



SUPPLEMENTARY LOCAL RULES

Third Judicial District Marion County Circuit Court

Effective February 1, 2020

Pursuant to ORS 3.220, a court may make and enforce local rules consistent with and supplementary to these rules for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court. NOTE: These rules must be read together with the applicable provisions of statute, ORCP and UTCR.

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Chapter 1: General Provisions

1.151 HOURS OF OPERATION

Normal hours of operation for the Main Courthouse, 100 High Street NE, Salem, OR, Court Annex, 4000 Aumsville Highway SE, Salem, OR, and Juvenile Court, 3030 Center Street NE, Salem OR are from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m. These hours are subject to occasional modification, with notice to be posted at the affected offices at least 24 hours in advance, whenever possible.

1.161 FILING OF DOCUMENTS IN COURT

(1) The Marion County Circuit Court has approval from the State Court Administrator to accept filings electronically for designated case types and documents pursuant to Uniform Trial Court Rule (UTCRC) Chapter 21, which governs filing and service by electronic means.

(2) When conventional filing is permitted or required by UTCRC Chapter 21, filings are accepted at the Marion County Circuit Court Accounting Office located in the Marion County Courthouse, 100 High Street NE, Salem, Oregon. Documents delivered by mail shall be addressed to: Marion County Circuit Court, P.O. Box 12869, Salem, Oregon, 97309- 0869. If a fee is required to be paid prior to filing of a document, then filing may occur only if the fee is satisfied.

(3) When conventional filing is permitted or required by UTCRC Chapter 21, documents filed in a case assigned to a judge may be filed with the assigned judge's staff unless the filing requires a filing fee. For purposes of ORS 10.010 and ORCP 9, judicial staff are conferred the powers of the clerk of the court.

(4) The following stipulated or *ex parte* documents may be presented conventionally:

- (a) Petitions for Immediate Danger;
- (b) Petitions for Family Abuse Prevention Restraining Orders;
- (c) Foreign Judgments;
- (d) Transcripts of Judgment;
- (e) Foreign Support Orders; and
- (f) Transport Orders.

(5) The following stipulated or *ex parte* documents must be presented conventionally:

- (a) Motions to waive/defer fees;

- (b) Accusatory instruments initiating criminal actions or juvenile delinquency proceedings;
- (c) Documents initiating a contempt proceeding;
- (d) Notices of appeal from justice or municipal court judgments;
- (e) Documents filed under seal or subject to in camera inspection;
- (f) Original wills, certified documents and documents under official seal; and
- (g) Documentary exhibits in juvenile proceedings.

1.171 WEBSITE

The website for the Circuit Court for the Third Judicial District is located at <http://courts.oregon.gov/Marion>

Chapter 2: Standards for Pleadings and Documents

2.015 CASE NUMBERS

In all cases which are assigned to an individual judge within the Circuit Court's Individual Assignment System, all pleadings, motions and other documents filed must contain the name or initials of the Judge to whom the case has been assigned immediately below the case number in the caption of the document. When filing documents in cases which have not been assigned in the Court's Individual Assignment System, no such addition is required or appropriate.

2.016 DESIGNATION OF KNOWN PARTIES BY FICTITIOUS NAME

In civil actions, the designation of a known party by a name other than the party's true name shall be allowed only upon an order of the court. If ordered, the designation of such party shall be by use of such party's initials or a fictitious name other than "Jane Doe" or "John Doe." The name "Jane Doe" or "John Doe" is reserved to be used for a party whose identity is unknown and the party is being designated as provided in ORCP 20 H.

2.035 RETURN OF A DOCUMENT TO A PARTY

Except as authorized by ORS Chapter 24 or elsewhere, and in addition to the authority to decline to receive or file a document under ORCP 9 E, a document may be returned to the party who submitted it in the following situations:

- (1) A document with an existing case number and case caption from another jurisdiction unless filed pursuant to an order signed by a judge allowing a change of venue or authorizing the

filing on some other basis;

- (2) A document which requires a fee but the fee payment or an order to waive or defer the fee is not provided;
- (3) A document without sufficient identifying information to determine in which case it should be filed or entered;
- (4) A document with a case caption from a jurisdiction not recognized by the Oregon Constitution or established by the Oregon Legislature;
- (5) A judgment or decree purportedly issued by a nonexistent court;
- (6) A lien or bond issued by or to a non-existent court or agency; or
- (7) A document submitted by fax transmission.

Chapter 3: Decorum in Proceedings

3.181 PUBLIC ACCESS COVERAGE IN AREAS OUTSIDE OF COURTROOMS

In facilities occupied by the court, public access coverage in areas outside of courtrooms, other than the Jury Assembly Room when jurors are in attendance, is permitted only with the prior approval of the Presiding Judge. Requests to conduct public access coverage in such areas may be made to the Office of the Presiding Judge at any time during the business day. Public access coverage is not permitted in the court's Jury Assembly Room when jurors are in attendance or at any time in the Juvenile Justice Center in areas outside of the courtrooms.

