

**AMENDED UNIFORM TRIAL COURT RULES
(Effective August 1, 2023)
AND SUMMARY OF OTHER UTCR COMMITTEE ACTIONS**

I. INTRODUCTION

The amended Uniform Trial Court Rules (UTCR) take effect on August 1, 2023, unless otherwise noted. The amendments are the result of suggestions and comments received from the public, bench, bar, and interested agencies. Unless otherwise noted, the proposed amendments were posted on the Oregon Judicial Department website to invite public comment. Additional information on the UTCR can be viewed at: <http://www.courts.oregon.gov/programs/utcr/Pages/default.aspx>.

II. FUTURE MEETINGS

The next meeting of the UTCR Committee is scheduled for Thursday, October 19, 2023. The committee will review proposed changes to the UTCR and the Supplementary Local Rules. The committee will make recommendations to the Chief Justice on those proposals. This is the only meeting in the next UTCR cycle at which the committee intends to accept proposals for UTCR changes that would take effect August 1, 2024. Meeting dates for the following year will be scheduled at this meeting.

III. BRIEF DESCRIPTIONS OF SPRING 2023 ACTIONS

See Section IV for detailed explanations. Related changes are grouped together for the convenience of the reader where possible. Thus, related items are not always listed in rule number order.

A. APPROVED CHANGES

These changes have been approved by the Chief Justice. They are effective as of August 1, 2023, unless otherwise noted.

1. 1.050 – PROMULGATION OF SLR; REVIEW OF SLR; ENFORCABILITY OF LOCAL PRACTICES
Amended to require each court to post all required forms to the court’s website and to include a link to that website in the court’s SLR. (Effective February 1, 2024)
2. 1.080 – FORMAT AND LOCATION OF COURT RULES
Amended to remove requirements that apply only to printed copies of the rules.
3. 2.010 – FORM OF DOCUMENTS
Amended to exempt statewide forms from certain formatting requirements.
4. 3.010 – PROPER APPAREL
Amended to require persons attending court by remote means to ensure that their screen does not detract from the dignity of court.

5. 3.180 – ELECTRONIC RECORDING AND WRITING
Revised the rule to reorder existing sections, correct a typo, add a definition of electronic transmission, and to require a person remotely observing or participating in a proceeding to obtain permission before transmitting an electronic writing directly and specifically to a witness, until the witness is excused.
6. 4.010 – TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES
Amended the rule to allow a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause. **See related items A.7 – A.8 and B.1 – B.3.**
7. 4.040 – REMOTE APPEARANCE IN LIEU OF TRANSPORTATION
Adopted a new rule allowing parties to agree to appear remotely to resolve cases outside of the court with jurisdiction over the county where the defendant is in custody. **See related items A.6, A.8, and B.1 – B.3.**
8. 7.010 – PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES
Amended the rule to remove plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. **See related items A.6 – A.7 and B.1 – B.3.**
9. 5.140 – OREGON DISCOVERY IN FOREIGN PROCEEDINGS
Amended the rule to require a petition to seek discovery under ORCP 38 C, in place of a declaration, and to allow a petition for discovery in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration, in lieu of an affidavit.
10. 7.090 – EXPRESSION OF MILK
Adopted a new rule to allow persons to request accommodation for expression of milk.
11. 8.030 – JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR ACTIONS UNDER ORS 109.103
Adopted a new rule governing joint petitions in certain domestic relations actions.
12. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL
Amended to allow courts to accept oral Informal Domestic Relations Trial (IDRT) related waivers and to allow a party to opt in or out at any time prior to trial.
13. 21.040 – FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY
Removed the requirement that electronically filed documents be submitted in a text searchable format.

B. PROPOSALS NOT ADOPTED

1. 4.020 – SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES
Adopt a new rule governing status appearances in criminal cases. **See related items A.6 – A.8 and B.2 – B.3.**

2. 4.040 – PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES
Adopt a new rule governing the request and scheduling of certain appearances. **See related items A.6 – A.8, B.1, and B.3.**
3. 4.060 – MOTION TO SUPPRESS EVIDENCE
Repeal the rule governing motions to suppress. **See related items A.6 – A.8 and B.1 – B.2.**

C. OUT-OF-CYCLE AMENDMENTS

1. 2.010 – FORM OF DOCUMENTS
Amended subsection (12) to indicate how and when nonprecedential memorandum opinions may be cited in trial courts.

D. OTHER

1. 19.020 – INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS
Amended the rule to require remedial contempt actions to be filed as a separate case. **See related item D.2.**
2. 21.070 – SPECIAL FILING REQUIREMENTS
Amended the rule to require remedial contempt actions to be filed as a separate case. **See related item D.1.**
3. UTCR Reporter Notice of Correction
Received notice of UTCR Reporter corrections.
4. SLR Assignment
Discussed future SLR assignment method.
5. Case Initiation Changes
Discussed upcoming case initiation changes and the impact on electronic filing.
6. Committee Membership
The Committee received an update on membership.
7. Committee Membership Cycle
Adjusted future membership term beginning and end dates to coincide with the UTCR rules cycle.
8. Fall 2023 Meeting
Fall meeting (October 19, 2023).

IV. DETAILED DESCRIPTIONS OF SPRING 2023 ACTIONS

A. APPROVED CHANGES

These changes are approved by the Chief Justice. They are effective on August 1, 2023, unless otherwise noted. Deletions are shown in [*brackets and italics*]. Additions are shown in **{braces, underline, and bold}**. New rules and revisions are shown without use of [*brackets and italics*] or **{braces, underline, and bold}**.

1. **1.050** – PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

Amended to require each court to post all required forms to the court's website and to include a link to that website in the court's SLR.

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe on behalf of the OJD Law and Policy Workgroup. The amendment to UTCR 1.050 will require courts to post any forms required by Supplementary Local Rule (SLR) on the local court's website, as opposed to being incorporated in the SLR itself. This change mirrors the change that was recently made to UTCR forms (effective August 1, 2021) requiring UTCR forms to be posted in the online Forms Center on the OJD website, instead of being included in the UTCR Appendix of Forms.

The committee discussed that this change allows courts to make more frequent updates to SLR forms, as needed to respond to statutory changes, for example. The change also allows courts to provide forms in alternative formats that are more accessible to court users (such as fillable PDFs or interactive forms). Additionally, courts can continue to append their forms to their SLR, for completeness and convenience, but those forms will not be required to be updated through the SLR amendment process.

The Committee recommended, and Chief Justice Flynn approved the rule, effective February 1, 2024. This date aligns with the effective date of the 2024 Supplementary Local Rules and gives courts time to move the forms from SLR to court websites.

The committee received one public comment expressing general support for the change and a belief that the change will positively impact self-represented parties.

AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) * * *

* * * * *

(d) **{Each court must post}** [A]{a}ll forms required by SLR **{on its website and must include the link to that forms page in its SLR}***[must be submitted as part of the SLR. Such forms shall be placed in an appendix and organized by chapter and SLR number]*. SLR and related forms shall contain cross-references to one another. **{A court may attach to its SLR all forms that the SLR requires, for convenience. Chief Justice approval is not required to amend any form required by SLR.}**

(2) * * *

* * * * *

{REPORTER'S NOTE (08/01/2023): Any form required by SLR that is provided by the court is done so for convenience but is not part of the SLR.}

2. 1.080 – FORMAT AND LOCATION OF COURT RULES

Amended to remove requirements that apply only to printed copies of the rules.

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

EXPLANATION

This proposal was submitted by Jenn McQuain from the OJD Office of the State Court Administrator (OSCA). The amendment to UTCR 1.080 removes requirements that pertain only to hard copy, printed versions of the rules.

The committee discussed that most court users now access the rules through electronic means and the printing of the full set of rules is unusual. When printing of the rules does occur, the printed rules do not need to comply with any additional format requirements.

No public comments were received on this amendment, and therefore, no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

AMENDMENT

1.080 FORMAT AND LOCATION OF COURT RULES

(1) All UTCR and SLR must include a table of contents[; *must be printed on paper measuring 8-1/2 x 11 inches; printing must be on both sides when practical; each sheet must be three-hole punched to fit a standard three-ring binder*].

(2) * * *

* * * * *

3. 2.010 – FORM OF DOCUMENTS

Amended to exempt statewide forms from certain formatting requirements.

ACTION TAKEN

By consensus, the committee amended the recommended rule to add a new example to the 1993 commentary demonstrating how a self-represented party can fulfill the “submitted by” requirement in subsection (11)(c). No motion was made to change the committee’s preliminary recommendation of approval. Therefore, by committee convention, the committee’s October 20, 2022, preliminary recommendation of approval became the committee’s final recommendation of approval.

EXPLANATION

This proposal was submitted by Holly Rudolph, OJD Forms Manager. The amendment to UTCR 2.010(14) creates two additional formatting exceptions for statewide forms. This amendment exempts statewide forms from the requirement that documents filed with the court identify the filing party in the title of the document, and show, in the document title, the name of the pleading against which the document is directed. See UTCR 2.010(10)(a)(v) and (10)(c).

The proponent explained that these requirements are not workable for all statewide forms because some forms are designed so that they may be filed by either the plaintiff/petitioner or the defendant/respondent, or may be directed in response to multiple document types. Complying with these requirements would require the creation of additional forms, where the only difference between forms would be the party or pleading name.

The amendment also corrects internal citations within the rule and the 1993 commentary following the rule, which referred to incorrect section numbers. These incorrect citations were caused when subsections of UTCR 2.010 were renumbered or removed.

The committee received one public comment, which recommended that the committee add a new example to the 1993 commentary following the rule to demonstrate how a self-represented party can fulfill the “submitted by” requirement in subsection (11)(c). The existing examples referred only to attorneys filing on behalf of a client. The committee agreed, by consensus, to amend the 1993 commentary as suggested by the public comment. That change is reflected in the final amendment below.

AMENDMENT

2.010 FORM OF DOCUMENTS

Except where a different form is specified by statute or rule, the form of any document, including pleadings and motions, filed in any type of proceeding must be as prescribed in this rule.

(1) * * *

* * * * *

(14) Application to Court Forms

Forms created by the Oregon Judicial Department are not required to comply with the provisions of UTCR 2.010(4){,} [or] ([8]{Z}){,} **(10)(a)(v), or (10)(c)** where the Oregon Judicial Department determines variation from those provisions will promote administrative convenience for courts or parties. Such forms and exact copies of such forms may be used and submitted to courts without challenge under UTCR 2.010(4){,} [or] ([8]{Z}){,} **(10)(a)(v), or (10)(c)**.

1993 Commentary to section (11)([b]{c}) { (updated 08/01/2023) }:

{Self-represented parties:

Subsection (c) of section (11) requires that the author include their name (signature not required), followed by an identification of the author's role in the proceeding (petitioner, respondent, plaintiff, or defendant).

Example: Submitted by:

C. D. Jones
Plaintiff

{Attorneys:}

Subsection ([b]{c}) of section (11) requires that the information include the author's name (signature not required), followed by an identification of { **the** } party being represented, plaintiff or defendant.

