to comment on, or object to the assignment or performance of a mediator.
- (6) The minimum qualifications of these rules have been met by an individual who is an approved mediator at the time these rules become effective if the individual has met the minimum requirements of the rules in effect prior to August 1, 2005.
- (7) The State Court Administrator may approve the successful completion of a standardized performance-based evaluation to substitute for formal degree requirements under UTCR 12.610 or 12.620 upon determining an appropriate evaluation process has been developed and can be used at reasonable costs and with reasonable efficiency.

12.530 MEDIATOR **ETHICS** [STANDARDS OF CONDUCT]

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

- (1) Disclose to the determining authority and the participants at least one of the relevant codes of mediator ethics, standards, principles, and disciplinary rules of the mediator's relevant memberships, licenses, or certifications; or, if the mediator does not have a relevant membership, license or certification, a relevant code of ethics, standards or principles to which the mediator subscribes;
- (2) Comply with relevant laws relating to confidentiality, inadmissibility, and non-discoverability of mediation communications including, but not limited to, ORS 36.220 and 107.785; and

- (3) Discuss with the participants prior to or at the commencement of the mediation 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) In appropriate cases, the advisability of proceeding with mediation under the circumstances of the particular dispute;**
 - (h) The availability of public information about the mediator pursuant to UTCR 12.540; and**
 - (i) If applicable, the nature and extent to which the mediator is being supervised.**

[A listed mediator required to meet or subscribe to standards of conduct of this section, must establish to the satisfaction of, and in the manner established by, the determining authority that the mediator meets or subscribes to all the following standards of conduct:

- (1) General responsibilities:**
- (a) Mediators have duties to the parties, to their profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties.**
 - (b) Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, show no bias toward individuals or institutions involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.**

(2) *Responsibilities to the parties:*

- (a) *Impartiality. The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations which the mediator may have with any participant and obtain all parties' consent to proceed as mediator.*
- (b) *Informed Consent. The mediator has an obligation to assure that all parties understand the nature of the mediation process, procedures to be utilized, and the particular role of the mediator. Each party's consent to proceed with mediation should be obtained early, prior to the beginning of substantive negotiations.*
- (c) *Confidentiality. Maintaining confidentiality is generally critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator shall inform mediation participants of the degree to which communications connected with the mediation process shall be confidential, including any individual caucuses which may be utilized. Except as legally required, the mediator should resist testifying and disclosing other information about the substance of a mediation at any proceeding without the consent of all mediating parties.*
- (d) *Suspension or Termination of Mediation. The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason, except as is required by law. If the mediator believes that participants are unable or unwilling to participate effectively in the mediation process, the mediator should suspend or terminate the mediation, except as is required by law. If the parties reach a final impasse, the mediator should not prolong unproductive discussions which result in emotional and monetary costs to the participants.*

(3) *Defining the process:*

- (a) *Comparison to Other Processes. In appropriate cases, the mediator shall explain that mediation is not arbitration, legal representation, or therapy. The mediator shall explain that the mediator will not decide any issues for the parties.*
- (b) *Independent Advice and Information. In mediations in which disputants personally represent their own individual interests and substantial legal issues exist, the mediator shall encourage participants to obtain desired individual legal advice and individual legal review of any mediated agreement as is reasonably necessary for the parties to reach an informed agreement.*
- (c) *Full Disclosure. In mediations in which disputants represent their own individual interests, the mediator shall seek to ensure to the mediator's, and all mediation participants', reasonable satisfaction*

the full disclosure of relevant information in the mediation process. If the mediator believes that full disclosure is not reasonably being made, the mediator shall express such concern to the mediation participants. If this concern is not reasonably satisfied, the mediator may suspend or terminate the mediation.

- (d) *Opportunity for Full Expression of Interests. The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.*
- (e) *Fees. The mediator has a duty to define and describe any fees for the mediation and to agree with participants as how fees are to be shared and the manner of payment before proceeding to facilitate substantive negotiations. When setting fees, the mediator shall ensure that they are explicit, fair, and commensurate with the service to be performed. Unearned fees must be promptly returned to the participants. It is inappropriate for a mediator to charge contingent fees or to base fees upon the outcome of a mediation. No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients.*
- (f) *Additional Representation or Roles. A mediator should not engage in any nonmediative role relative to the subject matter of a mediated dispute, except by the informed consent of all mediation participants.*

(4) *Responsibilities to the profession and the public:*

- (a) *Continuing Education. A mediator should participate in continuing mediation education and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professionals to promote mutual professional development.*
- (b) *Advertising. All mediation advertising must honestly represent the mediator's qualifications and the services to be rendered. No claims of specific results or promises should be made.]*

12.540 PROVIDING AND MAINTAINING PUBLICLY AVAILABLE INFORMATION

- (1) *[Contact I] Information for court use and public dissemination: All **approved [listed]** mediators must submit **UTCR Form 12.540.1 to the Determining Authority of [and maintain as current for public dissemination all the following information to]** each court at which the mediator is an **approved [listed]** mediator:*

- [(a) Programs and businesses which provide mediation services to the court through volunteer or employee mediators shall provide contact information for the program or business using UTCR Form 12.540.1a.*

(b) Any mediator whose court-connected mediation is provided solely through a program or business which has contact information on file with each court for which that program or business provides mediation services, may provide the name and contact information of that program or business as their own for purposes of this subsection.

