

# SUPPLEMENTARY LOCAL RULES

## CIRCUIT COURT OF THE STATE OF OREGON

### TENTH JUDICIAL DISTRICT UNION AND WALLOWA COUNTIES

Effective February 1, 2023



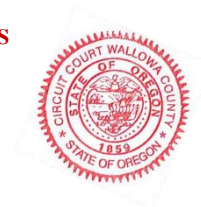
#### STATE OF OREGON – UNION AND WALLOWA COUNTIES

I certify that this is a true and correct copy of a document in the possession of the court administrator for the 10<sup>th</sup> Judicial District.

DATED: December 29, 2022

Court Administrator for the 10<sup>th</sup> Judicial District (or designee):

/s/Michelle Leonard



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## **CHAPTER 1 GENERAL PROVISIONS**

### **1.034 PAYMENT IN U.S. DOLLARS**

All fees, costs, fines, and assessments shall be paid in U.S. Dollars. Unless otherwise ordered by a judge of this court, or required by law, the Trial Court Administrator shall not accept any foreign currency and shall return any checks payable in foreign currency to the payor for replacement.

### **1.035 CREDIT CARDS**

Credit cards may be used, and fees assessed as provided in ORS 1.005.

### **1.161 MANDATORY ELECTRONIC FILING**

Mandatory Electronic Filing is required for members of the Oregon State Bar per UTCR 21.140.

### **1.171 COURT WEBSITES**

Website addresses for the Circuit Court of Oregon, Tenth Judicial District, are: <http://courts.oregon.gov/Union> and <http://courts.oregon.gov/Wallowa>.

## **CHAPTER 2 STANDARDS FOR PLEADINGS AND DOCUMENTS**

### **2.012 ADDRESSES AND TELEPHONE NUMBERS**

(1) Defendants in criminal, violation and infraction cases. During the pendency of any case charging an offense, including traffic, boating, game, infraction, violation, and criminal cases, or while any monetary or other obligations imposed by the court in such case remain unsatisfied, defendant must keep the court advised in writing of defendant's current name, mailing address, and telephone or message telephone number.

(2) Unrepresented parties in civil and small claims cases. During the pendency of any civil or small claims case any party who is not represented by an attorney of record must keep the court advised in writing of the party's current name, mailing address and telephone or message telephone number.

## **CHAPTER 3**

### **DECORUM IN PROCEEDINGS**

#### **3.011 DECORUM PROVISIONS FOR 10<sup>th</sup> JUDICIAL DISTRICT**

(1) Proper attire and appropriate behavior is required by everyone entering the Union or Wallowa County Circuit Court and will be strictly enforced. Anyone not properly dressed upon arriving in the courtroom may be sent away until properly dressed.

(2) The following apparel items are unacceptable:

- (a) Tube tops, tank tops, halter tops, bare midriff tops, see-through tops;
- (b) Shorts;
- (c) Dresses shorter than the fingertips of extended arms;
- (d) Skirts or pants with waists that allow undergarments to be seen;
- (e) Clothing with large holes, cut-off sleeves or pants;
- (f) Hats or bandanas/do-rags;
- (g) Clothing that display controlled substances (tobacco, alcohol, drugs), double meanings, hate motivated behavior, illegal activities, obscene gestures or language, profanity, sexual references, or violence;
- (h) Bare feet;
- (i) Chains that could be used as weapons;
- (j) Garments meant to be worn as undergarments, worn as outer garments and sagging, bagging or dragging pants;

3) No chewing gum or tobacco use in the courtroom. If you are chewing tobacco or gum upon arrival to court, you will be required to remove them before entering the courtroom.

(4) Please remember, your choice of clothing reflects an attitude when appearing before the court. The following attire is suggested for all non-lawyers appearing in court.:

(a) MALE - long or short sleeve shirts with collars. Slacks or dress denim trousers;

(b) FEMALE - Dresses, skirts, or slacks and blouse.

(5) During designated emergency situations, public safety may require relevant personal protective apparel including, but not limited to facial masks. Everyone appearing in court, attorneys, parties, witnesses, observers, court staff will be expected to follow any prescribed safety measure. This requirement is authorized by ORS 1.010, ORS 1.177, and UTCR 3.010.

(6) Attorneys are responsible for making their clients and witnesses aware of the decorum requirements.

### 3.051 PARTICIPATION IN HEARING BY TELEPHONE

(1) Counsel or a party may be granted permission to appear for a hearing by telephone. A written request must be submitted at least one day prior to the scheduled hearing.

(2) When counsel, parties, or witnesses are granted permission to appear by telephone, they may participate by telephone only:

- (a) When the call is made from a location affording good quality communication:  
and
- (b) The caller is not operating or a passenger in a moving vehicle.

(3) The first party requesting telecommunication must initiate the conference call at their expense unless the court directs otherwise.

(4) Persons not prearranging any appearance by phone pursuant to this rule are expected to appear in person.

*\*Note – This rule is in keeping with UCTR 4.050(2)(c)&(3)/5.050(2)(c)&(3), and by reference here shall apply to telephonic appearances in any court matter where telephone appearances are allowable. Any failure to coordinate a conference call may cause the matter to be set over and could result in a failure to appear.*

### 3.181 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS

(1) Media or public access coverage is prohibited in the hallways outside of any courtroom or court office. Upon request, on a case by case basis, the court will consider designating an area outside of the courtrooms and prohibited court areas for media and public access coverage.