3.182 USE OF CELL PHONES AND OTHER PERSONAL DATA AND COMMUNICATION DEVICES WHICH HAVE AUDIO RECORDING, PHOTOGRAPHIC OR ANY OTHER VISUAL OR IMAGE RECORDING OR REPRODUCTION CAPABILITY

- (1) Cell phones and other personal data or communication devices which have text transmission, audio recording, photographic or any other visual or image recording or reproduction capability constitute public access coverage equipment as defined in UTCR 3.180. Such devices may be used in a facility occupied by the court only as provided by UTCR 3.180, SLR 3.181, and this rule. Such devices must be turned off when entering any courtroom in any facility occupied by the court as provided by SLR 6.027, and must not be turned on for any use in a courtroom without complying with SLR 6.027, UTCR 3.180 and this rule.
- (2) Cell phones or other personal data or communication devices may be used in areas outside of a courtroom, as defined in UTCR 3.180 and SLR 3.181, in a facility occupied by the court without violating this rule or SLR 3.181, provided that such use is restricted to the transmission of the user's oral or written communication only and does not involve any

operation or use of the device's audio recording, photographic or any other visual or image recording or reproduction capability.

(3) In addition to any other consequence permitted under law or court rules, violators of this rule are subject to being ordered by the court to delete from the device any audio recording, photographic or any other visual image recording, or reproduction made in a court facility.

Chapter 4: Proceedings in Criminal Cases

4.081 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

The court may conduct appearances in any criminal proceeding by simultaneous electronic transmission as provided in UTCR 4.080(1) and under law, if the technology in the courtroom meets the requirements of the rule.

Chapter 5: Proceedings in Civil Cases

5.045 REFEREES (SPECIAL MASTERS)

In any case involving matters requiring specialized technical expertise, such as business valuation for dissolution of business partnership, parties shall consider the use of referees under ORCP 65 for determination of those matters involving specialized expertise. If the use of such referees is not appropriate, the parties shall so advise the Court along with the basis for such position.

5.061 PRESENTMENT OF *EX PARTE* MATTERS

Ex parte matters in a case assigned to an individual calendar judge shall be presented to the assigned judge. If the case has not been assigned, *ex parte* matters should be presented to the Referee's office.

5.065 SHOW CAUSE ORDERS, OTHER THAN FOR CONTEMPT

(1) Motions for Show Cause Orders (other than for contempt of Court) must separately state each item of relief requested by the moving party. Such motions may not state the requested relief by reference to a supporting affidavit.

(2) Unless otherwise specifically required by statute or ORCP or specifically directed by the Court, Show Cause Orders (other than for contempt of Court) shall not require the personal appearance of the opposing party and shall not set a time certain for response by the opposing party.

(3) When the Show Cause Order deals with temporary relief and when served within the State of Oregon, such orders shall require the opposing party to file a Response in writing to the Order within 10 days from the date of service of the Order upon the opposing party, except that no respondent in an action arising under ORS Chapter 107 and ORS Chapter 109 shall be required to file a Response before the time required by law to respond on the summons in the case.

(4) When the Show Cause Order deals with permanent relief or when it is served outside of the State of Oregon or by publication, the order shall require the opposing party to file an answer in writing within 30 days from the date of service or the date of first publication, whichever the case may be.

(5) Show Cause Orders which do not require the personal appearance of the opposing party shall contain or have attached a NOTICE which is in substantial conformity with the NOTICE set forth in Appendix A to these Rules. Service of such Orders shall be accomplished by serving upon the opposing party a true copy of the Order (with the NOTICE incorporated therein or attached thereto) together with a true copy of the motion and order and true copy of the affidavit submitted in support of the motion.

(6) If a Show Cause Order does not require the personal appearance of the opposing party and the opposing party fails to file a written Answer to the Show Cause Order within the time allowed by the Order, the moving party may present *ex parte*, an Order granting relief sought by the moving party, providing the return of service of the Show Cause Order has been filed of record or is presented with the proposed *ex parte* Order. The Court, in its discretion, may allow or deny the requested relief in whole or part, *ex parte*, or the Court may direct that a hearing be scheduled for the presentation of additional evidence in support of the relief sought by the moving party.

(7) Show Cause Orders (other than for contempt of Court) which, under ORCP or by direction of the Court, require the personal appearance of the opposing party, shall specifically state that the opposing party must appear in person before the Court at the time stated in the Order and shall further specifically state either that such appearance is for the purpose of setting a hearing on the merits of the relief sought by the moving party, or that such appearance is for the purpose of a hearing on the merits of the relief sought by the moving party, as the case may be.

Chapter 6: Trials

6.012 SETTLEMENT CONFERENCES

If the parties wish to utilize the settlement services of a judge, the lawyers may contact the settlement judge's office directly to schedule the conference. If the case already has a trial date set, the parties must schedule the settlement conference to conclude before the date set for trial, or first obtain a reset. When the parties schedule a settlement conference, they must keep the assigned judge's office informed.

6.081 PRESENTATION OF ELECTRONIC EVIDENCE IN JURY TRIALS

- (1) The proponent of evidence to be presented to a jury in an electronic format (i.e., security camera footage) must use their own computer to present the evidence in court and agree to make their computer available to the court and jury for use during jury deliberations.
- (2) The proponent of the evidence must instruct the court clerk on how to display the electronic evidence on the computer to jurors.
- (3) The court may decide whether to have the jury view the electronic evidence in the courtroom or in the jury room while they are deliberating.

Chapter 7: Case Management and Calendaring

7.025 INDIVIDUAL ASSIGNMENT SYSTEM

The Court maintains an Individual Assignment System wherein the Judges are directly assigned full responsibility for management of designated cases from assignment to ultimate conclusion, including post-judgment matters. All issues relating to assigned cases, including scheduling and procedural questions, are to be directed to the assigned Judge.

Chapter 8: Domestic Relations Proceedings

See Chapter 12 regarding mandatory mediation in domestic relations cases.

