

2014

LINCOLN COUNTY
CIRCUIT COURT

SUPPLEMENTARY LOCAL RULES



Effective February 1, 2014

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LINCOLN COUNTY CIRCUIT COURT SUPPLEMENTARY LOCAL RULES

The following Rules supplement the UTCR and apply to the Lincoln County Circuit Court:

Chapter 1

1.151 HOURS OF COURT OPERATION

Unless otherwise ordered due to emergency conditions, information regarding business hours for the Lincoln County Court can be found at <http://courts.oregon.gov/Lincoln/Pages/index.aspx>

The Trial Court Administrator's Office has a drop box located outside of Room 202 for civil case filings, making payments, entering pleas on violation cases and for submitting payment plans. The drop box is available on days the court is open for business.

1.171 COURT WEBSITE

The internet address for the Lincoln County Circuit Court website is:
<http://courts.oregon.gov/Lincoln/Pages/index.aspx>

Chapter 2

2.011 STANDARDS FOR PLEADINGS AND DOCUMENTS

Each pleading or similar document submitted for filing with the court that is not electronically filed shall be pre-punched with two (2) holes (approximately ¼ inch diameter) centered 2-3/4 inches apart and ½ to 5/8 inch from the top of the paper.

Chapter 3

3.181 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS

- (1) Unless allowed by a judge, Media or Public Access Coverage is prohibited on the Second and Third Floors of the Lincoln County Courthouse.
- (2) The court, upon request and on a case by case basis, will consider:

- (a) Designation of areas for public access coverage; and
- (b) Implementation of a public access order as per UTCR 3.180.

Chapter 5

5.061 EX PARTE MATTERS AND SHOW CAUSE HEARINGS

- (1) Ex parte matters requiring a hearing, and show cause hearings shall be scheduled by contacting the judicial assistant for the judge assigned to hear the case, or if no judge has been assigned, the judicial assistant for the Presiding Judge.
- (2) Family Abuse Prevention Act, Elderly Persons and Persons with Disabilities Abuse Prevention Act petitions filed pursuant to ORS 107.718 or ORS 124.010 through ORS 124.020 shall be heard Monday through Friday after arraignments at 1:15 P.M. in the courtroom designated. All required documents must be filed in the Trial Court Administrator's Office, Room 202, no later than 11:00 A.M. to be heard the same day.

Chapter 6

6.025 PAYMENT OF TRIAL FEES AND HEARING FEES

- (1) The Court shall verify that payment has been made or that fees have been waived or deferred prior to the start of a trial or hearing where a fee is required to be paid under ORS 21.114, 21.270, 21.275, 21.310 or 105.130. If the court is unable to verify that payment has been made, a fee receipt, fee waiver or fee deferral must be presented to the courtroom clerk prior to the commencement of the trial or hearing.
- (2) Fees payable at the conclusion of the trial shall be paid by 5:00 P.M. on the day trial concludes unless the fee is waived or deferred. If the trial concludes after the close of business, the fees shall be paid the morning of the first court day thereafter. For purposes of this rule, a jury trial will be considered concluded when the jury returns a verdict.
- (3) The trial judge may elect to delay the start of the case until the fees are paid.

6.081 EXHIBITS

- 1. In order for the Trial Court Administrator to comply with Oregon Judicial Department Policy pertaining to the listing and valuing of exhibits received as evidence, all exhibits will be assigned

a value of zero, unless the party submitting the exhibit supplies a written opinion as to their value to the trial court clerk.

Chapter 7

7.005 ARRAIGNMENTS

- (1) All cases, other than probation violations, arraigned within a week will be assigned to the “designated court” for that week. The presiding judge determines the schedule, rotating the assignment as “designated court”. For purposes of this chapter, if Monday is a legal holiday, the hearing shall be held the next day.
- (2) In-custody arraignments will be heard at 1:15 p.m. each judicial day in a courtroom designated by the presiding judge. The courtroom can be determined by contacting the office of the trial court administrator or by visiting the court’s web site.
 - (a) After arraignment, a case will be set for an early resolution conference pursuant to UTCR 7.010 on a Monday at a time scheduled by the court not less than 21 days from the date of arraignment when the court to which the case is assigned is the “designated court”.
 - (b) Probation violation cases will be set following defendant’s first appearance at a time and date as deemed appropriate by the court based upon those issues in the case known to court and counsel.
- (3) Out-of-custody arraignments will be heard each Monday at 8:30 a.m. unless otherwise provided. After arraignment, a case will be set for an early resolution conference pursuant to UTCR 7.010 on a Monday at a time scheduled by the court not less than 35 days from the date of arraignment when the court to which the case is assigned is the “designated court”.

7.015 EARLY RESOLUTION CONFERENCE

- (1) At the Early Resolution Conference the parties shall:
 - (a) Report any problems requiring additional time to resolve;
 - (b) Report whether judicial assistance is needed to:
 1. Resolve discovery issues;
 2. Decide motions or schedule hearings of any kind;
 3. Facilitate settlement discussions.

- (c) Have made such offer of settlement as deemed appropriate by that party;
 - (d) Request, if necessary, that the matter be calendared for a final resolution conference;
 - (e) Report to the court whether the case is settled, and if so that the matter can be calendared for disposition; and
 - (f) Report, if it be the case, that further plea discussions are unnecessary and that the matter be scheduled forthwith for trial.
- (2) A final resolution conference shall be set for a Monday at 9:30 a.m. in a week that the court to which the case is assigned is the “designated court”.
 - (3) Attorneys who are unable to be present at an early resolution conference may appear by affidavit setting forth the required information.
 - (4) An in-custody defendant is authorized to request a special-set final resolution conference; however, the final resolution conference shall not be at 9:30 a.m. on a Monday unless the court to which the case is assigned is the “designated court” for the week in which the hearing is set.

7.018 FINAL RESOLUTION CONFERENCE

- (1) Criminal cases not reported settled, and civil cases determined to be at issue, shall be set for a final resolution conference.
- (2) At the final resolution conference, the parties shall report whether the case has been settled or that the case is ready to proceed to trial.
- (3) Reporting ready for trial constitutes a representation to the court that:
 - (a) A good faith effort to settle the case has been made and that neither party is willing to make further concessions to the other party concerning disposition of the case.
 - (b) All motions have been filed and decided.
- (4) No plea negotiations will occur after the final resolution conference unless otherwise authorized by the court.