(2) Unless otherwise permitted by UTCR 3.180(6) or the judge presiding over the proceeding, personal communication devices (any electronic equipment capable of communicating with others outside a courtroom by transmission of sound or images, including, but not limited to cell phones and pagers) taken into a courtroom by any person shall be turned off upon entering the courtroom and shall remain off until after the person has departed from the courtroom.

### 3.185: PERSONAL COMMUNICATION IN COURTROOMS AND JURY ROOMS DURING PROCEEDINGS AND DELIBERATIONS

Unless otherwise permitted by UTCR 3.180(6) or the judge presiding over the proceeding, personal communication devices (any electronic equipment capable of communicating with others outside a courtroom by transmission of sound or images, including, but not limited to cell phones and pagers) taken into a courtroom by any person shall be turned off upon entering the courtroom and shall remain off until after the person has departed from the courtroom.

## 5.005 DEPOSITIONS

### (1) Scope of Deposition

ORCP 36B(1) provides that any matter not privileged may be inquired into during a deposition if reasonably calculated to lead to admissible evidence. This standard will be interpreted broadly by the Tenth Judicial District bench. If unreasonable or bad faith deposition techniques are being used, the deposition may be suspended briefly and a motion to limit pursuant to ORCP 39E may be made and heard by a judge.

### (2) Objections

Most objections are typically reserved until trial. Under ORCP 41C, only errors that can be obviated, removed, or cured are waived unless a reasonable objection is made during the deposition. ORCP 39D creates a mechanism so that the attorney whose question is objected to may accept the objection as an invitation to correct an alleged defect in the question. Rejection of the invitation may result in exclusion of the question and answer at trial. Attorneys should not state anything more than the legal grounds for an objection to preserve the record. Objections should be made without comment to avoid contamination of the answers of the witness. Argument in response to the objection is neither necessary nor desirable.

### (3) Instructions Not to Answer

The only basis for an instruction not to answer a question reasonably calculated to lead to the discovery of admissible evidence is in response to an attempt by the attorney taking the deposition to inquire into an area of privacy, right, privilege, or area protected by the constitution, statute, work product, or questioning amounting to harassment of the witness. Any objection to the form of the question or the responsiveness of the answer can be preserved with a brief objection.

### (4) Deposition Disputes

The parties should be able to resolve deposition disputes. 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 Judge, or designee, for hearing, either on or off the record, by phone or at the courthouse.

### (5) Pending Questions

If a question is pending, it shall be answered before a break is taken, unless the question involves a matter of privacy right, privilege, an area protected the Constitution, statute, or work product.

### (6) Persons Present



Any party may attend a deposition. Non-party witnesses are excluded at the request of any party.

## **CHAPTER 6**

### **TRIALS**

#### **6.012 Settlement Conferences:**

(1) The court on its own motion or on the request of any party may set a mandatory settlement conference. Scheduling of a settlement conference is subject to judicial availability and a settlement conference shall not be scheduled so as to delay trial of the case. The pretrial settlement conference will not be required if either party demonstrates good cause why the settlement conference should not be held.

(2) The purpose of the settlement conference is to provide a forum to resolve disputes before trial through the active participation of counsel and the Court. The attendance of all parties and their trial attorneys is required. When a party is insured, a representative of the insurance company with authority to settle the case shall be in attendance or readily available by telephone. Upon a showing of good cause, the judge conducting the settlement conference may excuse a party from personally appearing, but the party may be required to participate by telecommunication.

(3) Pretrial settlement conferences shall be conducted by a judge other than the assigned trial judge unless all parties stipulate in writing that the trial judge may also conduct the settlement conference.

(4) For a meaningful settlement conference to occur, all attorneys and parties must participate in good faith. The failure of any person to comply with these rules, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, may result in the court imposing appropriate sanctions as described in UTCR 1.090. Cases set for a settlement conference shall retain their place on the trial docket.

(5) If settlement negotiations are not successful, counsel should be prepared to proceed to trial on the date scheduled. The court will make every effort to ensure the case proceeds to trial on the date scheduled. The court will deny all requests for continuance except in case of emergency or highly unusual circumstances.

(6) If a settlement is reached, the parties shall place notice of the settlement on the record before the scheduled trial date, in accordance with UTCR 6.020.

(7) Upon a settlement being reached, the court will enter an order of dismissal on settlement giving the parties 30 days in which to submit the final judgment. A longer period may be allowed if requested by the parties.

(8) In every case, the party shall present directly to the settlement judge, not less than seven (7) days prior to the date of each settlement conference, a detailed settlement conference

statement. The date and time of hearing shall be typed on the face sheet of the statement. There is no requirement to serve the opposing party with the settlement conference statement.

(a) In the case of personal injury/property damage litigation, the plaintiff shall include in the settlement conference statement a summary of facts, the injuries and/or damages, any special legal issues involved, and a settlement demand, and shall attach a copy of the most recent medical report(s).

(b) The defendant shall prepare a similar statement setting forth a summary of the facts, the injuries, legal issues, defendant's settlement offer, and a copy of the most recent defense medical report(s).

(c) In actions for dissolution, annulment, or separation, and actions for modification of judgments therein, the parties shall present directly to the settlement judge seven (7) days prior to the date of the settlement conference, all documents otherwise required by UTCR Chapter 8 pertaining to domestic relations proceedings.

