

## CHAPTER 24—Post-Conviction Relief

### 24.010 POST-CONVICTION RELIEF – CASE INITIATION; DEFENDANT’S MOTION, DEMURRER, OR ANSWER

- (1)
  - (a) Counsel appointed for petitioner has 120 days from the date of appointment to file an amended petition, a notice that petitioner will proceed on the original petition, or, if unable to plead a viable claim for relief or proceed on the original petition, an affidavit pursuant to ORS 138.590(5).
  - (b) A motion for extension of time to file an amended petition, a notice that petitioner will proceed on the original petition, or an affidavit pursuant to ORS 138.590(5) shall be granted only upon demonstrated good cause.
  - (c) 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 petitioner when petitioner was self-represented.
  - (d) Counsel must attach to the filing of an amended petition, an affidavit pursuant to ORS 138.590(5), or a notice that petitioner will proceed on the original petition proof of mailing demonstrating that said filing was mailed to petitioner prior to or concurrent with the filing of such document with the court.
- (2)
  - (a)
    - (i) For cases with court-appointed counsel, defendant shall not file an answer, demurrer, or motion until petitioner has filed a notice that petitioner will proceed on the original petition, an amended petition, or an affidavit pursuant to ORS 138.590(5), or the time for filing has expired.
    - (ii) Defendant has 30 days after the notice, amended petition, or affidavit is entered in the court register, or from the expiration of the time for filing, to file an answer, demurrer, or motion against the pleadings.
    - (iii) Defendant may file a motion to dismiss as time-barred or successive at any time after appointed counsel has appeared on the case.
  - (b) If the petition is filed by counsel, or if petitioner files the petition pro se and does not seek appointment of counsel, defendant has 30 days from the date the petition is entered in the court register to file an answer, demurrer, or motion against the pleadings.
  - (c) A motion for extension of time to file an answer, any other motion, or demurrer shall be granted only upon demonstrated good cause.
- (3) If defendant files a demurrer or motion against the pleadings, petitioner has 30 days to file a response.
- (4) If petitioner files a response to defendant’s demurrer or motion against the pleadings, defendant has 20 days to file a reply.
- (5) If the court grants defendant’s demurrer or motion against the pleadings and if it appears to the court that there is a reasonable expectation that petitioner will be able to cure the defect, the court shall grant petitioner 30 days to file an amended petition. The court may allow additional time to file the amended petition with good cause shown.

- (6) If the court denies defendant's motion against the pleadings, defendant has 14 days to file an answer.
- (7) Any motion for an extension of any filing deadline under this subsection must reflect in the caption the number of extensions that have been requested, including the current request. If filed by petitioner's counsel, a motion for an extension of a filing deadline must state that petitioner has been informed of the motion.

#### 24.020 SCHEDULING IN COMPLEX CASES WITH APPOINTED COUNSEL

In a post-conviction case that involves a complex underlying case, including, but not limited to, criminal homicide as defined in ORS 163.005 or aggravated murder as defined in ORS 163.095, counsel for either party may request a scheduling conference within 60 days of appointed counsel's appearance. At the conference, the court, in its discretion, may issue an order modifying any deadlines set forth in these rules.

#### 24.030 RELIANCE ON UNDERLYING CIRCUIT COURT CRIMINAL CASE

- (1) If petitioner intends to rely on the contents of the underlying circuit court criminal case file to support the allegations in the petition, then petitioner must so state in the petition. If petitioner intends to rely on some, but not all, of the contents of the underlying case file, then petitioner must identify with reasonable specificity the materials on which petitioner intends to rely. Petitioner need not attach to the petition, as part of evidence supporting the allegations, any document from the underlying case file.
  - (a) This subsection applies only if the underlying criminal case was filed on or after the date that the circuit court in which the conviction was entered began using the Oregon eCourt Case Information system.
  - (b) The date that each circuit court began using the Oregon eCourt Case Information system is available at [www.courts.oregon.gov/programs/ecourt/Pages/Implementation-Map-2011-2016.aspx](http://www.courts.oregon.gov/programs/ecourt/Pages/Implementation-Map-2011-2016.aspx).