Example: Submitted by:

A. B. Smith
Attorney for Plaintiff (or Defendant)

An exception to this style would be in cases where there is more than one plaintiff or one defendant. In those situations, the author representing one defendant or plaintiff, but not all, should include the last name (full name when necessary for proper identification) after the designation of plaintiff or defendant.

Example: Submitted by:

A. B. Smith
Attorney for Plaintiff Clarke

1996 Commentary:

The UTCR Committee strongly encourages the use of recycled paper and strongly recommends that all original pleadings, motions, requested instructions, copies, and service copies be on recycled paper having the highest available content of postconsumer waste.

4. 3.010 – PROPER APPAREL

Amended to require persons attending court by remote means to ensure that their screen does not detract from the dignity of court.

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

EXPLANATION

This proposal was submitted by the Honorable Erin Kirkwood, Multnomah County Circuit Court.

The amendment adds a new subsection (3) to UTCR 3.010, which requires participants attending court by remote means to ensure that the screen visible to other court participants does not detract from the dignity of court. This standard mirrors the standard for appropriate dress in 3.010 subsection (1) ("All persons attending court, whether in person or by remote means, must be dressed so as not to detract from the dignity of court...").

At the fall meeting on October 20, 2022, discussion leader Noah Gordon proposed an alternative amendment that would have prohibited use of artificial or virtual filters or backgrounds, except blurred or static present backgrounds used for the purpose of maintaining privacy or the dignity of court.

The committee preliminarily recommended Referee Kirkwood's proposal but modified it by removing the words "a background" and replacing them with "the screen" as shown in the final amendment below.

Following the fall 2022 meeting, the committee received five public comments during the public comment period. An additional 16 public comments were received at the spring meeting on March 17, 2023.

- One of the public comments expressed concern that existing UTCR 3.010 expresses judgment regarding a person's clothing choices and that the rule assumes court attendees know what is proper to wear to court.
- Other public comments expressed concerns with the second sentence of existing UTCR 3.010(1), which states that: "A person may wear a religiously required head covering unless the court orders otherwise. Members of the public not dressed in accordance with this rule may be removed from the courtroom." The public comments expressed a belief that the portions of the rule allowing the court to find good cause to disallow a person from wearing a religiously required head covering, and to remove a person not dressed in accordance with the rule are at odds with the first amendment to the U.S. Constitution. The public comments also expressed a belief that court orders requiring persons to wear masks are at odds with the first amendment to the U.S. Constitution.

At the spring meeting on March 17, 2023, the committee discussed the concerns raised by the public comments submitted, and by a member of the public who was present and spoke at the meeting. The committee noted that the public

comments were not germane to the portion of the rule being considered for amendment and related only to portions of the rule already in effect.

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

AMENDMENT

3.010 PROPER [~~APPAREL~~]{**APPEARANCE**}

- (1) All persons attending court, whether in person or by remote means, must be dressed so as not to detract from the dignity of court. A person may wear a religiously required head covering unless the court orders otherwise. Members of the public not dressed in accordance with this rule may be removed from the courtroom.
- (2) When appearing before the court, whether in person or by remote means, all attorneys and court officials must wear appropriate attire.
- {(3) All persons attending court by remote means must ensure that the screen visible to other court participants, whether real or virtual, does not detract from the dignity of court.}**

5. 3.180 – ELECTRONIC RECORDING AND WRITING

Revised the rule to reorder existing sections, correct a typo, add a definition of electronic transmission, and to require a person remotely observing or participating in a proceeding to obtain permission before transmitting an electronic writing directly and specifically to a witness, until the witness is excused.

ACTION TAKEN

By consensus, the committee recommended revision of the rule as modified by the committee. The revision:

- Reorganizes existing sections within the rule (including splitting the rule into new subsections where necessary);
- Corrects a typo;
- Aligns the standards within the rule;
- Creates a new definition of electronic transmission; and
- Requires a remote proceeding attendee to request prior permission to electronically transmit a communication only if the communication is directed specifically to a witness during a proceeding, and prior to the time that the witness is excused by the court.

Chief Justice Flynn adopted a modified version of UTCR 3.180(2)(f) that requires a person remotely observing or participating in a proceeding to obtain permission before transmitting an electronic writing directly and specifically to a witness, until the witness is excused.

EXPLANATION

This proposal was originally submitted by Aja Holland, UTCR Reporter, and Lisa Norris-Lampe, Supreme Court Legal Counsel, for UTCR Committee consideration in the last UTCR cycle (2021-2022). The proposal was intended to clarify application of the rule to remote proceedings and was preliminarily recommended for approval at the fall 2021 UTCR meeting. No public comment on the amendment was received following that meeting and the amendments were recommended for final approval at the spring 2022 UTCR meeting.

When the recommended amendments were added to the Supreme Court public meeting agenda for June 2022, Chief Justice Walters expressed concern, prior to the meeting, that the Bar Press Broadcasters Council had not submitted any public comment on the amendments and that the committee had not reached out to the Bar Press Broadcasters Council. Chief Justice Walters reached out to the Bar Press Broadcasters Council to solicit feedback on the proposed amendments, and comments were received prior to the June 2022 public meeting. In light of the comments received from members of the Bar Press Broadcasters Council at the October 20, 2022, meeting, Chief Justice Walters asked the UTCR Committee to reconsider its recommendation of approval.

At the October 20, 2022, meeting, the committee discussed:

- Whether the requirement to obtain permission to electronically write, and separately, whether the requirement to obtain advance permission to send an electronic writing, should apply to attendees watching a hearing remotely;

- A person taking electronic notes at home is unlikely to disrupt a proceeding, however, when it comes to transmission of the electronic writing – it’s difficult to distinguish the effects of an electronic writing sent remotely versus an electronic writing sent from inside the courtroom;
- One member proposed revising the rule to differentiate transmittal/sending of an electronic writing to the public versus sending an electronic writing privately in the rule, so that a reporter may send electronic notes to their editor during the proceeding without obtaining advance permission from the court;
- Presumably, the witnesses to the proceeding should be separately ordered not to view any news footage or other coverage of the proceeding;
- Whether the rule should be amended out of cycle, given that remote hearings are already occurring;
- There was consensus that, because remote hearings are already occurring, and because proposed revisions to the rule were already circulated for public comment in the previous rule cycle, the rule should be amended out of cycle to clarify application to remote proceedings;
- Whether the court or the requestor should be required to inform parties of the request, given that the rule was previously silent as to who must inform the parties;
- Some courts require the requestor to provide advance notice to the parties by SLR, this is difficult for reporters to comply with if they are not given advance notice of the proceeding (such as a Monday morning arraignment) or if the reporter is not assigned to the case or proceeding in advance;
- In other courts, the request is submitted to the Trial Court Administrator and the judge notifies the parties of the request at the beginning of the proceeding (for example, in Lane County Circuit Court);
- In cases where public access coverage is anticipated in advance of trial or another proceeding, the judge may currently issue an order in advance defining the scope of electronic recording or writing;
- One member was concerned about attorneys having an opportunity to object to remote recording if notice is not provided to the parties prior to the proceeding – the committee discussed that this is already occurring (for example during arraignments) and that because the standard favors allowing the recording and the grounds for objecting are very narrow, advance notice to the parties should not be required; parties and attorneys can object when they are notified of the request (which may be at the beginning of the proceeding);
- Whether Supreme Court approval of amendments to the rule should be required going forward;
- There was consensus that, because the rule is no longer a judicial ethical rule, there is no constitutional or statutory requirement that amendments to the rule be amended out of cycle;
- The committee recommended removal of the “note” following the rule to reflect this change;
- The current definitions of “electronic writing” and “electronic recording” conflate the action of electronic writing or recording with the sending of the electronic writing; and

- There was consensus that the committee should form a workgroup to recommend changes to these definitions (including the creation of new definitions), and to consider other changes to the rule (including exploring the possibility of differentiating the standards for obtaining permission to transmit or send an electronic writing to the public versus sending an electronic writing privately) in the rule for consideration by the committee at its spring meeting.

By consensus, the committee recommended modification of the previously recommended amendments to the rule to allow a person attending a court proceeding remotely to write electronically without obtaining prior permission from the court. The amended rule also makes clear that the court is responsible for notifying parties of a request to electronically record and that the court may allow additional cameras and recording equipment. The committee also recommended removal of the “note” requiring Supreme Court approval of amendments to the rule and recommended that these changes be made out of cycle. Finally, the committee formed a workgroup to consider additional changes to the rule for consideration by the committee at the spring meeting.

Workgroup members include Judge Maalik Summer (Washington County Circuit Court), Jeff Howes (Multnomah County District Attorney’s Office), Therese Bottomly (Bar Press Broadcasters Council Member), Lisa Norris-Lampe (Supreme Court Legal Counsel), and Aja Holland (UTCR Reporter).

Following the UTCR Committee meeting, the rule was then amended out-of-cycle by [Supreme Court Order \(SCO\) 22-045](#), effective November 15, 2022.

The UTCR workgroup met and considered two alternative proposals:

- “Alternative A” would have added new definitions to the rule but would have otherwise maintained the “status quo” in that it would have continued to require a person to receive permission prior to sending an electronic writing during a remote proceeding.
- “Alternative B” included the definitional fixes from Alternative A but would not have required persons attending a remote proceeding to obtain permission before sending an electronic writing.
- Both Alternative A and Alternative B recommended reorganizing existing sections within the rule (including splitting the rule into new subsections where necessary), correcting a typo, and aligning the standards within the rule.

These two alternative proposals were presented to the Bar Press Broadcasters Council for consideration during its February 4, 2023, meeting. The Bar Press Broadcasters Council formed a small workgroup to further consider the alternatives. The Bar Press Broadcasters Council Workgroup recommended a modified version of Alternative B that creates a new definition of electronic transmission and requires a remote proceeding attendee to request prior permission to electronically transmit a communication only if the communication is directed specifically to a witness during a proceeding, and prior to the time that the witness is excused by the court.

At the Spring meeting on March 17, 2023, the committee discussed:

- The differences between attending a remote proceeding and attending an in-person proceeding;

- The proposal is narrowly tailored to prevent a remote attendee from sending a communication directly and specifically to a witness, but would allow a remote attendee to transmit other communications without prior permission;
- The revision is designed to prevent witness intimidation/witness tampering and to ensure that an excluded witness does not improperly receive communications relating to the proceeding; and
- Inclusion of the phrase “directly and specifically to a witness” is intended to allow a person to transmit electronic notes to the general public, but not directly and specifically to a witness.

The committee received one public comment inquiring whether the prior permission requirements for electronic writing apply to attorneys and their staff. The committee discussed that subsection (3) of the revised rule exempts attorneys and their staff from the requirements governing electronic writing.

Chief Justice Flynn adopted a modified version of UTCR 3.180(2)(f) (concerning permission in a remote proceeding). The modifications require prior permission, when a person is remotely observing or participating in a proceeding, before transmitting any electronic writing directly and specifically to a witness, until the witness is excused. The version recommended by the UTCR Committee would have required permission prior to sending any “communication,” but the rule does not define communication, only electronic writing. In addition, the modification adopted by the Chief Justice is intended to clarify that subsection (2)(f) applies to a person that is remotely observing or participating in a proceeding, regardless of whether the proceeding itself is in person, fully remote, or hybrid (where the judge attends in person but some participants or witnesses attend remotely).

