

## **CHAPTER 3—Decorum in Proceedings**

### **3.010 PROPER 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.

### **3.020 PROPER APPAREL FOR IN-CUSTODY WITNESSES AND DEFENDANTS APPEARING IN CRIMINAL PROCEEDINGS**

In-custody witnesses and defendants appearing for trial, whether in person or by remote means, must be dressed in neat, clean civilian clothing, unless otherwise ordered by the court.

### **3.030 MANNER OF ADDRESS**

During trial, the litigants and litigants' attorneys must not address adult witnesses, jurors or opposing parties by their first names, and, except in *voir dire*, must not address jurors individually. Jurors may not be addressed by name but may be addressed by number or by another means ordered by the court.

### **3.040 ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES**

Attorneys must advise their clients and witnesses of the formalities of the court, whether attending in person or by remote means, and must encourage their cooperation. Self-represented parties must similarly advise their witnesses and encourage their cooperation.

### **3.050 PROPER POSITION OF PARTIES BEFORE COURT**

Parties must:

- (1) Rise from their positions at counsel table and remain standing while addressing the court or the jury, except during *voir dire*;
- (2) Not approach the bench except by permission; and
- (3) Be allowed to move freely about the courtroom during trial unless otherwise instructed by the court.

1991 Commentary:

This 1991 change is not intended by the committee to transfer control of the conduct of the trial process from the trial judge to the litigants. The change is intended to facilitate the identification of exhibits by witnesses; the use of diagrams, photographs, and other exhibits by the examining attorney and witnesses; and to encourage the effective use of demonstrative evidence and exhibits in a manner facilitating the fact finder's understanding of the evidence. The committee recognizes that there is the potential for abuse of this rule change, which may be distracting or disruptive of the proceedings, and thus the court retains the ability to maintain appropriate decorum and order.

The committee recognizes that there are a number of factors which may affect the extent to which free movement is appropriate in a particular case. Without attempting to be all inclusive, these factors may include such things as: the physical layout of the courtroom; the age of the witness; the emotional/physical condition of the witness; the size, number, and nature of exhibits; etc. The committee therefore encourages communication between the litigants and the trial judge at the commencement of trial covering these considerations and resolving any uncertainty.

**3.060** DEFENDANT IN CRIMINAL TRIAL

During arraignment, plea and sentence, the defendant must stand unless otherwise permitted by the court.

**3.070** PERSONS PERMITTED WITHIN BAR OF COURT

Except as otherwise permitted by the court, during the trial of any case or the presentation of any matter to the court, no persons, including members of litigants' families, shall be permitted within the bar of the courtroom, other than clients, attorneys, court personnel and witnesses when called to the stand.

**3.080** PROCEDURE FOR SWEARING WITNESSES

The swearing of witnesses shall be conducted as a serious ceremony and not as a mere formality.

### **3.090** UNDUE RECOGNITION OR FAMILIARITY BY JUDGE

Judges shall refrain from showing undue recognition of or familiarity with any person in the courtroom.

### **3.100** PROPER USE OF COURT CHAMBERS

Except when court business is being conducted, parties must not congregate in the court's chambers or use the facilities or the court's entryway between the chambers and the bench without the permission of the court.

### **3.110** CONFERENCES IN CHAMBERS

Conferences may be conducted in chambers and shall be conducted without litigants present unless required by the court, requested by a party, or otherwise required.

### **3.120** COMMUNICATION WITH JURORS

- (1) Except as necessary during trial, and except as provided in subsection (2), parties, witnesses or court employees must not initiate contact with any juror concerning any case which that juror was sworn to try.
- (2) After a sufficient showing to the court and on order of the court, a party may have contact with a juror in the presence of the court and opposing parties when:
  - (a) There is a reasonable ground to believe that there has been a mistake in the announcing or recording of a verdict; or
  - (b) There is a reasonable ground to believe that a juror or the jury has been guilty of fraud or misconduct sufficient to justify setting aside or modifying the verdict or judgment.

### **3.130** DISCLOSURE OF RELATED MATTERS WHEN SEEKING COURT ORDER

When a party seeks to obtain an order from a judge, the party must inform that judge of any ruling, hearing or application for a ruling or hearing before any other judge that concerns the subject of the order requested.

