

SIXTH JUDICIAL DISTRICT

Umatilla and Morrow Counties

LOCAL COURT RULES

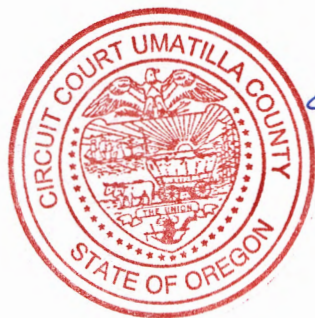
**Regular Cycle
February 1, 2019**

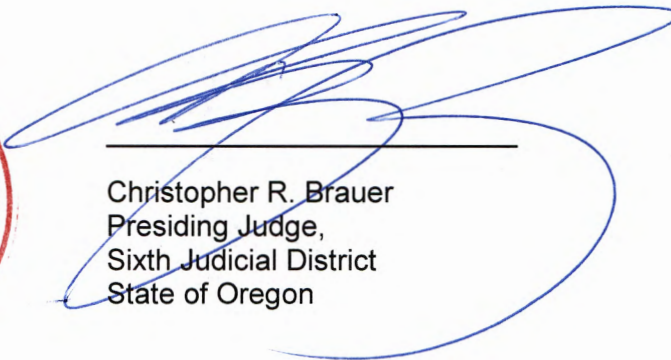
**Honorable Christopher R. Brauer, Presiding Judge
Roy N. Blaine, Trial Court Administrator**

**CERTIFICATE OF SUPPLEMENTARY LOCAL COURT RULES
OF THE CIRCUIT COURT
OF THE SIXTH JUDICIAL DISTRICT**

I, Christopher R. Brauer, Presiding Judge of the Sixth Judicial District of the State of Oregon, hereby certify that attached hereto is a complete, true and correct copy of the proposed supplemental local rules, of the Circuit Courts of the State of Oregon for Umatilla County and Morrow County that will go into effect the 1st day of February 2019.

DATED this 28 day of December 2018.





Christopher R. Brauer
Presiding Judge,
Sixth Judicial District
State of Oregon

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Sample forms for the Sixth Judicial District may be found on the Court's website identified in Supplementary Local Rule 1.171.

Chapter 1 – General Provisions

1.161 FILING COURT DOCUMENTS

- (1) The Sixth Judicial District presently holds court in three (3) locations: Pendleton, Hermiston and Heppner. Information regarding business hours and locations for the Sixth Judicial District may be found on the Court's website identified in Supplementary Local Rule 1.171.
- (2) For Umatilla County filings, matters filed under UTCR 21.070(3)(a) – (d) shall be filed in Pendleton.

1.171 SIXTH JUDICIAL DISTRICT WEBSITE

The Sixth Judicial District maintains an informational website on the Internet. The address of this website is: www.courts.oregon.gov/courts/Umatilla/Pages/default.aspx.

1.172 BUILDING SECURITY

The Umatilla County Courthouse in Pendleton, the Stafford Hansel Government Center Circuit Court (second floor), and the Morrow County Courthouse in Heppner, or any other facility or location where the court conducts its proceedings are Court facilities for the use of members of the public to exercise their rights to view proceedings and handle their affairs through the Court. There is no right of public access to staff areas or judicial chambers, offices, jury rooms, or conference rooms. Any right of access to public areas may, however, be overcome by conduct detrimental to the safety of the Court's Judicial Officers, other Officers of the Court, its employees, and members of the public. This type of conduct may result in the ejection of a person or party from these facilities and possibly their restraint from entering these buildings for a specified period of time. Such detrimental conduct may include, but is not limited to:

- (1) Direct physical assault or physical harassment upon any person;
- (2) Destruction or theft of Court records or posted public notices;
- (3) Vandalism, defacing, burning, or other physical destruction of any device or room within these facilities;
- (4) Intimidation, extortion, coercion, or other forcible conduct aimed at interrupting the Court's Judicial Officers, other Officers of the Court, and its employees in the course of their work or at interfering with members of the Bar or of the public in their dealings with the Court;
- (5) Any conduct which interferes with or interrupts a Court proceeding or court administration;
- (6) Any entrance into an area of these buildings designated off-limits or for employees only;
- (7) Any introduction of noxious odors designed to deny members of the public the use of any public part of these buildings;
- (8) Any attempt, either by fraud or threat, to gain access to confidential Court records or material;
- (9) Any attempt, either by fraud or threat, to gain access to the private office of a Judicial Officer, the Court Administrator, or other Court Officer; or

- (10) Any attempt by a member of the public to deny any other member of the public the use of these buildings.

Chapter 2 – Standards for Pleadings and Documents

2.011 FORM OF PLEADINGS

Proposed orders shall include at least three check boxes substantially as follows: one for “granted,” a second for “denied,” and a third for “Other.” Additionally, a two-inch or larger section below the “other” check box shall be left blank as space where the judge may annotate other specific orders and comments. When appropriate based upon the motion, the proposed order shall also reflect options for additional logically related decisions for the judge. All check boxes and blank space must be placed above the standard date and signature line.

2.012 CONTENT OF ORDERS

Proposed orders shall include the specific decisions or rulings to be made without need for reference to the motion or supporting pleadings.

2.015 RETURN OF DOCUMENTS TO A PARTY

- (1) In addition to the authority to decline to receive or file a document under ORCP 9 E and UTCR 2.010(12)(c), in certain limited situations, a document may be returned to the party who submitted it, without being filed by the court. Those situations include:
 - (a) 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;
 - (b) A document which requires a fee but the fee or an order to waive or defer such fee is not provided and the fee requirement has not been satisfied;
 - (c) A document without sufficient identifying information to determine in which case it should be filed or entered;
 - (d) A document which requires court action, but the court action cannot be taken without the filing of statutorily-required preceding documents;
 - (e) A document with a case caption from a jurisdiction not recognized by the Oregon Constitution or established by the Oregon Legislature, or a judgment order, or other document purportedly issued by a nonexistent court;
 - (f) A petition submitted for filing under ORS 813.210 more than thirty (30) days after the first appearance on the summons where there is no finding of good cause by the court to permit the late filing;
 - (g) A document submitted for filing by telephonic facsimile transmission (FAX); or,
 - (h) A written notice of appeal and request for trial *de novo* of an arbitration award submitted for filing beyond the time permitted by law.
- (2) In small claims and summary dissolution cases, documents which do not comply with ORS, ORCP, UTCR, or SLR may, at the discretion of the Presiding Judge, be returned to the filing party.
- (3) A pleading document which begins an action, and which is filed in this court and given an appropriate Umatilla or Morrow County Circuit Court case number, will not be

returned to a filing party even though the document may have a caption for another circuit court and was filed in error by the filing party.

2.161 SEALED MATTERS

- (1) For all case types, except as otherwise stated by law, UTCR 5.160 and SLR 5.160 apply to any materials filed under seal.
- (2) Upon a motion to seal a document or matter, unless otherwise restricted by law, a judge may order that the matters be filed confidentially instead of under seal.

Chapter 3 – Courtroom Proceedings

3.181 ELECTRONIC RECORDING AND WRITING ON COURTHOUSE PREMISES

- (1) In accordance with UTCR 3.180(11) the presiding judge has designated the following areas outside the courtrooms and under the control and supervision of the court where electronic recording is allowed without prior permission:
 - (a) For courtrooms 1, 2 and 3 in the Umatilla County Courthouse, the landing at the top of the stairs on the second floor;
 - (b) For courtrooms 4 and 5 in Hermiston, the waiting area just outside the public elevator on the 2nd floor;
 - (c) For the courtroom in the Morrow County Courthouse, the landing at the top of the stairs on the second floor.
- (2) All electronic equipment except that allowed by UTCR 3.180 must be powered off rather than simply muted, if taken into any courtroom.

Chapter 4 – Criminal Cases

4.005 AMENDMENT OF FELONY CHARGING INSTRUMENTS

An information of felony or an indictment shall not be amended by an information of misdemeanor within the existing case. To accomplish this, the original case shall be dismissed without prejudice and the charges filed in a new case initiated by an information of misdemeanor.

4.011 DISCOVERY

Before any motion to compel discovery in a criminal case is filed, a written demand shall be made on opposing counsel (or upon a party if self-represented) for the specific materials. The motion shall be supported by declaration that such a demand was made and shall include a copy of the demand, the date the demand was served, and the information that has been furnished and if known, types of information that have not been furnished as of the date the motion is filed. If no objection is filed within seven (7) days of delivery to the other party the court may approve an order to compel with a specific time frame for response.