The revised rule, shown below, will be published for public comment and placed on the October 19, 2023, agenda for discussion.

REVISION

3.180 ELECTRONIC RECORDING AND WRITING

- (1) As used in this rule:
- “Electronic recording” includes video recording, audio recording, and still photography by cell phone, tablet, computer, camera, tape recorder, or any other means. “Electronic recording” does not include “electronic writing.”
 - “Electronic writing” means the taking of notes or otherwise writing by electronic means and includes but is not limited to the use of word processing software and the composition of texts, emails, and instant messages.
 - “Electronic transmission” means to send an electronic recording or writing, including but not limited to transmission by email, text, or instant message; live streaming; or posting to a social media or networking service.

- (2) Except with the express prior permission of the court, and except as provided in subsection (3) of this rule, a person may not:
 - (a) Electronically record in any area of the courthouse under the control and supervision of the court unless permitted by SLR pursuant to subsection (11)(a) of this rule;
 - (b) Electronically record any court proceeding;
 - (c) Electronically transmit any recording from within a courtroom during a proceeding;
 - (d) Engage in electronic writing within a courtroom;
 - (e) Electronically transmit any electronic writing from within a courtroom during a proceeding; or
 - (f) While remotely observing or participating in a proceeding, electronically transmit any electronic writing directly and specifically to a witness until the witness is excused by the court.
- (3) Subsections (2)(d), (e), and (f) of this rule do not apply to attorneys or to agents of attorneys unless otherwise ordered by the court.
- (4)
 - (a) A request for permission to engage in electronic recording or writing must be made prior to the start of a proceeding. No fee may be charged.
 - (b) The granting of permission to any person or entity to engage in electronic recording or writing is subject to the court's discretion, which may include considerations of the need to preserve the solemnity, decorum, or dignity of the court; the protection of the parties, witnesses, or jurors; or whether the requestor has demonstrated an understanding of all provisions of this rule.
 - (c) If the court grants all or part of the request,
 - (i) The court shall provide notice to all parties, and electronic recording or writing thereafter shall be allowed in the proceeding, in any courtroom or during a remote proceeding, consistent with the court's permission.
 - (ii) The court shall permit one video camera, one still camera, and one audio recorder in the courtroom, and it may permit additional cameras and electronic recording in any courtroom or during a remote proceeding consistent with this rule.
 - (ii) The court may prescribe the location of and the manner of operating electronic equipment within a courtroom. Artificial lighting is not permitted.
 - (iv) Any pooling arrangement made necessary by limitations on equipment or personnel imposed by the court is the sole

responsibility of the persons or entities seeking to electronically record.

- (v) The court will not mediate disputes. If multiple persons or entities seeking to electronically record are unable to agree on the manner in which the recording will be conducted or distributed, the court may terminate any or all such recording.
- (5) Except as otherwise provided in this rule:
- (a) The court shall not wholly prohibit all electronic recording of a court proceeding unless the court makes findings of fact on the record setting forth substantial reasons that establish:
 - (i) A reasonable likelihood that the electronic recording will interfere with the rights of the parties to a fair trial or will affect the presentation of evidence or the outcome of the trial; or
 - (ii) A reasonable likelihood that the costs or other burdens imposed by the electronic recording will interfere with the efficient administration of justice.
 - (b) “Wholly prohibit all electronic recording” means issuing an order prohibiting all recording of a proceeding by all persons. The court’s denial of a particular request under the factors in section (4)(b) does not constitute an order prohibiting all recording by all persons and does not require findings of fact on the record, even if the person whose request is denied is the only person who has requested permission to record a proceeding.
- (6) The court has discretion to limit electronic recording of particular components of the proceeding based on one or more of the following factors:
- (a) The limitation is necessary to preserve the solemnity, decorum, or dignity of the court or to protect the parties, witnesses, or jurors;
 - (b) The use of electronic recording equipment interferes with the proceedings;
 - (c) The electronic recording of a particular witness would endanger the welfare of the witness or materially hamper the testimony of the witness; or
 - (d) The requestor has not demonstrated an understanding of all provisions of this rule.
- (7) Notwithstanding any other provision of this rule, the following may not be electronically recorded by any person at any time:
- (a) Proceedings in chambers.

- (b) Any notes or conversations intended to be private including but not limited to counsel and judges conferring at the bench and conferences involving counsel and their clients.
 - (c) Dissolution, juvenile, paternity, adoption, custody, visitation, support, civil commitment, trade secrets, and abuse, restraining, and stalking order proceedings.
 - (d) Proceedings involving a sex crime, if the victim has requested that the proceeding not be electronically recorded.
 - (e) *Voir dire*.
 - (f) Any juror anywhere under the control and supervision of the court during the entire course of the trial in which the juror sits.
 - (g) Recesses or any other time the court is off the record.
- (8) For the purpose of determining whether this rule or other requirements imposed by the court have been violated, or to ensure the effective administration of justice, a person engaged in electronic recording under this rule must, upon request and without expense to the court, provide to the court, for *in camera* review, an electronic recording in a format accessible to the court. The copy may be retained by the court and may be sealed if necessary for the further administration of justice.
- (9) If a person violates this rule or any other requirement imposed by the court, the court may order the person, and any organization with which the person is affiliated, to terminate electronic recording or electronic writing.
- (10) This rule does not:
- (a) Limit the court's contempt powers;
 - (b) Operate to waive ORS 44.510 to 44.540 (media shield law); or
 - (c) Apply to court personnel engaged in the performance of official duties.
- (11) A judicial district may, by SLR:
- (a) Designate areas outside a courtroom and under the control and supervision of the court, including hallways or entrances, where electronic recording is allowed without prior permission, unless otherwise ordered in a particular instance.
 - (b) Adopt procedures to obtain permission for electronic recording or electronic writing.
 - (c) SLR 3.181 is reserved for any SLR adopted under this subsection.

6. 4.010 – TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Amended the rule to allow a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause. **See related items A.7 – A.8 and B.1 – B.3.**

ACTION TAKEN

At the request of Chief Justice Walters, this proposal was sent out for public comment without recommendation following the October 20, 2022, meeting. At the meeting on March 17, 2023, a motion was made to recommend approval of the proposal, as modified by the committee. The motion failed by a vote of 4-5 with one member abstaining. As a result, the committee's final recommendation was a recommendation of disapproval. However, by consensus, the committee recommended that the Case Processing Subcommittee of OJD's Chief Justice's Advisory Committee (CJAC) continue to consider proposed UTCR 4.010, in light of any insights gained from Multnomah County Circuit Court's Omnibus Hearings Pilot project. The CJAC Case Processing Subcommittee met twice, on March 23, 2023, and May 25, 2023, to continue discussions regarding UTCR 4.010.

Following those discussions, Chief Justice Flynn adopted a modified version of UTCR 4.010 that allows a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If requested, the hearing must be held at least 7 days before trial, absent good cause.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). OCDLA explained that their proposals are intended to increase public defense capacity by increasing court efficiency. Specifically, the proposed amendment to 4.010 would create deadlines for filing motion responses and replies and would require the court to hold omnibus hearings at least 7 days before trial (unless the court finds good cause, or the parties agree otherwise).

At the UTCR Committee meeting on October 20, 2022, the proponents discussed:

- That the proposals were developed by the OCDLA Public Defense Reform Task Force and are intended to provide clarity to the parties and the court;
- The proposal mirrors the response and reply timelines that already apply in civil cases;
- That some courts hold the omnibus hearing on the morning before trial, which makes it difficult for practitioners to efficiently prepare for trial without knowing which evidence will be admitted or which witnesses will need to be subpoenaed;
- The proposed rule would require the omnibus hearing to be held at least seven days prior to trial and moving the omnibus hearing earlier would reduce work done on cases that ultimately will not proceed to trial (where the omnibus hearing is dispositive);
- Multnomah County Circuit Court has a Friday Omnibus Hearing pilot program that appears to be working well and is a big improvement;

- Moving the omnibus hearing earlier also gives public defense clients an opportunity to see their attorneys advocate for them before trial and build trust between the attorney and client.

At the spring meeting on March 17, 2023, the proponent discussed:

- Some courts hold omnibus hearings prior to trial; omnibus hearings can be an efficient way to resolve cases in advance of trial – if a pretrial motion is dispositive, omnibus hearings can save both parties (and witnesses, victims, and the court) time in preparing for trial.

The committee discussed:

- The OJD Criminal Justice Advisory Committee (CJAC) recommendations on UTCR 4.010 and report;
- The original proposal requires hard and fast filing deadlines, trying to get compliance from all parties may be difficult;
- One member noted that trying to get all pretrial motions submitted in advance of trial would require a culture shift, especially in Multnomah County;
- The proposal suggests a one-size-fits-all solution to what may not be a statewide problem;
- Whether this proposal is appropriate for inclusion in the Uniform Trial Court Rules, versus another solution (such as a statewide criminal code);
- One member noted that not holding an omnibus hearing in advance of trial requires attorneys to prepare to try the case in multiple ways, with multiple strategies, depending on the outcome of pretrial motions heard on the morning of or day before trial;
- In general, inefficiencies are not helping the public defense shortage crisis;
- Multnomah has a pilot project for pretrial omnibus hearings, but it has been used in only a handful of cases since November 2022;
- Whether Supplementary Local Rules could solve this problem on a local level, in the courts where it is an issue;
- Whether subsection (4), which sets 7- and 14-day deadlines for the motion and response, (in the CJAC report) is necessary or redundant of subsection (3), which would allow the court to impose a briefing schedule;
- One member noted that in complex cases, omnibus hearings are already held far in advance of trial in his court;
- One member noted that trial dates can be moving targets and any procedure that counts days from the trial date should consider that fact;
- Another member noted that if the trial date moves, the omnibus hearing date also moves; and
- One member asked how courts would be expected to enforce the filing deadlines if they are not complied with.

The committee also discussed the three public comments received:

- Two of the comments noted a belief that this is not a statewide issue, and therefore a statewide rule would be inappropriate; and
- One comment noted the Oregon District Attorneys Association's (ODAA) opposition to the rule as well as a concern that pretrial omnibus hearings may not preclude relitigation of pretrial motions if a trial date is reset.

A motion was made to recommend approval of the proposed version of UTCR 4.010 considered by the CJAC with the following modifications: adding a good cause exception to subsection (2) and deleting subsection (4) (which would have set a specific briefing schedule for the response). The motion failed by a vote of 4-5.

By consensus, the committee recommended that CJAC continue to consider proposed UTCR 4.010, in light of any insights gained from Multnomah County Circuit Court's Omnibus Hearings Pilot project.

Following the spring UTCR meeting, the CJAC Case Processing Subcommittee met again on March 23, 2023, and May 25, 2023, in part to continue discussion of UTCR 4.010 and hearings on pretrial motions. Based on feedback received from the CJAC Case Processing Subcommittee and others, Chief Justice Flynn adopted a modified version of UTCR 4.010, which is intended to accomplish the proponents' aims by allowing early resolution of pretrial motions in appropriate cases, including motions which may be dispositive or which, once ruled upon, may assist parties in reaching tentative plea agreements prior to trial.

