# Lane County Court Rules Deskbook

*Oregon Rules of Civil Procedure*

*Uniform Trial Court Rules*

*Lane County Supplemental Local Rules*

*Oregon Evidence Code*

Edited and compiled by Lane County Law Library

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All suggestions or errors may be sent to lclawlib@co.lane.or.us .

## Contents

# OREGON RULES OF CIVIL PROCEDURE

## RULE 1

SCOPE; CONSTRUCTION; APPLICATION; RULE; CITATION

**A Scope.** These rules govern procedure and practice in all circuit courts of this state, except in the small claims department of circuit courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin except where a different procedure is specified by statute or rule. These rules shall also govern practice and procedure in all civil actions and special proceedings, whether cognizable as cases at law, in equity, or of statutory origin, for the small claims department of circuit courts and for all other courts of this state to the extent they are made applicable to those courts by rule or statute. Reference in these rules to actions shall include all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin.

**B Construction.** These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

**C Application.** These rules, and amendments thereto, shall apply to all actions pending at the time of or filed after their effective date, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

**D "Rule" defined and local rules.** References to "these rules" shall include Oregon Rules of Civil Procedure numbered 1 through 85. General references to "rule" or "rules" shall mean only rule or rules of pleading, practice, and procedure established by ORS 1.745, or promulgated under ORS 1.006, 1.735, 2.130, and 305.425, unless otherwise defined or limited. These rules do not preclude a court in which they apply from regulating pleading, practice, and procedure in any manner not inconsistent with these rules.

**E Use of declaration under penalty of perjury in lieu of affidavit.**

E(1) **Definition.** As used in these rules, "declaration" means a declaration under penalty of perjury. A declaration may be used in lieu of any affidavit required or allowed by these rules. A declaration may be made without notice to adverse parties.

E(2) **Declaration made within the United States.** A declaration made within the United States must be signed by the declarant and must include the following sentence in prominent letters immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

E(3) **Declaration made outside the boundaries of the United States.** A declaration made outside the boundaries of the United States as defined in ORS 194.805 (1) must be signed by the declarant and must include the following language in prominent letters immediately following the signature of the declarant: "I declare under penalty of perjury under the laws of Oregon that the foregoing is true and correct, and that I am physically outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on the _____ (day) of _____ (month), _____ (year) at _____ (city or other location), _____ (country)."

**F Electronic filing.** Any reference in these rules to any document, except a summons, that is exchanged, served, entered, or filed during the course of civil litigation shall be construed to include electronic images or other digital information in addition to printed versions, as may be permitted by rules of the court in which the action is pending.

**G Citation.** These rules may be referred to as ORCP and may be cited, for example, by citation of Rule 7, section D, subsection (3), paragraph (a), subparagraph (iv), part (A), as ORCP 7 D(3)(a)(iv)(A). [CCP 12/2/78; amended by 1979 c.284 §7; §D amended by 1981 c.898 §3; §D amended by 1981 s.s. c.1 §21; §E amended by CCP 12/13/86; §A amended by 1995 c.658 §117; amended by 2003 c.194 §1; §F adopted and former §F redesignated as §G and §§D,E,G amended by CCP 12/13/08; §E amended by 2013 c.218 §9; §§A,E,F amended by CCP 12/6/14]

## RULE 2

FORM OF ACTION

**One form of action.** There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute, or by the Constitution of this state. [CCP 12/2/78]

## RULE 3

COMMENCEMENT

**Commencement of action.** Other than for purposes of statutes of limitations, an action shall be commenced by filing a complaint with the clerk of the court. [CCP 12/2/78]

## RULE 4

JURISDICTION (Personal)

**Personal jurisdiction.** A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

**A Local presence or status.** In any action, whether arising within or without this state, against a defendant who when the action is commenced:

A(1) Is a natural person present within this state when served; or

A(2) Is a natural person domiciled within this state; or

A(3) Is a corporation created by or under the laws of this state; or

A(4) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise; or

A(5) Has expressly consented to the exercise of personal jurisdiction over such defendant.

**B Special jurisdiction statutes.** In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

**C Local act or omission.** In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

**D Local injury; foreign act.** In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

D(1) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

D(2) Products, materials, or things distributed, processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

**E Local services, goods, or contracts.** In any action or proceeding which:

E(1) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

E(2) Arises out of services actually performed for the plaintiff by the defendant within this state or services actually performed for the defendant by the plaintiff within this state, if such performance within this state was authorized or ratified by the defendant; or

E(3) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to send from this state goods, documents of title, or other things of value; or

E(4) Relates to goods, documents of title, or other things of value sent from this state by the defendant to the plaintiff or to a third person on the plaintiff's order or direction; or

E(5) Relates to goods, documents of title, or other things of value actually received in this state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to where delivery to carrier occurred.

**F Local property.** In any action which arises out of the ownership, use, or possession of real property situated in this state or the ownership, use, or possession of other tangible property, assets, or things of value which were within this state at the time of such ownership, use, or possession; including, but not limited to, actions to recover a deficiency judgment upon any mortgage, conditional sale contract, or other security agreement relating to such property, executed by the defendant or predecessor to whose obligation the defendant has succeeded.

**G Director or officer of a domestic corporation.** In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

**H Taxes or assessments.** In any action for the collection of taxes or assessments levied, assessed, or otherwise imposed by a taxing authority of this state.

**I Insurance or insurers.** In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure any person, property, or risk and in addition either:

I(1) The person, property, or risk insured was located in this state at the time of the promise; or

I(2) The person, property, or risk insured was located within this state when the event out of which the cause of action is claimed to arise occurred; or

I(3) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person, property, or risk insured was located.

**J Securities.** In any action arising under the Oregon Securities Law, including an action brought by the Director of the Department of Consumer and Business Services, against:

J(1) An applicant for registration or registrant, and any person who offers or sells a security in this state, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; or

J(2) Any person, a resident or nonresident of this state, who has engaged in

conduct prohibited or made actionable under the Oregon Securities Law.

**K Certain marital and domestic relations actions.**

K(1) In any action to determine a question of status instituted under ORS chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state.

K(2) In any action to enforce personal obligations arising under ORS chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

K(3) In any proceeding to establish parentage under ORS chapter 109 or 110, or any action for declaration of parentage where the primary purpose of the action is to establish responsibility for child support, when the act of sexual intercourse which resulted in the birth of the child is alleged to have taken place in this state.

**L Other actions.** Notwithstanding a failure to satisfy the requirement of sections B through K of this rule, in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States.

**M Personal representative.** In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in sections A through L would have furnished a basis for jurisdiction over the deceased had the deceased been living. It is immaterial whether the action is commenced during the lifetime of the deceased.

**N Joinder of claims in the same action.** In any action brought in reliance upon jurisdictional grounds stated in sections B through L, there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this rule, or other rule or statute, for personal jurisdiction over the defendant as to the claim or cause to be joined.

**O Defendant defined.** For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court. [CCP 12/2/78; §K amended by 1979 c.284 §8; §M amended by CCP 12/13/80; §E amended by CCP 12/10/88 and 1/6/89; §K amended by 1993 c.33 §364; §J amended by 1995 c.79 §401; §K amended by 1995 c.608 §40; §K amended by 2003 c.14 §13; §K amended by 2017 c.651 §49]

## RULE 5

(In Rem)

**Jurisdiction in rem.** A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property, or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7 or other applicable rule or statute. Jurisdiction in rem may be invoked in any of the following cases:

A When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This

section also shall apply when any such defendant is unknown.

B When the action is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this state. [CCP 12/2/78]

## RULE 6

(Without Service)

**Personal jurisdiction without service of summons.** A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a party, exercise jurisdiction in an action over a party with respect to any counterclaim asserted against that party in an action which the party has commenced in this state and also over any party who appears in the action and waives the defense of lack of jurisdiction over the person, insufficiency of summons or process, or insufficiency of service of summons or process, as provided in Rule 21 G. Where jurisdiction is exercised under Rule 5, a defendant may appear in an action and defend on the merits, without being subject to personal jurisdiction by virtue of this rule. [CCP 12/2/78]

## RULE 7

**A Definitions.** For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought. For purposes of this rule, a "true copy" of a summons and complaint means an exact and complete copy of the original summons and complaint.

**B Issuance.** Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by plaintiff or an active member of the Oregon State Bar.

**C(1) Contents.** The summons shall contain:

C(1)(a) **Title.** The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C(1)(b) **Direction to defendant.** A direction to the defendant requiring defendant to appear and defend within the time required by subsection C(2) of this rule and a notification to defendant that, in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(1)(c) **Subscription; post office address.** A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(2) **Time for response.** If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection
D(6) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C(3) **Notice to party served.**

C(3)(a) **In general.** All summonses, other than a summons referred to in paragraph C(3)(b) or C(3)(c) of this rule, shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

_____

_____

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal document called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

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C(3)(b) **Service for counterclaim or cross-claim.** A summons to join a party to respond to a counterclaim or a cross-claim pursuant to Rule 22 D(1) shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

_____

_____

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion," a "reply" to a counterclaim, or an "answer" to a cross-claim. The "motion," "reply," or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

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C(3)(c) **Service on persons liable for attorney fees.** A summons to join a party pursuant to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

_____

_____

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees may be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal document called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

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_____

**D Manner of service.**

D(1) **Notice required.** Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of true copies of the summons and the complaint upon defendant or an agent of defendant authorized to receive process; substituted service by leaving true copies of the summons and the complaint at a person's dwelling house or usual place of abode; office service by leaving true copies of the summons and the complaint with a person who is apparently in charge of an office; service by mail; or service by publication.

D(2) **Service methods.**

D(2)(a) **Personal service.** Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

D(2)(b) **Substituted service.** Substituted service may be made by delivering true copies of the summons and the complaint at the dwelling house or usual place of abode of the person to be served to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed by first class mail true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service shall be complete upon the mailing.

D(2)(c) **Office service.** If the person to be served maintains an office for the conduct of business, office service may be made by leaving true copies of the summons and the complaint at that office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed by first class mail true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode or defendant's place of business or any other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service shall be complete upon the mailing.