4.012 DISCOVERY OF MATERIALS FROM NON-PARTIES AND IN CAMERA REVIEW

- (1) Except as allowed by subpoena to appear at a scheduled evidentiary court proceeding to provide testimony, no request for production from non-parties under ORS 136.580 through ORS 136.603 for either direct production or for judicial in camera review shall issue without a motion for and an approved court Order for Production including a court-specified date, time, and courtroom for hearing. The moving party shall submit a motion, supporting documents and proposed order pursuant to ORS 136.580 including:
 - (a) A caption reflecting that this is a “motion (order) for non-party production pursuant to subpoena,” and if applicable, “for in camera review” or “not for in camera review pursuant to ORS 136.580;”
 - (b) A description of the papers, documents, records or materials to be produced, with a description of the reviewing court’s preferred method of electronic submission (*e.g.*, CD or secured file transfer);
 - (c) A description of the method for verifying the items (*e.g.*, declaration pursuant to ORS 136.583(6)) including the legal basis for any required redaction of the materials;
 - (d) Points and authorities and supporting declaration describing the legal and factual basis for the production;
 - (e) A place for the court to insert the courtroom, date, time, and location for the hearing in response to production (this is the deadline for response to the process). The requested time frame for production should be approximately thirty (30) days out to allow sufficient time for signing of the order plus service plus the twenty (20) days allowed by ORS 136.583(3). Requests should be made no later than ninety (90) days prior to trial except for in-custody proceedings or with good cause shown;
 - (f) A statement that production, or objection by motion to quash or limit production, may be submitted to the court clerk at the designated court location prior to the court date. Allow a place for the court to insert instructions for delivery of the items to: Clerk of the Court, [County Name], Attn. Courtroom [#], [Address],

[email address]. If production is made, the court will cancel the hearing. If an objection, motion to quash or motion to limit production is filed, the court may choose to continue the deadline for production until after ruling on the objection; and

- (g) A copy of the proposed subpoena.
- (2) The applicant shall effect service of the subpoena for production, order for production, and any additional orders (including applicable protective orders and/or protective orders for in camera judicial review) as required under ORS 136.583 and shall file proof of service promptly thereafter with the court or notify the court that the matter was not timely served. If the court extends the time allowed for production, the applicant shall serve notice of the continuance to the responding party and file proof thereof with the court unless the continuance is granted on the record with the responding party present.
- (3) In addition to the requirements in sections (1) through (2), if in camera judicial review of materials is requested, the motion must clearly state in the caption that it includes a Motion for In Camera Judicial Review. The moving party has the burden of proving that the court should exercise its discretion and conduct the in camera review. In the absence of a showing of good cause, the court may deny the order to produce, protective order and the motion for in camera judicial review, therefore the motion should include, as appropriate:
- (a) The basis for the in camera review;
- (b) The expected relevant matters for which the court is to examine the documents, and the basis for relevance;
- (c) An explanation of why the documents sought are evidentiary, relevant, material and favorable to the moving party;
- (d) That the materials could not otherwise be procured reasonably in advance of trial by exercise of due diligence;
- (e) That the party cannot properly prepare for trial without pretrial production and inspection, and that failure to produce the materials for inspection pretrial may tend to delay the trial unreasonably; and
- (f) That the pretrial inspection is to produce specific evidence of known value and is not speculation to ascertain the existence of evidence;
- (4) Documents produced in response to an order of production for in camera judicial review are sealed until review and further order of the court. The court's order after in-camera review is a public document and will identify relevant materials that will be disclosed to the parties. The moving party shall pay the expense of providing these relevant materials to the parties. Documents and materials that are disclosed to the parties are confidential subject to any protective orders. Any non-disclosed documents and materials will remain sealed for further judicial review and to be available for appellate review if necessary.
- (5) Production without Judicial Review.

If the motion for production does not request judicial in camera review, then any produced documents are not filed in the court records and the court will provide a time for the parties to review and copy the provided materials at their cost.

(6) Protective Orders

Proposed protective orders shall be filed separately from any Motion for In Camera Review and or Production Under Subpoena. The caption must clearly state that it is a “General” or “Qualified Protective Order,” and if the order applies to medical records, caption should indicate whether it is a “HIPAA Compliant Qualified Protective Order.”

4.015 POSTPONEMENTS; EX PARTE MATTERS

Motions to postpone felony and misdemeanor cases and motions to rescind bench warrants shall be accompanied by supporting declaration and a proposed form of order. No motion for a continuance shall be submitted without contacting opposing counsel (or a party if unrepresented). Any such motion submitted without contacting opposing counsel will be returned without consideration or action by the court clerk or denied by the Judge. Motions to continue shall not be made to a Plan B or *pro tem* judge except in cases of emergency when the presiding judge or other judge of the Sixth Judicial District is not available.

4.025 SEARCH WARRANTS

Prior to presenting a request for a search warrant, the applicant shall:

- (1) Obtain prior approval from a District Attorney (or one of his/her deputies) who has personally reviewed the facts underlying the application;
- (2) Provide the name of the reviewing District Attorney; and
- (3) Verify that the search warrant application has not been presented to any other judge.

4.035 RELEASE REVOCATION

- (1) A motion for release revocation under ORS 135.280 or other law shall be supported by affidavit or declaration and relevant supporting documentation.
- (2) The party submitting the motion for release revocation shall also file a proposed order including the following options for the court:
 - (a) Issue a warrant with the proposed security amount;
 - (b) Order the defendant to appear for a hearing; or
 - (c) Deny the motion.
- (3) The motion and pleadings shall be copied to defense counsel (or defendant if unrepresented), and shall include a certificate of mailing, delivery or electronic service unless upon a showing of good cause, the court allows the matter to be filed *ex parte*. Good cause shall ordinarily be for security and safety reasons of law enforcement or the victim of the underlying offense.

4.045 SECURITY FORFEITURES

- (1) A defendant or surety may apply to the court for a remission of a forfeiture of the security amount by:
 - (a) Filing with the court, and serving upon the District Attorney, a written Motion for Remission of the Judgment or Order of Forfeiture accompanied by an affidavit or declaration stating good cause for the remission; and

- (b) If necessary, appearing at a hearing to further inform the court why the Judgment or Order of Forfeiture should be rescinded.
- (2) If a hearing is necessary on the Motion for Remission, the court will notify the applicant of the date, time, and location of the hearing. In any case, the court may decide to grant or deny the motion without any appearance by the applicant, and to notify the applicant by mail of its decision.

4.046 REFUND PROCEDURES

All bail or security refunds will be made by mail.

4.051 CRIMINAL MOTIONS AND ORAL ARGUMENT

Unless a different time is permitted by the court for good cause shown:

- (1) In addition to the timelines set by UTCR 4.010, motions *in limine* or other motions that may require evidentiary hearing or oral argument shall be filed at least twenty-one (21) judicial days prior to commencement of trial.
- (2) Procedural motions such as Motions for Phone Appearance shall be filed at least two (2) judicial days prior to commencement of trial.
- (3) The court will take into account any failure to timely submit materials when prioritizing cases set for trial on the same date.

4.071 DUII DIVERSIONS

- (1) An unrepresented person shall file a waiver of counsel with the diversion petition or at the objection hearing. A Waiver of Counsel form is available on the Court's website listed in SLR 1.171.
- (2) The District Attorney's objection to diversion, if any, shall be in writing, and served upon defendant's attorney, or defendant if self-represented, no later than the date set for change of plea.
- (3) No refunds of diversion fees will be made to any individual who for any reason fails to complete the program after diversion has been granted.

4.081 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

- (1) The Court presumes that court appearances for individuals who are in-custody shall be by means of simultaneous electronic transmission unless a motion, declaration, and order to transport are timely submitted to the court. A proposed order is available on the court's website listed in SLR 1.171.
 - (a) The state shall file the motion, declaration and order to transport a defendant for trial and sentencing after trial unless the defendant consents to appearance by electronic means.
 - (b) The defendant's attorney shall file the motion, declaration, and order to transport a defendant for all hearings other than trial and sentencing after trial, including changes of plea, motion hearings, and restitution hearings after sentencing, or sentencing upon remand.