- (5) Attorneys who are unable to be present at a final resolution conference may appear by affidavit setting forth the required information

Chapter 8

8.011 PARENT EDUCATION PROGRAM

(1) **Mandatory Parent Education Program**

(a) A parent education program of the type authorized by ORS 3.425 is established. The program shall provide information on the impact of family restructuring on the children to each person named as a party in the following types of proceedings, when such proceedings involve minor children:

- (i) Annulment or dissolution of marriage,
- (ii) Legal separation,
- (iii) Petition to establish custody or parenting plans (including paternity), and
- (iv) Post-judgment litigation involving custody, or parenting plans.

(b) Each party who files an appearance in a proceeding of the types described above shall complete the program unless exempted by the Court. A final judgment shall not be entered in the proceeding until each party not otherwise exempted by the Court who has filed an appearance has completed the program.

(c) The party initiating the proceeding shall register for the program within 21 days after filing the first pleading with the Court. A copy of this local rule and instructions on how to register for the program shall be served by the initiating party on all parties against whom relief is sought. Service shall be completed in the manner provided in ORCP 7 at the time the initiating documents are served. All other parties shall have 30 days after service of the notice upon them to register for the program.

(d) The program provider shall issue a certificate of completion to the participant when the participant has completed the program. The participant must file the certificate with the Court.

- (e) The Court may exempt one or both parties from the program if, after reviewing the requesting party's motion and supporting affidavit, the Court determines that participation is unnecessary or inappropriate.

(2) Sanctions

- (a) Failure or refusal to complete the program in a timely manner shall be considered by the Court in making its ruling on issues which are in dispute.
- (b) A party who has completed the program shall have the right to:
 - (i) Request that the pleadings of a party who has appeared be stricken if that party has not completed the program in a timely manner without good reason.
 - (ii) Request entry of an order from the Court to compel the non-complying party's completion of the program should the non-complying party not have completed the program in a timely manner without good reason. The Court may enter an award of attorney fees in favor of the complying party who utilizes this option to force the non-complying party's compliance with this rule.

8.043 TEMPORARY SUPPORT

Temporary support shall be determined without testimony, based on the affidavits filed by the parties. The moving party may respond to the adverse party's Responding Uniform Support Affidavit. In any case involving temporary child support, the financial affidavits filed by the parties with the Court shall include applicable DCS child support computation worksheets. When the matter is ready for decision, the moving party shall notify the Court by filing a Notice of Readiness for Decision.

8.045 PRE-JUDGMENT TEMPORARY ORDERS

- (1) Motions for temporary relief requested pursuant to ORS 107.095 shall be accompanied by an order to show cause. Unless otherwise ordered by the Court, the order shall not include a date and time for hearing. The order shall notify the opposing party to respond in writing within 21 days of service. When the matter is ready for decision, the moving

party shall notify the Court by filing a Notice of Readiness for Decision.

- (2) Temporary support shall be determined without testimony, based on the affidavits filed by the parties. The moving party may respond to the adverse Party's Responding Uniform Support Affidavit. In any case involving temporary child support, the financial affidavits filed by the parties with the Court shall include applicable DCS child support computation worksheets.
- (3) The petitioner may not file a motion for default on the petition while a temporary relief hearing is pending.
- (4) Ex parte temporary custody and parenting time orders based on immediate danger, and status quo orders are controlled by ORS 107.097

8.055 MODIFICATION OF JUDGMENT

- (1) An order to show cause filed pursuant to ORS 107.135 and UTCR 8.050 shall not include a date and time for hearing. The order shall require the opposing party to file a written response with the Court within 30 days of service, and shall notify the opposing party that an order granting the relief requested will be allowed if the written response is not timely filed.
- (2) A post-judgment motion for a temporary status quo order filed pursuant to ORS 107.138 requires a separate order to show cause and shall include a place for the Court to set a date and time for hearing. The moving party may not request an order of default on a motion to modify judgment if a hearing on a temporary status quo order is pending.
- (3) Post-judgment ex parte temporary custody and parenting time orders are controlled by ORS 107.139.

8.075 PARENTING TIME

- (1) Lincoln County has adopted a standardized parenting schedule, as per UTCR 8.070, which can be found in the appendix to these rules.
- (2) Unless the Court rules differently, or the non-custodial parent requests a lesser schedule of parenting time, or the parties stipulate to a different schedule of parenting time which is approved by the Court, a non-custodial parent shall have the right to parenting time with the minor child (child = children) of the parties according to the schedule and

guidelines in the standardized parenting plan which can be found in the appendix to these rules.

Chapter 9

9.015 ALLEGED INCAPACITATED PERSONS - NOTICE REGARDING FREE LEGAL AND OTHER RELEVANT SERVICES

In a proceeding for the appointment of a guardian for an alleged incapacitated person, the notice required under ORS 125.060 shall include the following language or its equivalent:

- (1) There may be free or low-cost legal services or other relevant services in your local area that may be helpful to you in the guardianship proceeding. For information about these services, call the following telephone numbers and ask to talk to people who can help you find legal services or other types of service:
 - (a) Free legal services for people at least 60 years of age who are subject to guardianship proceedings may be obtained by calling the Senior Law Program of Legal Aid Services of Oregon at 541-265-5305 or 1-800-222-3884. Many other kinds of free or low cost services for people at least 60 years of age may be obtained by calling Senior Services at 1-800-282-6194.
 - (b) Help finding a lawyer and a low-cost one-time consultation may be obtained by calling the Lawyer Referral Service of the Oregon State Bar at 1-800-452-7636.

9.025 APPOINTMENT OF PERSONAL REPRESENTATIVE FOR WRONGFUL DEATH CASE

If a wrongful death claim is the only asset in the estate, the petition should so state. The order appointing personal representative should specify that the appointment is for the sole purpose of prosecuting a wrongful death claim. In such a case, the requirement of inventory and accounting will be waived unless or until other probate assets are found.