The changes to UTCR 4.010 adopted by Chief Justice Flynn are shown below. The amended rule will be published for public comment and placed on the October 19, 2023, agenda for discussion. The Chief Justice intends to carefully consider all feedback received and may make further modifications to the rule based on parties' and courts' observations about whether the amended rule is working as intended.

AMENDMENT

4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

{(1)} In the absence of a showing of good cause or an SLR to the contrary, 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.

{(2) A party filing a motion under subsection (1) of this rule may request that a pretrial hearing be held prior to the date of trial. Such a request must be specified in the caption of the motion.

{(3) If a party requests a pretrial hearing under subsection (2), absent good cause, the hearing must be held at least 7 days prior to the trial date.}

7. **4.040** – REMOTE APPEARANCE IN LIEU OF TRANSPORTATION

Adopted a new rule allowing parties to agree to appear remotely to resolve cases outside of the court with jurisdiction over the county where the defendant is in custody. **See related items A.6, A.8, and B.1 – B.3.**

ACTION TAKEN

At the UTCR Committee's spring meeting on March 17, 2023, a motion was made to recommend adoption of this new rule, as modified by the committee. The committee modified the rule to allow both parties to agree to hold the hearing remotely, unless good cause is shown. The committee also changed both instances of the term "incarcerated" to "in custody." The committee voted 8-2 to recommend approval of the rule, as modified.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The new rule requires the court to hold a hearing by remote means upon agreement of the parties, when, as a result of negotiations, an in-custody defendant intends to resolve cases in more than one jurisdiction, any appearance required in a court, other than the court of jurisdiction in the county in which the defendant is in custody, unless good cause is shown.

Prior to the fall meeting on October 20, 2022, the committee received a letter from Chief Justice Walters requesting that the committee discuss and consider the amendments proposed by the OCDLA, but to refrain from making either a recommendation of approval or disapproval until the proposals could be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC). Chief Justice Walters directed CJAC to work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on this request from Chief Justice Walters, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. By consensus, the committee agreed to send the proposals out for public comment in their proposed form. Attorneys Jeffrey Howes (Multnomah County District Attorney's Office) and Peter Klym (Office of Public Defense Services) volunteered to work with CJAC on behalf of the UTCR Committee.

At the fall meeting on October 20, 2022, the proponents discussed that:

- This would save law enforcement agencies time because the defendant would not need to be transported;
- It could encourage some jail and prison facilities to adopt newly available technology; and
- The proponents acknowledged that this change may require some statutory or other system changes because each county has a separate public defense contract and there may need to be a change to allow a judge to resolve a case filed in another county.

Oregon District Attorneys Association (ODAA) representative Michael Wu discussed that:

- If this rule is adopted, it should be clearly limited to stipulated resolutions;

- Many of the transportation issues come up in the context of parole violations, and it's not clear how the rule would apply in that context; and
- Transportation is not solely within the district attorney's authority – OJD would need to work with the Department of Corrections (DOC) to hammer out any issues and create appropriate sideboards and safety valves in the rule.

The committee discussed that the proposed rule could be problematic if the defendant would prefer not to appear remotely, since the rule appears to require the hearing to be held remotely and would not require transportation of the defendant. One judge member noted that Lane County Circuit Court currently works with the DOC to schedule remote hearings.

At the spring meeting on March 17, 2023, the proponents discussed:

- The rule is intended to promote the use of remote hearings and to avoid unnecessary issues that arise from transporting in-custody defendants;
- The rule is intended to make it easier for defense attorneys practicing across multiple jurisdictions to appear in multiple counties by encouraging the use of remote hearings;
- Instances of "incarcerated" in the proposed rule should be changed to "in custody or in-custody" as appropriate;
- If the rule requires agreement of the parties, that should include consideration of any preferences of the victim because the prosecuting attorney would likely refuse to agree to a remote hearing if the victim does not consent;
- Allowing remote proceedings could also benefit victims who do not want to appear in person;
- The prosecuting attorney would have a responsibility to present the pros and cons of in-person versus remote appearance to the victim;
- This rule does not allow a court to resolve cases filed in other courts, it only concerns transportation of the in-custody defendant;
- There may still be issues with unavailability of technology, both in courts and in DOC facilities;
- One member noted that adopting a rule could prompt entities to acquire the necessary technology, which could be a positive result; and
- One member was concerned about whether victims would have any input on the nature of the proceeding, or an ability to object if they wanted to appear in court and that the district attorney or deputy district attorney would be responsible for presenting the objections of a victim to the court.

The committee also discussed two public comments related to this rule:

- One comment addressed concerns that victims may want to appear in court with the defendant and requested that the rule allow a judge to consider a request for a remote proceeding under these circumstances without making it mandatory. The commenter also addressed DOC's technology limitations and noted that, when remote appearance has previously been allowed, some hearings have had to be reset multiple times before the defendant appears.

- The second comment was submitted by the Oregon District Attorneys Association (ODAA) and noted that ODAA broadly supports the rule but that the rule:
 - Should only apply to stipulated resolutions and not contested or adversarial hearings;
 - If probation violation allegations are to be considered for this process that the committee spend some time working through that process since prosecutors and defense attorneys do not necessarily control that process, which involves other stakeholders such as the courts and probation officers;
 - The proposed rule should be available when both parties agree, and not the default method of appearance as in the proposed rule, this would allow the process to be for truly stipulated resolutions, and allow for the state to address any victim notification requirements; and
 - A rule that requires it to be a video appearance may not take into account logistical limitations of courts, jails, or corrections facilities in being able to accommodate those appearances.

A motion was made to approve the rule, as modified by the committee. The committee voted 8-2 to recommend approval of the rule. This rule was put forth as proposed UTCR 4.130, however, the rule proposed as UTCR 4.040 was not recommended for approval, so this rule was adopted as UTCR 4.040 to utilize an available number in UTCR Chapter 4 and to move this rule closer to the existing rule governing procedures for transportation orders (UTCR 4.030).

NEW RULE

4.040 REMOTE APPEARANCE IN LIEU OF TRANSPORTATION

Upon agreement of the parties, when, as a result of negotiations, an in-custody defendant intends to resolve cases in more than one jurisdiction, any appearance required in a court, other than the court of jurisdiction in the county in which the defendant is in custody, shall be by remote means unless good cause is shown.

8. 7.010 – PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES

Amended the rule to remove plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. **See related items A.6 – A.7 and B.1 – B.3.**

ACTION TAKEN

By consensus, the committee recommended adoption of the rule as modified by the committee. A second motion was made to approve additional amendments to the rule setting discovery deadlines; however, that motion failed without a vote as it did not receive a second.

Chief Justice Flynn adopted a modified version of UTCR 7.010(2) that removes application of the deadlines in UTCR 7.010(2)(a) and (b) to plea agreements and negotiations without specifying that parties shall be allowed to present plea agreements to the court up to, and including, the day of trial.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The original proposal would have created discovery deadlines in criminal cases and would have required the state to provide an initial plea offer at the first appearance or within the first 30 days of a case. If no initial offer was made, the proposed amendment would have required the state to communicate to defense counsel in writing an individualized reason why an offer was not made. The initial proposal would have also removed the deadline for plea agreements and negotiations from the rule.

Prior to the fall meeting on October 20, 2022, the committee received a letter from Chief Justice Walters requesting that the committee discuss and consider the amendments proposed by the OCDLA, but to refrain from making either a recommendation of approval or disapproval until the proposals could be further evaluated by the OJD Criminal Justice Advisory Committee (CJAC). Chief Justice Walters directed CJAC to work in conjunction with selected members from the UTCR Committee to make recommendations prior to the UTCR Committee's spring meeting on March 17, 2023. Based on this request from Chief Justice Walters, no recommendation of preliminary approval or disapproval was issued by the committee at the fall meeting. By consensus, the committee agreed to send the proposals out for public comment in their proposed form. Attorneys Jeffrey Howes (Multnomah County District Attorney's Office) and Peter Klym (Office of Public Defense Services) volunteered to work with CJAC on behalf of the UTCR Committee.

The proponents discussed:

- That responses to discovery requests can be delayed, which can result in delayed trials and case disposition;
- Michigan has timely discovery rules that require parties to receive discovery within 48 hours of the first appearance, or within 10 days of discovery coming into the prosecution's possession;

- Having an initial plea offer is essential to moving a case forward and it's difficult for defense attorneys to properly counsel their clients without having an initial plea offer from the prosecution;
- In some counties, there is a "plea deadline" before trial that prevents last minute negotiations; and
- A statewide OJD eDiscovery program with a project manager would be helpful to parties in standardizing how discovery is handled.

Oregon District Attorneys Association (ODAA) representative Michael Wu discussed that:

- CJAC has a large group of criminal justice stakeholders, jail partners, and sheriffs and may be a good forum for consideration of these proposals;
- Overall, the proposals appear to fall into two categories, finding ways to use new electronic means and technology and more profound substantive changes and plea conditions, and that ODAA has some strong concerns and objections about the second category of changes;
- Some of the proposed rules may present separation of power issues or wade into the territory reserved for prosecutorial discretion, in that the rule would require district attorneys and deputy district attorneys to offer pleas, which no statute requires;
- The rule could violate victims' rights, since victims are entitled to notice of a plea offer;
- Requiring an initial plea offer could impact the defendant's ability to participate in specialty courts; and
- Some of the proposed rules could create resource and staffing issues for district attorneys' offices; ODAA would prefer that those proposals be taken up by the legislature because the legislature has the ability to provide additional funding resources, while the UTCR Committee does not.

The committee discussed:

- Whether "plea negotiation end dates" are being enforced by the courts, or by district attorneys' offices;
- Whether having a rule requiring initial plea offers would result in meaningful offers or "boilerplate" offers, and whether courts could meaningfully enforce such a requirement;
- Whether these proposals should be addressed through legislation;
- One member noted that in his court, plea negotiation end dates are set the Friday before trial because the county is small and the court needs to know whether the case will proceed to trial; if plea negotiation end dates were prohibited, that court would need to double book trials for the same date in the event one case does not proceed to trial;
- Expiration dates on offers is common in civil case negotiations and is not intended as an absolute deadline for negotiations, but is instead designed to create prompt action on the offer;

- There has been a proliferation of remote appearances, electronic discovery, and body camera footage issues and there should be some attempt at standardization and working through these issues with the appropriate stakeholders;
- Concern about a one-size-fits-all approach that doesn't work for small courts; and
- One member suggested modifying UTCR 7.010(2)(a)(ii) to add, "or 7 days prior to trial, whichever is earlier" and adding a provision indicating the court must not prohibit negotiations from continuing (at any time prior to trial).

At the spring meeting on March 17, 2023, the committee discussed:

- Proposed Discovery Deadlines:
 - Delayed discovery causes problems for parties and results in trial resets;
 - Whether discovery deadlines should be dealt with in UTCR or whether this is a more appropriate topic for the legislature or whether Oregon should develop a uniform criminal code;
 - Some cases may have different discovery needs, for instance, in complex cases with multiple defendants, it may be more necessary for the court to set a discovery order; and
 - The discovery deadline issues addressed by the proposed rule may exist in only a few counties.
- Plea Negotiation Deadlines:
 - Trial dates resolve cases – it's important for parties to be able to reach a plea negotiation up to the day of trial;
 - This rule is intended to supersede SLR that require parties to end plea negotiations prior to trial;
 - The plea deadline issue addressed by the rule may exist in only a few counties.