D(2)(d) **Service by mail.**

D(2)(d)(i) **Generally.** When service by mail is required or allowed by this rule or by statute, except as otherwise permitted, service by mail shall be made by mailing true copies of the summons and the complaint to the defendant by first class mail and by any of the following: certified, registered, or express mail with return receipt requested. For purposes of this section, "first class mail" does not include certified, registered, or express mail, return receipt requested, or any other form of mail that may delay or hinder actual delivery of mail to the addressee.

D(2)(d)(ii) **Calculation of time.** For the purpose of computing any period of time provided by these rules or by statute, service by mail, except as otherwise provided, shall be complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state,

or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

D(3) **Particular defendants.** Service may be made upon specified defendants as follows:

D(3)(a) **Individuals.**

D(3)(a)(i) **Generally.** Upon an individual defendant, by personal delivery of true copies of the summons and the complaint to the defendant or other person authorized by appointment or law to receive service of summons on behalf of the defendant, by substituted service, or by office service. Service may also be made upon an individual defendant or other person authorized to receive service to whom neither subparagraph D(3)(a)(ii) nor D(3)(a)(iii) of this rule applies by a mailing made in accordance with paragraph D(2)(d) of this rule provided the defendant or other person authorized to receive service signs a receipt for the certified, registered, or express mailing, in which case service shall be complete on the date on which the defendant signs a receipt for the mailing.

D(3)(a)(ii) **Minors.** Upon a minor under 14 years of age, by service in the manner specified in subparagraph D(3)(a)(i) of this rule upon the minor; and additionally upon the minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor, or with whom the minor resides, or in whose service the minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 B.

D(3)(a)(iii) **Incapacitated persons.** Upon a person who is incapacitated or is financially incapable, as both terms are defined by ORS 125.005, by service in the manner specified in subparagraph D(3)(a)(i) of this rule upon the person and, also, upon the conservator of the person's estate or guardian or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B.

D(3)(a)(iv) **Tenant of a mail agent.** Upon an individual defendant who is a "tenant" of a "mail agent" within the meaning of ORS 646A.340, by delivering true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

D(3)(a)(iv)(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

D(3)(a)(iv)(B) the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint.

Service shall be complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) **Corporations including, but not limited to, professional corporations and cooperatives.** Upon a domestic or foreign corporation:

D(3)(b)(i) **Primary service method.** By personal service or office service upon a registered agent, officer, or director of the corporation; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(b)(ii) **Alternatives.** If a registered agent, officer, or director cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

D(3)(b)(ii)(A) by substituted service upon the registered agent, officer, or director;

D(3)(b)(ii)(B) by personal service on any clerk or agent of the corporation who may be found in the county where the action is filed;

D(3)(b)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the corporation, if any, as shown by the records on file in the office of the Secretary of State; or, if the corporation is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation; and, in any case, to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(b)(ii)(D) upon the Secretary of State in the manner provided in ORS 60.121 or 60.731.

D(3)(c) **Limited liability companies.** Upon a limited liability company:

D(3)(c)(i) Primary service method. By personal service or office service upon a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(c)(ii) **Alternatives.** If a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

D(3)(c)(ii)(A) by substituted service upon the registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company;

D(3)(c)(ii)(B) by personal service on any clerk or agent of the limited liability company who may be found in the county where the action is filed;

D(3)(c)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the limited liability company, as shown by the records on file in the office of the Secretary of State; or, if the limited liability company is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited liability company; and, in any case, to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(c)(ii)(D) upon the Secretary of State in the manner provided in ORS 63.121.

D(3)(d) **Limited partnerships.** Upon a domestic or foreign limited partnership:

D(3)(d)(i) **Primary service method.** By personal service or office service upon a registered agent or a general partner of a limited partnership; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(d)(ii) **Alternatives.** If a registered agent or a general partner of a limited partnership cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

D(3)(d)(ii)(A) by substituted service upon the registered agent or general partner of a limited partnership;

D(3)(d)(ii)(B) by personal service on any clerk or agent of the limited partnership who may be found in the county where the action is filed;

D(3)(d)(ii)(C) by mailing in the manner specified in paragraph D(2)(d) of this rule true copies of the summons and the complaint to: the office of the registered agent or to the last registered office of the limited partnership, as shown by the records on file in the office of the Secretary of State; or, if the limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited partnership; and, in any case, to any address the use of which the

plaintiff knows or has reason to believe is most likely to result in actual notice; or

D(3)(d)(ii)(D) upon the Secretary of State in the manner provided in ORS 70.040 or 70.045.

D(3)(e) **General partnerships and limited liability partnerships.** Upon any general partnership or limited liability partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership or limited liability partnership.

D(3)(f) **Other unincorporated associations subject to suit under a common name.** Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D(3)(g) **State.** Upon the state, by personal service upon the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(h) **Public bodies.** Upon any county; incorporated city; school district; or other public corporation, commission, board, or agency by personal service or office service upon an officer, director, managing agent, or attorney thereof.

D(3)(i) **Vessel owners and charterers.** Upon any foreign steamship owner or steamship charterer by personal service upon a vessel master in the owner's or charterer's employment or any agent authorized by the owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D(4) **Particular actions involving motor vehicles.**

D(4)(a) **Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.**

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated upon the roads, highways, streets, or premises open to the public as defined by law of this state if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection D(3) of this rule except service by mail pursuant to subparagraph D(3)(a)(i) of this rule and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph D(2)(d) of this rule addressed to that defendant at:

D(4)(a)(i)(A) any residence address provided by that defendant at the scene of the accident;

D(4)(a)(i)(B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

D(4)(a)(i)(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule that reasonably might result in actual notice to that defendant.

Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered, or express mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph shall be complete on the latest date on which any of the mailings required by parts D(4)(a)(i)(A), D(4)(a)(i)(B), and D(4)(a)(i)(C) of this rule is made. If the mailing required by part D(4)(a)(i)(C) of this rule is omitted because

the plaintiff did not know of any address other than those specified in parts D(4)(a)(i)(A) and D(4)(a)(i)(B) of this rule, the proof of service shall so certify.

D(4)(a)(ii) Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph D(4)(a)(i) of this rule may be recovered as provided in Rule 68.

D(4)(a)(iii) The requirements for obtaining an order of default against a defendant served pursuant to subparagraph D(4)(a)(i) of this rule are as provided in Rule 69 E.

D(4)(b) **Notification of change of address.** Any person who; while operating a motor vehicle upon the roads, highways, streets, or premises open to the public as defined by law of this state; is involved in any accident, collision, or other event giving rise to liability shall forthwith notify the Department of Transportation of any change of the person's address occurring within three years after the accident, collision, or event.

D(5) **Service in foreign country.** When service is to be effected upon a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases service shall be reasonably calculated to give actual notice.

D(6) **Court order for service; service by publication.**

D(6)(a) **Court order for service by other method.** On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods that under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and any of the following: certified, registered, or express mail, return receipt requested; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D(6)(b) **Contents of published summons.** In addition to the contents of a summons as described in section C of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C(3) of this rule shall state: "The< motion> or <answer> (or <reply>) must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D(6)(c) **Where published.** An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. The summons shall be published four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county in which the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph D(6)(a) of this rule, and the court may order publication in a comparable manner at that location in addition to, or in lieu of, publication in the county in which the action is commenced.

D(6)(d) **Mailing summons and complaint.** If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the

plaintiff shall mail true copies of the summons and the complaint to the defendant at that address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know and cannot ascertain upon diligent inquiry the current address of any defendant, true copies of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known addresses, a mailing of copies of the summons and the complaint is not required.

D(6)(e) **Unknown heirs or persons.** If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in Rule 20 I and J, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy at the time of the commencement of the action, and who are served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action had been brought against those defendants by name.

D(6)(f) **Defending before or after judgment.** A defendant against whom publication is ordered or that defendant's representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action. A defendant against whom publication is ordered or that defendant's representatives may, upon good cause shown and upon any terms that may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on that judgment, to a purchaser in good faith, shall not be affected thereby.

D(6)(g) **Defendant who cannot be served.** Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection D(3) of this rule if: service pursuant to subparagraph D(4)(a)(i) of this rule is not authorized, and the plaintiff attempted service of summons by all of the methods authorized by subsection D(3) of this rule and was unable to complete service; or if the plaintiff knew that service by these methods could not be accomplished.

**E By whom served; compensation.** A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. However, service pursuant to subparagraph D(2)(d)(i) of this rule may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in Rule 68.

**F Return; proof of service.**

F(1) **Return of summons.** The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by first class mail.

F(2) **Proof of service.** Proof of service of summons or mailing may be made as follows:

F(2)(a) **Service other than publication.** Service other than publication shall be proved by:

F(2)(a)(i) **Certificate of service when summons not served by sheriff or deputy**. If the summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating: the specific documents that were served; the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the certificate when, where, and with whom true copies of the summons and the complaint were left or describe in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate may be made by the person completing the mailing or the attorney for any party and shall state the circumstances of mailing and the return receipt, if any, shall be attached.

F(2)(a)(ii) **Certificate of service by sheriff or deputy.** If the summons is served by a sheriff or a sheriff's deputy, the sheriff's or deputy's certificate of service indicating: the specific documents that were served; the time, place, and manner of service; and, if defendant is not personally served, when, where, and with whom true copies of the summons and the complaint were left or describing in detail the manner and circumstances of service. If true copies of the summons and the complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt, if any, shall be attached.

F(2)(b) **Publication.** Service by publication shall be proved by an affidavit or by a declaration.

F(2)(b)(i) A publication by affidavit shall be in substantially the following form:

_____
_____
_____

Affidavit of Publication

State of Oregon )
) ss.
County of )

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this _____ day of _____, 2_____.

_____
Notary Public for Oregon
My commission expires
___ day of _____, 2 ___.

_____
_____

F(2)(b)(ii) A publication by declaration shall be in substantially the following form:

F(2)(b)(ii) A publication by declaration shall be in substantially the following form:

_____
_____

Declaration of Publication

State of Oregon )
)ss.
County of )

I, _____, say that I am the _____ (here set forth the title or job description of the person making the declaration), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____

____ day of _____, 2____.

_____

_____

F(2)(c) **Making and certifying affidavit.** The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting in that capacity by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of that person shall be affixed to the affidavit. The signature of the notary or other official, when so attested by the affixing of the official seal, if any, of that person, shall be prima facie evidence of authority to make and certify the affidavit.