- (2) Unless otherwise ordered, probation officers and witnesses in probation cases may appear by telephone or simultaneous electronic transmission.

4.091 MUNICIPAL APPEALS AND TRANSFERS

- (1) In municipal court appeals or transfers the city attorney authorized by the city to represent the state on behalf of the city shall file a notice of appearance and shall provide copies of the notice to the District Attorney and defendant or defendant's attorney.
- (2) An appeal or transfer shall be captioned State of Oregon *ex rel* City of [Name of city], Plaintiff v. [Name], Defendant.
- (3) All appeals and transfers are subject to immediate judicial review to initially determine if the appeal or transfer has been legally perfected. Filing does not preclude motions to dismiss for lack of jurisdiction on the filing.
- (4) Upon filing of an appeal, the clerk shall set the matter for first appearance, arraignment *de novo*, on the charges resulting in the appealed conviction, and send notices to the City Attorney and appellant or appellant's attorney.
- (5) Unless otherwise expressly ordered by the court, appellants must appear at all court proceedings either in person or through counsel. Failure of an appellant to appear pursuant to ORS 138.210 will result in dismissal of the appeal, affirmance of the judgment and remand to the municipal court.
- (6) If the court orders the appeal dismissed, the City Attorney shall promptly prepare the General Judgment of Dismissal of the Appeal and Remand to Municipal Court for submission to the court, with a certificate of mailing to appellant or appellant's attorney and the certificate required by UTCR 5.100.

4.101 REMOVAL OF NO CONTACT ORDERS

- (1) A victim wishing to remove a no contact order imposed under ORS 135.250 or ORS 135.247 must file a written petition or appear personally at a hearing on the matter.
 - (a) "Petition" as used in ORS 135.250 (2)(b)(A) and in ORS 135.247 (4) means a written petition signed and filed or presented at the hearing for filing in the criminal action by the victim or by a district attorney who has agreed to assert this right for the victim. A form of petition is available on the Court's website listed in SLR 1.171.
 - (b) In the alternative, the victim may appear at the hearing to modify or remove the no-contact conditions and state the request orally on the record to waive the required condition of release or custody that the defendant have no contact with the victim of the domestic violence.
- (2) A victim who files a petition shall provide the District Attorney and the defendant's counsel a copy of the petition and so reflect the service upon the petition, and the district attorney shall file a written response, if any, within ten (10) calendar days.
- (3) Absent a written petition or appearance by the victim at the hearing as set out in section (1) and (2) of this rule, the court will continue the no contact order imposed under ORS 135.250 (2)(a) or ORS 135.247 pending a petition by the victim.

4.111 PROBATIONARY COMPLIANCE / NON-COMPLIANCE REPORTS

- (1) All reports submitted by providers regarding treatment or other probationary compliance or non-compliance shall be conventionally filed or may be submitted to the court via the electronic filing system specified in UTCR 21.010.
- (2) All reports must contain:
 - (a) The defendant's name;
 - (b) Case number;
 - (c) A statement regarding defendant's compliance or non-compliance in the ordered program as of a specific date; and
 - (d) A declaration under penalty of perjury, in substantially the same form as specified in ORCP 1E, above the providers signature.
- (3) Reports must not contain medical information covered by HIPAA other than stating whether the defendant is in compliance or non-compliance with the ordered/recommended treatment.

4.201 POST-CONVICTION RELIEF – WHEN COUNSEL APPOINTED AT CASE INITIATION

- (1) Counsel appointed for the petitioner shall have one hundred twenty (120) days from the date of appointment to file an amended petition, or if unable to plead a viable claim for relief, an affidavit pursuant to ORS 138.590(5).
- (2) For cases with court appointed counsel, the defendant shall not file an answer, motion, or demurrer to the petition (other than a Motion to Show Cause Why Petition Should Not Be Dismissed as time-barred, successive, or meritless) until the petitioner has filed a notice that the petitioner will proceed on the original petition, has filed an amended petition or an affidavit pursuant to ORS 138.590(5), or the one hundred twenty (120) days to do so have expired.
- (3) Once counsel for the petitioner files an amended petition or an affidavit pursuant to ORS 138.590(5), or notifies the court in writing that the petitioner will proceed on the original petition, or the one hundred twenty (120) days has expired, the defendant shall have thirty (30) days from such filing or notice to file an answer, motion, or demurrer.
- (4) Extension of time to file an amended petition shall only be granted upon demonstrated good cause, and ordinarily shall not be granted for more than a total of one hundred twenty (120) additional days beyond the original deadline.

4.202 POST-CONVICTION RELIEF - MOTIONS

- (1) The petitioner shall have thirty (30) days to file a response to the defendant's motion or demurrer.
- (2) The defendant shall have twenty (20) days to file a reply to the petitioner's response.
- (3) If the court denies defendant's motion or demurrer, the defendant shall have twenty (20) days to file an answer.
- (4) If the court grants the defendant's motion or demurrer and if it appears to the court that there is a reasonable expectation that the petitioner will be able to cure the defect, the

petitioner shall be granted thirty (30) days to file an amended petition. Upon a showing of good cause, the court may, in its discretion, grant the petitioner additional time to file an amended petition.

- (5) Motions for extension of filing deadlines shall reflect in the caption which iteration of the motion it is (*e.g.*, Second Motion to Extend Time to File Amended Petition). If filed by Petitioner's counsel, motions will reflect that Petitioner has been made aware of the motion.
- (6) Unless a different time is permitted by the court for good cause shown, motions *in limine* or other motions that may require evidentiary hearing or oral argument shall be filed at least sixty (60) days prior to commencement of trial. Consideration of any late submissions will only be allowed by court order.

4.203 POST-CONVICTION RELIEF - EXHIBITS

- (1) Documents and exhibits to be included with the petition under ORS 138.580, should be included by separate pleading, substantially, "Petitioner's Documents and Exhibits in support of Petition for Post-Conviction Relief", specifically marked identifying portions of such documents or exhibits that support particular claims submitted in the petition, and filed with the petition. Otherwise, only the portions of documents and exhibits such as the trial transcript, medical records, or other documents that are directly relevant to plaintiff's claims shall be attached to the petition or amended petition.
- (2) For case pleading exhibits, parties should file a separate exhibit list and put lengthy transcripts, depositions, or other trial exhibits filed pursuant to UTCR 6.050(2) & 21.070(4)(b) on CD or DVD in the format required by UTCR 21.040(1) & (2) for conventional filing with the court.
- (3) References in pleadings relying on previously filed exhibits shall expressly describe the exhibits, the earlier pleading with which they were filed, and the date the earlier pleading was originally submitted or filed.

4.204 POST-CONVICTION RELIEF - ADDITIONAL BRIEFING AND EXHIBITS

- (1) Unless otherwise ordered by the court, all disclosure of witness information required under ORS 138.615 shall be made no later than sixty (60) days prior to trial. Any objection or response to a motion to authorize late disclosure of witness information will be considered by the administrative judge. If the administrative judge cannot resolve the motion or objection prior to trial, the trial judge shall consider the motion or objection.
- (2) The petitioner shall file with the court any legal memoranda and all additional trial exhibits not already attached to the petition or amended petition no later than thirty (30) days before trial.
- (3) The defendant shall file with the court any memorandum of law and all trial exhibits no later than twenty (20) days before trial.
- (4) The petitioner may respond to the defendant's memorandum of law and exhibits with a further memorandum and additional exhibits that rebut the defendant's evidence, which shall be filed with the court no later than ten (10) days before trial.