(c) All mediators who do not work for a program or business shall provide contact information for themselves using UTCR Form 12.540.1a.]

(2) **All approved mediators must update the information contained in UTCR Form 12.540.1 at least once every two calendar years.**[Consumer information for public dissemination: All listed mediators who provide mediation through the court may submit and maintain as current for public dissemination information to be provided to potential users of mediation using UTCR Form 12.540.2.]

(3) **The information contained in UTCR Form 12.540.1 must be made available to all mediation parties and participants upon request.**

QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS BY CASE TYPE

12.600 QUALIFICATION AS AN **APPROVED** [LISTED] GENERAL CIVIL MEDIATOR, ONGOING OBLIGATIONS

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

(1) Training. An applicant must have completed [a total of at least 36 hours of] training, including all the following:

(a) The basic mediation curriculum, in UTCR **12.710** [12.730, provided by a lead trainer with type 1 qualifications, in UTCR 12.700,] or substantially similar training. [An individual who has completed the basic mediation training under either the "Community Dispute Resolution Program Rules" (OAR 718-020-0070) or the "Minimum Qualifications and Training for Court Connected Domestic Relations Mediators Rules" (OAR 718-030-0050(1) and (2)) has met the requirements established by this paragraph.]

(b) [At least six hours of c] **Court-system training** in UTCR 12.740 or substantially similar training **or education**.

(2) Experience. An applicant must have [completed experience requirements at experience level 1 in UTCR 12.760.]:

(a) Observed three actual mediations; and

(b) Participated as a mediator or co-mediator in at least three cases that have been or will be filed in court, observed by a person qualified as a general civil mediation supervisor and performing to the supervisor's satisfaction.

(3) Continuing Education. As an ongoing obligation, an approved general civil mediator must complete continuing education requirements in UTCR 12.750.

(4/3) Conduct. An applicant, and as an ongoing obligation, an **approved [listed]** general civil mediator, must subscribe to the **mediator ethics [standards of conduct]** in UTCR 12.530.

(5/4) Public information. An applicant, and as an ongoing obligation, an **approved [listed]** general civil mediator, must comply with requirements to provide and maintain information **as provided** in UTCR 12.540.

(6) Supervision. A qualified general civil mediation supervisor is an individual who has:

(a) Met the qualifications of a general civil mediator as defined in this subsection; and

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

12.610 QUALIFICATION AS AN **APPROVED [LISTED]** DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATOR, ONGOING OBLIGATIONS

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

(1) Education. An applicant must possess **at least** one of the following:

(a) A master's **or doctoral** degree **in counseling, psychiatry, psychology, social work, marriage and family therapy, or mental health** from an accredited college or university[*with substantial course work in a behavioral science*].

(b) A law degree from an accredited law school with *[substantial]* course work and/or Continuing Legal Education credits in family law.

(c) A master's or doctoral degree in a subject relating to children and family dynamics, education, communication, or conflict resolution from an accredited college or university, with coursework in human behavior, plus at least one year full time equivalent post-degree experience in providing social

work, mental health, or conflict resolution services to families.

- (d) A bachelor's degree in a behavioral science related to family relationships, child development, or conflict resolution, with coursework in a behavioral science, and at least seven years full time equivalent post-bachelor's experience in providing social work, mental health, or conflict resolution services to families.**

(2) Training. An applicant must have completed training in each of the following areas:

- (a) **The basic mediation curriculum in UTCR 12.710;** *[Mediation Training:*

[(i) the basic mediation curriculum in UTCR 12.730 and at least 24 hours of either family or divorce curriculum in UTCR 12.510, or training substantially similar to each of those curricula; or

(ii) a curriculum which combines the basic mediation curriculum in UTCR 12.730 and either family or divorce curriculum in UTCR 12.510, or training substantially similar to each of those curricula, in at least a 40-hour curriculum.]