F(2)(d) **Form of certificate, affidavit, or declaration.** A certificate, affidavit, or declaration containing proof of service may be made upon the summons or as a separate document attached to the summons.

F(3) **Written admission.** In any case proof may be made by written admission of the defendant.

F(4) **Failure to make proof; validity of service.** If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

**G Disregard of error; actual notice.** Failure to comply with provisions of this rule relating to the form of a summons, issuance of a summons, or who may serve a summons shall not affect the validity of service of that summons or the existence of jurisdiction over the person if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, affidavit, declaration, or certificate of service of summons. The court shall disregard any error in the content of a summons that does not materially prejudice the substantive rights of the party against whom the summons was issued. If service is made in any manner complying with subsection D(1) of this rule, the court shall also disregard any error in the service of a summons that does not violate the due process rights of the party against whom the summons was issued. [CCP 12/2/78; amended by 1979 c.284 §9; §D amended by CCP 12/13/80; §§D,E amended by 1981 c.898 §§4,5; §§D,F amended by CCP 12/4/82; §§D,F amended by 1983 c.751 §§3,4; §C(2) amended by CCP 12/8/84; §D(4) amended by CCP 12/10/88 and 1/6/89; §D amended by CCP 12/15/90; §§C,E amended by CCP 12/12/92; §D amended by 1995 c.79 §402 and 1995 c.664 §99; §§B,C,D,F,G amended and D(7) redesignated as D(6)(g) by CCP 12/14/96; §§D,E amended by CCP 12/12/98; §D amended by CCP 12/9/00; amended by 2003 c.194 §5; §§A,B,D,F,G amended and §H deleted by CCP 12/9/06; §C amended by 2007 c.129 §23; §D amended by CCP 12/13/08 and 2009 c.11 §4; §C amended by 2011 c.398 §3; §§C,D,F,G amended by CCP 12/6/14]

## RULE 8

PROCESS

**A Process.** All process authorized to be issued by any court or officer thereof shall run in the name of the State of Oregon and be signed by the officer issuing the same, and if such process is issued by a clerk of court, the seal of office of such clerk shall be affixed to such process. Summonses and subpoenas are not process and are covered by Rule 7 and Rule 55, respectively.

**B Where county is a party.** Process in an action where any county is a party shall be served on the county clerk or the person exercising the duties of that office, or if the office is vacant, upon the chairperson of the governing body of the county, or in the absence of the chairperson, any member thereof.

**C Service or execution.** Any civil process may be served or executed on Sunday or any other legal holiday. No limitation or prohibition stated in ORS 1.060 shall apply to such service or execution of any civil process on a Sunday or other legal holiday.

**D Proof of service or execution.** Proof of service or execution of process shall be made as provided in Rule 7 F. [CCP 12/2/78; §A amended and §D deleted and §E redesignated by CCP 12/9/06]

## RULE 9

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

**A Service; when required.** Except as otherwise provided in these rules, every order; every pleading subsequent to the original complaint; every written motion other than one that may be heard ex parte; and every written request, notice, appearance, demand, offer to allow judgment, designation of record on appeal, and similar document shall be served on each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served on them in the manner provided for service of summons in Rule 7.

**B Service; how made.** Except as otherwise provided in Rule 7 or Rule 8, whenever under these rules service is required or permitted to be made on a party, and that party is represented by an attorney, the service shall be made on the attorney unless otherwise ordered by the court. Service on the attorney or on a party shall be made by delivering a copy to that attorney or party; by mailing it to the attorney's or party's last known address; by e-mail as provided in section G of this rule; by electronic service as provided in section H of this rule; or, if the party is represented by an attorney, by facsimile communication as provided in section F of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at the person's office with the person who is apparently in charge; or, if there is no one in charge, leaving the copy in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving the copy at the person's dwelling house or usual place of abode with some person 14 years of age or older then residing therein. A party who has appeared without providing an appropriate address for service may be served by filing the pleading or other document with the court. Service by mail is complete on mailing. Service of any notice or other document to bring a party into contempt may be only on that party personally.

**C Filing; proof of service.**

C(1) Generally. Except as provided by section D of this rule, all documents required to be served on a party by section A of this rule

shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rule 7 and Rule 8, proof of service of all documents required or permitted to be served may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by certificate of an attorney. Proof of service may be made on the document served or as a separate document attached thereto.

C(2) Proof of service by facsimile communication. If service is made by facsimile communication under section F of this rule, proof of service shall be made by affidavit or by declaration of the person making service, or by certificate of an attorney and the person making service shall attach to the affidavit, declaration, or certificate printed confirmation of receipt of the message generated by the transmitting technology.

C(3) Proof of service by e-mail. If service is made by e-mail under section G of this rule, proof of service shall be made by affidavit or by declaration of the person making service, or by certificate of an attorney, stating either that the other party has consented to service by e-mail or that he or she received confirmation that the message and attachment were received by the designated recipient and specifying the method by which the sender received confirmation. An automatically generated message indicating that the recipient is out of the office or is otherwise unavailable cannot support the required certification, nor can an automatically generated e-mail delivery status notification.

C(4) Proof of service by electronic service. If service is made by electronic service under section H of this rule, proof of service shall be made by affidavit or by declaration of the person making service, or by certificate of an attorney, specifying that service was completed by electronic service.

C(5) Proof of service on a party without a service address. Service on a party who has appeared without providing an appropriate address for service shall be by affidavit or by declaration of the person filing the document, or by certificate of an attorney, that service by filing as provided in section B of this rule is appropriate.

**D When filing not required.** Notices of deposition, requests made pursuant to Rule 43, and answers and responses thereto shall not be filed with the court. This rule shall not preclude their use as exhibits or as evidence on a motion or at trial. Offers to allow judgment made pursuant to Rule 54 E shall not be filed with the court except as provided in Rule 54 E(3).

**E Filing with the court defined.** The filing of pleadings and other documents with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse on the pleading or document the time of day, the day of the month, the month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any document unless a caption that includes the name of the court; the case number of the action, if one has been assigned; the title of the document; and the names of the parties are legibly displayed on the front of the document, nor unless the contents of the document are legible. Further, the clerk is not required to receive for filing any document that does not include the name, address, and telephone number of the party or the attorney for the party, if the party is represented.

**F Service by facsimile communication**. Whenever under these rules service is required or permitted to be made on a party, and that party is represented by an attorney, the service may be made on the attorney by means of facsimile communication if the attorney has such technology available and said technology is operating at the time service is made. Service in this manner shall be subject to Rule 10 B.

Facsimile communication includes: a telephonic facsimile communication device; a facsimile server or other computerized system capable of receiving and storing incoming facsimile communications electronically and then routing them to users on paper or via e-mail; or an internet facsimile service that allows users to send and receive facsimiles from their personal computers using an existing e-mail account.

**G Service by e-mail.** Whenever under these rules service is required or permitted to be made on a party, unless the party or the party's attorney is exempted from service by e-mail by an order of the court, the service may be made by means of e-mail. Service is complete under this rule on confirmation of receipt of the e-mail or, if the receiving party has consented to service by e-mail, on transmission of the e-mail. Any party or any party's attorney must provide the name and e-mail address of that party or that attorney and that attorney's designee, if any, on any document served by e-mail. Any party or attorney who has communicated by e-mail or by electronic service must notify the other parties in writing of any changes to that party's or that attorney's e-mail address. Service in this manner shall be subject to Rule 10 B.

**H Service by electronic service.** As used in these rules, "electronic service" means using an electronic filing system provided by the Oregon Judicial Department and in the manner prescribed in rules adopted by the Chief Justice of the Oregon Supreme Court. [CCP 12/2/78; amended by 1979 c.284 §10; §B amended by CCP 12/13/80; §B amended by CCP 12/4/82; §§C,D,E amended by CCP 12/13/86; amended by 1989 c.295 §1; §C amended by 2003 c.194 §6; §F amended by CCP 12/11/04; §§A,B,E amended by CCP 12/9/06 and 2007 c.129 §§24,25,26; §C amended by CCP 12/9/06 and 2007 c.255 §15; §G adopted by CCP 12/9/06; §D amended by CCP 12/11/10; §§A,B,C,D,E,G amended by CCP 12/6/14; §F amended by CCP 12/6/14 and 2015 c.212 §7; §H adopted by CCP 12/6/14; §§A,B,C,E,F,G amended by CCP 12/3/16]

## RULE 10

TIME

**A Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any court, or by order of court the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the period runs until the end of the next day that is not a Saturday or a legal holiday. If the period so computed relates to serving a public officer or filing a document at a public office, and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day shall be excluded in computing the period of time within which service is to be made or the document is to be filed, in which event the period runs until the close of office hours on the next day the office is open for business. When the period of time prescribed or allowed (without regard to section B of this rule) is less than 7 days, intermediate Saturdays and legal holidays, including Sundays, shall be excluded in the computation. As used in this rule, “legal holiday” means legal holiday as defined in ORS 187.010 and 187.020. This section does not apply to any time limitation governed by ORS 174.120.

**B Additional time after service by mail, e-mail, facsimile communication, or electronic service.** Except for service of summons, whenever a party has the right to or is required to do some act within a prescribed period after the service of a notice or other document upon that party and the notice or document is served by mail, e-

mail, facsimile communication, or electronic service, 3 days shall be added to the prescribed period. [CCP 12/2/78; §C amended by CCP 12/13/80; §A amended by CCP 12/10/88 and 1/6/89; §A amended by 2002 s.s.1 c.10 §9; §A amended by CCP 12/6/14 and 2015 c.212 §8; §B amended by CCP 12/6/14 and repealed by 2015 c.212 §4; §C amended by CCP 12/6/14 and amended and redesignated §B by 2015 c.212 §6]

## RULE 11 (Reserved for Expansion)

## RULE 12

PLEADINGS LIBERALLY CONSTRUED; DISREGARD OF ERROR

**A Liberal construction.** All pleadings shall be liberally construed with a view of substantial justice between the parties.