8.005 PLEADINGS

- (1) A party shall place the notation "YOUNG CHILD INVOLVED" in the title of the first pleading in the case (including a petition and a response) if the case involves custody or parenting time of a child that is three years of age or younger, including an unborn child
- (2) The requirement in paragraph (1) shall apply to the following proceedings:
 - (a) Annulment or dissolution of marriage;
 - (b) Legal separation;
 - (c) Petition to establish custody or parenting plans (including paternity);
 - (d) Family Abuse Prevention Act proceedings; and
 - (e) Post-judgment litigation involving custody or parenting plans.
- (3) When applicable, a party shall place the notation "THERE IS OTHER LITIGATION

INVOLVING CHILD CUSTODY" in the title of the first pleading and all subsequent pleadings involving child custody including the case number of the other litigation. "Other litigation involving child custody" includes proceedings involving a Family Abuse Prevention Act Order (restraining order), dependency or delinquency cases in juvenile court, child support, filiation, parenting time, visitation, guardianship or domestic relations. The case number for any other litigation involving child custody must also be included in the caption of the pleading.

8.011 PARENT EDUCATION PROGRAM

(1) Mandatory Parent Education Program - 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 children to each person named as a party in the following types of proceedings, when such proceedings involve minor children:

- (a) Annulment or dissolution of marriage;
- (b) Legal separation;
- (c) Petition to establish custody or parenting plans (including paternity); and
- (d) Post-judgment litigation involving custody or parenting plans.

(2) Each party who files an appearance in a proceeding of the type(s) 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.

(3) The party initiating the proceeding shall register for the program within 15 days after filing the initiating 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.

(4) The Court shall provide a copy of this rule to the initiating party for service upon all parties against whom relief is sought, together with a statement describing the program including contact telephone numbers, addresses and statement of costs.

(5) The program provider shall issue a certificate of completion when the participant has completed the program. The certificate must be filed with the Court.

(6) 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.

(7) Sanctions - 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.

(8) A party who has completed the program shall have the right to:

(a) 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.

(b) 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.

(c) Apply for entry of a default judgment against a non-appearing party notwithstanding the non-appearing party's failure to participate in the program. Any such default judgment shall include a provision requiring the defaulted party to participate in the program.

(9) Fees

(a) Each party shall pay the required fee to the program provider upon registering for the program.

(b) The program registration fee may be waived or deferred by the Court. The procedure for requesting a fee waiver or deferral shall be the same as used to request a waiver or deferral of the fee when filing a petition for dissolution.

(c) Application for fee waiver or deferral, if any, must be made prior to registering for the program. When registering, either the fee must be paid or the order waiving or deferring the fee must be provided to the program provider.

8.013 ALTERNATIVE PARENT EDUCATION PROGRAMS

(1) For purposes of this rule, "alternative parent education program" means a parent education program available in the community and approved by the Presiding Judge, other than the parent education program mandated under Marion County Circuit Court SLR 8.011. The Court shall maintain a list of alternative parent education programs approved by the Presiding Judge.

(2) Parties subject to participation in a parent education program pursuant to SLR 8.011(1)(a)(iv)(post-judgment litigation involving custody or parenting plans) may be ordered to participate in an alternative parent education program.

(3) Parties ordered to participate in a custody evaluation pursuant to the provisions of ORS 107.425 and requesting the advancement of conciliation funds to pay or partially pay for the services up front, may be ordered to participate in an alternative parent education program in addition to the requirements of SLR 8.011.

(4) The requirement to participate in the program pursuant to SLR 8.011(1)(a)(iv) shall be deemed satisfied if the Court orders participation in an alternative program under subsection (2) and a certificate of completion or other satisfactory evidence of completion is filed with the Court.

(5) The fee for participation in a parent education program shall be the responsibility of each parent unless otherwise ordered by the Court.

8.015 STATEMENT OF ASSETS

(1) In lieu of the filing of separate statements of assets and liabilities, values and proposed distribution, as provided by UTCR, counsel for the parties may and are encouraged to file a single joint statement containing a single list of those assets and liabilities (described individually or by groupings, as counsel may agree) which either or both parties claim to be subject to distribution by the Court. Such single joint statements shall set forth, opposite description of each listed asset and liability (or assets and liabilities by grouping), a separate listing of each party's valuation and proposal for distribution of such asset or liability or a statement that such asset or liability is not subject to distribution by the Court, or that, for the reasons stated, the value of the asset or liability should not be taken into account by the Court in the division and distribution of the parties' assets and liabilities.

(2) In the event counsel for the parties file separate statements pursuant to UTCR, such statements must include all assets and liabilities which either or both parties claim to be subject to distribution by the Court; must contain identical description of such assets and liabilities (either individually or by grouping); must list the assets and liabilities in the same order; and must include the filing party's position that the asset or liability is not subject to distribution by the Court, or, that for the reasons stated, the value of the asset or liability should not be taken into account by the Court in the division and distribution of the parties' assets and liabilities.

(3) Statements of assets and liabilities, whether filed jointly or separately, shall, to the extent possible, also reflect the following:

- (a) Disputed property should be grouped, separate from undisputed property;
- (b) Sub-totals should be reflected for each category and grouping; and
- (c) The private sale values should be listed for all vehicles listed.

8.017 REFEREES (SPECIAL MASTERS)

Where the use of referees under ORCP 65 is appropriate in domestic relations matters, SLR 5.045 shall apply.