The committee received three public comments on the rule:

- Each of the three comments expressed opposition to the proposed rule and expressed a belief that any issues with discovery and plea negotiation deadlines are local issues and should not be resolved with a statewide rule; the comments also emphasized a belief that statutes already sufficiently govern discovery deadlines and that the constitution and existing statutes prevent courts from adopting rules governing plea negotiations.

A member made a motion to modify the proposed amendment to UTCR 7.010(2) to state, "The parties shall be allowed to present plea agreements to the court up to, and including, the day of trial;" to renumber the remainder of the rule; and to recommend approval. By consensus, the committee recommended adoption of the rule as modified by the committee.

A second motion was made to modify the proposed discovery deadlines (as set out in the CJAC report), but to amend each reference to evidence in the "state's possession" to "district attorney's possession" and to recommend approval. However, that motion failed without a vote as it did not receive a second.

Following the spring UTCR meeting, Chief Justice Flynn solicited additional input on that proposal from courts, including from Presiding Judges, Trial Court Administrators, and court staff members. That inquiry revealed concerns that, if the rule expressly allowed plea agreements to be presented up to the day of trial, parties could be encouraged to delay negotiations and agreement, which in turn could result in the need for the court to schedule multiple trials on the same dates – in anticipation that more cases would be settled immediately before trial.

Based on that feedback, Chief Justice Flynn adopted a modified version of UTCR 7.010(2), which more simply removes plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. That modified rule is intended to accomplish the proponents' goals, by in effect removing the deadlines that currently apply to plea negotiations and agreements, but without inadvertently encouraging parties to delay resolving cases.

The changes to UTCR 7.010 adopted by Chief Justice Flynn are shown below. The amended rule will be published for public comment and placed on the October 19, 2023, agenda for discussion.

AMENDMENT

7.010 PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES

- (1) At the time of arraignment, the court may either accept a not guilty plea and set a trial date or set a date for entry of a plea in accordance with subsection (2) of this section.
- (2) [*Plea agreements, negotiations*]{**D**}[*d*]discovery[,] and investigations must be concluded by a date as set by the court which is:
 - (a) For defendants in custody, not less than 21 days after arraignment but, in any event, not later than 21 days prior to the trial date; and
 - (b) For defendants who are not in custody, not less than 35 days after arraignment, but not later than the 35th day prior to the trial date.
- (3) Not later than the date set pursuant to subsection (2), trial counsel must report the following:
 - (a) Whether a jury trial is requested;
 - (b) The probable length of trial;
 - (c) The need for a pretrial hearing; and
 - (d) Any other matter affecting the case.
- (4) Relief from the dates set pursuant to subsection (2) of this rule shall be granted for good cause shown.

9. 5.140 – OREGON DISCOVERY IN FOREIGN PROCEEDINGS

Amended the rule to require a petition to seek discovery under ORCP 38 C, in place of a declaration, and to allow a petition for discovery in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration, in lieu of an affidavit.

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

EXPLANATION

This proposal was submitted by OJD Forms Manager Holly Rudolph. The amendment to UTCR 5.140 requires filing of a petition to seek discovery under ORCP 38 (in lieu of a declaration). When the UTCR Forms Appendix was repealed (effective August 1, 2021) all forms that were previously part of the UTCR Forms Appendix were reviewed by the Law and Policy Workgroup's Statewide Forms Subgroup (SFSG). SFSG determined that, because the request for discovery is not filed into an existing Oregon Circuit Court Case, it should be titled as a petition rather than a declaration. This amendment aligns the term used in the rule with the form.

The amendment also allows a petition to compel witnesses in a foreign jurisdiction not subject to ORCP 38 C to be supported by a declaration, in lieu of an affidavit. In recent years, the UTCR Committee has revised most rules to allow filers to choose a declaration in lieu of an affidavit if there is no particular need to require notarization. The committee did not identify a need for an affidavit in this circumstance.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

AMENDMENT

5.140 OREGON DISCOVERY IN FOREIGN PROCEEDINGS

- (1) To obtain discovery in the State of Oregon for a proceeding pending in another state pursuant to Oregon Rule of Civil Procedure (ORCP) 38 C, a party must submit to the court all of the following:
 - (a) The foreign subpoena.
 - (b) An original and two copies of a fully completed subpoena that
 - (i) Complies with the requirements of the ORCP, including ORCP 55; and
 - (ii) Contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.

- (c) A {petition}[*declaration*] and request for issuance of a subpoena pursuant to ORCP 38 C, substantially in the form provided at www.courts.oregon.gov/forms, stating that
 - (i) The foreign subpoena was issued by a court of record of a state as “state” is defined in ORCP 38 C(1)(b);
 - (ii) The fully completed subpoena complies with the requirements of the ORCP, including ORCP 55; and
 - (iii) The fully completed subpoena contains the names, addresses, email addresses, and telephone numbers of all attorneys of record and self-represented parties in the foreign proceeding.

(2) * * *

(3) In the event that a foreign jurisdiction not subject to ORCP 38 C has no procedure to issue a writ, mandate, commission, letter rogatory, or order to authorize a deposition to be taken in Oregon, at *ex parte* the party must present a petition to compel the witnesses to appear and testify. The petition must be supported by an affidavit{or declaration} that contains all of the following:

- (a) The name of the foreign jurisdiction in which the proceeding is pending.
- (b) The name of the court in which the proceeding is pending.
- (c) The caption or other relevant title of the proceeding.
- (d) The case number assigned by the foreign jurisdiction to the proceeding.
- (e) The date of filing of the proceeding in the foreign jurisdiction.
- (f) A statement that the foreign jurisdiction has no process to issue a writ, mandate, commission, letter rogatory, or order to compel a witness to appear and give testimony if the witness is located outside its jurisdictional boundary.
- (g) A statement that the affiant{or declarant} seeks authorization from the court to proceed upon notice or agreement to take the testimony of witnesses in this state.
- (h) The identity of witnesses in this state to be compelled upon notice or agreement to appear and testify.

10. 7.090 – EXPRESSION OF MILK

Adopted a new rule to allow persons to request accommodation for expression of milk.

ACTION TAKEN

By consensus, the committee recommended several modifications to the recommended new rule. In subsection (1), the committee changed “must” to “should” and “possible” to “practicable.” In subsection (2), the committee removed the requirement to notify the court of any pending criminal charges when making the request. No motion was made to change the committee’s preliminary recommendation of approval. Therefore, by committee convention, the committee’s October 20, 2022, preliminary recommendation of approval became the committee’s final recommendation of approval.

EXPLANATION

This proposal was submitted by Melissa Franz, Eugene Attorney. The proposal would create a process for court users (including parties, attorneys, witnesses, and others) to request accommodations to express milk. Examples of potential accommodations to express milk could include breaks from a trial or hearing or access to a room in the courthouse to express milk.

At the fall meeting on October 20, 2022, the committee discussed the fact that some courthouses are better equipped to accommodate a request for expression of milk than others. For instance, some newer courthouses already have a room dedicated to expression of milk that is located in a publicly accessible area. In other courthouses, providing a room to express milk may be logistically challenging. Some courthouses are short on space and while they may be able to provide a room for employees to express milk, those rooms may not be in areas that are open to the public, may not have locking doors, etc.

The committee discussed the fact that the proposal does not require a court to provide any particular accommodation for the expression of milk, it merely provides a process for a person to make the request.

The original proposal would have amended the Americans with Disabilities Accommodation Rule, UTCR 7.060. Prior to the UTCR Committee meeting on October 20, 2022, the UTCR Reporter solicited input from the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF) subcommittee, which is currently assessing challenges to courthouse facility access. The OSCCIF subcommittee recommended that the UTCR Committee preliminarily recommend the proposed rule but noted that some subcommittee members were uncomfortable with including expression of milk in the ADA accommodation rule because expression of milk is not a disability. Members of the UTCR Committee modified the original proposal by recommending adoption of a new “expression of milk” rule separate from UTCR 7.060 (ADA Accommodations).

OSCCIF also recommended removing the four-day advance notice requirement from UTCR 7.060 because some court users may not know four days in advance that they will be attending a hearing or trial and will need ADA or expression of milk accommodations. The UTCR Committee modified the original proposal to omit the four-day notice requirement from the proposed expression of milk rule but retained the requirement in UTCR 7.060 because some ADA accommodations

require advanced notice to provide, and because the rule already contains a good cause exception.

OSSCIF also recommended revision of the ADA accommodations form on the OJD website. The UTCR committee noted that the rule itself does not require use of the form, and that forms are no longer part of the UTCRs. Therefore, revision of the form is outside of the UTCR Committee's scope, but this issue could be taken up by SFSG or the OJD Office of General Counsel.

At the spring meeting on March 17, 2023, the committee discussed the public comments received:

- One public comment indicated support for the rule while also opining that the rule could go farther to accommodate those expressing milk;
- The other comment expressed concern for the proposed rule, given that courthouses are generally in buildings owned by the counties and may not have a dedication space available for members of the public to express milk.

In response to the first public comment, a motion was made to modify subsection (1), to change "must" to "should" and "possible" to "practicable." In subsection (2), the committee removed the requirement to notify the court of any pending criminal charges when making the request. The committee noted that the rule does not require the court to provide any particular accommodation, especially if the requested accommodation is not available (as in the case of a court that does not have a lactation room available to the public), the rule simply provides a mechanism for making the request. These changes were adopted by consensus.

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

NEW RULE

7.090 EXPRESSION OF MILK

- (1) A person requesting an expression of milk accommodation should notify the court as soon as practicable. A request for an accommodation may be made by the person in need of the accommodation or by a party on behalf of the person.
- (2) Notification to the court must provide:
 - (a) The name of the person needing accommodation;
 - (b) The case number;
 - (c) The nature of the proceeding;
 - (d) The person's status in the proceeding;
 - (e) The time, date, and estimated length of the proceeding;

- (f) Whether the proceeding is scheduled to be conducted in person at the courthouse or by remote means, and, if by remote means, the type of remote means proceeding (e.g., by telephone, particular mode of video conference, etc.); and
- (g) The type of accommodation needed or preferred.

11. 8.030 – JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR ACTIONS UNDER ORS 109.103

Adopted a new rule governing joint petitions in certain domestic relations actions.

ACTION TAKEN

By consensus, the committee amended the rule to remove the words “as follows:” from the end of subsection (2) of the rule and to remove subsections (3)(a) and (3)(b) from the recommended rule. No motion was made to change the committee’s preliminary recommendation of approval. Therefore, by committee convention, the committee’s October 20, 2022, preliminary recommendation of approval became the committee’s final recommendation of approval.

EXPLANATION

This proposal was submitted by Lisa Norris-Lampe on behalf of the OJD Law and Policy Workgroup (LPWG). The new rule allows parties to certain domestic relations actions to file as joint petitioners.