**B Disregard of error or defect not affecting substantial right.** The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party. [CCP 12/2/78]

## RULE 13

KINDS OF PLEADINGS ALLOWED; FORMER PLEADINGS ABOLISHED

**A Pleadings.** The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses.

**B Pleadings allowed.** There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff, including a party joined under Rule 22 D, and a cross-claim against a defendant, including a party joined under Rule 22 D. A pleading against any person joined under Rule 22 C is a third party complaint. There shall be an answer to a cross-claim and a third party complaint. There shall be a reply to a counterclaim denominated as such and a reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer. There shall be no other pleading unless the court orders otherwise.

**C Pleadings abolished.** Demurrers and pleas shall not be used. [CCP 12/2/78; amended by 1979 c.284 §11]

## RULE 14

MOTIONS

**A Motions; in writing; grounds.** An application for an order is a motion. Every motion, unless made during trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

**B Form.** The rules applicable to captions, signing, and other matters of form of pleadings, including Rule 17 A, apply to all motions and other papers provided for by these rules. [CCP 12/2/78; amended by 1979 c.284 §12]

## RULE 15

TIME FOR FILING PLEADINGS OR MOTIONS

**A Time for filing motions and pleadings.** A motion or answer to the complaint or third party complaint and the reply to a counterclaim or answer to a cross-claim shall be filed with the clerk by the time required by Rule 7 C(2) to appear and defend. Any other motion or responsive pleading shall be filed not later than 10 days after service of the pleading moved against or to which the responsive pleading is directed.

**B Pleading after motion.**

B(1) If the court denies a motion, any responsive pleading required shall be filed within 10 days after service of the order, unless the order otherwise directs.

B(2) If the court grants a motion and an amended pleading is allowed or required, such pleading shall be filed within 10 days after service of the order, unless the order otherwise directs.

**C Responding to amended pleading.** A party shall respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs.

**D Enlarging time to plead or do other act.** The court may, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or allow any other pleading or motion after the time limited by the procedural rules, or by an order enlarge such time. [CCP 12/2/78; §A amended by 1979 c.284 §13; §A amended by CCP 12/10/94]

## RULE 16

FORM OF PLEADINGS

**A Captions; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the register number of the cause, and a designation in accordance with Rule 13 B. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

**B Concise and direct statement; paragraphs; separate statement of claims or defenses.** Every pleading shall consist of plain and concise statements in paragraphs consecutively numbered throughout the pleading with Arabic numerals, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Each separate claim or defense shall be separately stated. Within each claim alternative theories of recovery shall be identified as separate counts.

**C Consistency in pleading alternative statements.** Inconsistent claims or defenses are not objectionable, and when a party is in doubt as to which of two or more statements of fact is true, the party may allege them in the alternative. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based upon legal or equitable grounds or upon both. All statements shall be made subject to the obligation set forth in Rule 17.

**D Adoption by reference.** Statements in a pleading may be adopted by reference in a different part of the same pleading. [CCP 12/2/78; §B amended by CCP 12/8/84; §B amended by CCP 12/13/86]

## RULE 17

SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS

**A Signing by party or attorney; certificate.** Every pleading, motion, and other document of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the address of the party. The signature for filings may be in the form approved for electronic filing in accordance with these rules or any other rule of court. Pleadings need not be verified or accompanied by an affidavit or declaration.

**B Pleadings, motions and other papers not signed.** If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

**C Certifications to court.**

C(1) An attorney or party who signs, files or otherwise submits an argument in support of a pleading, motion or other document makes the certifications to the court identified in subsections (2) to (5) of this section, and further certifies that the certifications are based on the person's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances.

C(2) A party or attorney certifies that the pleading, motion or other document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C(3) An attorney certifies that the claims, defenses, and other legal positions taken in the pleading, motion or other document are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

C(4) A party or attorney certifies that the allegations and other factual assertions in the pleading, motion or other document are supported by evidence. Any allegation or other factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery.

C(5) The party or attorney certifies that any denials of factual assertion are supported by evidence. Any denial of factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party believes that a denial of a factual assertion so identified is reasonably based on a lack of information or belief.

**D Sanctions.**

D(1) The court may impose sanctions against a person or party who is found to have made a false certification under section C of this rule, or who is found to be responsible for a false certification under section C of this rule. A sanction may be imposed under this section only after notice and an opportunity to be heard are provided to the party or attorney. A law firm is jointly liable for any sanction imposed against a partner, associate or employee of the firm, unless the court determines that joint liability would be unjust under the circumstances.

D(2) Sanctions may be imposed under this section upon motion of a party or upon the court's own motion. If the court seeks to impose sanctions on its own motion, the court shall direct the party or attorney to appear before the court and show cause why the sanctions should not be imposed. The court may not issue an order to appear and show cause under this subsection at any time after the filing of a voluntary dismissal, compromise or settlement of the action with respect to the party or attorney against whom sanctions are sought to be imposed.

D(3) A motion by a party to the proceeding for imposition of sanctions under this section must be made separately from other motions and pleadings, and must describe with specificity the alleged false certification. A motion for imposition of sanctions based on a false certification under subsection C(4) of this rule may not be filed until 120 days after the filing of a complaint if the alleged false certification is an allegation or other factual assertion in a complaint filed within 60 days of the running of the statute of limitations for a claim made in the

complaint. Sanctions may not be imposed against a party until at least 21 days after the party is served with the motion in the manner provided by Rule 9. Notwithstanding any other provision of this section, the court may not impose sanctions against a party if, within 21 days after the motion is served on the party, the party amends or otherwise withdraws the pleading, motion, document or argument in a manner that corrects the false certification specified in the motion. If the party does not amend or otherwise withdraw the pleading, motion, document or argument but thereafter prevails on the motion, the court may order the moving party to pay to the prevailing party reasonable attorney fees incurred by the prevailing party by reason of the motion for sanctions.

D(4) Sanctions under this section must be limited to amounts sufficient to reimburse the moving party for attorney fees and other expenses incurred by reason of the false certification, including reasonable attorney fees and expenses incurred by reason of the motion for sanctions, and upon clear and convincing evidence of wanton misconduct amounts sufficient to deter future false certification by the party or attorney and by other parties and attorneys. The sanction may include monetary penalties payable to the court. The sanction must include an order requiring payment of reasonable attorney fees and expenses incurred by the moving party by reason of the false certification.

D(5) An order imposing sanctions under this section must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.

**E Rule not applicable to discovery.** This rule does not apply to any motion, pleading or conduct that is subject to sanction under Rule 46. [CCP 12/2/78; amended by 1979 c.284 §14; §A amended by CCP 12/8/84; amended by CCP 12/13/86; amended by 1987 c.774 §12; amended by 1995 c.618 §4; §D amended by CCP 12/14/96; §A amended by 2003 c.194 §7; §§A,C,D amended by 2007 c.129 §§27,28,29; §A amended by CCP 12/1/12]

## RULE 18

CLAIMS FOR RELIEF

A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall contain:

A A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition.

B A demand of the relief which the party claims; if recovery of money or damages is demanded, the amount thereof shall be stated; relief in the alternative or of several different types may be demanded. [CCP 12/2/78; amended by CCP 12/13/86; amended by 1987 c.774 §12a; amended by CCP 12/15/90]

## RULE 19

RESPONSIVE PLEADINGS

**A Defenses; form of denials.** A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an allegation, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part or a qualification of an allegation, the pleader shall admit so much of the allegation as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all of the allegations of the preceding pleading, the denials may be made as specific

denials of designated allegations or paragraphs, or the pleader may generally deny all of the allegations except such designated allegations or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all of the allegations of the preceding pleading, the pleader may do so by general denial of all allegations of the preceding pleading subject to the obligations set forth in Rule 17.

**B Affirmative defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively: accord and satisfaction; arbitration and award; assumption of risk; claim preclusion; comparative or contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury by fellow servant; issue preclusion; laches; license; payment; release; statute of frauds; statute of limitations; unconstitutionality; waiver; and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

**C Effect of failure to deny.** Allegations in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted are taken as denied or avoided. [CCP 12/2/78; amended by CCP 12/1/12]

## RULE 20

SPECIAL PLEADING RULES

**A Conditions precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

**B Judgment or other determination of court or officer; how pleaded.** In pleading a judgment or other determination of a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading is bound to establish on the trial the facts conferring jurisdiction.

**C Private statute; how pleaded.** In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

**D Corporate existence of city or county and of ordinances or comprehensive plans generally; how pleaded.**

D(1) In pleading the corporate existence of any city, it shall be sufficient to state in the pleading that the city is existing and duly incorporated and organized under the laws of the state of its incorporation. In pleading the existence of any county, it shall be sufficient to state in the pleading that the county is existing and was formed under the laws of the state in which it is located.

D(2) In pleading an ordinance, comprehensive plan, or enactment of any county or incorporated city, or a right derived therefrom, in any court, it shall be sufficient to refer to the ordinance, comprehensive plan, or enactment by its title, if any, otherwise by its commonly accepted name or number, and the date of its passage or the date of its approval

when approval is necessary to render it effective, and the court shall thereupon take judicial notice thereof. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

**E Libel or slander action.**

E(1) In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the plaintiff shall be bound to establish on the trial that it was so published or spoken.

E(2) In the answer, the defendant may allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages, and whether the defendant proves the justification or not, the defendant may give in evidence the mitigating circumstances.

**F Official document or act.** In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

**G Recitals and negative pregnants.** No allegations in a pleading shall be held insufficient on the grounds that they are pled by way of recital rather than alleged directly. No denial shall be treated as an admission on the ground that it contains a negative pregnant.

**H Fictitious parties.** When a party is ignorant of the name of an opposing party and so alleges in a pleading, the opposing party may be designated by any name, and when such party's true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the true name.

**I Designation of unknown heirs in actions relating to property.** When the heirs of any deceased person are proper parties defendant to any action relating to property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of the "unknown heirs" of the deceased.