8.019 PARENTING TIME COORDINATORS

- (1) A Parenting Time Coordinator may be appointed pursuant to ORS 107.425(3).
- (2) A Parenting Time Coordinator shall have at least one of the following qualifications: a mental health professional, attorney, mediator or court staff personnel with specialized training as a Parenting Time Coordinator or experience as a Parenting Time Coordinator.
- (3) A “mental health professional” for purposes of this rule is a person with one of the following qualifications:
 - (a) Masters, Psy.D or Ph.D degree in psychology, counseling or social work, or equivalent training, experience and education, or
 - (b) M.D. with psychiatric specialization.
- (4) An “attorney” for purposes of this rule is a person with a degree in jurisprudence.
- (5) A “mediator” for purposes of this rule is a person meeting the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.2.
- (6) “Specialized training as a Parenting Time Coordinator” shall include:
 - (a) Training required for domestic relations mediators as specified in the Oregon Judicial Department Court- Connected Mediator Qualifications Rules, Section 3.6(1)(b), seminar or graduate level course work in domestic violence, and any other training required by the Court; and
 - (b) While actively practicing as a Parenting Time Coordinator, completion of a two hour course on domestic violence per year from a local or nationally recognized organization. During the first year and for every third year thereafter, the training shall be through a local organization. Training through service providers recommended by the Marion County Domestic Violence Council shall be presumed to satisfy this requirement. However, the Court retains final authority to determine what satisfies this requirement.
- (7) Any Parenting Time Coordinator appointed to a case involving parents of a different culture than his or her own shall have an affirmative duty to educate himself or herself about the norms and values of that culture prior to conducting any substantive work on the case.
- (8) A person who does not meet the requirements of subsection (2) may act as a Parenting Time Coordinator if he or she has other qualifications deemed by the Court to be sufficient to act

as a Parenting Time Coordinator in a given case. For example, an M.D. with pediatric specialization may be qualified depending on his or her background and experience.

8.20 MOTION FOR ORDER OF DEFAULT; TIME FOR SERVICE AND APPEARANCE

Any party who has appeared in a domestic relations action in response to a contempt proceeding or to motions for temporary relief in such action, but who has not filed a response to the petition in such action, shall be entitled to be served with a copy of any motion for the entry of an order adjudicating his or her default in such action and with a copy of any motion for the entry of a default judgment against him or her, at least 10 days (plus 3 additional days if service is accomplished by mail) before the entry of such order or such judgment. Further, the motion for the default or for the default judgment shall request that such relief be granted only if the opposing party does not appear in response to the petition within 10 days from the date of the motion.

8.061 SHOW CAUSE ORDERS, OTHER THAN FOR CONTEMPT

The provisions of SLR 5.065 shall apply in domestic relations actions.

8.075 PARENTING PLANS

Marion County's model parenting plan sets forth numerous options and can be found on the court website at: www.courts.oregon.gov/Marion.

8.121 MANDATORY USE AND TIME FOR FILING FOR UTCR FORM 8.120.1

- (1) Use of the Domestic Relations Trial Process Selection and Waiver for Informal Domestic Relations Trial Form 8.120.1 in the UTCR Appendix of Forms is mandatory.
- (2) Each party shall file a Domestic Relations Trial Process Selection and Waiver for Informal Domestic Relations Trial Form 8.120.1 by the deadline specified by the assigned judge or prior to trial if no deadline is given.

Chapter 9: Probate

See Chapter 12 regarding mediation in probate cases.

9.005 PROBATE COMMISSIONER

- (1) A Probate Commissioner appointed by the Court shall assist the Court in the administration of decedent's estates, guardianships, conservatorships, trust estates, name change proceedings and adoptions.
- (2) The Probate Commissioner shall have authority to take the following actions in uncontested decedent's estates, guardianships, conservatorships, trust estates, name change

proceedings and adoptions:

- (a) To make and enter orders on behalf of the Court, admitting wills to probate, appointing special administrators, personal representatives, guardians and conservators;
- (b) To approve and set the amount of bond for special administrators, personal representatives, guardians and conservators; and
- (c) To screen all filings, including accountings, to determine compliance with procedural requirements imposed by law, UTCRs and SLRs.

9.015 SUBMISSION OF *EX PARTE* ORDERS IN UNCONTESTED DECEDENT'S ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS, TRUST ESTATES, NAME CHANGE PROCEEDINGS AND ADOPTIONS

All *ex parte* orders and all other matters in uncontested decedent's estates, guardianships, conservatorships, trust estates, name change proceedings and adoptions shall be submitted to the Probate Commissioner either directly or through the Trial Court Administrator. Such orders and matters may be presented at any time without the physical appearance of the attorney for the fiduciary.

9.025 GUARDIANS

Within 30 days of each anniversary of appointment, every guardian (whether the protected person is a minor or is an adult incapacitated person) shall submit to the Probate Commissioner for filing an annual report, in letter form or otherwise, signed by the guardian or his attorney of record, stating whether or not the need for the guardianship continues to exist, and if so, the basis for the need for continuation.

9.035 ACKNOWLEDGMENT OF CO-OBJECTOR

If more than one unrepresented party signs an objection or other pleading in a probate case, each such unrepresented party shall complete and file with the court an Acknowledgment of Co-Objector in the form set forth in Appendix D to these rules.

9.081 ORAL OBJECTIONS

Oral objections, where permitted in probate matters under ORS 125.075, shall be presented in the Probate Office of the Marion County Courthouse, 100 High Street NE, Salem OR 97301, during regular office hours. The respondent or protected person may also make objections orally to an appointed Court Visitor. Court Visitors are to include any objections by the respondent or protected person in the Visitor Report. The objection should be in bold and underlined so as to call its attention to the court when reviewing the report.

9.111 SHOW CAUSE ORDERS

The provision of SLR 5.065 shall apply in adoption matters.