At the fall meeting on October 20, 2022, the proponents discussed that, before the eCourt system, courts utilized joint petitions and stipulated judgments when parties agreed to terms. However, system limitations on party designations in Odyssey make it difficult for OJD to offer joint petitions. The LPWG and OJD have been receiving requests to once again offer joint petitions, so this rule attempts to work around the system limitations.

The new rule will allow parties to pay just one fee instead of separate fees for the petition and response. Parties will continue to appear in Odyssey as “petitioner” and “respondent” due to limitations in the system.

The committee discussed that case law requires parties to submit the Division of Child Support (DCS) worksheets (described in UTCR 8.060) regardless of whether child support is requested by either party, and that the forms are required for all joint children (meaning children shared by the parties) who are under the age of 21.

The committee modified the proposal as follows:

- In subsection (2), changed “require” to “requires;”
- In subsection (3), deleted “minor children” and added “joint children under the age of 21;”
- In subsection (5)(c), deleted “child support is requested by either party,” and added “the parties have joint children under the age of 21;” and
- In subsection (6), added “joint” before “children.”

At the spring meeting on March 17, 2023, the committee discussed:

- Application of the filing fee – if the parties choose to use the joint process provided in the rule, only one filing fee is due, and the fee would typically be collected from the party identifying as the petitioner. A second fee would only be due if there is a modification requested or the parties couldn’t agree on a stipulated judgment;

- One member questioned how the parties would be identified in the event of a later modification. The committee discussed that, due to limits in Odyssey, the court's electronic filing system, the parties will still be noted as "petitioner" and "respondent" in the court's electronic filing system. The documents will label the parties as "co-petitioners," but the electronic system will refer to them as "petitioner" and "respondent." The business process and the form instructions packet will explain this dichotomy; and
- One member questioned why the proposed rule requires the parties to serve DCS in advance of filing the co-petition when that is not required in non-jointly filed cases currently. That member was concerned about creating a new burden on filers that does not normally apply.

The committee received two public comments:

- The first public comment expressed concern that UTCR 8.030(3) would require an update to form judgments that self-represented parties would need to complete. The committee discussed that other rules have similar notification requirements and that these are not necessarily included in the judgment.
- The other public comment expressed concern that subsections (4) and (5) would remove the ability for the court to oversee and verify that a parent education class is attended by the parties. The committee discussed that the rule is not intended to modify any requirement to attend a parenting class.

A motion was made to remove the requirement to serve DCS with a copy of the joint petition and stipulated judgment at least 3 business days before filing or at least 10 business days before filing and submission if delivered by first class mail in subsection (3). That member noted that there is no DCS service requirement in other (non-jointly filed) cases and that there was no reason this requirement should apply only to jointly filed cases, especially when the joint petition process is intended to be streamlined. By consensus, the committee adopted these changes to the recommended rule, as shown below.

NEW RULE

8.030 JOINT PETITIONS AND STIPULATED JUDGMENTS FOR DISSOLUTION OF MARRIAGE, SEPARATION, OR PROCEEDINGS UNDER ORS 109.103

- (1) In an action for dissolution of marriage or Registered Domestic Partnership, separation, or as set out under ORS 109.103, the parties may file a joint petition for relief and, regardless of whether a joint petition was filed, may submit a stipulated general judgment.
- (2) A joint petition filed under this rule requires payment of only one filing fee under ORS 21.155, payable by one initiating party.
 - (a) If parties jointly file under this rule but do not submit a stipulated judgment, a second filing fee under ORS 21.155 will be due from the other party before any hearing or trial will be scheduled.

- (b) If a stipulated judgment entered under this rule becomes the subject of a contested modification action, the moving party must pay the filing fee due from a responding party under ORS 21.155.
- (3) Parties with joint children under the age of 21 who both file a joint petition and submit a stipulated judgment must also send a copy of the joint petition and proposed stipulated judgment to the Department of Justice, Division of Child Support.
- (4) Parties seeking a stipulated general judgment under this rule must submit the appropriate completed stipulated general judgment and are not required to file a motion requesting entry of judgment.
- (5) A stipulated general judgment submitted under this rule must be accompanied by the following documents if not previously filed:
 - (a) The affidavit or declaration required under ORS 107.095(4), which may be included in the petition.
 - (b) If the judgment is for dissolution of either a marriage or a Registered Domestic Partnership, a completed Oregon State Health Division Record of Dissolution of Marriage, Annulment, or Registered Domestic Partnership form.
 - (c) If the parties have joint children under the age of 21, the Division of Child Support (DCS) worksheets described in UTCR 8.060.
- (6) If the parties submitting a stipulated general judgment under this rule have any joint children ages 18, 19, or 20, the parties must file a waiver of further appearance and consent to entry of judgment for each adult child. In the absence of such a waiver for any adult child, the submitted judgment must include the signature of that child. If any adult child chooses not to sign or execute a waiver, the parties may not submit a stipulated judgment under this rule.
- (7) This rule does not apply to supplemental or limited judgments.

12. 8.120 – INFORMAL DOMESTIC RELATIONS TRIAL

Amended to allow courts to accept oral Informal Domestic Relations Trial (IDRT) related waivers and to allow a party to opt in or out at any time prior to trial.

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval.

EXPLANATION

This proposal was submitted by Salem Attorney Ryan Carty on behalf of the State Family Law Advisory Committee (SFLAC). The amendment will allow parties to opt in to the IDRT process more easily by allowing submission of an oral waiver at any time before trial commences. Currently, the rule requires submission of a written waiver. Due to the COVID-19 crisis, many proceedings are being conducted remotely, which makes submission of a written waiver more difficult, especially for self-represented parties. In an in-person proceeding, written waivers can be submitted during the hearing, but cannot be submitted during a remote proceeding unless the parties have access to a printer, scanner, etc., and many parties to domestic relations proceedings are self-represented. The amendment makes it easier for parties to select the IDRT process and to opt out of that process if desired.

At the committee's fall meeting on October 20, 2022, the proponent discussed that:

- The amendment is intended to streamline court processes for family law litigants;
- Judges have been accepting oral waivers during COVID because of the difficulty to parties in providing written waivers during remote hearings;
- The amendment makes clear that the judicial officer still needs to go over the terms of the waiver and IDRT process verbally with parties before accepting an oral waiver; and
- The amendment removes the deadline for opting out of the IDRT process.

The committee discussed:

- Whether the deadline for opting out of the IDRT process is enforceable, since the IDRT requires parties to waive the rules of evidence;
- Whether the amendment could be inappropriately weaponized by a party who opts out of the IDRT process at the last minute and demands a regular bench trial, since the rules of evidence would then apply, and the opposing party may be unprepared for an evidentiary trial;
- If a party opts out on the day of trial, the rule allows, but does not require, the judge to postpone trial. The judicial officer acts as a backstop to prevent any potential unfairness caused by the other party opting out at the last minute.

The committee modified subsection (5) for readability.

At the March 17, 2023, meeting, the committee discussed the public comment received on the rule:

- The public comment expressed a belief that the IDRT rule is not widely known about or used and is therefore not readily available to self-represented parties;
- One member noted that IDRTs are frequently used in her county and that, if they are not widely used in other counties, that may be based on local community preference or a need to do more outreach regarding the rule;
- The committee suggested forwarding the public comment to the Statewide Family Law Advisory Council (SFLAC) so that the SFLAC may consider whether more outreach or education on the rule is needed or would be helpful to increase utilization.

AMENDMENT

8.120 INFORMAL DOMESTIC RELATIONS TRIAL

- (1) Upon the consent of both parties, Informal Domestic Relations Trials may be held to resolve any or all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support, and child custody filed under ORS chapter 107, ORS chapter 108, ORS 109.103, and ORS 109.701 through 109.834.
 - (2) The parties may select an Informal Domestic Relations Trial [*within 14 days of a case subject to this rule being at issue (see UTCR 7.020(6)). The parties must file a Trial Process Selection and Waiver for Informal Domestic Relations Trial*]{**at any time before trial commences by filing either a Domestic Relations Trial Process Selection form (traditional or informal trial)**} in substantially the form provided at www.courts.oregon.gov/forms{ **or making such selection orally on the record. If the selection is made orally, the judicial officer accepting the parties' selection must ensure the parties agree to the items identified on the form provided at www.courts.oregon.gov/forms**}. This form must be accepted by all judicial districts. SLR 8.121 is reserved for the purpose of making such format mandatory in the judicial district and for establishing a different time for filing the form that is more consistent with the case management and calendaring practices of the judicial district.
 - (3) * * *
- * * * * *
- (5) {**To opt out, a**}[A] party who has previously agreed to proceed with an Informal Domestic Relations Trial {**must notify the parties and the court at any time before trial commences**}[*may file a motion to opt out of the Informal Domestic Relations Trial provided that this motion is filed not less than ten calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause*]. A change in the type of trial to be held may result in a change in the trial date.

13. 21.040 – FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

Amended the rule to remove the requirement that electronically filed documents be submitted in a text-searchable format.

ACTION TAKEN

No motion was made to change the committee’s preliminary recommendation of approval. Therefore, by committee convention, the committee’s October 20, 2022, preliminary recommendation of approval became the committee’s final recommendation of approval.

EXPLANATION

This proposal was submitted by Sam Dupree, OJD Senior Assistant General Counsel. The proposal removes the requirement that electronically filed documents be submitted in a text-searchable format that allows copying and pasting into another document. Recent updates to File & Serve ensure that all PDFs are text searchable, so this requirement is no longer needed and if not removed, could result in the unnecessary rejection of documents.

No public comments were received on this amendment, therefore, no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

AMENDMENT

21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

(1) A document submitted electronically to the court must be in the form of a [*text-searchable*] Portable Document Format (PDF) or a [*text-searchable*] Portable Document Format/A (PDF/A) file that does not exceed 25 megabytes.[*The PDF or PDF/A document must allow copying and pasting text into another document, as much as practicable.*] A document that exceeds the size limit must be broken down and submitted as separate files that do not exceed 25 megabytes each. A filer submitting separate files under this section must include in the Filing Comments field for each submission a description that clearly identifies the part of the document that the file represents, for example, “Motion for Summary Judgment, part 1 of 2.”

(2) * * *

* * * * *

B. DISAPPROVED CHANGES

1. 4.020 – SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES

Adopt a new rule governing status appearance in criminal cases. **See related items A.6 – A.8 and B.2 – B.3.**

ACTION TAKEN

At the request of Chief Justice Walters, this proposal was sent out for public comment without recommendation following the October 20, 2022, meeting. At the meeting on March 17, 2023, a motion was made to recommend approval of the proposal, as modified by the committee. The motion failed by a vote of 3-6. As a result, the committee's final recommendation was a recommendation of disapproval.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The proposal would allow the parties to file a form, at least two judicial days before a status conference, in lieu of holding the status appearance. The rule would also allow parties to attend a criminal status appearance via remote means as long as the technology to do so is available.

At the UTCR Committee meeting on October 20, 2022, the proponents discussed that:

- The rule would reduce the time burden for attorneys to attend status conferences – some courts utilize mass scheduling dockets where parties may be required to attend in person for a long block of time when the actual appearance is very short;
- The rule would encourage cross-jurisdictional practice by allowing one attorney to be present in multiple courts on the same day, thereby building attorney capacity within the existing public defense system; and
- The proposal would require OJD to create a statewide form similar to the one that was already utilized in Lane County Circuit Court.