### **3.140** RESIGNATION OF ATTORNEYS

- (1) An application to resign, a notice of termination, or a notice of substitution made pursuant to ORS 9.380 must contain the court contact information under UTCR 1.110 of the party and of the new attorney, if one is being substituted, and the date of any scheduled trial or hearing. It must be served on that party and the opposing party's attorney. If no attorney has appeared for the opposing party, the application must be served on the opposing party. A notice of withdrawal, termination, or substitution of attorney must be promptly filed.
- (2) The attorney who files the initial appearance for a party, or who personally appears for a party at arraignment on an offense, is deemed to be that party's attorney-of-record, unless at that time the attorney otherwise notifies the court and opposing party(ies) in open court or complies with subsection (1).
- (3) When an attorney is employed or appointed to appear in an already pending case, the attorney must immediately notify the court and the opposing party in writing or in open court. That attorney shall be deemed to be the attorney-of-record unless that attorney otherwise notifies the court.

1987 Commentary:

In subsection (3), a change of attorneys in a pending case requires notification to the opposing party and to the court. This rule makes no changes to ORCP procedures for taking a default judgment. It only addresses who will be considered the attorney of record in a case.

1991 Commentary:

UTCR 3.140 is intended neither to establish new standards of professional responsibility nor to provide a method of discharging existing standards of professional responsibility. See Oregon Rule of Professional Conduct (ORPC) 1.16.

**3.150 NO REACTION TO JURY VERDICT**

After the jury returns a verdict, all persons present in the courtroom must remain seated until the jury has left the room and must refrain from visibly or audibly reacting to the verdict in a manner which disrupts the dignity of the courtroom.

**3.160 EXPLANATION OF PROCEEDINGS TO JURORS**

In jury cases, after sustaining a dismissal of the case before verdict, the judge, in dismissing the jury, should, without discussion of the facts, briefly explain the procedure and why a verdict was unnecessary.

### 3.170 ASSOCIATION OF OUT-OF-STATE COUNSEL (*PRO HAC VICE*)

- (1) An attorney authorized to practice law before the highest court of record in any state or country (“out-of-state attorney”) may appear on behalf of a party in any action, suit, or proceeding pending in this state before a court or administrative body even though that attorney is not licensed to practice law in this state, if the attorney satisfies all of the following requirements:
  - (a) Shows that the attorney is an attorney in good standing in another state or country.
  - (b) Certifies that the attorney is not subject to pending disciplinary proceedings in any other jurisdiction or provides a description of the nature and status of any pending disciplinary proceedings.
  - (c) Associates with an active attorney licensee in good standing of the Oregon State Bar (“local attorney”) who must participate meaningfully in the matter.
  - (d) Certifies that the attorney will: comply with applicable statutes, law, and procedural rules of the state of Oregon; be familiar with and comply with the disciplinary rules of the Oregon State Bar; and submit to the jurisdiction of the Oregon courts and the Oregon State Bar with respect to acts and omissions occurring during the out-of-state attorney’s admission under this rule.
  - (e) If the attorney will engage in the private practice of law in this state, provides a certificate of insurance covering the attorney’s activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund plan.
  - (f) Agrees, as a continuing obligation under this rule, to notify the trial court or administrative body promptly of any changes in the out-of-state attorney’s insurance or status.
  - (g) If application will be for an appearance before a court, pays any fees required by subsection (6) below for appearance under this rule. No fee is required if application will be for an appearance before an administrative body.
- (2) The information required by subsection (1) of this rule must be presented as follows:
  - (a) If application will be for an appearance before a court, to the Oregon State Bar (Bar) in a form established by the Bar. The Bar may accomplish the submission of information by requiring a certificate with attachments or other means administratively convenient to the Bar. Upon receipt of all information necessary under subsection (1) of this section and receipt of the fee required by subsection (6) below, the Bar will acknowledge receipt in a form determined by the Bar. In making the acknowledgment, the Bar may attach