9.035 VISITOR'S FEE

If the appointment of a visitor is required, the visitor's fee shall be paid at the time of filing the petition. The visitor's fee shall be in the amount established by Presiding Judge order. The visitor will not undertake the investigation until the fee has been paid or unless the fee has been

waived by order of the Court.

9.055 CONSERVATORSHIPS OF A MINOR

- (1) In a conservatorship on behalf of a minor:
 - (a) Bond and standard accounting requirements may be waived if the funds are placed in a restricted account until the minor reaches the age of majority.
 - (b) In a conservatorship of a minor where accountings are waived, for each accounting period, a statement from each depository account as of the last day of the accounting period must be filed with the court within 60 days after each anniversary of appointment. The statement must include the account number, date, account balance, and current address of the conservator.
 - (c) Restricted accounts on behalf of a minor must be confirmed by a signed acknowledgment from the bank or brokerage firm which discloses the account number, type and account balance as required by UTCR 9.050.

9.061 CONTENT OF AFFIDAVITS IN SUPPORT OF ATTORNEY FEES

In addition to any other information the attorney may desire to submit, an affidavit in support of a motion for an order allowing payment of attorney fees shall include the time spent on services in connection with the estate and shall be calculated in decimals rather than fractions.

9.071 TERMINATION OF A CONSERVATORSHIP IN GENERAL

Except for a conservatorship that qualifies for the procedure in either ORS 125.475 (4) or in ORS 125.535, termination of a conservatorship requires the final accounting to include the proposed distribution of any conservatorship assets remaining after payment of administrative costs and any claims. The order approving the final accounting may be combined with a general judgment terminating the conservatorship.

After the court receives satisfactory receipts from the distributee(s), a supplemental judgment is to be submitted for the purpose of discharging the conservator, exonerating any surety bond, and closing the file.

9.081 PLACE FOR MAKING ORAL OBJECTIONS

Oral objections pursuant to ORS 125.075 may be made in Room 202 of the Lincoln County

Courthouse during regular office hours.

9.085 SELF REPRESENTED PARTIES APPEARANCE IN PROBATE COURT; APPROVAL

- (1) If a personal representative or conservator intends to appear without an attorney in any probate matter, that person must provide the Court notice of such intent and proof of competency in such matters. If such proof provided is not sufficient to assure the Court that the estate or interest will be protected, the Court shall take appropriate action.
- (2) A person other than a personal representative, conservator or corporation may appear in person without counsel in any probate matter as authorized or allowed by law.

9.161 FORM OF ACCOUNTINGS

Accountings substantially in the form specified in Form 9.160 in the UTCR appendix of forms are mandatory in this Judicial District.

9.185 VOUCHERS AND DEPOSITORY STATEMENTS

As allowed by ORS 125.475(3) and ORS 116.083(2)(d), vouchers are not required to accompany an accounting. In lieu of vouchers, for each depository account a list which sets out the date, amount, check number, recipient, and purpose of each disbursement shall be included in an accounting. In addition, the accounting shall include the opening and closing depository statements for each account for the accounting period.

Chapter 11

11.005 APPEARING AND ANSWERING DEPENDENCY AND TERMINATION PETITIONS

- (1) A summons in a termination of parental rights proceeding, or a proceeding to establish permanent guardianship under ORS 419B.365 must require that a parent file a written answer to the petition within 30 days from the date on which the parent is served with the summons.

- (2) A summons in a proceeding to establish jurisdiction under ORS 419B.100 must require that the person appear personally before the court at the time and place specified in the summons to admit or deny the allegations of the petition and if the person has physical custody of the child, bring the child before the court as directed in the summons.

11.015 JUVENILE PROCEEDINGS

The youth is required to attend all juvenile delinquency proceedings unless excused by the court. Juvenile delinquency matters, other than adjudications, are heard each Friday at 1:30 p.m. Juvenile dependency matters, other than adjudications, are heard each Friday at 8:30 a.m. If needed, the parties should request a call day. Absent such request, the matter will proceed directly to trial.

Chapter 12

12.005 DOMESTIC RELATIONS MATTERS SUBJECT TO MEDIATION

Except for those cases excluded from mediation below, the Trial Court Administration shall refer to Mediation Orientation all domestic relations cases in which there are issues concerning child custody, and/or parenting time.

12.015 MEDIATION ORIENTATION

- (1) In cases in which there are issues concerning child custody, and/or parenting time, Mediation Orientation consists of viewing a mediation orientation video or receiving information about mediation at a parenting education class, one meeting in person with a mediator, and a parenting education class designated by the Court.
- (2) In cases in which there are no issues concerning child custody, and/or parenting time, but in which the final judgment will necessarily involve provisions concerning child custody, and/or parenting time, Mediation Orientation consists of a parenting education class designated by the Court.
- (3) In cases in which the only issues to be resolved are financial concerns, and the final judgment will not involve provisions concerning child custody, and/or parenting time, Mediation Orientation consists of a mediation orientation video and one meeting in person with a mediator designated by the Court.
- (4) Upon a showing of good cause and/or the filing of a stipulated written waiver from both parties, the Court may waive the requirement of Mediation Orientation or a portion

thereof. The waiver granted may apply to either one party or to both.

- (5) The refusal by or failure of a party to attend mediation orientation as required by these rules and/or by the Court in a timely manner is a factor the Court may consider in decisions involving custody, and/or parenting time.
- (6) Persons in charge of administering Mediation Orientation sessions shall keep thorough records of attendance at all sessions and provide those records to the Court immediately upon completion of each component of Mediation Orientation.
- (7) There shall be no fee charged for a party to attend parenting education classes or the mediation orientation video, regardless of whether a party has filed an appearance in the case.