**J Designation of unknown persons.** In any action to determine any adverse claim, estate, lien, or interest in property, or to quiet title to property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, lien, or interest in the property described in the complaint herein." [CCP 12/2/78]

## RULE 21

DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS

**A How presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim or third party claim, shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is another action pending between the same parties for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or process, (6) that the party asserting the claim is not the real party in

interest, (7) failure to join a party under Rule 29, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows that the action has not been commenced within the time limited by statute. A motion to dismiss making any of these defenses shall be made before pleading if a further pleading is permitted. The grounds upon which any of the enumerated defenses are based shall be stated specifically and with particularity in the responsive pleading or motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If, on a motion to dismiss asserting defenses (1) through (7), the facts constituting such defenses do not appear on the face of the pleading and matters outside the pleading, including affidavits, declarations and other evidence, are presented to the court, all parties shall be given a reasonable opportunity to present affidavits, declarations and other evidence, and the court may determine the existence or nonexistence of the facts supporting such defense or may defer such determination until further discovery or until trial on the merits. If the court grants a motion to dismiss, the court may enter judgment in favor of the moving party or grant leave to file an amended complaint. If the court grants the motion to dismiss on the basis of defense (3), the court may enter judgment in favor of the moving party, stay the proceeding, or defer entry of judgment.

**B Motion for judgment on the pleadings.** After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings.

**C Preliminary hearings.** The defenses specifically denominated (1) through (9) in section A of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings mentioned in section B of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

**D Motion to make more definite and certain.** Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules upon motion by a party within 10 days after service of the pleading, or upon the court's own initiative at any time, the court may require the pleading to be made definite and certain by amendment when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge, defense, or reply is not apparent. If the motion is granted and the order of the court is not obeyed within 10 days after service of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

**E Motion to strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 10 days after the service of the pleading upon such party or upon the court's own initiative at any time, the court may order stricken: (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.

**F Consolidation of defenses in motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule, except a motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process,

but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection G(3) of this rule on any of the grounds there stated. A party may make one motion to dismiss for lack of jurisdiction over the person or insufficiency of summons or process or insufficiency of service of summons or process without consolidation of defenses required by this section.

**G Waiver or preservation of certain defenses.**

G(1) A defense of lack of jurisdiction over the person, that there is another action pending between the same parties for the same cause, insufficiency of summons or process, or insufficiency of service of summons or process, is waived under either of the following circumstances: (a) if the defense is omitted from a motion in the circumstances described in section F of this rule, or (b) if the defense is neither made by motion under this rule nor included in a responsive pleading. The defenses referred to in this subsection shall not be raised by amendment.

G(2) A defense that a plaintiff has not the legal capacity to sue, that the party asserting the claim is not the real party in interest, or that the action has not been commenced within the time limited by statute, is waived if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof. Leave of court to amend a pleading to assert the defenses referred to in this subsection shall only be granted upon a showing by the party seeking to amend that such party did not know and reasonably could not have known of the existence of the defense or that other circumstances make denial of leave to amend unjust.

G(3) A defense of failure to state ultimate facts constituting a claim, a defense of failure to join a party indispensable under Rule 29, and an objection of failure to state a legal defense to a claim or insufficiency of new matter in a reply to avoid a defense, may be made in any pleading permitted or ordered under Rule 13 B or by motion for judgment on the pleadings, or at the trial on the merits. The objection or defense, if made at trial, shall be disposed of as provided in Rule 23 B in light of any evidence that may have been received.

G(4) If it appears by motion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action. [CCP 12/2/78; §§F,G amended by 1979 c.284 §§15,16; §F amended by CCP 12/13/80; §A amended by CCP 12/4/82; §E amended by 1983 c.763 §58; §E amended by CCP 12/8/84; §G amended by 1987 c.714 §6; §G amended by 1995 c.658 §118; §A amended by CCP 12/9/00; §A amended by 2003 c.194 §8; §A amended by CCP 12/11/10]

## RULE 22

COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD PARTY CLAIMS

**A Counterclaims.**

A(1) Each defendant may set forth as many counterclaims, both legal and equitable, as that defendant may have against a plaintiff.

A(2) A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

**B Cross-claim against codefendant.**

B(1) In any action where two or more parties are joined as defendants, any defendant may in that defendant's answer allege a cross-claim against any other defendant. A cross-claim asserted against a codefendant must be one existing in favor of the defendant asserting the cross-claim and against another defendant, between whom a separate judgment might be

had in the action, and shall be one arising out of the occurrence or transaction set forth in the complaint or related to any property that is the subject matter of the action brought by plaintiff.

B(2) A cross-claim may include a claim that the defendant against whom it is asserted is liable, or may be liable, to the defendant asserting the cross-claim for all or part of the claim asserted by the plaintiff.

B(3) An answer containing a cross-claim shall be served on the parties who have appeared.

**C Third-party practice.**

C(1) After commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff as a matter of right not later than 90 days after service of the plaintiff's summons and complaint on the defending party. Otherwise the third-party plaintiff must obtain agreement of parties who have appeared and leave of court. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall assert any defenses to the third-party plaintiff's claim as provided in Rule 21 and may assert counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in this rule. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. Any party may assert any claim against a third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert the third-party defendant's defenses as provided in Rule 21 and may assert the third-party defendant's counterclaims and cross-claims as provided in this rule. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this section against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

C(2) A plaintiff against whom a counterclaim has been asserted may cause a third-party defendant to be brought in under circumstances that would entitle a defendant to do so under subsection C(1) of this section.

**D Joinder of additional parties.**

D(1) Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 28 and Rule 29.

D(2) A defendant may, in an action on a contract brought by an assignee of rights under that contract, join as parties to that action all or any persons liable for attorney fees under ORS 20.097. As used in this subsection "contract" includes any instrument or document evidencing a debt.

D(3) In any action against a party joined under this section of this rule, the party joined shall be treated as a defendant for purposes of service of summons and time to answer under Rule 7.

**E Separate trial.** On the motion of any party or on the court's own initiative, the court may order a separate trial of any counterclaim, cross-claim, or third-party claim so alleged if to do so would be more convenient, avoid prejudice, or be more economical and expedite the matter. [CCP 12/2/78; §D amended by 1979 c.284 §17; §A amended by CCP 12/13/80; §C amended by CCP 12/4/82; §C amended by CCP 12/10/94; amended by CCP 12/3/16]

## RULE 23

AMENDED AND SUPPLEMENTAL PLEADINGS

**A Amendments.** A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Whenever an amended pleading is filed, it shall be served upon all parties who are not in default, but as to all parties who are in default or against whom a default previously has been entered, judgment may be rendered in accordance with the prayer of the original pleading served upon them; and neither the amended pleading nor the process thereon need be served upon such parties in default unless the amended pleading asks for additional relief against the parties in default.

**B Amendments to conform to the evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice such party in maintaining an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

**C Relation back of amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, such party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining any defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party brought in by amendment.

**D How amendment made.** When any pleading is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended pleading, or by interlineation, deletion, or otherwise. Such amended pleading shall be complete in itself, without reference to the original or any preceding amended one.

**E Supplemental pleadings.** Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order,

specifying the time therefor. [CCP 12/2/78; §§B,D,E,F,G amended by CCP 12/13/80]

## RULE 24

JOINDER OF CLAIMS

**A Permissive joinder.** A plaintiff may join in a complaint, either as independent or as alternate claims, as many claims, legal or equitable, as the plaintiff has against an opposing party.

**B Forcible entry and detainer and rental due.** If a claim of forcible entry and detainer and a claim for rental due are joined, the defendant shall have the same time to appear as is provided by rule or statute in actions for the recovery of rental due.

**C Separate statement.** The claims joined must be separately stated and must not require different places of trial. [CCP 12/2/78; amended by 1979 c.284 §18]

## RULE 25

EFFECT OF PROCEEDING AFTER MOTION OR AMENDMENT

**A Amendment or pleading over after motion; non-waiver of defenses or objections.** When a motion to dismiss or a motion to strike an entire pleading or a motion for a judgment on the pleadings under Rule 21 is allowed, the court may, upon such terms as may be proper, allow the party to amend the pleading. In all cases where part of a pleading is ordered stricken, the pleading shall be amended in accordance with Rule 23 D. By amending a pleading pursuant to this section, the party amending such pleading shall not be deemed thereby to have waived the right to challenge the correctness of the court's ruling.

**B Amendment of pleading; objections to amended pleading not waived.** If a pleading is amended, whether pursuant to sections A or B of Rule 23 or section A of this rule or pursuant to other rule or statute, a party who has filed and received a court's ruling on any motion directed to the preceding pleading does not waive any defenses or objections asserted in such motion by failing to reassert them against the amended pleading.

**C Denial of motion; non-waiver by filing responsive pleading.** If an objection or defense is raised by motion, and the motion is denied, the party filing the motion does not waive the objection or defense by filing a responsive pleading or by failing to re-assert the objection or defense in the responsive pleading or by otherwise proceeding with the prosecution or defense of the action. [CCP 12/13/80]

## RULE 26

REAL PARTY IN INTEREST; CAPACITY OF PARTNERSHIPS AND ASSOCIATIONS

**A Real party in interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, conservator, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that party's own name without joining the party for whose benefit the action is brought; and when a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of the state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall

have the same effect as if the action had been commenced in the name of the real party in interest.

**B Partnerships and associations.** Any partnership or other unincorporated association, whether organized for profit or not, may sue in any name which it has assumed and be sued in any name which it has assumed or by which it is known. Any member of the partnership or other unincorporated association may be joined as a party in an action against the partnership or unincorporated association. [CCP 12/2/78; amended by CCP 12/13/80]

## RULE 27

MINOR OR INCAPACITATED PARTIES

**A Appearance of parties by guardian or conservator.** When a person who has a conservator of that person's estate or a guardian is a party to any action, the person shall appear by the conservator or guardian as may be appropriate or, if the court so orders, by a guardian ad litem appointed by the court in which the action is brought. The appointment of a guardian ad litem shall be pursuant to this rule unless the appointment is made on the court's motion or a statute provides for a procedure that varies from the procedure specified in this rule.