4.205 POST-CONVICTION RELIEF – FILING OF DOCUMENTS WHEN PETITIONER IS REPRESENTED BY COUNSEL

- (1) Counsel's written notification to the court that the case will proceed on the original petition constitutes counsel's ORCP 17 C certification of the original petition filed by the petitioner when self-represented.
- (2) All matters submitted to the court for filing shall be submitted only by counsel and, except for the petition or amended petition and any exhibits, signed exclusively by counsel. The only exception to this requirement is that the petitioner may file a motion or notice pursuant to *Church v. Gladden*, 244 Or 308, 417 P 2d 993 (1966), alleging ineffective assistance of currently assigned counsel.
 - (a) In such a motion or notice, the petitioner may seek the inclusion of particular claims in the case and/or request that currently appointed counsel be removed or replaced, with reasons therefore. Petitioner shall comply with ORCP 16B and plead a plain and concise statement of each claim petitioner seeks to have included. Such claims shall be supported by any documents and exhibits as necessary under ORS 138.580. Documents and exhibits in support of a notice pursuant to *Church v. Gladden*, 244 Or 308, 417 P 2d 993 (1966) shall be included or attached to the notice unless previously submitted with the *pro se* petition. Unless oral argument is requested, the court may decide issues raised in the notice pursuant to *Church v. Gladden*, 244 Or 308, 417 P 2d 993 (1966) on the pleadings.
 - (b) No response is required to *pro se* claims asserted under a filing pursuant to *Church v. Gladden*, 244 Or 308, 417 P 2d 993 (1966) unless ordered by the court, however both appointed counsel and counsel for the defendant may file a response or answer if desired.
 - (c) Claims alleged as part of a filing pursuant to *Church v. Gladden*, 244 Or 308, 417 P 2d 993 (1966) which are not ordered to be included in the post-conviction relief petition after hearing shall be deemed to have been adjudicated and denied on their merits.
- (3) Counsel may not attach or include petitioner's *pro se* claims, briefs, or other matters separately, or within signed pleadings without complying with ORCP 17.

4.206 POST-CONVICTION RELIEF - HEARINGS

- (1) Unless otherwise ordered by the court, all post-conviction relief hearings including trials in which petitioner is in the custody of the Oregon Department of Corrections shall be held by simultaneous electronic transmission, including but not limited to video or, if video is not available, by telephone. The petitioner shall remain in and appear from the correctional facility in which the petitioner is being held.
- (2) Counsel may appear by simultaneous electronic transmission including but not limited to video, or telephone, or in person before the trial judge. Counsel for the petitioner may appear apart from the petitioner only if the facility where counsel is located enables the petitioner to consult privately with the petitioner's counsel during the proceeding.
- (3) Public access and viewing of proceedings shall occur by advance arrangement with the Court at the physical location where the administrative hearing or trial is to be held, and the proceedings shall be deemed to take place at that location. Unless by approved motion of a party or otherwise ordered by the court, all witnesses, including original

counsel and law enforcement officers, shall appear at that location. Recording of post-conviction and habeas corpus proceedings from any 6th Judicial District location is deemed to have occurred in Umatilla County.

- (4) All motions, whether written or oral, to continue trial or other hearings shall be submitted to the administrative judge for post-conviction, or to the presiding judge or other judge of the Sixth Judicial District if the administrative judge is not available.
- (5) Motions to continue prior to the trial date shall not be made to the Plan B or *pro tem* trial judge except in cases of emergency when the presiding judge or other judge of the Sixth Judicial District is not available. Motions to continue trial at the time of trial may be considered by the trial judge but continuances shall not be granted without stipulation of the parties, and then only for good cause shown.
- (6) If the trial of the matter will take longer than the time allotted in the trial notice, or if witnesses other than the petitioner will be called, the parties shall make arrangements for additional time through the Umatilla County Trial Court Administrator within fifteen (15) days of the date of the trial notice is sent.
- (7) If a party requires the services of a court interpreter for a party or witness, the party shall make the request by email to: interpreter.request.6th.district@ojd.state.or.us and advise the Umatilla County PCR clerk no later than ten (10) judicial days before the date set for hearing. Requests must include the following information:
 - (a) Case Number;
 - (b) Case Name;
 - (c) Name of person needing interpreter;
 - (d) Relationship of person needing interpreter to the case (*e.g.*, Defendant, Petitioner, Victim, *etc.*);
 - (e) Language needed;
 - (f) Hearing date and time; and
 - (g) Judge.

Chapter 5 – Civil Cases

5.005 DEPOSITIONS

The parties should be able to resolve deposition disputes by referring to ORCP 38, 39, 40 & 41. If the parties have a problem that cannot be resolved without the assistance of the court, they should briefly suspend the deposition and contact the assigned court judge, the Presiding Judge, or designee, for hearing, either on or off the record, by phone or at the courthouse.

5.041 MOTIONS TO BE DETERMINED BY THE PRESIDING JUDGE OR DESIGNEE

Unless otherwise directed by the Presiding Judge, motions are to be determined by the courtroom trial judge, the administrative judge for the case type if no judge is assigned, or by the judge presiding over the motion hearing as set by the TCA and courtroom.

5.051 EVIDENTIARY HEARINGS ON MOTIONS IN CIVIL CASES

In addition to the requirements of UTCR 5.050, when a party requesting oral argument on a civil motion also desires an evidentiary hearing, the request for evidentiary hearing shall be reflected in the caption of the motion or response. The first paragraph of the motion or response shall also include an estimate of the time required for both the evidentiary hearing and oral argument.

5.052 CIVIL MOTIONS AND ORAL ARGUMENT

Unless a different time is permitted by the court for good cause shown:

- (1) In addition to the timelines set by UTCR 4.010, motions *in limine* or other motions that may require evidentiary hearing or oral argument shall be filed at least twenty-one (21) judicial days prior to commencement of trial.
- (2) All trial memoranda and procedural motions such as Motions for Phone Appearance shall be filed at least two (2) judicial days prior to commencement of trial.
- (3) The court will take into account any failure to timely submit materials when prioritizing cases set for trial on the same date.

5.053 EXHIBITS

- (1) One photo-copy of every documentary exhibit required to be marked pursuant to UTCR 6.080 shall be delivered to opposing counsel and one copy to the Court before the commencement of trial.
- (2) All exhibits marked pursuant to UTCR 6.080 shall be shown to opposing counsel before the commencement of trial. Counsel shall stipulate to those exhibits to which there are no objections and shall deliver the stipulated exhibits to the clerk. At the commencement of the trial the judge shall state on the record that the stipulated exhibits have been received into evidence.
- (3) Exhibits submitted for hearings and trials to be heard by electronic means shall be attached to a pleading document properly captioned and described generally as Plaintiff/Petitioner or Defendant/Respondent's Proposed Exhibits for Trial/hearing (and type), with a list of exhibits, their number, and each clearly set forth to follow with separation pages for each exhibit. Subsequent submissions of such exhibits shall again be attached to a pleading document reflecting that parties 'Supplemental' Proposed

Exhibits for Trial/Hearing and continuing exhibit numbers from the original filing. All pleadings, trial memoranda or other matters submitted which relate back to the exhibits shall describe with particularity the filing and the exhibit number, page, and paragraph and or line number of a document. All submissions shall be provided to the other party/attorney and the pleading shall provide a certificate of mailing/service. Unless otherwise ordered by the court all exhibits shall be filed with the court no later than ten (10) days prior to the trial or hearing date.

5.081 PROCEEDINGS INVOLVING PERSONS IN CUSTODY

In all civil proceedings involving a party who is in custody, including but not limited to civil suit, declaratory relief, domestic relations, small claims, post-conviction relief, habeas corpus, and mandamus, unless otherwise ordered by the court, all proceedings shall be by simultaneous electronic transmission by video or telephone depending on arrangements finalized between the institution and the court.

5.161 PROCEEDINGS IN SUPPORT OF DEBTOR EXAMINATIONS

- (1) In debtor examinations under ORS 18.265 *et seq.*, the moving party shall include in the case caption whether or not evidentiary hearing is requested and within the body of the motion the time anticipated for the hearing.
- (2) Proposed orders for judgment debtor examination hearings shall include a space of approximately two inches for the court to insert the courtroom or room, date, and time for the hearing, for subsequent service upon the debtor by the creditor for the hearing.
- (3) If a party moves to continue an examination and the original order has been served upon the debtor, the hearing may be reset by the court; if the original order has not yet been served, then the judgment creditor shall submit a new proposed order for the examination and serve only the amended order on the judgment debtor.
- (4) At the evidentiary hearing, after causing the judgment debtor to be sworn, the court may require the parties to conduct the examination off the record and outside the presence of the court. After the conclusion of the examination, the parties shall report back to the court and present requests for further testimony on the record and/or orders. The court may continue the hearing on the record at that time or may continue the matter to a later time for further evidentiary proceedings.
- (5) Appearance orders signed by a judge without an appearance date shall remain valid for six months from the date of signature.
- (6) If a judgment debtor fails to appear to a proceeding for a judgment debtor hearing, the moving party may motion for an order to show cause why the judgment debtor should not be held in contempt for failure to attend, and then upon the order signed by the judge the judgment creditor will serve the judgment debtor with the order to appear. If the Judgment debtor fails to appear, then the judgment creditor may motion the court for a civil warrant of arrest supported by proof of service of the order to show cause.