9.161 ACCOUNTING PROBATE MATTERS

Parties must file accountings in substantially the form specified by UTCR Form 9.160.

9.162 PRESENTATION OF ACCOUNTS IN DECEDENTS' ESTATES

(1) All accounts in decedent's estates shall be filed with the court. When requesting approval for an interim accounting in a decedent's estate, or for interim attorney's fees in connection with an interim accounting, notice of time to object must be provided to all interested persons as required by ORS 116.093 for a final account.

(2) Objections

(a) If objections to a final account are filed, the court will assign the case to a judge.

(b) If no objections to a final account are filed within the time fixed for filing objections, a proposed order approving the final account shall be filed with the court.

9.163 PRESENTATION OF ACCOUNTS IN CONSERVATORSHIPS

(1) All accounts in a conservatorship shall be filed with the court.

(2) Objections.

(a) If objections to an account are filed, the court will assign the case to a judge.

(b) If no objections to the account are filed within the time fixed for filing objections, and an order approving the account is desired, a proposed order shall be filed with the court.

(3) In conservatorships where remaining assets are being held in restricted accounts and annual accountings have been waived, the Conservator shall file an annual statement with copies of the most recent bank statement of the financial institution and the balance in the restricted account. If the depository institution does not issue bank statements, confirmation of the ending balance in the account shall be provided by Uniform Trial Court Rule Form 9.180.3.

(4) Depository statements submitted pursuant to UTCR 9.180(2) shall show the account's ending balance on the last day of the accounting period, unless the account was closed prior to the end of the accounting period.

9.200 VISITORS

Pursuant to ORS 125.165 and 125.170, the Presiding Judge of Marion County establishes by order:

- (1) Qualifications for persons serving as visitors for the court;
- (2) Standards and procedures to be used by visitors in the performance of their duties; and
- (3) Fees for visitors conducting interviews and preparing reports.

Chapter 12: Mediation

12.005 MEDIATION PROGRAMS

- (1) Marion County SLR 12.025 through 12.095 shall apply to mediation of custody and parenting time issues in domestic relations cases under ORS 107.765.
- (2) Marion County SLR 12.101 through 12.105 shall apply to mediation of financial issues in domestic relations cases under ORS 107.755(4).
- (3) Marion County SLR 12.115 through 12.165 shall apply to mediation of civil cases as an alternative to court-annexed arbitration.
- (4) Marion County SLR 12.305 shall apply to mediation of small claims and FED cases.

12.007 MEDIATORS

- (1) To qualify as a Court-approved mediator, a person must:
 - (a) Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.2 and/or 2.3;
 - (b) Sign and file an application with the Court; and
 - (c) Receive approval by the Presiding Judge, upon recommendation of the Domestic Relations Mediation Screening Committee (Domestic), or Marion County Commission on Dispute Resolution (Civil and Probate).
- (2) Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court- Connected Mediator Qualifications Rules, Section 1.3.
- (3) The Presiding Judge may remove a mediator from the court-approved list at any time at

the Presiding Judge's discretion.

12.015 APPLICATION OF RULES

- (1) These rules do not apply to mediation by private agreement.
- (2) These rules shall not be applied to restrict the process, but rather to grant considerable discretion to the mediator and mediating parties.

12.025 DOMESTIC RELATIONS MEDIATION

- (1) Mandatory Mediation

All cases eligible for mandatory mediation under ORS 107.765 shall be referred to mediation, as provided in these rules.

- (2) Exclusion from Mediation

A matter may be excused from mandatory mediation upon application by a party to the Court with service upon the opposing party and after being given the opportunity to be heard in objection and upon a showing of good cause.

12.035 RELATIONSHIP TO COURT JURISDICTION

- (1) A case filed in the Circuit Court remains under the jurisdiction of that 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.
- (3) At any point during the mediation, the Court may approve a temporary custody and parenting time order reflecting the parties' agreement as to those issues.

12.055 ASSIGNMENT TO MEDIATOR

- (1) The parties may select a mediator of their own choosing; however, if the mediator is not on the list of mediators approved by the Court, the expense of the mediator shall be the responsibility of the parties.
- (2) In the absence of a mediator selected by the parties, the Court will appoint a mediator from the list of court-approved mediators.

12.065 AUTHORITY OF MEDIATORS

- (1) A mediator has authority and control over the mediation process; but a mediator has no control or authority over the parties or over their decisions in the case.
- (2) A mediator shall encourage disputing parties to obtain individual legal advice and individual legal review of any mediated agreement before signing any agreement.
- (3) A mediator shall not act as a lawyer for either party.

12.075 SCHEDULING OF MEDIATION SESSIONS

- (1) Upon receipt of a mediation assignment, a mediator shall immediately notify the parties of a reasonable date and time for the initial mediation session which shall occur in the mediator's office, unless otherwise agreed upon between the mediator and the parties. The initial mediation session shall occur within fourteen (14) days of the mediator's receipt of first notice of assignment, assuming both parties have completed Cope (Co-Parenting education).
- (2) Mediation shall be completed in a prompt manner so as to not unduly delay the Court and in no event later than any deadline date ordered by the Court. The Court expects most cases to be completed within 49 days of the date of referral.

12.085 MEDIATOR'S REPORT

- (1) Report to the Court

In all cases which have been referred to a court-appointed mediator, the mediator shall make a final report to the Court describing the conclusion of the mediation, whether successful or unsuccessful.