(d) In other cases, each party shall prepare an appropriate settlement statement setting forth a summary of the facts, legal issues, damages and relief demanded, together with all demands and offers.

(9) Statements and other documents submitted to the judge by the parties and materials or notes prepared by the settlement conference judge are confidential and will not be placed in the trial court file in the event that the case does not settle or upon request of either party, and in that event, the materials or notes shall be destroyed by the settlement conference judge.

(10) All matters eligible for a settlement conference under this rule shall be set for a trial readiness hearing before a judge no less than 90 days after the matter becomes at issue. The trial readiness hearing will provide the court the necessary information with which to schedule a settlement conference, pretrial matters, and/or trial. This hearing will occur prior to the scheduling of a settlement conference under this rule.

#### 6.021 SETTLEMENT AGREEMENT

Unless the court receives documents, which conclude the pending matter before the time set for trial or hearing, all parties are required to appear for trial or hearing. Appearance may be in person or by telephone. The terms of the settlement agreement shall be read into the record and the parties will announce their agreement with the terms of settlement.

#### 6.035 MOTION TO POSTPONE

(1) No motion for postponement shall be considered unless the motion is filed more than one week before the trial or hearing date; provided, however, an exception may be made if the party seeking such exception shall in addition to any statutory requirements, the requirements of ORCP 52, and the requirements of UTCR 6.030, satisfy the court that the cause for postponement came to the knowledge of the party and counsel too late to be timely presented.

(2) The first paragraph of the motion must state the current trial or hearing date and in criminal cases whether defendant is in custody.

(3) Motions to postpone shall use the format as prescribed in UTCR 6.080 and SLR 6.035 for both trials and hearings.

#### 6.055 DELIVERY OF TRIAL MEMORANDA AND OTHER DOCUMENTS

In civil cases, trial memoranda shall be received by the court and opposing counsel at least two judicial days prior to the commencement of the trial.

#### 6.081 COPIES OF EXHIBITS

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.

#### 6.082 STIPULATION TO EXHIBITS

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.

#### 6.191 AUDIO VISUAL DEVICES USED IN COURT

(1) The use of audio/visual (AV) devices to present evidence or other information at court hearing/trial is permitted.

(2) A request to use the court's AV connections and/or devices at hearing/trial must be made in advance of the proceeding. The party presenting the information must make every effort to submit a request immediately upon receiving the hearing/trial notice.

(3) Requests must be received by the respective court at least 48 hours prior to the hearing/trial to allow technical support staff sufficient time to assess the needs for the request. The respective court will notify the presenting parties of any items which might be needed for their specific presentation. Failure to give court staff time to prepare and react to requests for AV usage may result in AV presentation being delayed or canceled.

*\*Note – forms/format for these requests are available on the official websites for both counties.*

## **CHAPTER 7**

### **CASE MANAGEMENT AND CALENDARING**

#### **7.015 VIDEO APPEARANCES**

The Tenth Judicial District presently has video capability at the courthouses in La Grande and Enterprise, and the Union County Correctional Facility.

(1) Criminal cases - When handled by video, a completed plea petition document must be filed with the court prior to any change of plea.

(2) Habeas Corpus and Post-Conviction Relief cases - If a defendant is in the custody of a correctional institution, the defendant's pretrial motions, pretrial hearings, and court trial shall be conducted by video, if available.

(3) Civil cases - Parties wishing to use video technology in civil cases shall, where available, make arrangements with the Trial Court Administrator prior to trial and pay all expenses of the video.

(4) Mental Commitment cases - If a person alleged to have a mental illness is in a mental health facility, the motions, hearings, and trial may be conducted by video appearance, if available, at the expense of the Mental Health Division.

(5) Scheduling - Parties requesting appearances by video shall contact the judicial assistant or docketing clerk where their case is filed to obtain permission for appearance via video. That court will then coordinate with other court on the use and availability of the video system. The first priority for use of video is criminal matters.

(6) Exhibits - All exhibits will be presented to the court no later than three (3) judicial 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. Prior to the hearing, copies of exhibits shall be provided to witnesses appearing by video.

#### **7.111 TIMELINES**

The following timelines will be observed in all criminal cases:

(1) Plea hearing. A hearing for entry of plea to felony and misdemeanor charges shall be set approximately eight (8) weeks after the arraignment, notice of appointment or date of representation, whichever is last to occur. This schedule does not apply to 60 day rule cases and complex cases. See ORS 136.290.

(2) Pre-Trial status conference. This status conference will be held in open court just prior to the scheduled trial.

#### 7.112 PRELIMINARY HEARING DECISION

All requests and waivers of preliminary hearings must be in writing or on the record in open court. Notice to the court by telephone will not be accepted. If defendant is in custody a preliminary hearing will be set within five (5) judicial days of the defendant's request. If defendant is not in custody a preliminary hearing will be set within 30 days of the defendant's request. The court will make reasonable efforts to expedite appointment proceedings when the defendant is in custody. Discovery shall be expedited so that defense counsel will have discovery prior to the preliminary decision date.

#### 7.113 PLEA HEARING

If the defendant enters a plea of not guilty counsel shall report whether a jury trial is desired and advise the court of the probable length of the trial. The parties will advise the court of potential motions to suppress evidence and other pretrial motions and will advise the court of the need to set an omnibus hearing pursuant to ORS 135.037. The court will fix a date for filing the motions.