12.025 CASES EXCLUDED FROM MEDIATION

Cases excluded from mediation include the following:

- (1) Stalking proceedings under ORS 30.866 or 163.738;
- (2) Family Abuse Prevention Act proceedings under ORS 107.700 to 107.732;
- (3) Elder Abuse Prevention Act proceedings under ORS 124.005 et seq.;
- (4) Proceedings in which a party has opted out of mediation after attending Mediation Orientation;
- (5) Proceedings that the Court determines are inappropriate for mediation, which decision may be made by the Court before or after referral to mediation;
- (6) Filiation proceedings under ORS 109.124 et seq., but only until paternity has been established;
- (7) Cases in which the mediator has determined that the case is not appropriate for mediation. In this event, the sole report by the mediator to the Court and to counsel for the parties, if any, shall be that the parties have not reached an agreement. The mediator may alert the Court to the reason no agreement was reached (e.g., domestic violence issues) only with the written permission of both parties and each party's attorney, if any; and

- (8) Cases involving expedited parenting time enforcement under ORS 107.434 unless either:
- (a) The party who files the enforcement motion requests referral to mediation and the Court approves that motion; or
 - (b) The judge refers the case to mediation. Because expedited parenting time enforcement exists to provide speedy relief to a party aggrieved by noncompliance with one or more provisions of an existing judgment, the Court shall make such referrals with all due caution, as mediation may prolong the rendering of appropriate relief past the time period required by ORS 107.434.

If a case involving expedited parenting time enforcement is referred to mediation through a mediator who is on the list of court-approved mediators, the parties shall pay the mediation fee required of a petitioner and respondent within 14 days notice of referral to mediation or as otherwise ordered by the Presiding Judge.

12.035 RELATIONSHIP TO COURT JURISDICTION

- (1) A case filed in the Circuit Court remains under the jurisdiction of the Court in all phases of the proceedings, including mediation.
- (2) Any agreement of the parties reached as a result of mediation for which Court enforcement may be sought must be presented to the Court, and the Court shall retain final authority to accept, modify or reject the agreement. In order to preserve and promote the integrity of mediation as a dispute resolution technique, the Court will endeavor to include all reasonable agreements reached by the parties in formulating any judgment or order in the case.

At any point during the mediation process, the Court may approve a temporary custody and parenting time order reflecting the parties' agreement as to those issues.

12.045 MEDIATION PANEL

- (1) In addition to meeting the requirements of the OJD Court-Connected Mediator Qualification Rules, to qualify as a Court-approved mediator, a person must, at the minimum:
 - (a) Sign and file an application with the Court;

- (b) Receive approval of the Presiding Judge. The Presiding Judge may act upon the application or refer the request to a designee or committee for evaluation and recommendation to the Presiding Judge. Merely meeting the requirements of the administrative rules referenced above does not entitle a person to be appointed as a mediator. The selection may be made strictly according to the discretion of the Presiding Judge; and
 - (c) Comply with the requirements of the Domestic Violence Plan that is a component of the Lincoln County Domestic Relations Mediation Plan.
- (2) Pursuant to ORS 107.775(3), mediators and others providing mediation services are not officers, employees, or agents of the Oregon Judicial Department or of the State of Oregon.
- (3) The Presiding Judge may remove a mediator from the mediation panel at any time solely at the Presiding Judge's discretion.

12.055 AUTHORITY OF MEDIATORS

- (1) The mediator has authority and control over the mediation process, but the mediator has no control or authority over the parties or their decisions in the case.
- (2) The mediator has the authority to enforce all statutes, Oregon Administrative Rules, Uniform Trial Court Rules, Supplementary Local Rules and all other rules, orders or ordinances (e.g., formal acts of the County Commissioners) adopted by or within the Seventeenth Judicial District concerning the mediation process.
- (3) The mediator shall encourage disputing parties to obtain independent legal advice and review of any mediated agreement before signing any agreement.
- (4) The mediator shall not act as a lawyer for either party.

12.065 MEDIATION OF FINANCIAL ASPECTS OF DOMESTIC RELATIONS CASES

- (1) A mediator who has been approved by the Presiding Judge to mediate financial aspects in domestic relations cases may be allowed to mediate such issues whether or not there are also issues concerning child custody, parenting time and/or visitation.

(2) Minimum qualifications of mediators for financial issues:

- (a) In addition to the other qualifications for mediators, mediators for financial issues must be attorneys licensed to practice law in the State of Oregon and who have been actively involved in domestic relations litigation for at least two years' full time equivalent.
- (b) Persons who meet the minimum qualifications must apply to the Presiding Judge, who shall have the sole discretion to approve or disapprove an application. Likewise, the Presiding Judge may discontinue a person's approval to mediate financial aspects of domestic relations cases at the Presiding Judge's sole discretion.

12.085 REFERRAL TO MEDIATION AND ASSIGNMENT OF MEDIATOR

(1) The use of the phrase "referral to mediation" means the act of notifying the parties that they must go through Mediation Orientation as scheduled.

(2) By the Court

- (a) In cases in which it appears from the pleadings that child custody, and/or parenting time is an issue, the Court shall refer the case to mediation. A mediator shall be assigned after a Response is filed with the Court. The exception to this procedure shall be when the Court decides that the case is not appropriate for mediation prior to such referral.
- (b) Assignment of Mediator
 - (i) The Trial Court Administrator shall send a notice of referral to mediation to the parties. The notice shall include the names of court-approved mediators. Each party shall be entitled to object to a maximum of two mediators. To object, a party shall strike the names from the mediation notice and return the notice to the Court. A mediation notice containing such objections must be received by the Court within 10 days of the date of the notices.
 - (ii) The Trial Court Administrator shall assign a mediator whose name has not been stricken from the mediator list by the parties. If a party fails to submit the mediation notice to the Court within the time required in the preceding

paragraph, the Trial Court Administrator shall assign a mediator.

- (iii) Except when otherwise mandated by this Plan or when the Presiding Judge decides otherwise, the Trial Court Administrator shall assign a mediator upon whom the parties have stipulated when that mediator is on the list of mediators approved by the Court.
- (iv) If no approved mediators are left on the Court's list after considering the parties objections to mediators, to conflict cases when a mediator may not be able to ethically or legally participate in mediation in a given case, or to other appropriate concerns, the Trial Court Administrator shall refer the designation of a mediator to the Presiding Judge. The Presiding Judge shall have the authority to designate any person approved as a domestic relations mediator in another county or other individual who has met the qualifications for a mediator prescribed by this plan or for whom the Presiding Judge waives strict compliance, as allowed by this plan.