**B Appointment of guardian ad litem for minors; incapacitated or financially incapable parties.** When a minor or a person who is incapacitated or financially incapable, as those terms are defined in ORS 125.005, is a party to an action and does not have a guardian or conservator, the person shall appear by a guardian ad litem appointed by the court in which the action is brought and pursuant to this rule, as follows:

B(1) when the plaintiff or petitioner is a minor:

B(1)(a) if the minor is 14 years of age or older, upon application of the minor; or

B(1)(b) if the minor is under 14 years of age, upon application of a relative or friend of the minor, or other interested person;

B(2) when the defendant or respondent is a minor:

B(2)(a) if the minor is 14 years of age or older, upon application of the minor filed within the period of time specified by these rules or any other rule or statute for appearance and answer after service of a summons; or

B(2)(b) if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor, or other interested person;

B(3) when the plaintiff or petitioner is a person who is incapacitated or financially incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend of the person, or other interested person; or

B(4) when the defendant or respondent is a person who is incapacitated or is financially incapable, as those terms are defined in ORS 125.005, upon application of a relative or friend of the person, or other interested person, filed within the period of time specified by these rules or any other rule or statute for appearance and answer after service of a summons or, if the application is not so filed, upon application of any party other than the person.

**C Discretionary appointment of guardian ad litem for a party with a disability.** When a person with a disability, as defined in ORS 124.005, is a party to an action, the person may appear by a guardian ad litem appointed by the court in which the action is brought and pursuant to this rule upon motion and one or more supporting affidavits or declarations establishing that the appointment would assist the person in prosecuting or defending the action.

**D Method of seeking appointment of guardian ad litem.** A person seeking appointment of a guardian ad litem shall do so by filing a motion and seeking an order in the proceeding in which the guardian ad litem is sought. The motion shall be supported by one or more affidavits or declarations that contain facts sufficient to prove by a preponderance of the evidence that the party on whose behalf the motion is filed is a minor, is incapacitated or is financially incapable, as those terms are defined in ORS 125.005, or is a person with a disability, as defined in ORS 124.005. The court may appoint a suitable person as a guardian ad litem before notice is given pursuant to section E of this rule; however, the appointment shall be reviewed by the court if an objection is received as specified in subsection F(2) or F(3) of this rule.

**E Notice of motion seeking appointment of guardian ad litem.** Unless waived under section H of this rule, no later than 7 days after filing the motion for appointment of a guardian ad litem, the person filing the motion must provide notice as set forth in this section, or as provided in a modification of the notice requirements as set forth in section H of this rule. Notice shall be provided by mailing to the address of each person or entity listed below, by first class mail, a true copy of the motion, any supporting affidavits or declarations, and the form of notice prescribed in section F of this rule.

E(1) If the party is a minor, notice shall be provided to the minor if the minor is 14 years of age or older; to the parents of the minor; to the person or persons having custody of the minor; to the person who has exercised principal responsibility for the care and custody of the minor during the 60-day period before the filing of the motion; and, if the minor has no living parents, to any person nominated to act as a fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

E(2) If the party is 18 years of age or older, notice shall be given:

E(2)(a) to the person;

E(2)(b) to the spouse, parents, and adult children of the person;

E(2)(c) if the person does not have a spouse, parent, or adult child, to the person or persons most closely related to the person;

E(2)(d) to any person who is cohabiting with the person and who is interested in the affairs or welfare of the person;

E(2)(e) to any person who has been nominated as fiduciary or appointed to act as fiduciary for the person by a court of any state, any trustee for a trust established by or for the person, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660, and any person acting as attorney-in-fact for the person under a power of attorney;

E(2)(f) if the person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, to a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the person;

E(2)(g) if the person is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by the State of Oregon through the Department of Human Services, to a representative of the department;

E(2)(h) if the person is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, to a representative of the authority;

E(2)(i) if the person is committed to the legal and physical custody of the Department of Corrections, to the Attorney General and the superintendent or other officer in charge of the facility in which the person is confined;

E(2)(j) if the person is a foreign national, to the consulate for the person's country; and

E(2)(k) to any other person that the court requires.

**F Contents of notice.** The notice shall contain:

F(1) the name, address, and telephone number of the person making the motion, and the relationship of the person making the motion to the person for whom a guardian ad litem is sought;

F(2) a statement indicating that objections to the appointment of the guardian ad litem must be filed in the proceeding no later than 14 days from the date of the notice; and

F(3) a statement indicating that the person for whom the guardian ad litem is sought may object in writing to the clerk of the court in which the matter is pending and stating the desire to object.

**G Hearing.** As soon as practicable after any objection is filed, the court shall hold a hearing at which the court will determine the merits of the objection and make any order that is appropriate.

**H Waiver or modification of notice.** For good cause shown, the court may waive notice entirely or make any other order regarding notice that is just and proper in the circumstances.

**I Settlement.** Except as permitted by ORS 126.725, in cases where settlement of the action will result in the receipt of property or money by a party for whom a guardian ad litem was appointed under section B of this rule, court approval of any settlement must be sought and obtained by a conservator unless the court, for good cause shown and on any terms that the court may require, expressly authorizes the guardian ad litem to enter into a settlement agreement. [CCP 12/2/78; amended by 1979 c.284 §19; §B amended by CCP 12/15/90; §B amended by 1995 c.79 §403 and 1995 c.664 §100; amended by CCP 12/6/14; §§C,D,E,F,G,H,I adopted by CCP 12/6/14; §B amended by CCP 12/3/16]

## RULE 28

JOINDER OF PARTIES

**A Permissive joinder as plaintiffs or defendants.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

**B Separate trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to unnecessary expense by the inclusion of a party against whom that party asserts no claim and who asserts no claim against that party. The court may order separate trials or make other orders to prevent delay or prejudice. [CCP 12/2/78]

## RULE 29

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

**A Persons to be joined if feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in that person's absence complete relief cannot be accorded

among those already parties, or (2) that person claims an interest relating to the subject of the action and is so situated that the disposition in that person's absence may (a) as a practical matter impair or impede the person's ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such person has not been so joined, the court shall order that such person be made a party. If a person should join as a plaintiff but refuses to do so, such person shall be made a defendant, the reason being stated in the complaint.

**B Determination by court whenever joinder not feasible.** If a person as described in subsections A(1) and (2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

**C Exception of class actions.** This rule is subject to the provisions of Rule 32. [CCP 12/2/78; amended by 1979 c.284 §20]

## RULE 30

MISJOINDER AND NONJOINDER OF PARTIES

**Misjoinder and nonjoinder of parties.** Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately. [CCP 12/2/78]

## RULE 31

INTERPLEADER

**A Parties.** Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but adverse to and independent of one another, or that the plaintiff alleges that plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties otherwise permitted by rule or statute.

**B Procedure.** Any property or amount involved as to which the plaintiff admits liability may, upon order of the court, be deposited with the court or otherwise preserved, or secured by bond in an amount sufficient to assure payment of the liability admitted. The court may thereafter enjoin all parties before it from commencing or prosecuting any other action regarding the subject matter of the interpleader action. Upon hearing, the court may order the plaintiff discharged from liability as to property deposited or secured before determining the rights of the claimants thereto.

**C Attorney fees.** In any suit or action in interpleader filed pursuant to this rule by any party other than a party who has been compensated for acting as a surety with respect to the funds or property interpled, the party filing the suit or action in interpleader shall be awarded a reasonable attorney fee in addition to costs and disbursements upon the court ordering that the funds or property interpled be deposited with the court, secured or otherwise preserved and that the party filing the suit or action in interpleader be discharged from liability as to the funds or property. The attorney fees awarded shall be assessed against and paid from the funds or property ordered interpled by the court. [CCP 12/2/78; amended by 1991 c.733 §1]

## RULE 32

CLASS ACTIONS

**A Requirement for class action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if:

A(1) The class is so numerous that joinder of all members is impracticable;

A(2) There are questions of law or fact common to the class;

A(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;

A(4) The representative parties will fairly and adequately protect the interests of the class; and

A(5) In an action for damages, the representative parties have complied with the prelitigation notice provisions of section H of this rule.

**B Class action maintainable.** An action may be maintained as a class action if the prerequisites of section A of this rule are satisfied, and in addition, the court finds that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to this finding include:

B(1) The extent to which the prosecution of separate actions by or against individual members of the class creates a risk of:

B(1)(a) Inconsistent or varying adjudications with respect to members of the class which would establish incompatible standards of conduct for the party opposing the class; or

B(1)(b) Adjudications with respect to members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

B(2) The extent to which the relief sought would take the form of injunctive relief or corresponding declaratory relief with respect to the class as a whole;

B(3) The extent to which questions of law or fact common to the members of the class predominate over any questions affecting only individual members;

B(4) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

B(5) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

B(6) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

B(7) The difficulties likely to be encountered in the management of a class action that will be eliminated or significantly reduced if the controversy is adjudicated by other available means; and

B(8) Whether or not the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

**C Determination by order whether class action to be maintained.**

C(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether and with respect to what claims or issues it is to be so maintained and shall find the facts specially and state separately its conclusions thereon. An order under this section may be conditional, and may be altered or amended before the decision on the merits.

C(2) Where a party has relied upon a statute or law which another party seeks to have declared invalid, or where a party has in good faith relied upon any legislative, judicial, or administrative interpretation or regulation which would necessarily have to be voided or held inapplicable if another party is to prevail in the class action, the court may postpone a determination under subsection (1) of this section until the court has made a determination as to the validity or applicability of the statute, law, interpretation, or regulation.

**D Dismissal or compromise of class actions; court approval required; when notice required.**

Any action filed as a class action in which there has been no ruling under subsection C(1) of this rule and any action ordered maintained as a class action shall not be voluntarily dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to some or all members of the class in such manner as the court directs, except that if the dismissal is to be without prejudice or with prejudice against the class representative only, then such dismissal may be ordered without notice if there is a showing that no compensation in any form has passed directly or indirectly from the party opposing the class to the class representative or to the class representative's attorney and that no promise of such compensation has been made. If the statute of limitations has run or may run against the claim of any class member, the court may require appropriate notice.

**E Court authority over conduct of class actions.**

In the conduct of actions to which this rule applies, the court may make appropriate orders which may be altered or amended as may be desirable:

E(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument, including precertification determination of a motion made by any party pursuant to Rules 21 or 47 if the court concludes that such determination will promote the fair and efficient adjudication of the controversy and will not cause undue delay;

E(2) Requiring, for the protection of class members or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all class members of any step in the action, of the proposed extent of the judgment; of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses or otherwise to come into the action, or to be excluded from the class;

E(3) Imposing conditions on the representative parties, class members, or intervenors;

E(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

E(5) Dealing with similar procedural matters.