#### 7.114 CRIMINAL PRE-TRIAL PROCEDURE

Instead of scheduling pretrial hearings, the lawyers must follow this procedure regarding plea negotiations (except as to in-custody, 60-day rule cases, "complex" cases, and cases for which good cause may be demonstrated):

(1) Felonies, Misdemeanors and violations: The district attorney and the defense attorney(s) must negotiate during the 8-week period immediately following the date of arraignment, notice of appointment, or date of representation, whichever is last to occur.

(2) Reciprocal discovery and investigations must be completed within the above-referenced 8-week period.

(3) Prior to the expiration of the 8-week period, the District Attorney's Office must notify the court, in writing, of the status of the case regarding settlement, plea(s), dismissal(s), trial, or any requests for extensions of time.

(4) Any request for extension of the 8-week period must be sought, in writing, prior to the expiration of said period.

(5) If a settlement has been reached, the parties must provide the court with a copy of the settlement document (or plea petition), including amounts of restitution and the addresses of victims.

(6) If settlement has not occurred by the conclusion of the 8-week period, or any extension thereof, a plea shall be entered and a trial date set. The court will not accept a negotiated plea after a trial date has been set except for good cause shown.

#### 7.115 PRE-TRIAL STATUS CONFERENCE

Counsel and the defendant must appear at this conference scheduled prior to the date set for trial. If defendant does not appear, an arrest warrant will issue and no jury will be called. The parties will advise the court of any unresolved motions, any issues regarding scheduling of witnesses, and any other matters that may facilitate trial by the avoidance of unnecessary proof or by simplification of issues to be tried. The parties will advise the court of any special security considerations or equipment needs.

#### 7.215 SCHEDULING COURT APPEARANCES

(1) Trials, motions and show cause hearings shall be scheduled in writing to the parties, except that short-notice hearings may be arranged telephonically. Trials commence daily at 9:00 a.m. and continue through 5:00 p.m. Non-custodial matters are scheduled every Tuesday at 9:00 a.m. in Union County and Wednesday at 9:30 a.m. in Wallowa County. Custodial matters are scheduled daily at 1:15 p.m.

(2) In keeping with SLR 7.111 & 7.114 counsel is required to appear in court with their calendars to facilitate in-court scheduling. The court may provide written confirmation of dates set.

### **CHAPTER 8 DOMESTIC RELATIONS PROCEEDINGS**

#### 8.005 SETTLEMENT CONFERENCES

In actions for dissolution, annulment, or separation, and actions for modification of judgments therein, the parties shall present directly to the settlement judge 14 days before a SLR 6.012, all documents otherwise required by UTCR Chapter 8.

#### 8.006 COORDINATION OF CASES

(1) Neither counsel nor parties shall bring an action for custody or parenting time in any civil action without disclosing the existence and status of any other pending or closed case relating to those issues, whether the other case is a governmental action (such as a child support or juvenile matter), a probate action (such as a guardianship), or an out of state action.

(2) Where more than one case filed in this Judicial District relates to the same parties, every attempt will be made to calendar all related cases before the same judge and, where appropriate, at the same time.

#### 8.011 STATEMENT OF ASSETS AND LIABILITIES

(1) Prior to filing statements of assets and liabilities pursuant to UTCR 8.010(4), the parties shall confer in an effort to agree on the following:

- (a) Terminology to be used to describe each asset and liability;
- (b) Values of each asset and liability;

- (c) The order in which each asset and liability is to be listed; and
- (d) Which assets and liabilities are part of the marital estate.

(2) In lieu of filing separate statements of assets and liabilities, the parties may file one joint statement of assets and liabilities which either or both parties claim to be subject to distribution by the court. The parties shall use Form 8.011.2 in the Appendix of Forms.

(3) In the event parties file separate statements, such statements must include all assets and liabilities which either or both parties claim to be subject to distribution by the court. Each party's statement of assets and liabilities shall use the agreed-upon terminology for each asset and liability. If the parties are unable to agree on terminology for any particular asset or liability, each party shall refer to each such asset or liability with their own preferred terminology, followed immediately by the opposing party's terminology for that item in parentheses.

(4) Assets and liabilities shall be listed in the same order. If the parties are unable to agree upon the listing order, petitioner's listing order shall prevail, and respondent's statement and any other party's statement shall follow petitioner's listing order.

(5) Each party's statement of assets and liabilities shall first list all items the parties agree are part of the marital estate. Any assets or liabilities that the parties do not agree are part of the marital estate shall be separately listed at the end of the statement.

#### 8.012 PARENT EDUCATION CLASS AND MEDIATION ORIENTATION

(1) In any domestic relations action involving the custody or parenting time of minor children, including enforcement or modification proceedings and proceedings involving parties who are non-parents, all parties shall attend a parent education class and mediation orientation session provided by the court prior to a judicial determination of the issues. For purposes of this rule, domestic relations actions include dissolution of marriage, separation, annulment, filiation, dissolution of domestic partnership, guardianship and such other cases as shall be designated by the Presiding Judge.

(2) Attendance at a parent education class and mediation orientation shall not be required in any case arising under the Family Abuse Prevention Act, ORS 107.700-107.730, or the stalking act, ORS 163.730-163.755.