5.181 CHALLENGE TO GARNISHMENT NOT TO CONTEST JUDGMENT

Challenge to writs of garnishment which contest the underlying judgment will be denied by the court.

5.182 IDENTITY CHANGES

- (1) The petitioner or the petitioner's attorney must be personally present at the change of identity hearing or the petition will be dismissed and the petitioner will be required to re-file the petition and pay the required filing fee.
- (2) In name changes involving the change of name of a minor, the guardian *ad litem*, or the attorney for the guardian is required to file proof that the Petition for Change of Name was served on the parent(s) of the child.
- (3) In name changes brought by a person in custody of a correctional facility, the petitioner shall have the burden of showing that a change of name is not objected to by the Superintendent of the institution and that the change is not contrary to public policy.
- (4) The court's form of supplemental declaration in support of name change shall be filed with the court. A sample form of declaration is available on the Court's website listed in SLR 1.171.

Chapter 6 – Trials

6.005 DOMESTIC RELATIONS PRETRIAL SETTLEMENT CONFERENCES

Rules relating to domestic relations settlement conferences are found in SLR Chapter 8.

6.012 PRETRIAL SETTLEMENT CONFERENCE PROCEDURES – CIVIL CASES

The following procedures shall apply to pre-trial settlement conferences in all pending civil, other than domestic relations cases, when ordered by the Court pursuant to UTCR 6.010, 6.200, or requested by a party or the party's attorney:

- (1) If one party requests a pre-trial settlement conference, and if the trial judge approves, and if a judge can be reasonably made available, then the settlement conference shall be held and shall be conducted according to the procedures set forth in this rule.
 - (a) Except in the case where the Court orders a conference, the pre-trial settlement conference will not be required if the opposing party demonstrates good cause why the settlement conference should not be held.
 - (b) The judge conducting the settlement conference may require the party requesting a conference to certify that reasonable efforts to achieve settlement have been attempted by the parties and that they have been unable to resolve the controversy without the court's assistance.
- (2) The trial judge, upon request of a party or parties, in consideration of the request, may approve the request and seek to obtain an in-district or out-of-district judge in coordination with the Presiding Judge and TCA.
- (3) Each trial attorney and party or representative of a corporation or insurance company who has full authority to settle and compromise the litigation shall personally appear at the pre-trial settlement conference. However, the assigned judge may permit telephone appearances in lieu of personal appearance for good cause. Nevertheless, the individual with settlement authority shall be immediately available during the settlement conference for consultation by parties' counsel and the settlement judge.
- (4) Each pre-trial settlement conference shall be scheduled to allow adequate time for meaningful settlement discussions. Additional settlement conferences may be scheduled by the assigned judge or by agreement of all attorneys and parties.
- (5) The pre-trial settlement conference shall not delay the trial scheduling.
- (6) No judge conducting a pre-trial settlement conference under this rule shall be permitted to act as trial judge if the case does not settle unless the parties stipulate to such procedure. The settlement judge may take any stipulated agreement upon the record and approve any stipulated judgment.
- (7) Each attorney or party shall submit to the assigned judge, at least one (1) business day prior to the scheduled pre-trial settlement conference, information regarding the case. Any documents or information submitted to the judge shall be presumed confidential unless a copy is provided to the opposing side(s). The assigned judge shall make available forms for the submission of such information, but an attorney or party may submit such other or further information to the judge to inform the court of the issues in the case.
- (8) No submissions under SLR 6.012(7) shall be included in the court file, nor shall any

notes prepared by the judge be filed or otherwise disclosed, except by permission of the attorneys and/or parties or by court order. All matters submitted to the settlement judge shall be marked substantially PLAINTIFF/DEFENDANT'S SETTLEMENT STATEMENT, DO NOT FILE, DO NOT DISTRIBUTE.

- (9) The assigned pre-trial settlement conference judge shall inform the courtroom judicial assistant of the occurrence of the conference, the possibilities of settlement, and the estimated length of trial time, in the event the case does not settle at the conference. No other information regarding the case or the conference shall be communicated to the trial judge or the jury.

6.031 CONTINUANCES

- (1) In addition to the requirements in UTCR 6.030 & 6.040, all motions for a continuance in criminal cases shall set forth all the information contained below:
- (a) Custodial status of moving party;
 - (b) If victims/witnesses have a conflict, the date the victims/witnesses were notified of the hearing/trial;
 - (c) A list of other qualified attorneys in the office of the attorney requesting this continuance, and their availability to substitute;
 - (d) Hearing/trial dates to which opposing counsel/parties/victims/witnesses are in agreement;
 - (e) Other suitable alternatives, *e.g.*, video appearance, depositions, stipulated testimony, *etc.*; *and*
 - (f) If the defendant is in custody, whether or not a waiver of speedy trial has been filed.
- (2) No motion for a continuance shall be submitted without a declaration in support of the motion, or without contacting opposing counsel (or party if unrepresented). Any such motion submitted without opposing party's position or a detailed account of efforts to obtain opposing party's position may be returned or denied by the Judge without consideration.

6.051 CRIMINAL TRIAL DOCUMENTS

Unless a different time is permitted by the court for good cause shown:

- (1) Fully formed proposed jury instructions and verdict forms for trial, and for sentencing if enhancement facts are at issue, shall be filed at least seven (7) judicial days prior to commencement of trial;
- (a) This requirement is in addition to the requirements of UTCR 6.060 and UTCR 6.070.
 - (b) Simultaneously, each party must also submit to the Court an electronic copy of all requested jury instructions and verdict form(s). The electronic copy shall be in Microsoft Word® format, must be in jury ready form as to each separate document and instruction, and must be submitted in the proposed order of instruction. This copy must be emailed to the courtroom email address or other email address provided by the court.

- (2) The court will take into account any failure to timely submit materials when prioritizing cases set for trial on the same date.

6.052 CIVIL TRIAL DOCUMENTS

Unless a different time is permitted by the court for good cause shown:

- (1) Fully formed proposed jury instructions and verdict forms shall be filed at least seven (7) judicial days prior to commencement of trial;
 - (a) This requirement is in addition to the requirements of ORCP 59A, UTCR 6.060 and UTCR 6.070.
 - (b) Simultaneously, each party must also submit to the Court an electronic copy of all requested jury instructions and verdict form(s). The electronic copy shall be in Microsoft Word® format, must be in jury ready form as to each separate document and instruction, and must be submitted in the proposed order of instruction. This copy must be emailed to the courtroom email address or other email address provided by the court.
- (2) The court will take into account any failure to timely submit materials when prioritizing cases set for trial on the same date.

6.141 HAZARDOUS SUBSTANCES

In addition to the definition found in UTCR 6.140 (2), a hazardous substance is defined as any substance listed in, or hereinafter added to, the Federal Aviation Authority Regulations on Hazardous Substances, any provisions of the United States Code defining hazardous substances, or the Federal Controlled Substances Act; or is any potentially dangerous or contaminated substance capable of inflicting death or serious physical injury either immediately or over the course of time. A hazardous substance shall include any device or implement which carries, contains, or exhibits such characteristics.

6.181 USE OF CELL PHONES AND OTHER DATA OR COMMUNICATION DEVICES - JURY

- (1) In addition to the requirements of SLR 3.181, unless otherwise permitted by the judge presiding over the trial, personal data or communication devices (any electronic or other equipment capable of communicating with others outside a jury room, including, but not limited to personal computing devices, cell phones and pagers) are not allowed to be in the possession of jurors in a courtroom or a jury room during jury selection, trial or jury deliberations.
- (2) If a juror brings any such device into court, the juror will either be allowed to leave and secure the item and then return through security, or the device will be collected by the court clerk or court security officer.

Chapter 7 – Case Management and Calendaring

7.005 PLEAS AND NEGOTIATIONS IN CRIMINAL CASES

It is the intent of the Sixth Judicial District to effect resolution of criminal cases in conformance with UTCR 7.010.

(1) Changes of Plea After the End of Plea Negotiations

Any change of plea after the deadlines established in UTCR 7.010(2) may be subject to open sentencing.

(2) Forms/Plea Petitions

Counsel shall complete any and all forms required for change of plea prior to the hearing for change of plea including Blakely waivers and notices of sex offender registration if appropriate. Counsel shall deliver to court staff the original or an electronic copy of all change of plea documents a minimum of twenty-four (24) hours prior to all change of plea hearings. Counsel shall use the Uniform Plea Petition that is available from the Court on request or from the Sixth Judicial District website listed in SLR 1.171.

