

## CHAPTER 4—Proceedings in Criminal Cases

NOTE: Rules specifically relating to contempt proceedings are located in UTCR Chapter 19.

### 4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later, unless a different time is permitted by the court for good cause shown.

### 4.030 PROCEDURE FOR ORDER OF TRANSPORTATION

- (1) Any motion that a person held in custody be transported from the place of confinement to a designated place must be accompanied by a separate proposed court order directing the sheriff to transport the person to and from the designated place at the appointed time.
- (2) All proposed orders of transportation must contain the dates and times on which the person in custody is to appear at the designated place and is to be returned to the place of confinement, the exact location of the designated place and, if the person in custody is to appear as a witness in a court proceeding, the caption and number of the case. A person in custody appearing as a witness must be returned to the place of confinement only after execution of an order of release signed by the judge presiding over the court proceeding.

### 4.050 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

- (1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response, except that the court is not required to grant oral argument on a motion to postpone trial. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.
- (2) Counsel for either the state or the defense may request that a motion not requiring testimony be heard by telecommunication. The following apply to a request for oral argument by telecommunication:
  - (a) A request must be in the caption of the motion or response. If oral argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request, the position of opposing counsel, and whether the defendant has waived in writing the right to appear at the hearing.
  - (b) A request by counsel for defense must be granted if counsel for defense represents that the defendant agrees to the procedure and provides a signed waiver of personal appearance.
  - (c) A request by the state must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.
  - (d) The party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.

- (3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other.

#### 4.060 MOTION TO SUPPRESS EVIDENCE

- (1) All motions to suppress evidence:
  - (a) Must cite any constitutional provision, statute, rule, case, or other authority upon which it is based; and
  - (b) Must include in the motion document the moving party's brief, which must sufficiently apprise the court and the adverse party of the arguments relied upon.
- (2) Any response to a motion to suppress:
  - (a) Together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed, absent a showing of good cause, not more than 7 days after the motion to suppress has been filed;
  - (b) Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and
  - (c) Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.
- (3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.
- (4) Failure to file a written response shall not preclude a hearing on the merits.

#### 1991 Commentary:

The Committee proposes these amendments to clarify its intent in originally adopting this rule that a written response not be required.

#### 4.070 DISMISSAL OF CHARGES FOLLOWING SUCCESSFUL COMPLETION OF DIVERSION

For any charge dismissed based upon successful completion of diversion for driving under the influence of intoxicants or other diversion program, the dismissing instrument must state the basis for the dismissal.

#### 4.080 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

- (1) A court may conduct an appearance in a criminal proceeding at any circuit court location by the following types of simultaneous electronic transmission, as defined in ORS 131.045, if the transmission complies with the requirements of ORS 131.045, 135.030, 135.360, 135.767, 137.040, and 137.545:

- (a) Telephone;
  - (b) Television;
  - (c) Video conference; and
  - (d) Internet.
- (2) SLR 4.081 is reserved for judicial districts to adopt a local rule regarding appearance at criminal proceedings by means of simultaneous electronic transmission.

#### 4.090 ELECTRONIC CITATIONS

- (1) As used in this rule:
- (a) “Electronic citation” means a violation complaint or a criminal citation electronically filed in circuit court by a filing agency pursuant to ORS 153.770 or ORS 133.073.
  - (b) “Filing agency” means a law enforcement agency or a parking enforcement agency filing an electronic citation.
  - (c) “Trial court administrator” means the trial court administrator for the circuit court in which the electronic citation is filed.
- (2) Requests for authorization to use electronic citations must be submitted to the Odyssey Change Control Workgroup (OCCW) for review. The OCCW must:
- (a) Submit the results of its review to the State Court Administrator, and
  - (b) Obtain approval from the State Court Administrator before authorizing use of electronic citations.
- (3) The State Court Administrator may establish appropriate conditions and procedures to be followed by a court and its partners in an electronic citation program to assure that the process for electronic citations can be accommodated by Oregon Judicial Department systems and computer technology.
- (4) The transmission of information and images as provided in this rule must be tested and meet completely the system requirements for electronically uploading information and images into the Oregon Judicial Department’s automated information systems. Testing shall be administered by Oregon Judicial Department staff.
- (5) A filing agency must satisfy all of the following requirements when filing an electronic citation in circuit court:
- (a) The filing agency must obtain from the trial court administrator written approval before filing electronic citations.
  - (b) For a violation complaint, the electronic citation information must include all of the information required by ORS 153.770(2)(a).
  - (c) For a criminal citation, the electronic citation information must include all of the information required by ORS 133.073(2)(a).

- (d) The electronic citation must contain a unique identification number for the law enforcement or parking enforcement officer issuing the citation, the officer's name, the officer's eSignature, and the identity of the agency employing the officer.
  - (e) The filing agency must number the electronic citation using a number series approved by the trial court administrator.
  - (f) The filing agency must assign to the citation a unique number that does not duplicate the number on any electronic citation previously filed by the filing agency.
  - (g) A criminal citation with a form of complaint must not be filed until after the district attorney has conducted the review required by ORS 133.069(2).
  - (h) The filing agency must transmit to the circuit court an image of the electronic citation for public inspection under ORS 153.770(2)(c) and ORS 133.073(2)(c).
  - (i) If the circuit court in which the electronic citation is to be filed has a Supplementary Local Rule (SLR) on electronic citations, the filing agency must comply with all procedures and requirements in the SLR.
- (6) Subject to the restrictions under ORS 133.066(4) and (5) regarding the types of offenses that can be included in a citation, an electronic citation may contain up to ten offenses on a single citation.
  - (7) An electronic citation is deemed filed at the time the information for the citation is entered in the register of the court.
  - (8) A circuit court may scan uniform traffic citations filed in paper format, along with any supporting documentation and correspondence, and reformat them to an electronic record.
  - (9) Citations that are electronically filed or manually scanned, including those to which additional information, judicial orders, judgments, and judicial signatures have been added, are the original and legal court record.

#### 4.100 CRIME VICTIMS' RIGHTS – PROSECUTOR'S NOTIFICATION AND CRIME VICTIMS' RIGHTS VIOLATION CLAIM

- (1) The prosecuting attorney must file a notification of compliance as provided in ORS 147.510, in substantially the form set out in Form 4.100.1a or 4.100.1b in the UTCR Appendix of Forms.
- (2) To allege a violation of a right granted by Article I, section 42 or 43, of the Oregon Constitution, a victim may file a claim in substantially the form set out in Form 4.100.2a or 4.100.2b in the UTCR Appendix of Forms. The claim must be filed with the court clerk's office in the court in which the criminal case is pending.

#### 4.110 DEFENDANT MOTION FOR REIMBURSEMENT

- (1) As used in this rule, "reviewing court" means an appellate court or a post-conviction relief court.

- (2) A defendant may request reimbursement of costs, fines, fees, and restitution imposed by the court as a result of conviction and paid by the defendant to the court pursuant to a criminal judgment if:
  - (a) The criminal judgment has been reversed or vacated by a reviewing court; and
  - (b) All opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor.
- (3) A defendant seeking reimbursement must file and serve on the prosecutor a motion in the criminal case that states:
  - (a) Information showing that the criminal judgment has been reversed or vacated by a reviewing court;
  - (b) The name of the reviewing court, the reviewing court case number, and the date of the reviewing court decision;
  - (c) Information showing that all opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor; and
  - (d) The itemized amounts that the defendant has paid to the court in costs, fines, fees, and restitution.
- (4) This rule does not apply to fees imposed by the court on a defendant independent of conviction or acquittal, including indigent defense application fees, contribution fees, and attorney's fees.