- (b) **The domestic relations custody and parenting mediation curriculum in UTCR 12.720; and** *[For paragraph (a) of this section, the basic mediation training must be provided by a lead trainer with type 1 qualifications in UTCR 12.700, and the family or divorce curriculum must be provided by a lead trainer with type 2 qualifications in UTCR 12.700 and must include, in addition to the requirements under UTCR 12.730 and 12.510, the following as described:*

(i) Feedback given to the trainee, including an evaluation of the trainee by the trainer which identifies areas where trainee improvement is needed for the benefit of both the trainee and the program;

(ii) The training must specifically address assisting individuals during intake and case development to resolve their disputes with a minimum of intervention by a third party; and

(iii) The training must include at least six hours participation as a mediator or comediator in a minimum of three simulated or actual domestic relations mediation cases under the supervision of a lead trainer with type 2 qualifications in UTCR 12.700, or a supervisor with type 1 qualifications in UTCR 12.710.]

- (c) **Court-system training in UTCR 12.740 or substantially similar training.** *[Subject Matter Training:]*
- [(i) *At least six hours of court-system training in UTCR 12.740 or substantially similar training; and*
- (ii) *A family studies course as defined in UTCR 12.510.]*
- (3) Experience. An applicant must have **completed one of the following types of experience:** *[completed experience requirements at experience levels 2 and 3 in UTCR 12.760.]*
- (a) Participation in at least 20 cases including a total of at least 200 hours of domestic relations mediation supervised by or co-mediated with a person qualified as a domestic relations custody and parenting mediation supervisor. At least ten cases and 100 hours of the supervised cases in this paragraph must be in domestic relations custody and parenting mediation. At least three of the domestic relations custody and parenting mediation cases must have direct observation by the qualified supervisor.**
- (b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:**
- (i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 100 hours of domestic relations custody and parenting mediation, and**
- (ii) An understanding of court-connected domestic relations programs.**
- (4) Continuing education. As an ongoing obligation, **an approved** *[listed]* domestic relations custody and parenting mediator must complete continuing education requirements in UTCR 12.750.
- (5) Conduct. An applicant, and as an ongoing obligation, **an approved** *[listed]* domestic relations custody and parenting mediator, must subscribe to the **mediator ethics** *[standards of conduct]* in UTCR 12.530.
- (6) Public information. An applicant, and as an ongoing obligation, **an approved** *[listed]* domestic relations custody and parenting mediator, must comply with requirements to provide and maintain information in UTCR 12.540.

(7) Supervision. A qualified domestic relations custody and parenting mediation supervisor is an individual who has:

(a) Met the qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.610; and

(b) Completed at least 50 cases including a total of at least 500 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in this section; and

(c) An understanding of court-connected domestic relations programs.

[2004 NOTE: In the 2003 and 2004 versions of these rules, subsection (3) contains requirements that were included in the basic curriculum for domestic relations custody and parenting mediators under OAR 718-030-0050 that were not included in the basic curriculum for general civil mediators under OAR 718-040-0040. So they are included here because they are apparently additional requirements.]

12.620 QUALIFICATION AS AN **APPROVED** *[LISTED]* DOMESTIC RELATIONS FINANCIAL MEDIATOR, ONGOING OBLIGATIONS

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

(1) **Education** *[Qualifications]*. An applicant must meet **the education requirements** *[all of the qualifications]* under UTCR 12.610 applicable to an applicant to be **approved** *[listed]* as a domestic relations custody and parenting mediator*[, except continuing education]*.

(2) **Training. An applicant must have completed training in each of the following areas:** *[Ongoing obligations. A listed domestic relations financial mediator must comply with all ongoing obligations a listed domestic relations custody and parenting mediators must comply with under UTCR 12.610.]*

(a) The basic mediation curriculum in UTCR 12.710;

(b) The domestic relations custody and parenting mediation curriculum in UTCR 12.720;

(c) Domestic relations financial mediation training in UTCR 12.730; and

(d) Court-system training in UTCR 12.740 or substantially similar training.

- [(3) Training content. In addition to training requirements required under subsection (1) of this section, an applicant must have completed 40 hours of training which includes training about all] the following:
- (a) Legal and financial issues in separation, divorce, and family reorganization in Oregon.
 - (b) In relation to paragraph (a) of this subsection: property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, joint and several liability for family debt.
 - (c) Basics of corporate and partnership law, retirement interests, enhanced earning capacity, personal bankruptcy, ethics (including unauthorized practice of law), drafting, and legal process (including disclosure problems).
 - (d) The needs of pro se parties, the desirability of review by independent counsel, recognizing the finality of a judgment, and methods to carry out the parties' agreement.
- (4) Training structure. Of the training required in subsection (3) of this section:
- (a) Twenty-four of the hours must be in an integrated training.
 - (b) Six hours must be in three supervised role plays in financial mediation.
 - (c) Fifteen hours must be in training accredited by the Oregon State Bar.]
- (3[5]) Experience. *[In addition to the experience required under subsection (1) of this section, a]***An applicant must have completed one of the following types of experience; *[requirements at experience level 4 in UTCR 12.760.]***

(a) Participation in at least 20 cases including a total of at least 200 hours of domestic relations mediation supervised by or co-mediated with a person qualified as a domestic relations financial mediation supervisor. At least ten cases and 100 hours of the supervised cases in this paragraph must be in domestic relations financial mediation. At least three of the domestic relations financial mediation cases must have direct observation by the qualified supervisor.