At the UTCR Committee meeting on March 17, 2023, the proponent discussed:

- The intent of the proposal is to reduce the amount of time that defense attorneys spend in court; defense attorneys had more time to work on cases when hearings were more universally remote (during the pandemic); and
- Lane County had a form that could be used as a template for a statewide form.

The committee discussed that:

- At the OJD Criminal Justice Advisory Committee (CJAC) meetings, Trial Court Administrators expressed difficulties with scheduling remote proceedings and the time it takes to coordinate with prisons and jail facilities;
- The intent is to file the form in lieu of appearance, but nothing in the rule indicates that the hearing will be canceled if the form is received; if the rule moves forward, that disconnect should be addressed;

- Different counties call hearings by different names, and it may not be clear which hearings are “status appearances;”
- Whether OJD could create a form without specifying a form in the rule;
- Lane County stopped using their form in lieu of status conferences in Summer 2022 because it was specifically developed for use during the pandemic and was not widely utilized;
- Whether subsection (2) (of the CJAC report version) could be adopted (allowing parties to appear by remote means unless the technology is not available) without the portion of the rule that was sent out for public comment that allows filing of a form in lieu of appearance at a status conference;
- Whether the meaning of the phrase “where the appearance is to take place” is ambiguous in that it’s not clear if it refers to a party’s location or to the court’s location; and
- One member pointed out that status conferences are important to a case because they help the parties to resolve potential issues, help the judge learn the status of the case and the stage of preparation of the parties, and some judges may want authority to hold the status conference even if the parties agree to waive it.

A motion was made to recommend the rule, as modified by the committee, the motion failed 3-6. As a result, the committee’s final recommendation was a recommendation of disapproval.

PROPOSED NEW RULE

4.020 SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES

When a case is set for appearance solely for the purpose of reporting on the status or progress of the case, the court must allow parties to appear by remote means unless the technology is not available.

2. **4.040** – PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES

Adopt a new rule governing the request and scheduling of certain appearances.
See related items A.6 – A.8, B.1, and B.3.

ACTION TAKEN

There was no motion to approve the proposal, therefore, by committee convention, the proposal was disapproved.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The proposed new rule would allow parties to request certain hearing types without filing a formal motion and proposed order. In lieu of filing a motion with the court, the proposal would allow a party to send an email to the court requesting the hearing. The rule would require the party requesting the hearing to include opposing counsel as a recipient on the email. The rule would also require the court to set the hearing as soon as practicable after receipt of the request, or on the date stipulated by parties if that date is available on the court calendar.

At the fall meeting on October 20, 2022, the proponents discussed that the proposal could save parties time in requesting hearings because it takes less time to send an email than to draft a motion and proposed order.

The committee discussed that the rule would require court staff to ensure that the email is added to the court record as some courts do not assign one judge for the life of the case and the case record needs to be preserved.

At the March 17, 2023, meeting, the committee discussed:

- The intent of this rule is to save parties time in requesting a hearing by allowing them to request certain hearings by email instead of by filing a formal motion and order;
- Trial Court Administrators are concerned about placing the burden on court staff to ensure that emails are added to the electronic court file;
- Courts that have allowed certain requests by email have also received other requests at the designated email addresses that are not appropriate for email (such as parties expecting court staff to accept court filings by email);
- One member suggested that a Guide & File form could be easier for the parties to complete while also assuaging court concerns about preserving the record;
- Whether the rule should include guardrails for what information the form should include, and whether the OJD Criminal Justice Advisory Committee (CJAC) could be consulted to determine what information should be included on the form;
- Whether the rule would allow enough time for victims to be notified of a release hearing, since the rule would require the hearing to be set as soon as practicable; and

- One member posited whether subsection (2) (regarding timing of the hearing) could be omitted from the rule to resolve concerns about victim notification.

By consensus, the committee disapproved the rule but recommended that OJD create a Guide & File form for parties to utilize. There was a concern about whether Guide & File would allow multiple parties to sign the same form prior to submission to the court. It was suggested that the form could include the ability for one party to submit the form after conferral and agreement by the other party (without including the second party's signature).

PROPOSED NEW RULE

4.040 PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES

In lieu of a formal Motion and Order, and upon appropriate notice to opposing counsel, either party may request a Release Hearing, Release Revocation Hearing, Request to Modify Terms of Release, Change of Plea and/or Sentencing, or similar appearance.

- (1) The request may be made by email, with opposing counsel included as a recipient of the communication. If the request is made in writing or orally, the requesting party shall provide opposing counsel's position, or, if unknown, certify that opposing counsel has been notified and indicate how and when that notification was conveyed.
- (2) Upon receipt of the request for hearing, the court must set the hearing as soon as practicable, or on the date the parties stipulate to if the court is available.

3. 4.060 – MOTION TO SUPPRESS EVIDENCE

Repeat the rule governing motions to suppress. **See related items A.6 – A.8 and B.1 – B.2.**

ACTION TAKEN

There was no motion to approve the proposal, therefore, by committee convention, the proposal was disapproved.

EXPLANATION

This proposal was submitted by the Oregon Criminal Defense Lawyers Association (OCDLA). The proposal would repeal the rule regarding motions to suppress evidence. The proponents discussed that the new timelines proposed in UTCR 4.010 would include motions to suppress evidence, so a standalone rule covering only motions to suppress would not be necessary.

This proposal was withdrawn by OCDLA prior to the March 17, 2023, meeting. There was no motion to approve the proposal, therefore, by committee convention, the proposal was disapproved. The committee noted that, if the OJD Criminal Justice Advisory Committee (CJAC) recommends adoption of UTCR 4.010, the committee would need to make conforming changes to UTCR 4.060.

PROPOSED AMENDMENT

4.060 MOTION TO SUPPRESS EVIDENCE

{UTCR 4.060 was repealed effective August 1, 2023.}

[(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. If the evidence sought to be suppressed was obtained without a warrant, it is sufficient for the moving party to so state.*

(2) Any response to a motion to suppress:

- (a) Must, in the absence of a showing of good cause or an SLR to the contrary, be served and filed, together with opposing affidavits, if any, upon which it is based, 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.]

C. OUT-OF-CYCLE AMENDMENTS

1. 2.010 – FORM OF DOCUMENTS

Review public comment on the out-of-cycle amendment.

ACTION TAKEN

No public comments were received.

EXPLANATION

This proposal was submitted by UTCR Committee member Judge Lung Hung (Malheur County Circuit Court). Following the October 20, 2022, meeting, Chief Justice Walters approved the amendment out of cycle (effective November 21, 2022). The amendment outlines how and when a nonprecedential opinion issued by the Oregon Court of Appeals pursuant to Oregon Rules of Appellate Procedure (ORAP) 10.30(1) may be cited in circuit court.

The committee discussed that:

- Nonprecedential opinions are already being issued by the Oregon Court of Appeals;
- This rule mirrors a temporary rule that was recently adopted by the Oregon Court of Appeals (ORAP 10.30(1)), governing citation of nonprecedential opinions, and would apply similar parameters to citation of nonprecedential memorandum opinions in the circuit courts;
- Coos/Curry Circuit Courts have proposed a very similar SLR which would become effective on February 1, 2023, accordingly, the committee recommended out-of-cycle adoption of amendment to UTCR 2.010, so that this rule will be in place statewide, and Coos/Curry Circuit Courts will not need to adopt an otherwise redundant SLR;
- The proposal is necessary because circuit court judges should not consider a different set of legal authorities than the appellate courts that will affirm or reverse circuit court decisions; and
- The proposal should be modified to apply only to nonprecedential opinions issued by Oregon's Court of Appeals under ORAP 10.30(1); the modification adopted by the committee is shown in the amendment below.

Two members voted against recommending the amendment, as modified or otherwise, because the ORAP is only a temporary rule and there's no certainty that the ORAP will become permanent. Those members were also concerned that the rule could prohibit citation of some nonprecedential opinions that could be helpful to the court.

Amendment of the rule was preliminarily recommended, as modified by the committee, by a vote of 9-2 at the UTCR Committee's fall meeting on October 20, 2022. The rule was then amended out of cycle by [Chief Justice Order \(CJO\) 22-033](#), effective November 21, 2022.

Following the UTCR Committee meeting, Chief Justice Walters approved out-of-cycle amendment of UTCR 2.010, effective November 21, 2022, as modified by

the committee, and preliminarily recommended by the majority of committee members.

AMENDMENT

2.010 FORM OF DOCUMENTS

Except where a different form is specified by statute or rule, the form of any document, including pleadings and motions, filed in any type of proceeding must be as prescribed in this rule.

(1) * * *

* * * * *

(12) Citation of Oregon Cases

{(a)} In all matters submitted to the circuit courts, Oregon cases must be cited by reference to the Oregon Reports as: *Blank v. Blank*, Or (year) or as *State v. Blank*, Or App (year). Parallel citations may be added.

{(b) **A nonprecedential memorandum opinion issued by the Oregon Court of Appeals under ORAP 10.30(1) may not be cited unless the opinion is relevant under the law of the case doctrine, the rules of claim preclusion or issue preclusion, or if no precedent addresses the issue before the court. A citation to a nonprecedential memorandum must include a parenthetical indicating that the case is a “nonprecedential memorandum opinion” and explaining the reason for citing the opinion and how it is relevant to the issues presented.**}

(13) * * *

* * * * *

D. OTHER ACTIONS

1. 19.020 – INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS

Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item D.2.**

ACTION TAKEN

No motion was made to change the committee's preliminary recommendation of approval. Therefore, by committee convention, the committee's October 20, 2022, preliminary recommendation of approval became the committee's final recommendation of approval. The committee's recommendation of approval was conditioned on passage of House Bill (HB) 2225 (2023), which at the time of the March 17, 2023, meeting, had not yet occurred. If the measure passes during the 2023 legislative session, approval of the amendment to UTCR 19.020 will be sought from the Supreme Court, with an effective date of October 1, 2023 (to align with the relevant operative date in the measure).

EXPLANATION

This proposal was submitted by Senior Judge Keith Raines on behalf of the OJD Contempt Workgroup.

At the October 20, 2022, meeting, the proponent discussed that:

- This proposal is the product of a workgroup that met in 2018 to consider changes to remedial contempt case initiation;
- Currently, remedial contempt cases are initiated by filing a motion in the underlying case that contains the judgment or order to be enforced. Under the current rule, the case is then treated as a separate case in Odyssey with a separate case number. This can cause confusion for parties, judges, and the court because the party identifiers that are used in the underlying case are not necessarily the same for the contempt case and may not be properly reflected in the case caption;
- The contempt workgroup proposed correcting this issue by amending the rule to require the remedial contempt action to be initiated as a separate case so that parties are properly identified from the beginning of the case. This would also help to define the record more clearly for appeal of the contempt proceeding, if one occurs.

In drafting the amendment, a question arose about whether the remedial contempt action should be initiated by a petition or a complaint. The proponents determined that a "complaint" makes more sense because the statute refers to the alleged contemnor as the "defendant."