- (2) Successful Mediation

The mediator shall prepare a written memorandum of any agreement which the parties have reached as a result of mediation. The unsigned, proposed form of memorandum of agreement shall be distributed to the parties and to their counsel by the mediator. If the parties choose to sign a memorandum of agreement after having had an opportunity to review it with a lawyer, the document may then be incorporated into a Court Order or Judgment.

- (3) Unsuccessful Mediation

The mediator may notify the Court at any time following the initial mediation session involving the parties and the mediator that mediation has been unsuccessful, in which case the proceeding will be scheduled for hearing in the same course and with the same priority as if there had been no mediation. The mediator may determine that the mediation has been unsuccessful if the parties are unable to resolve the custody or parenting plan controversy; or, if one or both parties are unwilling to participate in mediation; or, if the mediator determines that either party is using the mediation process in bad faith for the delay of resolution of other issues.

12.095 COMPENSATION OF MEDIATORS (Custody and Parenting Issues)

(1) For issues subject to mandatory mediation under these rules (custody and parenting plan), Marion County shall compensate the mediator an hourly rate set by order of the Presiding Judge, up to a maximum of eight (8) hours per case, including time allocated to no shows. A maximum of one (1) hour of this time may be allocated to administrative time setting appointments and corresponding with parties and attorneys, and one (1) hour may be charged for time spent drafting the parties' agreement. The court expects that eighty (80) percent of cases will be concluded in a maximum of six (6) hours. The funding source shall be fees collected pursuant to ORS 107.615.

(2) Marion County shall not pay for any mediation expenses beyond the eight (8) hours authorized under subsection (1) without a signed court order in the court file authorizing the additional time. After the mediator has filed a report with the court indicating whether the case has settled, further mediation expenses shall be paid by the parties in the absence of a court order authorizing additional payment. If the parties wish to use any remaining balance of the initial eight (8) hours within a year of the judgment, the mediator shall notify the mediation coordinator in advance of conducting further mediation.

(3) In the event both parties do not appear at a scheduled mediation session without at least 24 hours advance notice to the mediator, the mediator may request a cancellation fee, set by order of the Presiding Judge. Alternatively, the mediator may mediate with one party if shuttle mediation would be helpful in resolving the case and charge the regular hourly rate. The party canceling must provide advance notice on a regular business day to avoid imposition of the cancellation fee.

In order to charge the cancellation fee, the mediator must send a written notification identifying the responsible parent and the amount charged to the assigned judge and both parties, through their attorneys if they are represented. The mediator shall refer the case back to the court after two no shows. Marion County shall not pay for more than two no shows on any one case. The assigned judge will allocate the cost of any no shows to the responsible party, in the absence of good cause shown.

(4) For issues not involved in mandatory mediation, the parties may agree to mediate with the court-appointed mediator; but the compensation arrangement shall be between the parties and the mediator, as they may agree in writing, and the compensation rate shall be negotiated by and between the parties and the mediator, unless the Court has entered an order allowing payment pursuant to SLR 12.105(2).

If the parties select a mediator who is not on the court-approved list, the compensation shall be fixed by agreement between the parties and the mediator, and shall be the responsibility of the parties.

12.101 DOMESTIC RELATIONS FINANCIAL ISSUES MEDIATION

The parties may agree to mediate financial issues, including but not limited to, property and debt division, and support. The Court may also refer matters to mediation on the motion of one party, or on the Court's own motion.

12.105 COMPENSATION OF MEDIATOR (Financial Issues)

(1) The parties are responsible for paying the mediator for his or her time. Appropriate fee arrangements should be made with the mediator prior to the first session.

(2) The Court may pay for up to \$480 of the mediator's fee if one or both of the parties are indigent.

12.115 CIVIL MEDIATION IN MANDATORY ARBITRATION CASES

(1) Parties to civil cases which are subject to mandatory arbitration under ORS 36.400 through 36.425, UTCR Chapter 13 and SLR Chapter 13 may satisfy this requirement by electing and participating in court-annexed mediation pursuant to ORS 36.180 through 36.210 and these rules.

(2) Pursuant to ORS 36.185, the following cases are excluded from elective mediation under these rules:

- (a) proceedings in small claims court; and
- (b) proceedings in forcible entry and detainer cases.

12.135 MOTIONS

At the discretion of the Court, a potentially dispositive motion may be determined by the Court prior to mediation. Any other motions shall be stayed pending disposition of mediation.

12.145 REFERRAL TO MEDIATION (Civil)

(1) The case shall be assigned to arbitration unless an election for mediation is jointly made by all parties not in default or their respective counsel.

(2) The parties shall have the option to select a mediator. So long as these guidelines are followed, such mediation will qualify as an election not requiring mandatory arbitration.

(3) The mediator will assign the date, time and meeting place of the mediation session. Additional sessions may be set at the discretion of the mediator with the cooperation of the parties.

12.155 COMPENSATION OF MEDIATOR (Civil)

Compensation of the mediator shall be the same as for arbitration, as to rate, payment timelines and allocation of cost, unless agreed to otherwise between all parties and the mediator.

12.165 COMPLETION OF MEDIATION

(1) Unless otherwise ordered by the Court, mediation shall be completed within 90 days of assignment.

(2) The case shall be reported as "settled" or "not settled." If the parties are not able to settle, but nonetheless are able to limit issues or partially settle the case, the agreement regarding the partial settlement shall be reported to the Court for the purposes of further proceedings. In such an instance, the parties and mediator shall sign the form.

(3) In all cases assigned to mediation in which a settlement is reached, the parties shall report such settlement to the Court as follows:

(a) If the settlement is prior to the mediation hearing, the parties shall report the settlement to the Court and the mediator.