(b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:

- (i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 100 hours of domestic relations financial mediation, and
- (ii) An understanding of court-connected domestic relations programs.

(4/6) Continuing education. **As an ongoing obligation, an approved domestic relations financial mediator must complete continuing education requirements in UTCR 12.750.** *[In addition to the continuing education requirements of subsection (2) of this section, a listed domestic relations financial mediator must also have at least seven hours annually of education in financial issues in divorce and separation. Four of the hours of this additional requirement may apply to the continuing education requirement under UTCR 12.750.]*

(5) **Conduct. An applicant, and as an ongoing obligation, an approved domestic relations financial mediator must subscribe to the mediator ethics in UTCR 12.530.**

(6) **Public information. An applicant, and as an ongoing obligation, an approved domestic relations financial mediator, must comply with requirements to provide and maintain current information in UTCR 12.540.**

(7) Insurance. As an ongoing obligation, an **approved** *[listed]* domestic relations financial mediator shall have in effect at all times the greater of:

- (a) \$100,000 in malpractice insurance or self-insurance with comparable coverage.
- (b) Such greater amount of coverage as the determining authority requires.

(8) **Supervision***[ing]. a qualified domestic relations financial mediation supervisor is an individual who has:* *[As an ongoing obligation, a listed domestic financial relations mediator who has been active for three years, and who qualifies as a type 2 qualified supervisor under UTCR 12.710, must provide supervision necessary for other applicants to meet the experience requirements of experience level 4 necessary under subsection (5) of this section.]*

(a) Met the qualifications of a domestic relations financial mediator as defined in this subsection; and

(b) Completed at least 50 domestic relations cases including a total of at least 500 hours of domestic relations financial mediation beyond the experience required in subsection (a) or (b) of this section; and

(c) Malpractice insurance coverage for the supervisory role in force.

COMPONENTS OF QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS

[12.700 LEAD TRAINERS. QUALIFICATIONS, REQUIREMENTS

When a requirement for qualification as a listed mediator requires training be done by a lead trainer at a specified level of qualification, the person doing the training must meet the qualification as specified below.

- (1) *A type 1 qualified lead trainer is an individual who has:*
 - (a) *completed 50 hours of mediation experience;*
 - (b) *a substantial background as a mediation trainer or an assistant mediation trainer; and*
 - (c) *mediation training substantially comparable to that required for a general civil mediator.*
- (2) *A type 2 qualified lead trainer is an individual who has all the following:*
 - (a) *the qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.610;*
 - (b) *participated in a minimum of 35 domestic relations mediations or a total 350 hours of domestic relations mediation;*
 - (c) *substantial background as a mediation trainer or an assistant mediation trainer; and*
 - (d) *an understanding of court-connected domestic relations programs.]*

[12.710 QUALIFIED SUPERVISORS. QUALIFICATIONS, REQUIREMENTS

When applicants to become listed mediators are required to have completed supervised experience, the supervisors must meet the standards described below:

- (1) *A type 1 supervisor is an individual who has:*
 - (a) *the qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.610;*
 - (b) *participated in a minimum of 35 domestic relations mediations or a total 350 hours of domestic relations mediation; and*
 - (c) *an understanding of court-connected domestic relations programs.*

- (2) *A type 2 supervisor is an individual who is all of the following:*
- (a) *A mediator.*
 - (b) *Someone who can affirm meeting the qualifications for a domestic relations financial mediator.*
 - (c) *Someone who has been a family mediator for three years with at least 250 hours and 25 cases involving domestic relations financial mediation.*
 - (d) *Someone who has in force malpractice insurance coverage for the supervisory role.*
 - (e) *Someone who will issue, at the end of the supervisory experience, a letter of certification for an applicant stating whether the applicant has satisfactorily fulfilled the supervision, according to guidelines of the determining authority.]*

12.700 [12.720] INDEPENDENT QUALIFICATION REVIEW

- (1) In programs where domestic relations financial mediators are independent contractors, the determining authority must appoint a panel consisting of at least:
- (a) **A/a** representative of the determining authority;
 - (b) **A/a** domestic relations financial mediator *[or type 2 qualified supervisor, in UTCR 12.620 and 12.710 respectively];* and
 - (c) **An/an** attorney who practices domestic relations law locally.
- (2) The panel shall interview each applicant to be an **approved [listed]** domestic relations financial mediator solely to determine whether the applicant meets the requirements for being **approved [listed]** or whether it is appropriate to substitute or waive some minimum qualifications. The review panel shall report its recommendation to the determining authority in writing.
- (3) Nothing in this rule affects the authority under UTCR 12.520 to make sole and final determinations about whether an applicant has fulfilled the requirements to be **approved [listed]** or whether an application for substitution should be granted.