7.015 VIDEO / TELEPHONE APPEARANCES

The Sixth Judicial District presently has telephonic conferencing & video conferencing at the courthouses in Pendleton, Hermiston and Heppner. Unless prohibited by statute, all in-custody matters will be heard by video or telephone conferencing unless transport is ordered prior to the scheduled hearing. Out-of-custody matters may be heard by video or telephone conferencing if authorized by the judge.

(1) Criminal Cases

A completed plea petition document shall be filed with the court prior to any change of plea.

(2) Civil Cases

Parties wishing to use video conferencing in civil cases shall, where available, make arrangements with the trial judge's assistant prior to trial and pay all expenses of the video.

(3) Mental Commitment Cases

If a person alleged to have a mental illness is in a mental health facility, the motions, hearings, and trial shall be conducted by video conferencing, if available, at the expense of the Mental Health Division.

(4) Exhibits

Parties not appearing in person shall submit all exhibits to the court no later than ten (10) days prior to the scheduled court proceeding. Any party presenting exhibits to the court will also provide a self-addressed, pre-paid postage mailing package to the court for the return of the exhibits.

7.061 ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

For purposes of complying with UTCR 7.060, if a special accommodation is needed under UTCR 7.060, prior to each proceeding in the action in which a special accommodation is

needed, the party needing the accommodation for the individual must contact the Trial Court Administrator's Office. The Trial Court Administrator's Office makes arrangements for special accommodations under the ADA upon notification required by UTCR 7.060.

7.071 SCHEDULING FOREIGN LANGUAGE INTERPRETERS UNDER UTCR 7.070

For purposes of complying with UTCR 7.070, if a foreign language interpreter is needed, the party in need of an interpreter, prior to each proceeding in the action in which an interpreter is needed, shall make the request by email to: interpreter.request.6th.district@ojd.state.or.us. Requests must include the following information:

- (1) Case Number;
- (2) Case Name;
- (3) Name of person needing interpreter;
- (4) Relationship of person needing interpreter to the case (*e.g.*, Defendant, Petitioner, Victim, *etc.*);
- (5) Language needed;
- (6) Hearing date and time; and
- (7) Judge.

Chapter 8 – Domestic Relations Proceedings

8.004 DOMESTIC RELATIONS MEDIATION

Rules relating to domestic relations mediation are found in SLR Chapter 12.

8.005 FILING OF UTCR 8.010 DOCUMENTS

- (1) All documents required to be filed under UTCR 8.010(3), (4) and (5) including a detailed list of all personal and real property shall be filed with the clerk of the court and served on the opposing counsel (or party if self-represented) seven (7) days before the trial.
- (2) All pleadings shall specify “Subject to Mandatory Mediation” and “Subject to Mandatory Arbitration” in the case caption if appropriate.
- (3) Absent a showing of good cause, a party who fails to timely file all documents required by UTCR 8.010 may be deemed to have admitted values of property established by a filing party.

8.011 STIPULATED JUDGMENTS

Stipulated judgments submitted which involve child support orders in administrative cases, or where the Department of Justice, Child Support Division is involved, must include a certificate of mailing of a copy of the proposed judgment to the responsible Child Support Enforcement Office of the Department of Justice.

8.012 SETTLEMENT CONFERENCES – DOMESTIC RELATIONS CASES

- (1) The presiding judge shall appoint a panel of qualified attorneys who shall preside over settlement conferences in all contested domestic relations cases where both parties are represented by counsel. Attorneys shall be selected to preside over settlement conferences in a rotating order. Litigants may not disqualify settlement attorneys, except where there is a conflict of interest as defined by the Oregon Rules of Professional Conduct 1.7 to 1.9.
- (2) At the time set for trial readiness, the attorneys may request the case be assigned a settlement conference. The attorneys shall firmly believe the conference would be beneficial. The conference shall be held at the office of the settlement attorney unless the settlement attorney and the litigants otherwise agree, and shall be held at least three (3) weeks prior to the trial date.
- (3) Each party shall participate in the settlement conference in good faith.
- (4) All information disclosed in the settlement conference shall be deemed privileged, settlement negotiations.
- (5) As soon as practical, the settlement attorney shall report in writing to the trial judge regarding the outcome of the settlement conference, including any violations of this rule. All agreements shall be reduced to writing and signed by the parties. In the event that settlement negotiations do not result in a complete settlement, counsel should be prepared to proceed to trial on the date scheduled.

8.013 SETTLEMENT CONFERENCE STATEMENT – DOMESTIC RELATIONS CASES**(1) Settlement Attorney Conferences**

Not less than forty-eight (48) hours prior to the commencement of the settlement conference, the parties shall submit to the settlement attorney two copies of a detailed settlement statement including a detailed list of all personal and real property, the proposed distribution of assets and liabilities and, if support is involved, the proposal for and computation of support. In addition, the petitioner shall submit to the settlement attorney all orders and judgments filed in the case, including the mediator's report, if any. Once settlement conference statements are received from both parties, the settlement attorney will distribute copies to the parties as soon as practical.

(2) Judicial Settlement Conferences

In the event that a judicial settlement conference is held, the procedures in SLR 6.012 apply in addition to the requirements of section (1) above.

8.015 CO-PARENTING PROGRAM**(1) Mandatory Co-Parenting Program**

The Sixth Judicial District, Umatilla & Morrow Counties has established a parent education program authorized by ORS 3.425.

- (a) In all cases involving children under the age of 18, all parents/guardians shall complete the co-parenting program unless exempted by the court. A judgment will not be entered in the proceeding until each party not otherwise exempted by the court who has filed an appearance has completed the program, or appropriate sanctions have been applied.
 - (b) The court may exempt one or more of the parties from the program if, after reviewing the requesting party's motion and supporting declaration, the court determines that participation is unnecessary or inappropriate. It will be very unusual where an exception is granted.
 - (c) The court may allow one or more of the parties to participate in a comparable court-sanctioned program. Parties who participate in a comparable program are responsible for submitting proof of program completion to the court themselves.
- (2) If a party fails to successfully complete the co-parenting program and later files a motion to modify any order of the court, the court will not consider the requested modification until that party successfully completes the co-parenting program or is exempted by the court.
- (3) 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 cause.
 - (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.

8.025 PARENTING TIME ENFORCEMENT

Proceedings to enforce parenting time pursuant to ORS 107.434 shall be initiated by motion, declaration and order to show cause. The proposed order shall include an area where the court can indicate the date, time and location of the hearing. Unless otherwise ordered by the court, the moving party shall obtain a copy of the signed order from the court and serve the other party with the motion, declaration and order to show cause and supporting papers at least twenty-one (21) days prior to the time set for hearing.

8.055 PRE- AND POST-JUDGMENT RELIEF

The procedures of this rule are limited to domestic relations cases. A contempt proceeding arising out of a domestic relations case is not covered by this rule.

(1) Pre-Judgment Temporary Custody and Parenting Time

In addition to the requirements of UTCR 8.040, the proposed Order to Show Cause shall comply with the following requirements:

- (a) Shall not contain a date for hearing.
- (b) Shall provide notice that if a party wishes to object to any of the requested relief, that adverse party shall file and serve a written response or declaration in opposition within fourteen (14) days from the date of service of the order, or within such additional time as allowed by the court upon showing of good cause.
- (c) Shall provide notice that if such opposing response is not filed and served within the time allowed, the requested relief may be granted by the court.

(2) Pre-Judgment Temporary Financial

- (a) Motions for temporary financial relief may be filed separately from other *pendente lite* motions to facilitate timely resolution.
- (b) Temporary financial relief shall be determined without testimony based on the Uniform Support Declarations of the parties if filed separately.
- (c) Requests for temporary child support shall include a child support computation worksheet. If either party requests oral argument pursuant to UTCR 5.050, both parties shall file a Uniform Support Declaration prior to oral argument.
- (d) After the response deadline, the moving party shall notify the court by filing a Notice of Readiness for Decision.
- (e) With due regard for other pending matters, the court will attempt to issue a ruling within fourteen (14) days of the date the Notice of Readiness for Decision is filed.
- (f) If the opposing party fails to file an opposing written response within the time allowed, the moving party shall submit an order allowing the relief requested in the order to show cause. The court reserves the right to require the taking of testimony of the moving party in such default matters. The court also reserves the right to enter the order requested if the opposing party does not file the required response and it may do so upon its own motion if the moving party fails to present for signature the order required above.