(3) The parent education class shall include information about parenting children during the process of separation or dissolution of marriage and shall be designed to assist parents and other adults in meeting children's needs during this period. Mediation orientation shall include information about the mediation process, other dispute resolution processes, including litigation, and circumstances in which mediation may not be appropriate. The classes shall be open to the public.

(4) Parties may attend a similar parent education session in another Oregon county and file a certificate of attendance with the court. With prior court approval parties may attend a similar parent education session in another state.

(5) The court, upon the motion of any party or upon its own motion, may order parties in any action identified in subparagraph (1), above, to attend such supplemental education programs as the court deems to be in the best interest of the minor children.

#### 8.041 TIME FOR FILING UNIFORM SUPPORT DECLARATION

The moving party seeking child support or spousal support shall file A Uniform Support Declaration pursuant to UTCR 8.010(4), UTCR 8.040(3), or UTCR 8.050(1) with their initial pleading seeking such support. The responding party shall file their Uniform Support Declaration within 14 days of service of a motion for temporary support, and within 30 days of service of a petition or other pleading which seeks support on other than a temporary basis.

#### 8.042 PRE-JUDGMENT MOTIONS UNDER ORS 107.095.

(1) Motions for temporary support and/or custody filed pursuant to ORS 107.095(1)(b) and 107.097 and motions for exclusive use of the home or vehicles or motions for suit money may be determined without testimony. Parties shall notify the court in writing when the motion is ready for decision without hearing. With due regard for other pending matters, the court will attempt to issue a ruling within 14 days of such notice.

(2) Except where otherwise provided by ORS 107.097 regarding *ex parte* orders, temporary child custody and/or support issues and motions for exclusive use of the home or vehicle and motions for suit money must be resolved through the following procedures:

(a) Motions for temporary custody, temporary child and/or spousal support issues, and motions for exclusive use of the home or vehicle and motions for suit money must be accompanied by an affidavit or declaration setting forth the justification for the requested relief. If temporary child support is sought, the party must file a Uniform Support Declaration and attach a child support computation worksheet. A written response shall be filed within 14 days following service, if the adverse party wishes to contest the temporary relief sought, except that no respondent shall be required to respond before the time required by law on the summons in the case.

(b) The Motion and Affidavit or Declaration must be filed with the Trial Court Administrator before being submitted to a judge.

(c) A copy of this Supplementary Local Rule must be served on the adverse party along with true copies of the Motion and Affidavit or Declaration in Support.

(d) The Response must admit or deny each form of relief sought and must set forth any additional motions for temporary relief. The Response must be accompanied by an affidavit or declaration setting forth the justification for the relief opposed or sought by the responding party. If the response contests the amount of temporary support, a Uniform Support Declaration must be filed.

(e) Within ten (10) days following service of the Response and Affidavit or Declaration on the moving party or their attorney, either or both parties may submit a Supplemental



Affidavit or Declaration in support of their respective positions. If service of the Response is made by mailing, the date of service shall be considered to be three (3) days after the date of mailing. Except for good cause shown, no further pleadings are required or permitted.

(f) Temporary relief will generally be determined without testimony, based upon the parties' written submissions to the court. Oral argument will be allowed if requested by either party pursuant to UTCR 5.050. The court may on its own motion schedule an evidentiary hearing if deemed necessary. Failure to submit the required filings may result in an adverse ruling or denial of relief. There is no requirement, however, to file a supplemental affidavits or declaration. On matters involving custody and parenting time only, if a party files a written motion for reconsideration within ten (10) days after the court's ruling, a hearing will be scheduled to review that ruling. If temporary custody and/or support are awarded pursuant to this rule, the court's determination of permanent custody and/or support shall be made *de novo*.

(g) Nothing in this rule limits the court's authority to issue temporary status quo orders pursuant to ORS 107.138 and temporary custody or parenting time orders pursuant to ORS 107.139. The court reserves its authority to refer custody and parenting time disputes to mediation, pursuant to ORS 107.765 and SLR 8.075.

(h) STANDARD FOR TEMPORARY CUSTODY: To prevail under this procedure, the moving party must prove that the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare.

## 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 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 provision for more or less parenting time than desired by the parties. Every parenting plan shall specify the percentage or number of overnights which each parent has with the children.

## 8.115 STANDARD PARENTING PLAN FORM

A Standard Parenting Plan adopted for use in Union and Wallowa Counties may be found on Union and Wallowa Counties' websites. Website addresses for the Circuit Court of Oregon, Tenth Judicial District, are: <http://courts.oregon.gov/Union> and <http://courts.oregon.gov/Wallowa>.

## **CHAPTER 9**

### **PROBATE AND ADOPTION PROCEEDINGS**

#### **9.015 SERVICE ON PARENT(S) OF A MINOR**

In addition to the parent who must receive notice under ORS 125.060(f), any parent whose rights have not been terminated are also considered persons who must receive notice, ORS 125.060(m). Both parents whose rights have not been terminated are to receive copies of all filings. A petitioner may be granted a waiver of such a requirement upon a finding of good cause.

#### **9.052 WRONGFUL DEATH AND PERSONAL INJURY PROCEEDS**

(1) When wrongful death and/or personal injury proceeds are not the only assets in probate, conservatorship and guardianship proceedings, that fact shall be alleged by a separate titled paragraph in the initial petition filed with the court.