12.710 [12.730] BASIC MEDIATION CURRICULUM

The basic mediation curriculum shall *[include all the following]:*

- (1) **Include a/A**t least **36 [30]** hours **in a single curriculum that is designed to integrate the elements in this section consistent with any guidelines promulgated by the State Court Administrator; [of training which shall include, but not be limited to, the following:]**

- [(a) a minimum of six hours participation by each trainee in three or more supervised role plays with feedback; and*
- (b) a trainee self-assessment.]*

(2) Include training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees, including, but not be limited to at least twelve hours participation by each trainee in role plays with trainer feedback to the trainee and trainee self assessment.

(3) Include instruction to help the trainee:

(a) Gain an understanding of conflict resolution and mediation theory;

(b) Effectively prepare for mediation;

(c) Create a safe and comfortable environment for the mediation;

(d) Facilitate effective communication between the parties and between the mediator and the parties;

(e) Use techniques that help the parties solve problems and seek agreement;

(f) Conduct the mediation in a fair and impartial manner;

(g) Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations; and

(h) Conclude a mediation and memorialize understandings and agreements.

(4) Be conducted by a lead trainer who has:

(a) The qualifications of a general civil mediator as defined in UTCR 12.600, except the requirement in UTCR 12.600 (1)(a) to have completed the basic mediation curriculum; and

(b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of a general civil mediator in 12.600; and either

(c) Served as a trainer or an assistant trainer for the basic mediation curriculum outlined in UTCR 12.710 at least three times; or

(d) Have experience in adult education and mediation as follows:

(i) Served as a teacher for at least 1000 hours of accredited education or training for adults; and

(ii) Completed the basic mediation curriculum outlined under UTCR 12.710.

[(2) Development of mediation knowledge and skills, including information gathering, relationship skills, communication skills, problem solving, conflict management, and ethical practices.]

[(3) The curriculum shall specifically address all the following areas:

(a) Active listening, empathy, and validation.

(b) Sensitivity to, and awareness of, cross-cultural issues.

(c) Maintaining neutrality.

(d) Legal and ethical issues surrounding confidentiality.

(e) Identifying and reframing interests and issues.

(f) Establishing trust and respect.

(g) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement.

(h) Shaping and writing agreements.

(i) Ethical standards for mediator conduct adopted by state and national organizations.]

12.720 DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATION CURRICULUM

The domestic relations custody and parenting mediation curriculum shall:

(1) Include at least 40 hours in a domestic relations custody and parenting mediation curriculum consistent with any guidelines promulgated by the State Court Administrator.

(2) Include multiple learning methods and training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees.

(3) Provide instruction with the goal of creating competency sufficient for initial practice as a family mediator, and must include the following topics:

- (a) General Family Mediation Knowledge and Skills;
 - (b) Knowledge and Skill with Families and Children;
 - (c) Adaptations and Modifications for Special Case Concerns ;
and
 - (d) Specific Family, Divorce and Parenting Information.
- (4) Be conducted by a lead trainer who has all of the following:
- (a) The qualifications of a domestic relations custody and parenting mediator as defined in UTCR 12.610;
 - (b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in UTCR 12.610;
 - (c) Served as a mediation trainer or an assistant mediation trainer for the domestic relations custody and parenting mediation curriculum outlined in UTCR 12.720 at least three times; and
 - (d) An understanding of court-connected domestic relations programs.

12.730 DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING

- (1) Domestic relations financial mediation training shall include at least 40 hours of training or education which 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, 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 pro se parties, the desirability of review by independent counsel, recognizing the finality of a judgment, and methods to carry out the parties' agreement.
- (2) Of the training required in subsection (1) of this section:
- (a) Twenty-four of the hours must be in an integrated training.

(b) Six hours must be in three role plays in financial mediation with trainer feedback to the trainee.

(c) Fifteen hours must be in training accredited by the Oregon State Bar.