(3) Post-Judgment Relief

- (a) In addition to the requirements of UTCR 8.050, the proposed Order to Show Cause on post-judgment motions to modify any terms of the judgment shall provide notice that if a party wishes to object to any of the requested relief, that party shall file and serve a written response or declaration in opposition within thirty (30) days from the date of service of the order, or within such additional time as allowed by the court upon showing of good cause, and if none is filed, the requested relief may be granted by the court.
- (b) If the opposing party fails to file an opposing written response or declaration within the time allowed, the moving party shall submit a proposed order allowing the modification requested in the order to show cause. The court reserves the right to require the taking of testimony of the moving party in such default matters. The court also reserves the right to enter the order requested if the opposing party does not file the required response and it may do so upon its own motion if the moving party fails to present for signature the proposed order required above.

(4) Immediate Danger Temporary Custody

With due regard for other pending matters, the court will attempt to schedule an initial appearance to consider a party's affidavit or declaration in support of an *ex parte* temporary order and take *ex parte* testimony regarding the matters submitted within one (1) judicial day of the date of filing.

8.075 PARENTING SCHEDULE

It is the policy of the court to encourage the parties to work out their own parenting time schedule, either between themselves or through mediation. The court will generally approve any schedule agreed upon by the parties. However, if the parties are unable to agree, the Standard Parenting Plan Less Than 225 Miles or Standard Parenting Plan Over 225 Miles provided on the court website will be used as the basis for establishing parenting time. Because each family's circumstances are different, the parenting time schedule established by the court may make a provision for more or less parenting time than desired by the parties. Every parenting plan shall specify the percentage of overnights which each parent has with the children.

Chapter 9 – Probate and Adoption

9.035 DELINQUENT FILINGS

In the event of a delinquency or deficiency in filing any document required by statute, court rule, or court order, the attorney of record, or litigants if there is no attorney of record, shall be sent a courtesy notice. The personal representative, conservator, or guardian, is expected to promptly cure the defect or delinquency. If the deficiency is not corrected within the time specified by the court in its notice, an order to appear and show cause why the personal representative, conservator, guardian, and counsel of record should not be removed shall be issued. The personal representative, conservator, or guardian, together with counsel of record, shall appear whether or not the delinquency or deficiency has been subsequently corrected. If the delinquency or deficiency has not been corrected by the time of the hearing, appropriate sanctions including contempt, may be imposed.

9.045 REPRESENTATION

- (1) If a personal representative or conservator intends to appear on behalf of the estate or protected person without an attorney, the personal representative or conservator shall provide notice of that intent to the court and proof of competence to so appear. If the proof is not sufficient to assure the court the estate will be protected and properly administered, the court will take appropriate action.
- (2) A person other than a personal representative or conservator, or a corporation, may appear in person without counsel in any matter coming before the probate judge if otherwise allowed by law. The person appearing and counsel for the personal representative shall notify the probate judge if any party to a proceeding is appearing self-represented.

9.055 BONDS

- (1) Consistent with ORS 113.105, the personal representative of an intestate estate may be required to file a bond even if he or she is the sole heir or devisee of the estate, if the court is not satisfied that the creditors will be paid.
- (2) Notice to Surety

If a bond has been posted, the surety shall be notified of the resignation or substitution of counsel, with appropriate proof provided to the court by counsel.

9.075 GUARDIANSHIPS

Guardians for minors shall be required to annually make a guardian's report unless exempted by the court. A sample form is available on the Sixth Judicial District website identified in SLR 1.171.

9.081 OBJECTIONS TO PROBATE MATTERS

- (1) Oral objections, where permitted in probate matters under ORS 125.075 shall be presented to a Circuit Court clerk at one of the following Sixth Judicial District locations during regular office hours:
 - (a) Circuit Court of Oregon for Umatilla County, Umatilla County Courthouse, Civil Records Office Room 230, Second Floor, 216 SE 4th Street, Pendleton, Oregon.

- (b) Circuit Court of Oregon for Umatilla County, Stafford Hansell Government Center, Room 201, Second Floor, 915 SE Columbia Drive, Hermiston, Oregon.
 - (c) Circuit Court of Oregon for Morrow County, Morrow County Courthouse, Room 203, Second Floor, 100 Court Street, Heppner, Oregon.
- (2) In accordance with ORS 125.075(2), the court designates the probate counter as the place where oral objections shall be filed.
- (a) An objection form is available on the Court's website identified in SLR 1.171 or from the court clerk as a means to reduce any oral objection to a signed writing for the purpose of filing the objection.
 - (b) Upon receipt of the objection, the Court may schedule a hearing and the Petition may be heard in the courtroom of the judge assigned to the case.
- (3) 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. An objection presented in this manner shall be in bold and underlined so as to call its attention to the court when reviewing the report.

9.085 PERSONAL INJURY SETTLEMENT PETITIONS

A petition for approval of a settlement of a personal injury claim involving minors and/or incapacitated persons shall be accompanied by a declaration which sets forth the following:

- (1) A description of the incident causing the injury;
- (2) A description of the injuries;
- (3) The amount of the prayer and proposed settlement, and if a structured settlement is proposed, the present value of the future payments of that settlement;
- (4) The amount of the attorney fees and costs;
- (5) The proposed distribution of the settlement proceeds; and
- (6) A concise statement explaining the reasons for the settlement.

9.105 DISBURSEMENT VOUCHERS

As provided by ORS 116.083(2), each accounting shall contain the information provided for therein, except that original checks or vouchers used to make disbursements during the accounting period need not be included in the accounting file, but may be held by the fiduciary or his/her attorney.

Chapter 10 – Vehicle Laws and Driving Conditions

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 11 – Juvenile Court Proceedings

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 12 – Mediation

12.005 MEDIATION IN GENERAL

- (1) Purpose of Mediation. The purpose of mediation shall be to assist the parties in reaching a workable settlement of those issues before the court.
- (2) Mandatory Mediation. Any dispute involving custody and/or parenting time arising from any of the following types of cases shall be subject to mediation under this rule:
 - (a) Any domestic relations suit, as defined in ORS 107.510 (3).
 - (b) Any filiation proceeding pursuant to ORS 109.124 to 109.230.
 - (c) Proceedings to determine the custody or parenting time of a child under ORS 109.103.
 - (d) Any proceeding to modify custody and/or parenting time previously determined in one of the above types of cases.

- (3) Authority of Circuit Court Not Affected by Mediation

The authority of a Circuit Court of the Sixth Judicial District, Umatilla & Morrow Counties over a domestic relations case filed in that Circuit Court is not affected by referral to mediation. Any agreement of the parties reached as a result of mediation for which court enforcement may be sought, shall be presented to the court and the court shall retain final authority to accept, modify, or reject the agreement.

- (4) Mediation Process

- (a) Commencement of Mediation by Judicial Order

When parenting time and/or custody is at issue, the court will schedule a status check hearing. At the hearing, the judge will determine whether or not the case is appropriate for mediation, and will either waive mediation or will appoint a mediator and schedule the first mediation date.

- (b) Commencement of Mediation by Stipulated Request for Mediation.

If there is a disagreement between the parties concerning custody and/or parenting time at any stage of a domestic relations proceeding, either both parties or their attorneys may sign and file with the court a stipulated request for mediation, or the attorneys may verbally request an Order for Mediation. A mediator will be available to the parties in accordance with these rules, or the parents may agree and stipulate to an independent mediator in their stipulated request for mediation. If the parties choose an independent mediator, the costs for the mediator will be paid by the parties jointly.

- (c) Mediation shall consist of up to four (4) hours of sessions involving the parties and the mediator. At the request of the mediator, the court may allow an additional two (2) hours of time. Additional time may be provided at the parties' expense.

(5) Completion of Mediation.

It is the responsibility of the parties and their attorneys to see that mediation is completed within such time as to not delay the trial of the case. Failure to do so may result in dismissal of the case when called for trial or postponement under such conditions as the court may require. The mediator shall provide to the court and to counsel for the parties the outcome of the mediation, including the mediated agreement within three (3) judicial days of the date the last party signs the agreement, or if all signatures cannot be obtained within fifteen (15) days following the conclusion of mediation, the mediator shall report that the mediation has not been successful.