**F Notice and exclusion.**

F(1) When ordering that an action be maintained as a class action under this rule, the court shall direct that notice be given to some or all members of the class under subsection E(2) of this rule, shall determine when and how this notice should be given and shall determine

whether, when, how, and under what conditions putative members may elect to be excluded from the class. The matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and the relief sought; (b) the extent and nature of any member's injury or liability; (c) the interest of the party opposing the class in securing a final resolution of the matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible prejudice to members to whom notice is not directed. When appropriate, exclusion may be conditioned on a prohibition against institution or maintenance of a separate action on some or all of the matters in controversy in the class action or a prohibition against use in a separately maintained action of any judgment rendered in favor of the class from which exclusion is sought.

F(2) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The court may, however, order that defendant bear all or a specified part of the costs of any notice included with a regular mailing by defendant to its current customers or employees. The court may hold a hearing to determine how the costs of such notice shall be apportioned.

F(3) No duty of compliance with due process notice requirements is imposed on a defendant by reason of the defendant including notice with a regular mailing by the defendant to current customers or employees of the defendant under this section.

F(4) As used in this section, “customer” includes a person, including but not limited to a student, who has purchased services or goods from a defendant.

**G Commencement or maintenance of class actions regarding particular issues; subclasses.** When appropriate an action may be brought or ordered maintained as a class action with respect to particular claims or issues or by or against multiple classes or subclasses. Each subclass must separately satisfy all requirements of this rule except for subsection A(1).

**H Notice and demand required prior to commencement of action for damages.**

H(1) Thirty days or more prior to the commencement of an action for damages pursuant to the provisions of sections A and B of this rule, the potential plaintiffs' class representative shall:

H(1)(a) Notify the potential defendant of the particular alleged cause of action; and

H(1)(b) Demand that such person correct or rectify the alleged wrong.

H(2) Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, such person's principal place of business within this state, or, in the case of a corporation or limited partnership not authorized to transact business in this state, to the principal office or place of business of the corporation or limited partnership, and to any address the use of which the class representative knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

**I Limitation on maintenance of class actions for damages.** No action for damages may be maintained under the provisions of sections A and B of this rule upon a showing by a defendant that all of the following exist:

I(1) All potential class members similarly situated have been identified, or a reasonable effort to identify such other people has been made;

I(2) All potential class members so identified have been notified that upon their request the defendant will make the appropriate compensation, correction, or remedy of the alleged wrong;

I(3) Such compensation, correction, or remedy has been, or, in a reasonable time, will be, given; and

I(4) Such person has ceased from engaging in, or if immediate cessation is impossible or unreasonably expensive under the circumstances, such person will, within a reasonable time, cease to engage in such methods, acts, or practices alleged to be violative of the rights of potential class members.

**J Application of sections H and I of this rule to actions for equitable relief; amendment of complaints for equitable relief to request damages permitted.** An action for equitable relief brought under sections A and B of this rule may be commenced without compliance with the provisions of section H of this rule. Not less than 30 days after the commencement of an action for equitable relief, and after compliance with the provisions of section H of this rule, the class representative's complaint may be amended without leave of court to include a request for damages. The provisions of section I of this rule shall be applicable if the complaint for injunctive relief is amended to request damages.

**K Coordination of pending class actions sharing common question of law or fact.**

K(1)(a) When class actions sharing a common question of fact or law are pending in different courts, the presiding judge of any such court, upon motion of any party or on the court's own initiative, may request the Supreme Court to assign a Circuit Court, Court of Appeals, or Supreme Court judge to determine whether coordination of the actions is appropriate, and a judge shall be so assigned to make that determination.

K(1)(b) Coordination of class actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and personnel; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied.

K(2) If the assigned judge determines that coordination is appropriate, such judge shall order the actions coordinated, report that fact to the Chief Justice of the Supreme Court, and the Chief Justice shall assign a judge to hear and determine the actions in the site or sites the Chief Justice deems appropriate.

K(3) The judge of any court in which there is pending an action sharing a common question of fact or law with coordinated actions, upon motion of any party or on the court's own initiative, may request the judge assigned to hear the coordinated action for an order coordinating such actions. Coordination of the action pending before the judge so requesting shall be determined under the standards specified in subsection (1) of this section.

K(4) Pending any determination of whether coordination is appropriate, the judge assigned to make the determination may stay any action being considered for, or affecting any action being considered for, coordination.

K(5) Notwithstanding any other provision of law, the Supreme Court shall provide by rule the practice and procedure for coordination of class actions in convenient courts, including provision for giving notice and presenting evidence.

**L Form of judgment.** The judgment in an action ordered maintained as a class action, whether or not favorable to the class, must generally describe the members of the class and must specifically identify any persons who requested

exclusion from the class and are not bound by the judgment.

**M Attorney fees, costs, disbursements, and litigation expenses.**

M(1)(a) Attorney fees for representing a class are subject to control of the court.

M(1)(b) If under an applicable provision of law a defendant or defendant class is entitled to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and those members of the class who have appeared individually are liable for those amounts. If a plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court may apportion the fees, costs, or disbursements among the members of the class.

M(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose, the court may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery.

M(1)(d) The court may order the adverse party to pay to the prevailing class its reasonable attorney fees and litigation expenses if permitted by law in similar cases not involving a class.

M(1)(e) In determining the amount of attorney fees for a prevailing class the court shall consider the following factors:

M(1)(e)(i) The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;

M(1)(e)(ii) Results achieved and benefits conferred upon the class;

M(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

M(1)(e)(iv) The contingent nature of success; and

M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Professional Conduct.

M(2) Before a hearing under section C of this rule or at any other time the court directs, the representative parties and the attorney for the representative parties shall file with the court, jointly or separately:

M(2)(a) A statement showing any amount paid or promised them by any person for the services rendered or to be rendered in connection with the action or for the costs and expenses of the litigation and the source of all of the amounts;

M(2)(b) A copy of any written agreement, or a summary of any oral agreement, between the representative parties and their attorney concerning financial arrangement or fees; and

M(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the representative parties or the attorney to share these amounts with any person other than a member, regular associate, or an attorney regularly of counsel with the law firm of the representative parties' attorney. This statement shall be supplemented promptly if additional arrangements are made.

**N Statute of limitations.** The statute of limitations is tolled for all class members upon the commencement of an action asserting a class action. The statute of limitations resumes running against a member of a class:

N(1) Upon filing of an election of exclusion by such class member;

N(2) Upon entry of an order of certification, or of an amendment thereof, eliminating the class member from the class;

N(3) Except as to representative parties, upon entry of an order under section C of this rule refusing to certify the class as a class action; and

N(4) Upon dismissal of the action without an adjudication on the merits.

**O Payment of damages.** As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the

court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

(1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and

(2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members. [CCP 12/2/78; amended by CCP 12/13/80; amended by 1981 c.912 §1; §H amended by CCP 12/8/84; amended by CCP 12/12/92; §F amended by CCP 12/10/94; §N amended by CCP 12/9/00; §§F,M amended by 2003 c.576 §§173,259; §§F,N amended by CCP 12/9/06; §K deleted and §§L,M,N,O redesignated and amended by 2009 c.552 §§1 to 5; §§F,L amended by 2015 c.2 §§1,2; §O added by 2015 c.2 §3]

## RULE 33

INTERVENTION

**A Definition.** Intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, by uniting with the defendant in resisting the claims of the plaintiff, or by demanding something adversely to both the plaintiff and defendant.

**B Intervention of right.** At any time before trial, any person shall be permitted to intervene in an action when a statute of this state, these rules, or the common law, confers an unconditional right to intervene.

**C Permissive intervention.** At any time before trial, any person who has an interest in the matter in litigation may, by leave of court, intervene. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

**D Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 9. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the court allows the intervention, parties shall, within 10 days, file those responsive pleadings which are permitted or required by these rules for such pleading. [CCP 12/2/78; §B amended by 1979 c.284 §21]

## RULE 34

SUBSTITUTION OF PARTIES

**A Nonabatement of action by death, disability, or transfer.** No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the claim survives or continues.

**B Death of a party; continued proceedings.** In case of the death of a party, the court shall, on motion, allow the action to be continued:

B(1) By such party's personal representative or successors in interest at any time within one year after such party's death; or

B(2) Against such party's personal representative or successors in interest unless the personal representative or successors in interest mail or deliver notice including the information required by ORS 115.003 (3) to the claimant or to the claimant's attorney if the claimant is known to be represented, and the claimant or his attorney fails to move the court to substitute the personal representative or successors in interest within 30 days of mailing or delivery.

**C Disability of a party; continued proceedings.** In case of the disability of a party, the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against the party's guardian or conservator or successors in interest.

**D Death of a party; surviving parties.** In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be shown upon the record by a written statement of a party signed in conformance with Rule 17 and the action shall proceed in favor of or against the surviving parties.

**E Transfer of interest.** In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

**F Public officers; death or separation from office.**

F(1) When a public officer is a party to an action in such officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and such officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

F(2) When a public officer sues or is sued in such officer's official capacity, such officer may be described as a party by official title rather than by name; but the court may require such officer's name to be added.

**G Procedure.** The motion for substitution may be made by any party, or by the successors in interest or representatives of the deceased party or the party with a disability, or the successors in interest of the transferor and shall be served on the parties as provided in Rule 9 and upon persons not parties in the manner provided in Rule 7 for the service of a summons. [CCP 12/2/78; §D amended by 1979 c.284 §22; §B amended by CCP 12/14/02; §G amended by 2007 c.70 §5]

## RULE 35 (Reserved for Expansion)

## RULE 36

GENERAL PROVISIONS GOVERNING DISCOVERY

**A Discovery methods.** Parties may obtain discovery by one or more of the following methods: depositions on oral examination or written questions; production of documents or things or permission to enter land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

**B Scope of discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

B(1) **In general.** For all forms of discovery, parties may inquire regarding any matter, not privileged, that is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the

information sought appears reasonably calculated to lead to the discovery of admissible evidence.