12.740 COURT-SYSTEM TRAINING

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

(1) At least six hours including, but not limited to the following subject areas:

(a) Instruction on *[Knowledge of]* the court system including, but not limited to:

[(a)] (i) *[b]* Basic legal vocabulary;

[(b)] (ii) *[h]* How to read a court file;

(iii) Confidentiality and disclosure;

(iv) Availability of jury trials;

(v) Burdens of proof;

(vii) Basic trial procedure;

[(c)] (viii) *[t]* The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability;

(ix) Agreement writing.

[(d)] (x) *[w]* Working with interpreters; and

[(e)] (xi) *[o]* Obligations under the Americans with Disabilities Act.

[(2)] (b) Information on *[Knowledge of]* the range of available administrative and other dispute resolution processes.

[(3)] (c) Information on *[Knowledge of]* the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable.

(d) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.

(2[4]) For mediators working in contexts other than small claims court, **at least two additional hours** *[working with represented and unrepresented parties]* including, but not limited to, all of the following:

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

(i) The role of litigants' lawyers in the mediation process;

[(b)] (ii) Attorney-client relationships, including privileges;[.]

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

[(d)] (iii) Attorney fee issues.

(b[e]) Understanding motions, discovery, and other court rules and procedures.

(c) Basic rules of evidence; and

(d) Basic rules of contract and tort law.

12.750 CONTINUING EDUCATION REQUIREMENTS

When required to comply with continuing education requirements, an **approved** *[listed]* mediator must attend at least **24** *[12]* hours of continuing mediation education **every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority. Continuing education classes should enhance the participant's competence as a mediator and provide opportunities for mediators to expand upon existing skills and explore new areas of practice or interest.** *[each year. Continuing education choices shall be made in consultation with the mediation program supervisor.]* To the extent that the mediator's **prior training and experience** *[prior to being listed]* do[es] not include the *[following]* topics **listed below**, *[those topics shall be emphasized in the mediator's continuing education requirements.]*, **the mediator should emphasize those listed areas relevant to the mediator's practice. Where applicable, continuing education topics should be coordinated with, reported to and approved by the mediation program supervisor, and reported at least every two calendar years on UTCR Form 12.540.1.**

(1) Of those 24 continuing education hours:

(a) Two hours must relate to confidentiality;

(b) Two hours must relate to mediator ethics;

(c) If the mediator is an approved domestic relations custody and parenting mediator, twelve hours must be on the subject of custody and parenting issues;

- (d) If the mediator is an approved domestic relations financial mediator, twelve hours must be on the subject of financial issues;
 - (e) Twelve hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation; and
 - (f) The hours required in paragraphs (a) and (b) can be met in the hours required in paragraphs (c) or (d) if confidentiality or mediator ethics is covered in the context of domestic relations.
- (2) Continuing education shall be conducted by an individual or group qualified by practical or academic experience. For purposes of this section, an hour is defined as 60 minutes of instructional time or activity and may be completed in a variety of formats, including but not limited to:
- (a) Attendance at a live lecture or seminar;
 - (b) Attendance at an audio or video playback of a lecture or seminar with a group where the group discusses the materials presented;
 - (c) Listening or viewing audio, video or internet presentations;
 - (d) Receiving supervision as part of a training mentorship;
 - (e) Formally debriefing mediation cases with mediator supervisors and colleagues following the mediation;
 - (f) Lecturing or teaching in qualified continuing education courses; and
 - (g) Authoring or editing written materials submitted for publication, which have significant intellectual or practical content directly related to the practice of mediation.
- (3) Continuing education topics may include, but are not limited to the following examples:
- (a) Those topics outlined in 12.710, 12.720, and 12.730;
 - (b) Practical skills-based training in mediation or facilitation;
 - (c) Court processes;
 - (d) Confidentiality laws and rules;

- (e) Changes in the subject matter areas of law in which the mediator practices;
- (f) Mediation ethics;
- (g) Domestic violence;
- (h) Sexual assault;
- (i) Child Abuse and Elder Abuse;
- (j) Gender, ethnic, and cultural diversity;
- (k) Psychology and Psychopathology;
- (l) Organizational development;
- (m) Communication;
- (n) Crisis intervention;
- (o) Program administration and service delivery;
- (p) Practices and procedures of state and local social service agencies, and
- (q) Safety issues for mediators.