#### 24.040 EXHIBITS

- (1) Only the portions of the trial transcript or other documents that are directly relevant to petitioner's claims must be attached to the petition or amended petition as an exhibit, or, if UTCR 24.030 applies, identified in the petition.
- (2)
  - (a) A pleading that relies on a previously filed exhibit must expressly describe the exhibit, the earlier pleading with which it was filed, and the date that earlier pleading was filed.
  - (b) Each exhibit submitted must be numbered sequentially with no duplication, regardless of when the exhibit is submitted or what document the exhibit relates to.
  - (c) An exhibit may not be submitted more than one time unless the filer is submitting a corrected exhibit.
- (3) Unless UTCR 24.030 or UTCR 21.070(3)(g) apply, all documentary exhibits must be submitted as follows:

- (a) If the filer is an authorized eFiler under UTCR 21.030(1)(a), the filer must submit the exhibits electronically unless the exhibit is an audio or video recording or the court orders otherwise. UTCR 21.040 applies to this subsection, except that each exhibit must be submitted as a separate electronically filed document.
- (b) If the filer is not an authorized eFiler under UTCR 21.030(1)(a), the filer must submit the documentary exhibits pursuant to UTCR 6.050(3).

#### 24.050 ADDITIONAL MOTIONS, BRIEFING, AND EXHIBITS

Unless otherwise ordered by the court:

- (1) All substantive pretrial motions must be filed at least 60 days before trial. The court may allow a late filing for good cause shown.
- (2) Petitioner's trial memoranda, including legal memoranda, and any additional exhibits not already filed with the court, must be filed not later than 30 days before trial.
- (3) Defendant's trial memoranda, including any legal memoranda, and any additional exhibits not already filed with the court must be filed not later than 20 days prior to trial.
- (4) Not later than 10 days before trial, petitioner may respond to defendant's memoranda and exhibits with a further memorandum and additional exhibits.

#### 24.060 DISCLOSURE OF WITNESSES PURSUANT TO ORS 138.615

Unless otherwise ordered by the court for good cause shown, the disclosure of witness information required under ORS 138.615 must be made no later than 60 days before trial.

#### 24.070 APPEARANCE AT HEARINGS AND TRIAL

- (1) Unless the court orders otherwise, a petitioner in custody shall appear by simultaneous electronic transmission.
- (2) Unless the court orders otherwise, if petitioner is not in custody, or is released from custody while the petition is pending, petitioner shall immediately notify the court, and petitioner shall appear at scheduled hearings and trial in person, at the courthouse.
- (3) Counsel may appear in person at the courthouse or by remote means in accordance with ORS 138.622.
- (4) Public access to the proceedings shall be provided at the circuit court in which the petition is pending, and the proceeding shall be deemed to take place at that location.
- (5) Unless otherwise ordered by the court, all witnesses, except original trial counsel, appellate counsel, and law enforcement officers, must appear at the circuit court in which the petition is pending.
- (6) Any party requiring the services of a court interpreter for a hearing or trial must request a court interpreter in accordance with UTCR 7.070 and any supplementary local rule enacted pursuant to that section. If a party fails to comply with UTCR 7.070 or any supplementary

local rule enacted pursuant to that section, the party is responsible for obtaining court-certified interpreter services at the party's own expense.

#### 24.080 CONTINUANCES

- (1) Motions to continue a hearing or trial may be made to the judge presiding over the hearing or trial, or such other judge as may be designated by supplementary local rules. The judge may allow a continuance for good cause shown.
- (2) Any motion for continuance by a represented party must include a certification by the moving counsel that:
  - (a) Counsel has conferred with opposing counsel and whether opposing counsel objects or agrees to the motion; and
  - (b) If the motion is filed by petitioner's counsel and is beyond one year from the filing of the original petition, a statement that petitioner's counsel has conferred with petitioner and has authorization to request the continuance. If petitioner does not authorize the request, counsel must note petitioner's objections together with counsel's reason for requesting the continuance despite petitioner's objections.

#### 24.090 PRESIDING POST-CONVICTION JUDGE

By supplementary local rule, a judicial district may assign a judge to serve as Presiding Post-Conviction Judge for purposes of pretrial case management. The Presiding Post-Conviction Judge may conduct status conferences, hear pretrial motions, and engage in other duties as provided by local rules enacted under this section.

#### 24.100 TRIALS

- (1) Trials will be scheduled as soon as possible after defendant's answer is filed or after the date for filing an answer has passed but, unless the parties consent, trial shall not be scheduled sooner than 90 days after the date the answer is filed or the date for filing an answer has passed.
- (2) Trials will be scheduled for 30 minutes and without the expectation of live witness testimony other than petitioner. If the trial will take longer than 30 minutes, or if witnesses other than petitioner will be called, the party requesting additional time must notify the court no later than 45 days before the trial date.

#### 24.110 CHALLENGES TO COURT APPOINTED COUNSEL

SLR 24.111 is reserved for judicial districts to adopt a local rule regarding challenges to court appointed counsel (*Church v. Gladden* claims).