(3) By stipulation

- (a) At any stage of the proceedings, the parties may sign and file with the Court a request for mediation. This applies even for cases in which a party or both parties had earlier opted out of mediation.
- (b) Upon receipt of a request for mediation from both parties in a case where the parties had previously opted out of mediation, the Trial Court Administrator shall notify the Judge assigned to hear the case or the Presiding Judge. The case shall be referred back to mediation only if the Court so directs.
- (c) The request for mediation may be denied by the Presiding Judge or by the judge assigned to hear the case in the sole discretion of such judge. The Court is not required to explain or justify a denial of a referral to mediation. Nonetheless, appropriate reasons to deny a referral to mediation would include, but not be limited to, situations in which the Court concludes that such referral is a delaying tactic in a case where it appears likely that mediation could not reasonably be expected to be

concluded prior to the time set for a trial or other hearing, and/or when the Court determines that the request for mediation appears not to be made in good faith.

- (d) Except as set forth below in subparagraph (e), the Court shall honor a written stipulation by both parties to a particular mediator if that mediator is on the Court's list of approved mediators.
- (e) Parties may not stipulate to using a particular mediator from the Court-approved list under the circumstances outlined in this subparagraph. If the parties had previously met with a domestic relations mediator approved by the Court but mediation had not been successfully concluded, and thereafter the Court receives a request from the parties to return to mediation, the case shall be referred back to mediation with the same mediator. The Trial Court Administrator may assign a different mediator at the request of the parties only if, within fifteen days from the date of inquiry by the Trial Court Administrator as to the reason for the previous termination of mediation, the original mediator tenders written confirmation to the Court that the case was not sent back to the Court due to domestic violence concerns by the mediator. If such confirmation is not received, the parties shall be notified that the case will not be referred back to mediation and will be set on the trial docket.
 - (i) To preserve the confidentiality mandated by ORS 107.785, the Trial Court Administrator shall seal in the file a mediator's written report of domestic violence concerns, and send the file to the judge assigned to hear the case for docketing of all future hearings in the case.

(4) Use of Independent Mediators

- (a) Parties shall not be required to use a mediator who has been approved by the Court for domestic relations mediation. Upon written stipulation by both parties, an independent mediator may be used, but only if the Presiding Judge approves the request. Under such circumstances, the following conditions apply
 - (i) The costs of the independent mediator shall be borne exclusively by the parties, and the parties shall not be entitled to any refund of the mediation fee paid by the parties to the Court.

- (ii) Where custody and/or parenting time involving minor children will necessarily be a component of any judgment, the parties shall be required to attend the parenting education classes that are included in Mediation Orientation.
 - (iii) No independent mediator shall be approved unless that person meets the qualifications for a mediator prescribed by this plan or unless the Presiding Judge waives strict compliance with those qualifications as allowed by this plan.
 - (iv) The request for mediation may be denied by the Presiding Judge or by the judge assigned to hear the case, in the sole discretion of such judge. The Court is not required to explain or justify a denial of referral to mediation. Nonetheless, appropriate reasons to deny a referral to mediation would include, but not be limited to, situations in which the Court concludes that such referral is a delaying tactic in a case where it appears likely that mediation could not reasonably be expected to be concluded prior to the time set for trial or other hearing and/or when the Court determines that the request for mediation appears not to be made in good faith.
- (b) If an independent mediator is selected by the parties, the parties or their attorneys shall file with the Court a written stipulation indicating the name of the mediator and the date set for the first mediation session.

12.095 SCHEDULING OF MEDIATION SESSIONS

- (1) Upon receipt of a mediation assignment, the mediator shall notify the parties of that appointment. The mediator shall send a domestic violence screening questionnaire to each party, requiring that the parties fully complete and return those forms within seven days of that notice. Upon receipt of fully completed questionnaires, the mediator shall notify the parties of the date and time of the initial joint or individual meetings with the mediator. Mediation shall occur at locations within Lincoln County designated by the mediator, unless an out of county location is approved by the Presiding Judge or upon stipulation of both parties and the mediator. The initial mediation session shall occur as soon as practicable.
- (2) Subsequent sessions with the mediator and the parties shall be conducted as scheduled by the mediator.

12.105 COMPENSATION OF MEDIATOR

Lincoln County shall compensate the mediator at the rate of \$100.00 per hour. Funds to compensate the mediator shall come from the Lincoln County Mediation Account. The mediator may be reimbursed for actual long distance phone calls associated with the case and for fax and photocopy costs at the rate then in effect for the general public at the Trial Court Administrator's Office. There shall be no charges for paralegal time, secretarial time, or other law firm employee time.

12.115 LIMIT ON MEDIATOR'S TIME

- (1) Mediation shall consist of eight hours which includes sessions involving the mediator and the parties, scheduling, conferences with the Court or Trial Court Administrator, conferring with the parties or their attorneys, and drafting documents. Any additional time needed to complete mediation shall occur only if:
 - (a) The parties pay for additional mediation out of their own funds; or
 - (b) The parties apply for approval for additional time from the Presiding Judge and the Presiding Judge grants approval for additional funding to complete the mediation.
- (2) If a mediator refers the case back to the Court for any reason, but the case is later re-referred to mediation, the parties shall be allowed a new eight hours of sessions at no additional cost unless the Presiding Judge directs otherwise.
- (3) In every case in which a mediator is selected, the mediator shall be entitled to a minimum fee of one hour at the hourly rate then in effect for mediator compensation.

12.125 UNSUCCESSFUL MEDIATION

In the event the mediator determines that the parties have not been successful in mediating any issue referred to mediation, the mediator shall notify the Court of that fact in writing. Upon written request by any party thereafter, a temporary custody and parenting time/visitation hearing shall be scheduled by the Court as soon as possible. Any request by a party for a hearing shall identify the issues to be determined and the length of time estimated for the hearing.

12.135 COUNSELORS NOT TO SERVE AS MEDIATORS

In cases in which a non-attorney is selected as a mediator, the mediator may not also be a counselor who conducts custody or parenting time/visitation evaluation without the prior, express written consent of the parties.