- [(1) *The effects of domestic violence on children, and the legal rights of domestic violence victims.*
- (2) *Dynamics of domestic violence and sexual assault.*
- (3) *Gender, ethnic, and cultural diversity.*
- (4) *Divorce adjustment for adults and children.*
- (5) *"The best interest of the child".*
- (6) *Psychopathology.*
- (7) *Crisis intervention with families.*
- (8) *Oregon Child Support Guidelines.*
- (9) *Mediation models, theory, and techniques.*
- (10) *Program administration and service delivery.*
- (11) *Development of parenting plans.*
- (12) *Establishment of visitation schedules.*

- (13) *Practices and procedures of state and local social service agencies.*
- (14) *Safety issues for mediators.*
- (15) *Family Systems Theory.*
- (16) *Changes in family law.]*

[12.760 *EXPERIENCE REQUIREMENTS*

When applicants to become a listed mediator are required to have completed experience requirements at a specific experience level, the requirement is to meet the appropriate following described specific experience level:

- (1) *Experience level 1—A person meeting this experience level has observed live mediations or participated as a mediator in at least three cases that have been filed in court.*
- (2) *Experience level 2—A person meeting this experience level has observed live mediations or participated as a mediator in domestic relations cases for a period of at least 30 hours, including at least three actual domestic relations cases involving children.*
- (3) *Experience level 3—A person meeting this experience level has completed one of the following types of experience supervised by a lead trainer with type 2 qualifications in UTCR 12.700 or supervisor with type 1 qualifications under UTCR 12.710:*
 - (a) *Participation in at least 20 domestic relations mediation cases supervised by or jointly mediated with a supervisor with type 1 qualifications in UTCR 12.710.*
 - (b) *At least two years full-time equivalent mediation experience.*
 - (c) *At least two years full-time equivalent of direct therapy or counseling experience with a preferred emphasis on short-term problem solving in a private, public, or private nonprofit agency and having:*
 - (i) *participated as a mediator or comediator in a total of six actual domestic relations mediations or a total of 60 hours of domestic relations mediation, and*
 - (ii) *an understanding of court-connected domestic relations programs.*
 - (d) *Been a practicing attorney with at least two years full-time equivalent handling a domestic relations or juvenile caseload and having:*
 - (i) *participated as a mediator or comediator in a total of six actual domestic relations mediations or a total of 60 hours of domestic relations mediation, and*

- (ii) *an understanding of court-connected domestic relations programs.*
- (4) *Experience level 4—A person meeting this experience level has participated in six financial mediation cases and a total of 40 hours of mediation with supervision by a type 2 qualified supervisor in UTCR 12.710, including four client hours with the supervisor present.]*

**[Court-Connected Mediator
Contact Information for Court Use
and Public Dissemination
UTCR Form: 12.540.1a**

Name of Mediator:	
Business or Program Name (if applicable):	
Business Contact Information below (as applicable)	
Mailing Address:	
Telephone Number:	Fax Number:
E-Mail Address:	

Court- Connected Mediator
[Consumer] Information for Public Dissemination
UTCR Form: 12.540.1[2]

Name of Mediator:	
Business or Program Name (if applicable):	
Business or Program Contact Information below (as applicable)	
Mailing Address:	
Telephone Number:	Fax Number:
E-Mail Address:	

[Description of formal education: _____

Description of mediation training: _____

Description of other relevant education: _____

If you are a domestic relations mediator, description of formal education: _____

Description of mediation experience, including type and approximate number of cases mediated: _____

Relevant organizations with which the mediator is affiliated: _____

Description of other relevant experience: _____

Description of fees (if applicable): _____

Description of relevant codes of ethics to which the mediator subscribes: _____

[Availability of mediator malpractice insurance: _____]

[Statement of case preference (please check all case types for which you are qualified, and will accept referrals):

<i>Categories of Cases</i>	<i>YES</i>	<i>NO</i>
<i>Business</i>		
<i>Domestic Relations</i>		
<i>Employment</i>		
<i>Small Claims</i>		
<i>Landlord-Tenant</i>		
<i>Probate</i>		
<i>Torts</i>		
<i>Other (specify)</i>		

I hereby certify that the above is true and accurate.

_____ (Name) _____ (Date)

11. **13.090** - Amend to require arbitrators to carry malpractice insurance.

ACTION TAKEN

Preliminarily recommended for disapproval, by inaction.
No motion made.

REASON

The committee was concerned that this is a licensing issue that would be more appropriately addressed by the legislature.

PROPOSED AMENDMENT

13.090 ARBITRATORS

(1) * * *

* * * * *

(4) Any attorney who qualifies as an arbitrator under this rule shall carry malpractice insurance, with the Oregon Professional Liability Fund or an equivalent insurer.

- C. OTHER ACTIONS.** These items are published to inform the public and to solicit public comment (see Section I. Introduction).

1. **2.100** - Out-of-cycle amendment (and new forms) to simplify process for segregating social security numbers.

ACTION TAKEN

Preliminarily recommended for approval.