(2) When wrongful death and personal injury proceeds are assets in probate and conservatorships, please indicate if there will be more than one claim in litigation(s).

#### **9.081 ORAL OBJECTIONS**

Oral objections, where permitted in probate matters under ORS 125.075, may be made during regular court hours at the respective court location in the 10th Judicial District:

Union County Circuit Court – 1105 K Avenue, La Grande, Oregon.

Wallowa County Circuit Court – 101 S River Street, 2nd floor, Enterprise Oregon.

The respondent or protected person may also make objections orally to an appointed Court Visitor. Court Visitors shall 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.

#### **9.135 PROBATE COMMISSIONERS**

As provided by law, these rules, and where not inconsistent with the Uniform Trial Court Rules, a Probate Commissioner appointed by this court shall assist in the administration of decedents' estates, guardianships, conservatorships, and other similar proceedings, and is empowered:

(1) To act upon uncontested petitions for appointment of special administrators, for probate of wills, and for appointment of personal administrators, guardians and conservators.

(2) To make and enter orders on behalf of the court admitting wills to probate and appointing special administrators, personal representatives, guardians and conservators.

(3) To set the amount of the bond for special administrators, personal representatives, guardians and conservators; and to approve such bonds.

#### 9.145 COURT VISITORS

A court visitor for any alleged incapacitated person (ORS 125.005, 125.125 *et seq*) is a designee of the court. The petitioner shall serve the visitor with all applications, proposed orders and correspondence. The petitioner is responsible for the payment of the visitor's fees in the amount established by the Presiding Judge by General Order. Any request for fees in excess of this amount, or for extraordinary expenses, must be submitted to the Presiding Judge for consideration. The visitor's fee shall be paid to the court at the time the order appointing visitor is submitted for approval. The fee will be disbursed to the visitor when the visitor's report is received.

#### 9.155 REPORTS

(1) In addition to other matters, the fiduciary of any incapacitated person and the guardian of any minor ward shall file and serve annually the report required by ORS 125.325.

(2) If the assets are being held in a restricted account where annual accountings have been waived, the fiduciary shall file and serve annually a summary report showing the current value of the restricted assets. Annual summaries will also satisfy the requirements of UTCR 9.030 as the report will keep the court apprised of the parties' contact information for an active case.

#### 9.164 PETITIONS FOR PARTIAL DISTRIBUTION PRIOR TO FINAL SETTLEMENT

As the statute describes, partial distributions shall be in the form of a petition under ORS 116.013. Such petitions are subject to notices as prescribed by the court. Partial distribution shall be subject to the same notice requirement set forth under ORS 116.093.

\*note\* Inventories must be in the court case record when requesting a partial distribution.

#### 9.165 DECEDENT'S ESTATE CASES PENDING FOR ONE YEAR OR LONGER

When one year has elapsed after the initial filing of a decedent's estate that does not include a wrongful death claim, the Personal Representative shall file, in the annual accounting, a statement advising the court of the status of the estate. The statement shall indicate the date the Personal Representative anticipates closing the estate.

## **CHAPTER 11**

### **JUVENILE COURT PROCEEDINGS**

#### **11.005 APPEARANCES IN JUVENILE COURT DEPENDENCY CASES**

(1) A parent who is served with a summons in a child dependency case shall appear personally in court at the time and place specified in the summons for a hearing on the allegations of the petition.

(2) A parent who fails to appear shall be subject to entry of a default order or judgment granting the relief sought by the petitioner.

## **CHAPTER 12**

### **MEDIATION**

#### **12.013 MEDIATION OF CHILD CUSTODY AND PARENTING TIME DISPUTES**

(1) It is the court's policy that resolution of family issues through good faith participation in competent, professional mediation is in the interest of both the family and the public.

(2) Mediation of custody/parenting time disputes may be commenced at any stage in a civil action by the stipulation of the parties or by the order of the court. The court may order mediation on the motion of either party or on the Court's own motion. For purposes of this rule, civil actions include dissolution of marriage, separation, annulment, filiation, dissolution of domestic partnership, guardianship and such other cases as shall be assigned by the Presiding Judge.

(3) The court may decline to hear a contested custody or parenting time issue until and unless the parties have participated in mediation in a good faith attempt to resolve the issues between themselves. A notice from the assigned mediator must be filed with the court stating that the parties have cooperated, and that mediation has nevertheless not resulted in an agreement before trial or hearing on the merits will be calendared.

(4) Parties ordered to mediation shall be referred to the court's Family Mediation Program.

(5) Parties may select, by stipulation, a private mediator. The parties shall directly contract with the private mediator and be responsible for payment of the mediator's fees. If private mediation is selected, a written stipulation indicating the name of the mediator shall be filed with the court. Private mediators should have education and experience equivalent to the minimum requirements for membership in the court's family mediation panel.

(6) If the parents cannot agree on the amount of support to be paid by one to the other, and they are also in dispute as to custody or parenting time, upon the request of both parents, the mediator may assist in resolving the support issue as well.

(7) The mediator may only assist in resolving economic issues to the extent they are related to establishing custody and parenting time arrangements, and subject to ORS 107.765(1).

(8) At any point during mediation, the court may approve a custody and parenting time order reflecting the parents' full or partial agreement as to the issues. If the agreement is reached through the court's Family Mediation Program and prepared by one of the court mediators, the mediator shall hold the signed agreement for seven (7) calendar days from the date of the last signature and mail notice of the agreement to the parties and their attorneys, if known to the Program.