12.145 COMPLETION OF MEDIATION

- (1) Mediation must be completed within 90 days after the notice to the mediator, unless otherwise ordered by the Court on application of the parties or the mediator, based upon good cause set forth by affidavit.
- (2) The mediator shall report to the Court and to counsel for the parties the outcome of the mediation as allowed by law. The mediator shall report in writing to the Court and to counsel for the parties any agreement reached by the parties as a result of mediation, and the agreement shall be incorporated into a proposed order or judgment prepared for the Court.

12.155 SMALL CLAIMS MEDIATION GENERALLY

All contested small claims cases shall be referred to mediation pursuant to ORS 36.185, except as otherwise ordered by the Court. Attendance at mediation orientation is mandatory unless waived by the Court for good cause. After a demand for hearing is filed, both parties shall be notified of the date and time they are to appear for mediation. Any counterclaim shall be heard at the same time. Requests for a change in the mediation date must be in writing and received by the Lincoln County Dispute Resolution Office no later than seven days before the scheduled mediation date.

12.165 SMALL CLAIMS MEDIATION PROCEDURES

- (1) The small claims clerk shall assign cases to a mediator. Each party shall come to mediation with full authority to make and accept offers for settlement.
- (2) All parties shall appear for mediation. A party not appearing for mediation may have a judgment entered against him or her subsequent to an opportunity for a hearing. An authorized representative may appear on behalf of a business but must be familiar with the facts of the case and have full authority to settle. Unless a party to the case, an attorney shall not attend small claims mediation.

- (3) If mediation is not successful, a trial will be set by the Court on a future date. If mediation is successful, the agreement will be forwarded to a judge for approval.
- (4) If the agreement does not constitute a judgment, the signed agreement shall be entered in the case as a stipulated order and the case will be dismissed. If one party fails to comply with the terms of the agreement, the other party may file an affidavit of non-compliance and request to reinstate the case which, if approved by a judge will convert the stipulated order into a judgment for the original claim. The creditor's filing fees, service costs, and a prevailing party fee will be added.

12.355 FORCIBLE ENTRY AND DETAINER MEDIATION GENERALLY

All Forcible Entry and Detainer cases will be referred to mediation pursuant to ORS 36.185, except as otherwise ordered by the Court. Attendance at mediation is mandatory unless waived by the Court for good cause. At the time set for first appearance both parties shall attend mediation at the Court's direction. If the parties do not reach an agreement the defendant must file their answer before the end of that business day and the case will be set for a hearing. If the parties reach an agreement a stipulated agreement form shall be presented to the court for approval.

All mediation services will be provided by the Court without cost to the litigants, through the use of volunteer mediators.

Chapter 13

13.035 ARBITRATION COMMISSION

- (1) At the request of a Judge, to render advisory opinions relating to arbitration.
- (2) The Arbitration Commission shall be composed of three judges, three attorneys, and as an ex officio member, the Trial Court Administrator.
- (3) Three members of the Commission constitute a quorum, but at least one attorney and one judge must be present.
- (4) A majority of the Judges will appoint the members of the Commission who serve at the pleasure of the majority of the Judges.

13.095 ARBITRATORS

- (1) To qualify as an arbitrator, a person must sign and file an application as an arbitrator, either to serve in a particular case or as a member of the panel of arbitrators.
- (2) Arbitration Panel. There shall be a panel of arbitrators in such number as the Arbitration Commission may from time to time determine. A person desiring to serve as an arbitrator shall complete an information sheet on the form prescribed by the Court. A list showing the names of arbitrators available to hear cases will be available for public inspection in the Trial Court Administrator's office. The execution of the form must be completed and filed prior to an applicant being placed on the panel.
- (3) Refusal; Disqualification. The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the Trial Court Administrator immediately if refusing to serve or if any cause exists for the arbitrator's disqualification from the case upon any of the grounds of interest, relationship, bias or prejudice governing the disqualification of judges. If disqualified, the arbitrator must immediately return all materials in the case to the Trial Court Administrator.

13.125 COMPENSATION OF ARBITRATOR

- (1) In all cases, the arbitrator's fee will be set by the Arbitration Commission as required by UTCR 13.120(1)
- (2) In any case, or in a case that settles before the date of the arbitration, the parties and arbitrator may use the procedure found in UTCR 13.120(1) to adjust or request a higher fee than that provided for by the Arbitration Commission.
- (3) If a case settles before the date of the arbitration, the arbitrator shall refund the preliminary payment except for such minimum amount set by the Arbitration Commission.

13.135 PAYMENT OF ARBITRATOR'S FEE

- (1) The term "preliminary payment" as used in UTCR 13.120 shall be defined as the full amount of the arbitration fee then in effect as established by the Arbitration Commission.
- (2) In the event any party does not pay that party's pro-rata share of the "preliminary payment" for the arbitrator, the arbitrator may do any one or more of the following:

- (a) Refuse to allow the non-paying party to participate any further in the arbitration proceedings;
 - (b) Immediately enter an arbitration award in favor of a party who has paid the party's respective pro-rata share;
 - (c) Enter an award dismissing the case for want of payment;
 - (d) Enter such other award and take such other action as may be just and equitable under the circumstances.
- (3) In the event one party pays its pro-rata share of the preliminary payment and the other party does not, the arbitrator shall be entitled to retain all payments received by the arbitrator in order to fully compensate the arbitrator for the arbitrator's time involved in making an award or otherwise disposing of the case.
- (4) Any dispute regarding any action taken by the arbitrator to enforce or implement UTCR 13.120(1), (2), or this supplemental local rule shall be resolved by the Court in a summary manner, after affording the parties and the arbitrator an opportunity to be heard. No such action by the arbitrator shall be reversed or modified by the Court unless it is established that the arbitrator has failed to follow these rules or acted in an arbitrary and capricious manner.

13.161 DEADLINE FOR ARBITRATION HEARING

The arbitration hearing must take place within 49 days from the date of assignment of the case to the arbitrator. The Trial Court Administrator or designee may allow an extension of time to conduct the hearing for good cause shown, but in no event will the arbitration process be allowed to extend more than six months from the date the case is assigned to an arbitrator.