(b) If the settlement is after the commencement of the mediation hearing, the parties shall cooperate with the mediator, and the mediator shall file a notice of the settlement with the Court.

(4) If a case is reported as "settled," an outline of the terms of the agreement (which is not required to be typed), signed by both parties, shall be filed by the mediator with the Court within 14 judicial days. It is the responsibility of the parties and their counsel to file a stipulated judgment dismissing the case or stipulated judgment within 21 days of the filing of the mediator's outline of the agreement. Unless further services are engaged by the parties, the mediator's services are terminated with the filing of the outline of agreement. It is the parties' responsibility to draft any specific language regarding the particulars of the settlement and judgment.

(5) If the parties are not able to settle a mediated case, the result shall be reported as "not settled."

(6) Unless there is an election by the parties to arbitrate, the case shall proceed to be tried in the normal course. Each party shall deposit the sum otherwise provided by ORS 36.425(2) (c).

12.305 SMALL CLAIMS AND FED MEDIATION

(1) All contested small claims and FED cases shall be referred to mediation pursuant to ORS 36.185, except as otherwise ordered by the Court. Cases involving an incarcerated party shall not be referred to mediation unless all parties agree to participate in mediation.

(2) Such mediation services shall be provided by the Court, without cost to the litigants, with volunteer mediators.

Chapter 13: Arbitration

13.045 ARBITRATORS

- (1) To qualify as a court-approved arbitrator, a person must:
 - (a) Meet the requirements contained in UTCR 13.090,
 - (b) Participate in at least ten trials or arbitrations either as a lawyer or an arbitrator or other comparable professional experience in the area of law the applicant proposes to arbitrate,
 - (c) Submit three letters of recommendation to the Court, and
 - (d) Receive approval by the Presiding Judge, upon recommendation of the Marion County Commission on Dispute Resolution.
- (2) The parties may stipulate to an arbitrator not approved by the Court and proceed through court annexed arbitration, regardless of whether that arbitrator meets the minimum requirements outlined in subsection (1).
- (3) The Presiding Judge may remove an arbitrator from the panel at the Presiding Judge's discretion.
- (4) Each arbitrator shall be evaluated by the Marion County Commission on Dispute Resolution at least every five years for compliance with standards of legal practice, UTCRs, SLRs, and Marion County Arbitration Procedures. Complaints or comments about the arbitrator should be submitted in writing to the Arbitration Coordinator and may be considered in the review process. The Commission may recommend approval or removal based upon this review.
- (5) A written complaint against an arbitrator shall be reviewed within 60 days by the Marion County Commission on Dispute Resolution. The Commission may make recommendations as the Commission feels are appropriate based upon the review.

13.055 SPECIFICATION OF ARBITRATORS HOURLY RATE

Arbitrators shall specify the agreed-to hourly rate, if it is any different from the norm, when they are initially appointed by the court and have contact with the parties. Arbitrators that charge more than the court's normal arbitration fees shall be identified on the arbitration lists available to litigants.

13.075 TRIAL DE NOVO

In a civil action where a party asserts a claim in an amount which is subject to the arbitration limit under ORS 36.400(3), that party shall not be precluded from asserting a larger claim in a trial *de novo* under ORS 36.425, subject to ORCP 23.

13.085 EXEMPTION FROM ARBITRATION

The Marion County Courts have instituted a mediation program as described in ORS 36.405(3). The parties shall not be required to participate in arbitration if they participate in mediation under SLR 12.115 through 12.165.

13.095 ARBITRATION PROCEEDING

(1) All cases referred to arbitration under these rules must be heard by the arbitrator in Marion County, unless this requirement is waived by all parties in writing prior to the arbitration hearing. In addition, the arbitrator shall notify the court arbitration coordinator of the date, time and location of every arbitration hearing so that public notice may be provided pursuant to ORS 36.420. Failure to comply with this rule may result in removal from the arbitration panel pursuant to SLR13.045 (3).

(2) Except for good cause shown, the hearing must be scheduled to take place not sooner than 14 days, or later than 77 days, from the date of assignment of the case to the arbitrator. The parties may stipulate to a postponement or continuance only with the permission of the arbitrator. Such postponements or continuances must also be within the 77 day period. Any continuances or postponements beyond such period require the moving party to obtain approval of the Presiding Judge or his or her designee. The arbitrator must give notice of any continuance to the arbitration coordinator.

(3) Upon failure to timely comply with UTCR 13.160 or any SLR adopted pursuant thereto, the Presiding Judge, or his or her designee, may exercise the court's authority under UTCR 1.090(2).

(4) Except as otherwise provided in ORS 36.400(4), when a party fails to tender fees to the arbitrator under UTCR 13.120(2), without an order waiving or deferring fees pursuant to UTCR 13.120(3), the arbitrator may preclude the party from presenting evidence or participating in the arbitration. The arbitrator may proceed in the same manner as set forth in UTCR 13.200.

Chapter 15: Small Claims

15.015 DISMISSAL FOR FAILURE TO PURSUE CLAIM

A judgment of dismissal shall be filed and entered on the Court's own motion 90 days after the date the claim is filed, unless the claim is set for a hearing or a default judgment is entered.

15.002 MEDIATION

Small claims cases shall be subject to mediation, except for good cause acceptable to the Court. The Small Claims office will summarize the process and assign cases out for mediation on a specific date. The Court may decline to consider any small claims matter until notified by the mediator that the matter has proceeded through the mediation process without resolution. Cases that do not reach resolution shall be scheduled for trial at a later date.