Motion 65, to recommend approval, passed by consensus. The committee had no objection to out-of-cycle adoption of the amendment and forms. The amendment and forms were adopted out-of-cycle pursuant to Chief Justice Order 04-054, dated December 22, 2004, and became effective on December 22, 2004. This order can be viewed at:

<http://scadom01.isd.ojd.state.or.us/internet/programs/utcr/documents/04-054.pdf>

REASON

The amendment and new form are meant to add a process for segregating just social security numbers. The proponent, BeaLisa Sydlik, Oregon Judicial Department Family Law Section policy analyst, advised the committee that pro se parties and legal aid providers who help those parties were seeking a form that was easier for these parties to understand and complete. Legal aid providers believe this new process will significantly reduce the time they spend explaining this mechanism to parties. The new form supplements the existing forms in the current rule, rather than replacing them.

AMENDMENT AND FORM

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

(1) * * *

* * * * *

(4) Procedure to follow. A person may only request protected personal information be segregated and protected under this rule when submitting it to a court in a case. The procedures under this rule may be used to identify and separately present protected personal information from any submitted document or form that is used to give information to a court. To do so, a person must do *[all of]* the following:

(a) * * *

(b) Complete an affidavit in substantially the form provided in UTCR Form 2.100.4a. **If the person is requesting segregation of only social security numbers, the person may use the alternative form of affidavit provided in UTCR Form 2.100.4c.**
The affidavit:

(i) Need not be notarized but must be signed by the requestor and contain language that the person knowingly gives the information under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if the person provides false information to the court.

(ii) Must describe generally the protected personal information and set out the legal authority for protecting the information.

(c) Complete an information sheet in substantially the form provided in UTCR Form 2.100.4b to duplicate the protected personal information sought to be segregated and attach the information sheet to the affidavit. **If the person is requesting segregation of only social security numbers, the person may use the alternative information sheet form provided in UTCR Form 2.100.4d.**

(d) * * *

* * * * *

(5) * * *

* * * * *

2. **7.050(3)** - Repeal section (3).

ACTION TAKEN

Motion 72, passed by consensus - the committee decided to not make a recommendation on this proposal, but they did ask that it be sent out for public comment and placed on the agenda for the April 1, 2005, meeting.

REASON

This proposal was submitted by The Honorable Richard L. Barron, Coos County Circuit Court. He believes this is not an appropriate matter for the UTCR as it is one more appropriate for the Oregon Rules of Civil Procedure and is addressed by ORCP 52 on postponements. He also believes it nullifies judicial discretion by telling judges how they must rule. This rule was adopted out-of-cycle after negotiations between the Oregon Judicial Department and the Oregon Department of Justice in response to legislation on this issue that was being sought by the Department of Justice.

PROPOSED AMENDMENT

7.050 EFFECT OF BANKRUPTCY PETITION

- (1) Upon notice that proceedings in an action are subject to a federal bankruptcy stay, the court must stay the action until it is shown to the court's satisfaction that the federal bankruptcy stay has been terminated or is not applicable to the action.
- (2) Upon motion of any party, the court may sever a claim that continues to be subject to the federal bankruptcy stay or a claim as it applies to the bankruptcy debtor and proceed with the remainder of the action if:
 - (a) the action includes multiple claims or multiple parties; and
 - (b) it is shown to the court's satisfaction that, as to one or more claims, the federal bankruptcy stay has been terminated or is not applicable.
- ~~[(3)]~~ *A court must not dismiss the action stayed under this rule solely because of the bankruptcy filing. Nothing in this rule limits a court's ability to initiate the process to dismiss an action stayed under this rule for want of prosecution under ORCP 54B(3) or as provided by statute. However, if a party to the action responds to the court notice concerning dismissal for want of prosecution by timely application to continue the action because bankruptcy proceedings are ongoing:*
 - (a) *the ongoing bankruptcy proceedings constitute good cause to continue the action for purposes of ORCP or statute; and*
 - (b) *the court must continue the action as a pending case.]*
- ~~[(4)]~~ **(3)** Time periods established by UTCR 7.020 or by SLR for proceeding with an action are not applicable during the stay to that action or part of an action stayed under this rule. For all or part of the action stayed under this rule, time periods held in abeyance under this subsection continue

when the court proceeds and only as to that part of the action with which the court proceeds.

[(5)] **(4)** Nothing in this section limits a court's ability to grant dismissal of an action stayed under this rule as provided under ORCP 54A.

[(6)] **(5)** References in this rule to federal bankruptcy stays are to a stay under provisions of 11 U.S.C. Sections 105, 362, 1201, or 1301. As provided under UTCR 1.010(3), this rule is applicable to all cases that may be subject to a federal bankruptcy stay, including small claims cases.

3. Subcommittee on Electronic Filing.

ACTION TAKEN

Subcommittee member Velure reported on the Oregon State Bar task force on electronic filings (of which she is a member).

BCM:sh/05eBCM01sh
1/27/05