13.165 SITUS OF HEARING

All cases involving statutorily mandated arbitration shall be heard in Lincoln County. A case may be heard outside of Lincoln County only upon the motion of one or both parties.

Chapter 15

15.010 RULES RELATING TO SMALL CLAIMS

UTCRC 7.020(2) and (3) shall apply to small claims cases.

Chapter 16

16.061 TRIAL BY AFFIDAVIT

Testimony by affidavit shall be allowed in violation cases only upon receiving a signed statement from the defendant waiving the right to have the testimony presented orally in court.

The affidavit and statement may be filed in the form set forth in the appendix of forms, form number 16.061.

At the commencement of any violation trial, any and all affidavits which have been filed by that time with the Trail Court Administrator shall be deemed offered by the party who tendered them to the court or on whose behalf they were tendered to the Court, and such affidavits shall then be received and considered by the court as substantive evidence in that case.

APPENDIX OF FORMS

Form 8.075

STANDARDIZED PARENTING PLAN

- (1) Subject to the parenting time guidelines as set forth in subsection 13 of this plan which modify parenting time until the child reaches the age of six, the non-custodial parent shall have the following PARENTING TIME SCHEDULE:
 - (a) **ALTERNATE WEEKENDS**, a weekend being defined as beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on the following Sunday; and
 - (b) **ALTERNATE WEDNESDAYS**, commencing at 9:00 A.M. and ending at 6:00 P.M., providing the child is not in school; and
 - (c) **WINTER BREAK**: Regardless of whether the child is attending school, parenting time shall be during the period of winter vacation of the district in which the custodial parent resides (measured from the day school adjourns through the day before school resumes). Parenting time for the non-custodial parent shall commence at 6:00 P.M. on the day school adjourns through 8:00 A.M. on December 25 in odd-numbered years, and from 9:00 A.M. on December 25 until 9:00 A.M. on the last day of the break in even-numbered years; and
 - (d) **THANKSGIVING BREAK**: In even numbered years, commencing on Wednesday at 6:00 P.M. and ending on Sunday at 6:00 P.M.; and
 - (e) **SPRING BREAK**: In odd numbered years, spring vacation of the school district of the custodial parents residence from 6:00 P.M. on the day that school adjourns until 9:00 A.M. on Sunday prior to the commencement of school; and
 - (f) **SUMMER BREAK**: Regardless of whether the child is in school, for a period of five weeks during summer school vacation commencing at the beginning of the break in even numbered years and the last five weeks of the summer in odd numbered years (except that the child shall be returned to the custodial parent at least thirty-six hours prior to the commencement of school in the fall).
1. When the non-custodial parent exercises their right to a parenting time

period of more than twenty days, the custodial parent shall have the right to a weekend parenting time. At the option of the non-custodial parent, the weekend parenting time for this summer break shall occur on the third or fourth weekend and shall be preceded by notice to the custodial parent at the commencement of the summer parenting time period. Further, this parenting time shall not extend beyond the summer parenting time period of the non-custodial parent.

2. In the period of time not assigned to the non-custodial parent, the custodial parent shall be entitled to an uninterrupted two week block during which the alternate weekend and alternate Wednesday of the non-custodial parent shall be suspended. Notice of the dates of the two week block shall be given to the non-custodial parent at the commencement of the summer break.

(g) **HOLIDAYS:** The non-custodial parent shall be entitled to alternate legal holidays as set forth in ORS 187.010 et seq, excluding Sundays and those holidays previously mentioned or explicitly covered, commencing with Martin Luther King, Jr.'s Birthday on the third Monday in January in even numbered years, and in odd numbered years with Presidents Day on the third Monday in February.

1. Any holiday not falling on Friday, Saturday, Sunday or Monday, the period of parenting time shall be from 9:00 A.M. through 6:00 P.M., unless the holiday falls on a school day in which case there will be no parenting time. Any holiday falling on a Friday or a Monday, will entitle the party to the holiday, to have the child for the entire weekend, including the holiday. If the holiday falls on Friday, parenting time will be from 6:00 P.M. on Thursday to 6:00 P.M. on Sunday. If the holiday falls on Monday, parenting time is from 6:00 P.M. on Friday, through 6:00 P.M. on Monday.
2. Fourth of July shall be included in the non-custodial parent's summer parenting time during even numbered years, regardless to which the holiday belongs.

(h) **PERSONAL HOLIDAYS:** The non-custodial parent shall be entitled to have parenting time on the day of his or her birthday from 9:00 A.M. to 6:00 P.M., if occurring on a non-school day. If the custodial parent's birthday falls during a

period of parenting time, the custodial parent shall be entitled to parenting time with the child for that day from 9:00 A.M. to 6:00 P.M., unless it causes a substantial interference with the scheduled parenting time of the non-custodial parent. Further, each parent is entitled to parenting time on their respective Mother's or Father's Day, from 9:00 A.M. until 6:00 P.M.; and either parent may include this day in a whole weekend and trade the upcoming parenting time weekend for Mother's or Father's Day weekend.

- (i) **CHILD'S BIRTHDAY:** The non-custodial parent shall be entitled to parenting time with the child on the child's birthday in even numbered years. The parenting time will be from 9:00 A.M. if the birthday falls on a non-school day until 6:00 P.M., and if the birthday falls on a school day, from 5:00 P.M. until 8:00 P.M.
- (2) All parenting time periods shall be exercised in a prompt manner so that both parties can make their plans accordingly. The non-custodial parent shall pick the child up from the front steps of the custodial parent's residence no earlier than 15 minutes before and not later than 15 minutes after the parenting time period commences. Return of the child to the front steps of the custodial parent's residence shall also be subject to the 15 minute rule. The non-custodial parent shall notify the custodial parent by telephone at least 24 hours in advance if he or she is going to be unable to exercise parenting time rights as scheduled.
- (3) The custodial parent shall have the child fed and ready on time for parenting time with sufficient and proper clothing packed and ready for the parenting time period.
- (4) The non-custodial parent shall feed the child the evening meal before returning from the parenting time period, and return the child with the same clothes as when they arrived, laundered and ready to wear.
- (5) In the event the child is ill and unable to visit, a makeup parenting time will be allowed to the non-custodial parent on the next succeeding weekend. However, if the non-custodial parent fails to exercise their parenting time, for reasons of health or for any other reason, there will be no makeup parenting time period. The child will not be permitted to determine whether they wish to visit with the non-custodial parent.
- (6) Personal plans of the custodial parent or child, school activities, church activities and other considerations will not be reasons for failing to adhere to the parenting time schedule set forth in the court's order. Only substantial medical reasons will be considered sufficient for postponement of parenting time.