Chapter 16: Violations

16.005 VIOLATIONS BUREAU

- (1) A Violations Bureau is established pursuant to ORS 153.800.
- (2) The Trial Court Administrator is appointed as Violations Clerk, and duly appointed deputies of the Administrator are further appointed as Deputy Violations Clerks.
- (3) The Violations Bureau may exercise authority over the following traffic and non-traffic violations as defined in ORS 153.008:
 - (a) offenses designated as violations in the statute defining the offense;
 - (b) offenses created by Oregon statute, or ordinance of a county, city district or other political subdivision of Oregon, that provide violation of the law is punishable by a fine but not a term of imprisonment; and
 - (c) misdemeanors treated as violations by a prosecuting attorney pursuant to ORS 161.568.
- (4) An appearance shall be allowed in the Violations Bureau for any defendant who has not been convicted of three or more offenses in Marion County within the preceding 12-month period if the current violation falls into one of the following categories: traffic, overload, boating, fish and wildlife, park and recreation, bicycle, pedestrian and parking violations. On all other violations, a defendant may appear in front of the Violations Bureau once unless he or she has been convicted of a violation in Marion County within the preceding 12-month period.

16.015 TRIALS BY AFFIDAVIT OR DECLARATION UNDER PENALTY OF PERJURY

If a signed waiver is filed by the alleged violator, testimony in any violation trial is allowable by affidavit or by declaration under penalty of perjury, pursuant to ORS 153.080.

APPENDIX A

Supplementary Local Rule 5.065

NOTICE

You must file an Answer in writing to this Order within the time stated in the Order. If you do not file a written Answer within such time, the other side may automatically be given the relief against you which the other side is requesting in the attached motion.

In order to file an Answer in writing, you must do the following things:

1. Your written Answer must contain the title and number of this case.
2. Your written Answer must specify the item or items of relief requested by the other side which you oppose. (You do not need to state the reasons why you oppose the relief.)
3. Your written Answer must be signed by you and must contain your current mailing address. All future notices and documents in this case will be sent to you at the address listed on your written Answer unless and until you file in this case a written notice of a change of address, and the Court will proceed on the assumption that you have received all communications and documents mailed to you at your most current address on file in this case.
4. Your written answer must be mailed or presented to the Court so as to actually reach the Court within the time stated above.
5. Your written Answer must be accompanied by payment of any filing fee required by law for the filing of the Answer, or you must obtain a Court Order waiving or deferring such filing fee. (You should contact the Court if you have any questions concerning a filing fee.)
6. At or before the time you file your written Answer with the Court, you must mail a copy of the Answer to the attorney for the other side, or to the other side personally if the other side is not represented by an attorney, and you must attached to the Answer which you file with the Court, a certificate showing that you mailed a copy of the Answer to the Attorney for the other side or to the other side personally. If you file a written Answer in the matter within the time stated above, the Court will schedule a hearing to decide whether or not to grant relief requested by the other side, and you will be notified by mail of the date and time of such hearing. However, you will not be entitled to seek any relief for yourself against the other side. If you wish to seek affirmative relief for yourself against the other side, you must file an appropriate motion or motions for such relief, and you must mail a copy of such motion or motions to the attorney for the other side or to the other side personally if the other side is not represented by an attorney.

If you have any questions, you should see an attorney immediately.

APPENDIX B

IN THE CIRCUIT COURT OF STATE OF OREGON FOR MARION COUNTY

In matter of the _____)
 Guardianship/Conservatorship) Case No.: _____

Estate of _____)
_____) **ACKNOWLEDGMENT OF CO-OBJECTOR**

Respondent Deceased)
_____)

I have signed an objection in this case along with other objectors. I provide the court with the following information: (PLEASE PRINT)

Name: _____

Address: _____

Phone number: _____

I understand and agree to the following:

- 1) By signing the objection, I am making myself a party to this court case.
- 2) As a party, I am required to appear for all scheduled court proceedings unless excused by the court. My failure to appear will result in my objection being stricken and my status as a party being terminated. If that occurs, I may continue to attend any court proceedings but will not receive notice unless I file and pay the filing fee for a request for notice or a new objection or appearance; and I will not be entitled to participate in further proceedings unless I file and pay the filing fee for a new objection or pleading.
- 3) I understand that the court is not required to allow me to appear by phone. I further understand that, if I am allowed to appear by phone, I will be required to call into the court. If multiple unrepresented parties wish to call into the court we will be required to arrange a conference call into the court.
- 4) I understand that at times the court will not be able to give me written notice of a hearing and at times the court is required to set hearings in a short time frame. I understand that at times the only notice I will receive of court proceedings is a phone call, or a voice message if I do not answer the phone. I understand that if I do not have a phone that can receive voice messages I may not receive any notice of court hearings.
- 5) As a party, I am required to comply with all obligations imposed on parties to litigation, for

example, I may be required to provide documents to other parties if requested.

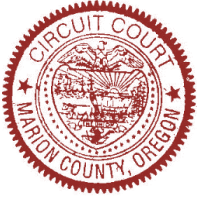
6) I understand that I may not speak for or represent other parties, and that no one other than an attorney licensed by the Oregon State Bar may speak for or represent me.

7) I understand that any communication I send to the court must be copied to all other parties to the case and I must provide proof of doing so to the court.

Dated: _____

Signature of Objector

Printed Name



STATE OF OREGON – MARION COUNTY

I certify that this is a true and correct copy of a document in the possession of the court administrator for the Marion County Circuit Court.

DATED: December 26, 2019

Court Administrator for Marion County Circuit Court (or designee):
Linda Hukari