The committee discussed that the changes to the rule would also require statutory changes, both to the contempt statute, ORS 33.055, and the filing fee statutes, which refer to filing a "motion" to initiate a remedial contempt action. These changes have been proposed as part of OJD's planned "omnibus bill," which will be introduced in the 2023 legislative session.

The committee voted 9-1 to preliminarily recommend adoption of the rule as modified, conditioned on passage of OJD's planned "omnibus" bill. One member felt that approval of the proposal was premature, and the committee should wait until after the legislation has passed (or failed) to consider these proposals.

The committee discussed that, given the UTCR Committee cycle and the planned operative date of the measure, this is the best opportunity to receive public comment on the proposal because if the legislation passes it will become operative on October 1, 2023, before the committee meets to consider changes proposed for the next UTCR cycle. If the legislation passes, the UTCR Reporter will seek out-of-cycle Supreme Court approval for the amendments effective October 1, 2023, to align with the operative dates in the measure. The committee modified the proposal for readability as reflected in the proposed amendment below.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

PROPOSED AMENDMENT

19.020 INITIATING INSTRUMENT REQUIREMENTS AND MAXIMUM SANCTIONS

[(1) *In addition to any other requirements for initiating instruments, the initiating instrument in a contempt proceeding under ORS 33.055 (remedial) or ORS 33.065 (punitive), must state:*

(a) *In the caption, the word "remedial" or "punitive," as appropriate, and the words "violation of restraining order," if appropriate.*

(b) *In the instrument:*

(i) *The maximum sanction(s) that the party seeks;*

(ii) *Whether the party seeks a sanction of confinement; and*

(iii) *As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive.*

(2) *If a party is initiating a contempt proceeding under ORS 33.055 (remedial) and a related circuit court case exists, the party must initiate the contempt proceeding by filing a motion in the related case.*

(a) *For purposes of the court's electronic case management system, the trial court administrator will treat the contempt proceeding as a separate case.*

(b) *Any subsequent filing by any party in the contempt proceeding must include both case numbers, with the contempt proceeding case number appearing first.*

- (3) *An initiating instrument in a contempt proceeding under ORS 33.055 (remedial) that initiates a new circuit court case must state, in the first paragraph:*
- (a) *If arising from a justice court or municipal court proceeding, the court name, the case name and number, and a description of the nature of that proceeding;*
 - (b) *If arising from an agency proceeding other than a child support proceeding, the agency name, the agency case name and number, and a description of the nature of that proceeding; or*
 - (c) *If arising from an agency proceeding that is a juvenile proceeding, the information required in paragraph (b) of this section as to any applicable agency or department, and any applicable juvenile department petition number.]*

([4]{1}) **{In addition to any other requirements for initiating instruments, a complaint in a contempt proceeding under ORS 33.055 (remedial) or a}** [A]n accusatory instrument in a contempt proceeding under ORS 33.065 (punitive) must state **{or include}**, as applicable:

- (a) In the caption{;}, *if arising from an existing circuit court case, the words “Related to [Court Name] Case No. [Case Number].”*

{(i) The party seeking remedial or punitive sanctions must be designated as the plaintiff and the alleged contemnor must be designated as the defendant;

{(ii) the word “remedial” or “punitive,” as appropriate, and the words “violation of restraining order,” if appropriate; and

{(iii) If arising from an existing circuit court case, the words “Related to [Court Name] Case No. [Case Number].”}

- (b) In the first paragraph:
 - (i) If arising from an existing circuit court case, the court name, the case name and number, and the nature of that case;
 - (ii) If arising from an existing juvenile court case, the court name, the case name and number, the juvenile department petition number, if any, and the nature of that case;
 - (iii) If arising from a justice court or municipal court proceeding, the court name, the court case name and number, and a description of the nature of that proceeding;
 - (iv) If arising from an agency proceeding **{other than a child support proceeding}**, the agency name, the agency case name and number, and a description of the nature of that proceeding; or

- (v) If arising from a juvenile proceeding, the information required in paragraph (b)(iv) of this section as to any applicable agency or department, and any applicable juvenile department petition number.

{(c) In the instrument or the body of the complaint:

(i) The maximum sanction(s) that the party seeks;

(ii) Whether the party seeks a sanction of confinement;

(iii) As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive; and

(iv) If the party is seeking remedial sanctions, a notice substantially in the form set out at ORCP 7.

([5]{2}) Maximum Sanction Imposed

The court shall not impose a sanction greater than the sanction sought. A punitive sanction is presumed greater than a remedial sanction. A punitive sanction of confinement is presumed greater than other punitive sanctions. A remedial sanction of confinement is presumed greater than other remedial sanctions.

2. 21.070 – SPECIAL FILING REQUIREMENTS

Amend the rule to require remedial contempt actions to be filed as a separate case. **See related item D.1.**

ACTION TAKEN

No motion was made to change the committee’s preliminary recommendation of approval. Therefore, by committee convention, the committee’s October 20, 2022, preliminary recommendation of approval became the committee’s final recommendation of approval. The committee’s recommendation of approval was conditioned on passage of House Bill (HB) 2225 (2023), which at the time of the March 17, 2023, meeting, had not yet occurred. If the measure passes during the 2023 legislative session, approval of the amendment to UTCR 21.070 will be sought with an effective date of October 1, 2023 (to align with the relevant operative date in the measure).

EXPLANATION

See explanation for related item D.1.

At the fall meeting on October 20, 2022, the committee voted 9-1 to preliminarily recommend adoption of the rule as modified, final approval is conditioned on passage of OJD’s planned “omnibus” bill which will be introduced in the 2023 legislative session. One member felt that approval of the proposal was premature and should wait until after it is known whether the legislation will succeed. The committee discussed that, given the UTCR committee cycle and the planned operative date of the measure, this is the best opportunity to receive public comment on the proposal because if the legislation passes it will become operative on October 1, 2023, before the committee meets to consider changes proposed for the next UTCR cycle. If the legislation passes, the UTCR Reporter will seek out-of-cycle Supreme Court approval for the amendments effective October 1, 2023, to align with the operative dates in the measure.

The committee modified the proposal to refer to the initiating document in a remedial contempt proceeding as a complaint, as reflected in the proposed amendment below.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

PROPOSED AMENDMENT

21.070 SPECIAL FILING REQUIREMENTS

(1) * * *

* * * * *

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) * * *

* * * * *

(d) A[*n initiating instrument*] {**complaint**} in a contempt proceeding{ **seeking remedial sanctions under ORS 33.055 or an initiating instrument in a contempt proceeding seeking punitive sanctions under ORS 33.065, including documentation supporting that instrument or complaint**}[, *including for purposes of this rule a motion and supporting documentation filed contemporaneously with the motion under ORS 33.055 (remedial) or an accusatory instrument that initiates a contempt proceeding and supporting documentation filed contemporaneously with the initiating instrument under ORS 33.065 (punitive)*].

(e) * * *

* * * * *

3. UTCR Reporter Notice of Correction

Received notice of UTCR Reporter corrections.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

At the fall meeting on October 20, 2022, committee members were given notice of UTCR Reporter's corrections to UTCR, made effective August 1, 2022, pursuant to UTCR 1.020(6):

- Corrected grammar in UTCR 1.090(2)(a) and (2)(b) (changed "attorneys fees" to "attorney fees").
- Corrected the citation to UTCR 1.110 in UTCR 2.010(6) to account for the renumbering of subsections in UTCR 1.110.
- Corrected and updated the citation in UTCR 3.140 1991 Commentary from DR 2-110 to ORPC 1.16.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

4. SLR Assignment

Discussed future SLR assignment method.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

At the fall meeting on October 20, 2022, the committee discussed that SLR assignments are currently assigned to committee members by chapter number, and each member is assigned three chapters to review. The UTCR Reporter opened discussion on whether the SLR assignment process should be changed to assign multiple courts' SLR to each member to allow for a more holistic review of each court's SLR.

Committee members expressed a strong preference for the current assignment method and noted that it's easier to compare SLR within the same subject matter chapter. One committee member requested that members be assigned to SLR chapters within their respective areas of expertise. Another member noted that new members should be more clearly informed that members are tasked with reviewing both existing SLR and proposed new SLR. Based on the discussion, SLR review will continue to be assigned by chapter.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

5. Case Initiation Changes

Discussed upcoming case initiation changes and the impact on electronic filing.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

At the fall meeting on October 20, 2022, the committee received an update on criminal case initiation from Sam Dupree (OJD Senior Assistant General Counsel). Currently, Odyssey does not have the capability to allow case-initiating documents in criminal, delinquency, and contempt cases to be electronically filed; however, OJD is working with Tyler Technologies to develop this capability and anticipates that it may be available within the next year. If the capability to electronically file these case initiating documents becomes available, some out-of-cycle amendments to UTCR 21.070(3) or other rules may be needed. No specific amendments to UTCRs were discussed.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

6. Committee Membership

The committee received an update on membership.

ACTION TAKEN

No action was needed nor taken.

EXPLANATION

Judge Stephen Bushong (then-Multnomah County Circuit Court), Judge Lung Hung (Malheur County Circuit Court), and Judge Charles Zennaché (Lane County Circuit Court), and Bryan Francesconi's (then-Criminal Defense Attorney, Portland) terms expired on December 31, 2022. Member Gene Hallman (Civil Attorney, Pendleton) retired from the committee prior to the October 20, 2022, meeting. These committee positions were filled prior to the March 17, 2023, meeting.

At the March 17, 2023, meeting, new members included Judge Steffan Alexander (Multnomah County Circuit Court), Charles Allen (Legal Aid Attorney, Bend), Judge James Edmonds (Marion County Circuit Court), Judge Kelly Kritzer (Klamath County Circuit Court), and John Robb (Criminal Defense Attorney, Portland).

7. Committee Membership Cycle

The committee discussed a proposal to adjust future membership term beginning and end dates to coincide with the UTCR rules cycle.

ACTION TAKEN

No action needed nor taken.

EXPLANATION

At the UTCR Committee meeting on October 20, 2022, the committee discussed that:

- The UTCR cycle starts in August of each year. Judges, attorneys, court users, and other community members submit UTCR suggestions by the end of August for consideration at the October committee meeting. At the October meeting, committee members make preliminary recommendations on UTCR amendments;
- New committee members start their terms in January—in the middle of the UTCR cycle—and their first meeting is a spring meeting, where the committee makes final recommendations on items that were considered at the previous fall meeting;
- Members approving items at the spring meeting may be different than the members who made preliminary recommendations at the fall meeting.

The UTCR Reporter proposed that new members start their terms effective August 1, to align with the UTCR cycle. Existing members' terms would be extended by 7 months and would end on July 31. By consensus, the committee recommended adjusting future membership terms to coincide with the UTCR rules cycle.

Following the fall meeting, Chief Justice Martha Walters signed [CJO 22-036](#) extending existing members' terms so that all existing members will end their terms on July 31 of any given year. New members appointed in CJO 22-036 will also end their terms on July 31. Going forward, member terms will align with the UTCR cycle so that members will attend both the fall and spring meetings.

No public comments were received on this amendment and therefore no action by the committee was needed nor taken at the spring meeting on March 17, 2023.

8. Fall 2023 Meeting

Fall meeting.

ACTION TAKEN

The fall meeting is scheduled for Thursday, October 19, 2023.