- (7) Both parties will provide addresses and contact telephone numbers to the other party and will immediately notify the other party of any emergency circumstances or substantial changes in the health of the child. Both parents shall be entitled to complete access to all medical, dental and other records concerning the health of the child.
- (8) The non-custodial parent shall, in addition to the parenting time, have the unlimited right to correspond with the child, and to telephone the child during reasonable hours without interference or monitoring by the custodial parent or anyone else in any way. Unless otherwise agreed upon between the parties, telephone conferences between the non-custodial parent and child shall be limited to no more than 3 per week and each call shall be of 10 minutes or less in duration. The custodial parent shall have the same rights as set forth above during the period that the child is with the non-custodial parent.
- (9) Both parties shall be restrained and enjoined from making derogatory comments about the other party or in any way diminishing the love, respect and affection that the child has for the other party.
- (10) In addition to the parenting time specified above, the non-custodial parent shall have the right to visit with the child at school, attend the child's school activities, and have full access to school teachers and administrators for complete information about the child in school. The non-custodial parent does not have the right to take the child out of school without the written authorization of the custodial parent.
- (11) No modification, or acquiescence in changes of these specific parenting time conditions will be allowed or recognized, unless such modifications are in the form of a written stipulation signed by the parties, or a court order.
- (12) As is state law, unless otherwise set forth in the judgment of dissolution, no modification or abatement of support shall occur during the periods of parenting time, including the summer.
- (13) The following are **PARENTING TIME GUIDELINES** in reference to the age of the child:
 - (a) **INFANTS THROUGH 12 MONTHS:** The parenting time in section 1 shall be modified as follows:
 - 1. The alternate weekend in Section 1 (a) shall be reduced to a 24 hour period beginning at 6:00 pm on Friday and ending at 6:00 p.m. on Saturday.

2. Sections 1(b) through 1(h) do not apply.
3. The non-custodial parent shall be allowed a 3 hour period beginning at 6:00 pm and ending at 9:00 p.m. each Monday and Wednesday.
4. The parents are encouraged to add additional days during the summer break.

(b) CHILDREN AGE ONE THROUGH THREE:

1. The alternate weekend in Section 1 (a) shall be reduced to a 24 hour period beginning at 6:00 pm on Friday and ending at 6:00 p.m. on Saturday.
2. The non-custodial parent shall be allowed a 3 hour period beginning at 6:00 pm and ending at 9:00 p.m. each Monday and Wednesday;
3. Winter break in Section 1(c) shall be reduced to 6:00 pm on December 23 to 8:00 p.m. on December 24 in even numbered years, and 8:00 p.m. on December 24 to 6:00 pm on December 25 in odd numbered years.
4. Thanksgiving break in Section 1(d) shall be reduced to Thursday at 9:00 a.m. to Friday at 9:00 a.m. in even numbered years.
5. The summer break in section 1(f) shall be reduced to 5 three day blocks, each block being separated by at least three days. The blocks may not be used to extend any period of parenting time to four days or more. The non-custodial parent shall notify the custodial parent in writing by May 1 of each year setting out the schedule for the summer break.
6. Sections 1 (b) and (e) do not apply.
7. If the holiday listed in section 1(g) falls on a Monday, parenting time will be from 6:00 pm on Sunday until 9:00 p.m. on Monday. Parenting time on Veterans Day and Independence Day shall be from 9:00 a.m. until 6:00 p.m.

(c) CHILDREN FOUR THROUGH FIVE

1. The summer break listed in section 1(f) shall be 2 two week blocks with at least a 2 week block in between. The non-custodial parent shall notify the

custodial parent in writing by May 1 of each year setting out the schedule for the summer break.

- (d) **CHILDREN AGE SIX TO TWELVE:** The parenting time schedule should be flexible enough to insure the child's participation in ongoing or special activities. During the summer, residence with the non-custodial parent is suggested with the custodial parent having weekly or bi-weekly access.
- (e) **ADOLESCENTS AND YOUNG ADULTS, OVER TWELVE:** Flexible parenting time is the basic principle, with the child having some input to avoid scheduling conflicts. At this age, it seems the quality of time is more important than the quantity. During the summer, consideration should be given to the child's employment, organized athletics and other activities.
- (f) **LONG DISTANCE PARENTING TIME:** Unless otherwise specified by court order, the non-custodial parent shall make appropriate arrangements for travel, taking into account the age of the child.

FORM 16.061

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

STATE OF OREGON)

v.)

Case No. _____

Defendant)

WAIVER and AFFIDAVIT

I, _____, have pleaded NOT GUILTY and requested a trial in the above captioned case.

Pursuant to ORS 153.080, I hereby waive my right to have my testimony, the testimony of my witnesses if any, and the testimony of the officer presented orally in court, and I agree that such testimony may be presented by sworn affidavit. I waive the right to provide opening remarks and closing argument in court, and the right to raise objections to written testimony on the grounds of hearsay. I waive further appearance and agree to submit this violation to the court based upon my affidavit and the affidavits of my witnesses, if any, and allow the officer to present his or her testimony in the same fashion.

I am not represented by an attorney in this matter. If I retain counsel, I will notify the court immediately.

Dated _____.

Signature

TESTIMONY BY AFFIDAVIT

STATE OF OREGON)

County of Lincoln) ss.

I, _____, being first duly sworn, state that I am the ____ defendant
____ Police Officer in the above captioned case, and further state that pursuant to ORS
153.080, this affidavit represents my sworn testimony concerning the above traffic violation
offense:

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, leaving small margins at the top and bottom. There are no vertical margin lines, text, or other markings on the page.

I swear or affirm that the information contained in this affidavit is true.

Signature

Notary Public / Court Clerk