- copies or comment on any submitted material the Bar finds may be appropriate for a court to consider with an application under this section. The local attorney must then submit the Bar's acknowledgment with any information the Bar includes to the court by motion signed by the local attorney requesting the court to grant application under this section. The court may rely on the acknowledgment of the Bar as a basis to conclude that all information required to be submitted and fees required to be paid for granting an application under this section have been submitted and paid. Bar records on materials it receives under this section will be available to a court on request for two years or such longer period as the Bar considers administratively convenient.
- (b) If the application is for an appearance before an administrative body, to the administrator of the agency before which the proceeding will occur or that person's designee or to any other appropriate officer, employee or designee of that agency as set forth by procedures or rules established by that agency. Application may be accomplished by an application certificate with attachments or other means administratively convenient to and established by the agency. Agency records on materials the agency or designee receives under this section will be available to the Bar on request for two years or such longer period as the agency considers administratively convenient.
- (3) The court or administrative body shall grant the application by order if the application satisfies the requirements of this rule, unless the court or administrative body determines for good cause shown that granting the application would not be in the best interest of the court or administrative body or the parties. At any time and upon good cause shown, the court or administrative body may revoke the out-of-state attorney's permission to appear in the matter.
- (4) Each time a court or administrative body grants an application under this rule or revokes an out-of-state attorney's permission to appear in a matter, the local attorney must provide a notice to the Bar of such occurrence in a manner and within the time determined by the Bar.
- (5) This rule applies to all judicial and administrative proceedings in this state. When a court or administrative body grants an application for approval to appear under this rule, the authorization allows that individual attorney to appear in all proceedings for a single case that occur within a year after the application is granted. Applications will not be granted for firms. There must be separate application and approval for any of the following: appearance by another out-of-state attorney representing the same or any other party; representation by the same out-of-state attorney in this state on another matter; any appearance that occurs later than that one-year period. The Bar or an administrative body may establish such abbreviated procedures and requirements as Bar or body finds administratively convenient to limit unnecessary submission of duplicate information by an attorney who has already had application granted to appear in one proceeding and is

seeking to appear in other proceedings or to renew an application at the end of a current one-year grant for a case.

- (6) Except as otherwise provided in this rule, for each application under this rule to appear before a court, the applicant must pay to the Bar a fee of \$750 at the time of submission of information under subsection (2) of this section, including when application is sought to renew an application at the end of a current one-year grant for a case. The fee will not be refundable.
- (7) Subject to the following, the Bar or any administrative agency acting under this section, may use electronic means to accomplish acts required or authorized under this section:
  - (a) The Bar shall provide acknowledgment under paragraph (2)(a) of this rule for court purposes by electronic means only upon approval of the State Court Administrator.
  - (b) No administrative agency may provide electronic means of notifying the Bar of a grant of application or revocation under this section without prior approval of the Bar.
- (8) An applicant is not required to pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that the applicant is employed by a government body and will be representing that government body in an official capacity in the proceeding that will be the subject of the application.
- (9) An applicant is not required to associate with local counsel pursuant to subsection (1)(c) of this section or pay the fee established by subsection (6) of this section if the applicant establishes to the satisfaction of the Bar that:
  - (a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 USC §1903, pursuant to the Indian Child Welfare Act of 1978, 25 USC §1901 *et seq.* and the Oregon Indian Child Welfare Act, ORS 419B.600 *et seq.*;
  - (b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 USC §1903 and ORS 419B.603; and
  - (c) An Indian tribe as defined in 25 USC §1903 or ORS 419B.603(7) has affirmed the child's eligibility for membership or citizenship in the tribe.

NOTE: UTCR 3.170 is adopted by the Oregon Supreme Court under ORS 9.241 and may be modified only by order of that court.

### 3.180 ELECTRONIC RECORDING AND WRITING

- (1) As used in this rule:
  - (a) “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.”
  - (b) “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.
  - (c) “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 Supplementary Local Rule (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.
  - (iii) 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 attorneys and judges conferring at the bench and conferences involving attorneys 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.

### **3.190** CIVIL ARRESTS (Repealed)

REPORTER'S NOTE: UTCR 3.190 was repealed to avoid conflict or duplication with ORS 181A.828.