(9) Mediation shall not be used by any party in bad faith for the purposes of delay or undue influence on other issues. If the court finds at any time that the mediation process is being misused, it may determine that further mediation is inappropriate, have the case removed from the mediation process and impose sanctions, as appropriate.

(10) In the event the parties are not successful in mediating the custody or parenting time controversy, the mediator shall notify the court. The matter will be scheduled for hearing as to the remaining unresolved issues, to be held in the same course and with the same priority on the docket as though there had been no mediation.

#### 12.014 COURT'S AUTHORITY

A civil case filed in the Circuit Court remains under the control of the court in all phases of the proceedings, including mediation. The court referring a case to mediation may set, in its referral order, the limits of the mediator's scope of authority in the case. Absent an order to the contrary:

(1) The mediator has authority and control over the mediation process but has no authority over the parties or over their decisions in the case;

(2) Unless otherwise agreed in writing by the parties and mediator, the parties' legal counsel shall not be present at mediation sessions;

(3) The mediator shall encourage disputing parties to obtain individual legal advice at any time during the process and individual legal review of any mediated agreement before signing any agreement; and

(4) The mediator shall not act as a lawyer for either party or the children of the parties in the current or any related matter absent the written consent of both parties.

#### 12.016 MEDIATION WHERE A POWER IMBALANCE EXISTS

(1) Where there is a restraining order between the parties, a history of domestic violence or abuse, an extreme imbalance in the power relationship between the parties or other reason to believe that mediation may be inappropriate, a party may contact the assigned mediator to request that the parties meet with the mediator separately, or to request the presence of a support

person during mediation, telephonic mediation, or another remedy. A mediator may exclude a support person from a session if the support person disrupts the process of mediation.

(2) The mediator may arrange separate sessions, require telephonic mediation or terminate mediation at any time if the mediator believes that issues of violence, abuse, threatening behavior, manipulation or power imbalance make further mediation inappropriate. In any telephonic mediation, both parties will participate by telephone.

#### 12.017 NON-RESIDENT PARTICIPANTS

If one of the parties is not a resident of the county in which mediation is scheduled, that party may request that mediation occur by telephone. If the needs of both parties would be better served by telephonic mediation, they may agree to such mediation. If telephonic mediation occurs, both parties will appear by telephone and will arrange to be available in a quiet place, not in the presence of the parties' children. All others present at the time of telephone mediation must be identified. Costs of telephonic mediation will be paid proportionately by the parties appearing by telephone.

#### 12.018 DISPUTED PARENTAGE

If parentage is disputed, the issue need not be resolved by the court prior to mediation. Mediation shall not be denied to the parties on the basis that parentage is an issue in the proceeding before the court. The court may make a temporary order granting parenting time to a non-custodial parent absent a parentage determination upon a finding that the granting of such visitation would be in the best interest of the child.

#### 12.020 [Not used - See UTCR 1.080(3)]

#### 12.021 MEDIATOR QUALIFICATIONS

To qualify as a Court Family Mediation Program panel member, person must:

(1) Meet the requirements of Court-Connected Mediator Qualification Rules for mediation of custody-parenting disputes as outlined in UTCR 12; if the mediator is assigned additional responsibility per rules 12.013(6), the mediator shall meet the minimum requirements set by Court-Connected Mediator Qualification Rules for those additional responsibilities.

(2) Sign and file an application with the court; and

(3) Be approved by the Presiding Judge.

#### 12.022 OBJECTION TO MEDIATOR

Within five (5) days of notice of the identity of the appointed mediator and prior to the conduct of the first mediation session, a party may, one time only, object in writing to the

assignment of the mediator, without giving a reason, and request assignment of another mediator. Thereafter, any objection must be for cause and must be resolved by the court.

#### 12.125 SMALL CLAIMS MEDIATIONS

See Supplementary Local Rule 15.015 below.

### **CHAPTER 13 ARBITRATION**

#### 13.015 ACTION TRIED TO COURT EXEMPTED

Civil cases may be exempted or removed from arbitration in accordance with ORS 36.405(2).

#### 13.025 REQUEST FOR AND OBJECTIONS TO ARBITRATION

(1) Any party may file and serve notice of a request that the court transfer a case to arbitration.

(2) A court decision on an exemption filed pursuant to ORS 36.405(2) will be rendered within five (5) days following the filing of a motion for exemption from arbitration. 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.

#### 13.035 COURT SHALL DETERMINE WHETHER CASE IS SUBJECT TO ARBITRATION

(1) A case assigned to arbitration will not be removed, except as might occur under (2) of this Rule, without an affidavit, 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. The Presiding Judge of the judicial district in which the case was filed does retain the authority to remove a case from arbitration any time the Presiding Judge is of the opinion that such extraordinary circumstances exist.

(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 must notify the Trial Court Administrator. Unless the parties stipulate otherwise, the court shall then remove the case from arbitration.

### 13.042 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 unless all parties have appeared or have had a judgment of default entered against them. If a case has been referred to arbitration prior to the filing of a motion directed by the complaint or a dispositive motion, the motion shall be heard and decided by the arbitrator pursuant to UTCR 13.100.