(6) Unsuccessful Mediation.

The mediator shall notify the court and counsel for the parties within three (3) judicial days following the conclusion of mediation that mediation has been unsuccessful. The court will then set the case for hearing or trial.

(7) Failure or refusal to comply with the mediation program in a timely manner may be considered by the court in making its ruling on issues which are in dispute.

(8) A party who has complied with the mediation process shall have the right to:

- (a) Request that the pleading of a party who has appeared be stricken, if that party has not completed the program in a timely manner without good cause; and
- (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.

Chapter 13 – Arbitration

13.005 MATTERS SUBJECT TO ARBITRATION

- (1) Mandatory Arbitration matters are those as noted in ORS 36.400 and ORS 36.405, subject to any Presiding Judge Order exempting matters from Arbitration under ORS 36.405(2).
- (2) Any party to a case may file and serve notice of a request that the Court transfer a case to arbitration.
- (3) A court decision on an exemption filed pursuant to UTCR 13.070 will be rendered within ten (10) judicial days following the filing of a motion for exemption from arbitration or the motion is deemed denied. If the motion is allowed, the case will be returned to the active trial docket for future disposition. If the motion is denied, the case will remain in arbitration in accordance with these rules and the UTCR.

13.015 COURT DETERMINES WHETHER CASE SUBJECT TO ARBITRATION

- (1) A case assigned to arbitration will not be removed without a declaration, motion, and order.
- (2) Only in extraordinary circumstances will the court order a case returned from arbitration to the court docket after a case has been assigned to an arbitrator.
- (3) In the event that amended pleadings are allowed by the arbitrator (*e.g.*, amended complaint, third party complaint, *etc.*), in which a party or parties will be added to the case, or which causes the case not to be subject to mandatory arbitration, the party filing such an amended pleading shall notify the Arbitration Clerk in the Office of the Trial Court Administrator. These cases, when appropriate, may be returned to arbitration. In the event that the case is not thereafter subject to mandatory arbitration, the party requesting removal from arbitration shall file a motion to exempt the case from arbitration, or to remove it if it was previously referred to arbitration.

13.025 REFERRAL TO ARBITRATION

If the first appearance of a defendant is not an answer, but is a motion directed to the complaint or a dispositive motion, the motion shall be decided before the case is referred to arbitration. No case shall be referred to arbitration until all parties have appeared or have had a judgment of default entered against them.

13.045 INDIGENT PARTIES

- (1) In the event that funds are available under ORS 36.420 for the payment of fees that are waived, the arbitrator shall be reimbursed after completion of the arbitration, filing of the arbitration award, and submission of a request for payment to the Trial Court Administrator. Such request shall be in the form of a letter stating the identity of the case, the total hours of service the arbitrator provided, and the share of those hours chargeable to the indigent party. If funds are available, reimbursement will be provided for up to three (3) hours for each indigent party. The letter shall be accompanied by a copy of the order deferring or waiving fees of the indigent party.

- (2) In the event funds are not available under ORS 36.420 for the payment of fees that are waived by court order, a party may request that the clerk provide to the parties a list of arbitrators who have agreed to serve for no compensation, for compensation from one party only, or at a reduced rate.
- (3) The clerk shall provide names of available arbitrators, but no arbitrator is required to serve unless he or she has agreed to such alternate fee arrangement. The parties shall select an arbitrator from such list in the same manner as required in SLR 13.045.

13.055 ARBITRATORS

- (1) There shall be a panel of arbitrators in such number as the Presiding Judge may from time to time determine. Persons desiring to serve as an arbitrator shall submit in writing their desire to be placed on the arbitration panel, with the date they were admitted to the Bar, their name, address and phone number, and if they have any preference against certain types of cases (*e.g.*, no family law). A list showing the names of arbitrators available to hear cases will be available for public inspection at the office of the Trial Court Administrator.
- (2) The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator shall notify the clerk 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. No arbitrator shall have pending at any given time more than three (3) arbitration cases, subject to the discretion of the Presiding Judge.
- (3) If such disqualification or refusal occurs, the arbitrator shall notify all parties and immediately return all appointment materials on the case to the Arbitration Clerk in the Office of the Trial Court Administrator.

13.065 STIPULATIONS

No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings will be regarded by the arbitrator unless the agreement or consent is made at the arbitration hearing or is in writing and signed by the lawyers or parties.

13.075 AWARD, PROOF OF SERVICE

At the conclusion of arbitration, if the arbitrator attempts to file the award with the court without the proof of service of a copy of the decision and award upon each party as required by ORS 36.425(1), the award will not be filed and will be returned to the arbitrator.

Chapter 14 – Reference Judges

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 15 – Small Claims

15.065 TIME EXTENSION

On written request filed with the Small Claims Department at least seven (7) days prior to the hearing date, the Court may extend the time within which to make appearances or file documents. The time extension will not ordinarily exceed thirty (30) days.

15.075 COMMUNICATION IN WRITING

Any written communication to the Court must be copied to all parties, and reflect the action on the document or separate document reflecting such.

15.115 AUTHORIZED AGENTS IN SMALL CLAIMS CASES

An agent shall be designated by any organization filing or defending a Small Claim. The designated agent may be ordered to appear before the Court.

15.117 COLLATERAL PROCEEDINGS FROM SMALL CLAIMS

Collateral and subsequent actions based on a small claims judgment, *i.e.*, judgment debtor examinations, motions and orders to show cause for contempt, and motions upon a contempt case, shall be formalized requiring formal pleadings compliant with ORCP, UTCR and SLR, and not informal proceedings as otherwise allowed in small claims cases.

Chapter 16 – Violations

16.015 VIOLATIONS BUREAU

- (1) The Sixth Judicial District has established a Violations Bureau.
- (2) A person may make a first appearance at the Violations Bureau or may pay the Violations Bureau fine and assessment by mail, phone, or on-line for all violations not requiring a mandatory physical appearance.
- (3) The fine and applicable assessment(s) shall be paid immediately and in full at the Violations Bureau, unless the court approves a deferred payment.

16.021 TRIAL BY AFFIDAVIT OR DECLARATION

Trial by affidavit or declaration, as provided in ORS 153.080 is authorized for all violations unless consolidated with another pending charge. For trial by affidavit or declaration, the defendant's submission shall clearly waive the right to submit oral testimony in court in favor of written statement by affidavit or declaration, and for waiver of personal appearance at trial, specifically waiving trial. Upon submitting matters for trial by affidavit or declaration, the state is authorized to also submit matters by affidavit or declaration. Unless specifically requested the trial will be by the judge without hearing being set for any further appearance. At the trial, any witness, including the defendant, may have the witness' testimony presented to the Court by affidavit or declaration and need not appear personally. (Sample *Waiver and Declaration* is provided on the court website identified in SLR 1.171.)

16.025 POSTPONEMENTS

- (1) Court Trial

A request to postpone a court trial shall be made to the court in writing no later than fourteen (14) days prior to the time of trial. Unless specifically ordered by the court, only one postponement per party will be allowed.
- (2) Notice

When a postponement is granted, the court will notify all parties to the action. If the postponement is granted in open court, parties personally present are deemed notified.

Chapter 17 – Parking

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 18 – Forcible Entry and Detainer

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 19 – Contempt Proceedings

19.021 REMEDIAL CONTEMPT

- (1) All documents filed on contempt matters involving remedial sanctions shall be filed separately from documents addressing other matters in the underlying case. This rule applies to motions, affidavits, proposed orders, judgments, and any other document regarding the contempt matter.
- (2) Unless otherwise ordered by the court, the first appearance on an Order to Show Cause involving remedial sanctions is an arraignment or advice of rights on the allegations. If the sanction of confinement is sought, the defendant may request and be verified for eligibility for court appointed counsel. Further proceedings may be scheduled as required.

19.023 PUNITIVE CONTEMPT

Complaints, informations, or other charging documents alleging a violation of law or court order and seeking the remedy of contempt shall be filed separately from all “other than contempt” offenses which might otherwise be ordinarily charged in one instrument.

Chapter 20 – Voluntary Arbitration

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 21 – Filing and Service by Electronic Means

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 22 – Enterprise Content Management System

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.

Chapter 23 – Oregon Complex Litigation Court

THIS CHAPTER IS RESERVED FOR FUTURE EXPANSION.