### 13.048 WAIVER OR DEFERRAL OF FEE

(1) Indigent parties must seek waiver or deferral of the arbitrator's fee within 14 days from the date the case is transferred to arbitration. The request must be submitted by motion and order, supported by an affidavit setting forth with specificity the party's income, assets, and expenses, and presented to the Presiding Judge for approval.

(2) In the event funds are available under ORS 36.420 for the payment of fees that are waived or deferred, the arbitrator shall be reimbursed after completion of the arbitration, filing of the arbitration award, and submission of the form approved by the State Court Administrator for such purpose.

### 13.055 ARBITRATORS

(1) To qualify as an arbitrator, a person must sign and file an application as arbitrator and, if not a retired or senior judge or stipulated non-lawyer arbitrator, be an active member of the Oregon State Bar at the time of each appointment. During any period of suspension or disbarment from the practice of law by the Oregon State Bar or the Supreme Court, an arbitrator will be removed from the court's list of arbitrators and may re-apply when the attorney is reinstated or readmitted to the Bar.

(2) There shall be a panel of arbitrators in such number as the Arbitration Commission may 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. A list showing the names of arbitrators to hear cases will be available for public inspection with the Trial Court Administrator for each individual county.

(3) The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the court 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 arbitration cases, subject to the discretion of the Presiding Judge.

(4) If such disqualification or refusal occurs, the arbitrator must notify all parties and immediately return all appointment materials in the case to the court.



### 13.065 STIPULATIONS

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

### 13.066 MOTIONS

Motion practice is discouraged in cases assigned to arbitration.

### 13.075 ALTERNATE MEDIATION PROCEDURE

On the parties' written stipulation, filed with the court at any time prior to the commencement of the arbitration hearing, the parties may elect to mediate rather than arbitrate any civil or domestic relations matter subject to mandatory arbitration.

### 13.085 NO AWARD FILED WITHOUT PROOF OF NOTICE

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.

### 13.125 ARBITRATOR'S COMPENSATION

(1) Plaintiff(s) shall be responsible for one-half of arbitrator's fee. Defendant(s) shall be responsible for one-half of the arbitrator's fee. *\*Note: Per the Arbitration Commission, Arbitrators can set their own fees, but must disclose their hourly rate including their staff's hourly rate (the arbitrator is to provide fee information when chosen by litigants). An arbitrator's compensation is capped at \$200 per hour (or any greater sum agreed upon by the parties) with a maximum of ten hours per case except for good cause shown and approved by the Presiding Judge. Travel time shall not be compensated unless an arbitrator must travel from one county to another county for hearing, in which case the arbitrator will be paid \$50 per hour while traveling, with a maximum payment for travel time of \$200\**

(2) The parties each shall pay the arbitrator a fee deposit of \$500 before the arbitrator begins work on a case. If the plaintiff fails to pay plaintiff's share of the deposit within 14 calendar days of assignment to the arbitrator, the court may exercise its authority to strike plaintiff's complaint. If the defendant fails to pay defendant's share of the deposit within 14 calendar days of assignment to the arbitrator, the court may exercise its authority under UTCR 1.090.

(3) The parties must pay the arbitrator's fee in full before the arbitrator files the award with the court. This requirement is waived for any portion of the fee payable under ORS 36.420.

## **CHAPTER 15 SMALL CLAIMS**

### **15.015 APPLICABLE SUPPLEMENTARY LOCAL RULES**

Supplementary Local Rules 2.012(2) and apply in small claims cases.

### **15.025 SMALL CLAIMS MEDIATION**

(1) All contested small claims cases shall be subject to mediation, pursuant to ORS 36.185. A case will be removed from mediation and proceed in the normal fashion if either party files a written objection to mediation.

(2) These mediation services shall be provided by the court without cost to the litigants through the use of volunteer mediators.

(3) All parties must appear for mediation. A party not appearing for mediation may have a judgment entered against them subsequent to an opportunity for hearing before the court.

(4) An authorized representative may appear on behalf of a business but must be familiar with the facts of the case and must have full authority to settle.

(5) Attorneys shall not be permitted to attend a small claim mediation session unless they are parties to the case, or with permission of the court.

(6) Agreements reached while in mediation shall be signed by the parties and filed as stipulated orders.

(7) Failure of either party to abide by the stipulated order will be grounds for the opposing party to file an Affidavit of Non-Compliance and obtain a judgment on the original claim.

## **CHAPTER 16 VIOLATION OFFENSES**

### **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 all offenses authorized by ORS 153.800.

(4) Appearances before the Violations Bureau shall be permitted on any authorized offenses to a maximum of two (2) occurrences within any 12-month period.

#### 16.015 TRIAL BY AFFIDAVIT OR DECLARATION UNDER PENALTY OF PERJURY

If a signed waiver is filed by the alleged violator, testimony in a violation trial is allowable by affidavit or by declaration under penalty of perjury. ORS 153.080. Copies of affidavits or declarations by either party will be available if requested in writing at least five (5) days before trial.

APPENDIX Form 8.011.2

JOINT PROPERTY LIST								CIRCUIT CASE NUMBER:				
ASSETS ITEM DESCRIPTION		PETITIONER'S OPINION AWARD TO:			RESPONDENT'S OPINION AWARD TO:			PRE-MARITAL/ SEPARATE/JOINT			COURT'S OPINION OF VALUE AND ALLOCATION	
		VALUE	PET	RESP	VALUE	PET	RESP	JT	PET	RESP	PET	RESP
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												