B(2) **Insurance agreements or policies.**

B(2)(a) **Requirement to disclose.** A party, on the request of an adverse party, shall disclose:

B(2)(a)(i) the existence and contents of any insurance agreement or policy under which a person transacting insurance may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

B(2)(a)(ii) the existence of any coverage denial or reservation of rights, and identify the provisions in any insurance agreement or policy on which such coverage denial or reservation of rights is based.

(2)(b) **Procedure for disclosure.** The obligation to disclose under this subsection shall be performed as soon as practicable following the filing of the complaint and the request to disclose. The court may supervise the exercise of disclosure to the extent necessary to ensure that it proceeds properly and expeditiously. However, the court may limit the extent of disclosure under this subsection as provided in section C of this rule.

B(2)(c) **Admissibility; applications for insurance.** Information concerning the insurance agreement or policy is not by reason of disclosure admissible in evidence at trial. For purposes of this subsection, an application for insurance shall not be treated as part of an insurance agreement or policy.

B(2)(d) **Definition.** As used in this subsection, "disclose" means to afford the adverse party an opportunity to inspect or copy the insurance agreement or policy.

B(3) **Trial preparation materials.**

B(3)(a) **Materials subject to a showing of substantial need.** Subject to the provisions of Rule 44, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection B(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has substantial need of the materials in the preparation of such party's case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

B(3)(b) **Prior statements.** A party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that party. On request, a person who is not a party may obtain, without the required showing, a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person or party requesting the statement may move for a court order. The provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the motion. For purposes of this subsection, a statement previously made is either: a written statement signed or otherwise adopted or approved by the person making it; or a stenographic, mechanical, electrical, or other recording, or a transcription that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

**C Court order limiting extent of disclosure.**

C(1) **Relief available; grounds for limitation.** On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from

annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: that the discovery not be had; that the discovery may be had only on specified terms and conditions, including a designation of the time or place; that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; that discovery be conducted with no one present except persons designated by the court; that a deposition after being sealed be opened only by order of the court; that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or that to prevent hardship the party requesting discovery pay to the other party reasonable expenses incurred in attending the deposition or otherwise responding to the request for discovery.

C(2) **Denial of motion.** If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the motion. [CCP 12/2/78; §B amended by 1979 c.284 §23; §B(3) amended by CCP 12/13/80; §B amended by CCP 12/11/10; amended by CCP 12/3/16]

## RULE 37

PERPETUATION OF TESTIMONY OR EVIDENCE BEFORE ACTION OR PENDING APPEAL

**A Before action.**

A(1) **Petition.** A person who desires to perpetuate testimony or to obtain discovery to perpetuate evidence under Rule 43 or Rule 44 regarding any matter that may be cognizable in any court of this state may file a petition in the circuit court in the county of such person's residence or the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner, or the petitioner's personal representatives, heirs, beneficiaries, successors, or assigns are likely to be a party to an action cognizable in a court of this state and are presently unable to bring such an action or defend it, or that the petitioner has an interest in real property or some easement or franchise therein, about which a controversy may arise, which would be the subject of such action; (b) the subject matter of the expected action and petitioner's interest therein and a copy, attached to the petition, of any written instrument the validity or construction of which may be called into question or which is connected with the subject matter of the expected action; (c) the facts which petitioner desires to establish by the proposed testimony or other discovery and petitioner's reasons for desiring to perpetuate; (d) the names or a description of the persons petitioner expects will be adverse parties and their addresses so far as one is known; and, (e) the names and addresses of the parties to be examined or from whom discovery is sought and the substance of the testimony or other discovery which petitioner expects to elicit and obtain from each. The petition shall name persons to be examined and ask for an order authorizing the petitioner to take their depositions for the purpose of perpetuating their testimony, or shall name persons in the petition from whom discovery is sought and shall ask for an order allowing discovery under Rule 43 or Rule 44 from s**uch persons for the purpose of preserving evidence.**

A(2) **Notice and service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse

party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein, for the order described in the petition. The notice shall be served either within or without the state in the manner provided for service of summons in Rule 7, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served with summons in the manner provided in Rule 7, an attorney who shall represent them and whose services shall be paid for by petitioner in an amount fixed by the court, and, in case they are not otherwise represented, shall cross examine the deponent. Testimony and evidence perpetuated under this rule shall be admissible against expected adverse parties not served with notice only in accordance with the applicable rules of evidence. If any expected adverse party is a minor or incompetent, the provisions of Rule 27 apply.

A(3) **Order and examination.** If the court is satisfied that the perpetuation of the testimony or other discovery to perpetuate evidence may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions; or shall make an order designating or describing the persons from whom discovery may be sought under Rule 43 specifying the objects of such discovery; or shall make an order for a physical or mental examination as provided in Rule 44. Discovery may then be had in accordance with these rules. For the purpose of applying these rules to discovery before action, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such discovery was filed.

**B Pending appeal.** If an appeal has been taken from a judgment of a court to which these rules apply or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony or may allow discovery under Rule 43 or Rule 44 for use in the event of further proceedings in such court. In such case the party who desires to perpetuate the testimony or obtain the discovery may make a motion in the court therefor upon the same notice and service thereof as if the action was pending in the circuit court. The motion shall show: (1) the names and addresses of the persons to be examined or from whom other discovery is sought and the substance of the testimony or other discovery which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony or seeking such other discovery. If the court finds that the perpetuation of the testimony or other discovery is proper to avoid a failure or delay of justice, it may make an order as provided in subsection (3) of section A of this rule and thereupon discovery may be had and used in the same manner and under the same conditions as are prescribed in these rules for discovery in actions pending in the circuit court.

**C Perpetuation by action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

**D Filing of depositions.** Depositions taken under this rule shall be filed with the court in which the petition is filed or the motion is made. [CCP 12/2/78]

## RULE 38

PERSONS WHO MAY ADMINISTER OATHS FOR DEPOSITIONS; FOREIGN DEPOSITIONS

**A Within Oregon.**

A(1) Within this state, depositions shall be preceded by an oath or affirmation administered to the deponent by an officer authorized to administer oaths by the laws of this state or by a person specially appointed by the court in which the action is pending. A person so appointed has the power to administer oaths for the purpose of the deposition.

A(2) For purposes of this rule, a deposition taken pursuant to Rule 39 C(7) is taken within this state if either the deponent or the person administering the oath is located in this state.

**B Outside the state.** Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken: (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; (2) before a person appointed or commissioned by the court in which the action is pending, and such a person shall have the power by virtue of such person's appointment or commission to administer any necessary oath and take testimony; or (3) pursuant to a letter rogatory. A commission or letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

**C Foreign depositions and subpoenas.**

C(1) **Definitions.** For the purpose of this section:

C(1)(a) "Foreign subpoena" means a subpoena issued under authority of a court of record of any state other than Oregon.

C(1)(b) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

C(2) **Issuance of subpoena.**

C(2)(a) To request issuance of a subpoena under this section, a party or attorney shall submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state.

C(2)(b) When a party or attorney submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure and requirements, shall assign a case number and promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed. If a party to an out-of-state proceeding retains an attorney licensed to practice in this state, that attorney may assist the clerk in drafting the subpoena.

C(2)(c) A subpoena under this subsection shall:

(i) Conform to the requirements of these Oregon Rules of Civil Procedure, including Rule 55, and conform substantially to the form provided in Rule 55 A but may otherwise incorporate the terms used in the foreign subpoena as long as those terms conform to these rules; and

(ii) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the

subpoena relates and of any party not represented by counsel.

C(3) **Service of subpoena.** A subpoena issued by a clerk of court under subsection (2) of this section shall be served in compliance with Rule 55.

C(4) **Effects of request for subpoena.** A request for issuance of a subpoena under this section does not constitute an appearance in the court. A request does allow the court to impose sanctions for any action in connection with the subpoena that is a violation of applicable law.

C(5) **Motions.** A motion to the court, or a response thereto, for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court pursuant to this section is an appearance before the court and shall comply with the rules and statutes of this state. The motion shall be submitted to the court in the county in which discovery is to be conducted.

C(6) **Uniformity of application and construction.** In applying and construing this section, consideration shall be given to the need to promote the uniformity of the law with respect to its subject matter among states that enact it. [CCP 12/2/78; amended by 1979 c.284 §24; §A amended by CCP 12/12/92; §§B,C amended by CCP 12/11/10; §C amended by 2013 c.1 §2]

## RULE 39

DEPOSITIONS UPON ORAL EXAMINATION

**A When deposition may be taken.** After the service of summons or the appearance of the defendant in any action, or in a special proceeding at any time after a question of fact has arisen, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of the period of time specified in Rule 7 to appear and answer after service of summons on any defendant, except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) a special notice is given as provided in subsection C(2) of this Rule. The attendance of a witness may be compelled by subpoena as provided in Rule 55.

**B Order for deposition or production of prisoner.** The deposition of a person confined in a prison or jail may only be taken by leave of court. The deposition shall be taken on such terms as the court prescribes, and the court may order that the deposition be taken at the place of confinement or, when the prisoner is confined in this state, may order temporary removal and production of the prisoner for purposes of the deposition.

**C Notice of examination.**

C(1) **General requirements.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify such person or the particular class or group to which such person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

C(2) **Special notice.** Leave of court is not required for the taking of a deposition by plaintiff if the notice (a) states that the person to be examined is about to go out of the state, or is bound on a voyage to sea, and will be unavailable for examination unless the deposition is taken before the expiration of the period of time specified in Rule 7 to appear and answer after service of summons on any

defendant, and (b) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and such signature constitutes a certification by the attorney that to the best of such attorney's knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when served with notice under this subsection, the party was unable through the exercise of diligence to obtain counsel to represent such party at the taking of the deposition, the deposition may not be used against such party.

C(3) **Shorter or longer time.** The court may for cause shown enlarge or shorten the time for taking the deposition.

C(4) **Non-stenographic recording.** The notice of deposition required under subsection (1) of this section may provide that the testimony will be recorded by other than stenographic means, in which event the notice shall designate the manner of recording and preserving the deposition. A court may require that the deposition be taken by stenographic means if necessary to assure that the recording be accurate.

C(5) **Production of documents and things.** The notice to a party deponent may be accompanied by a request made in compliance with Rule 43 for the production of documents and tangible things at the taking of the deposition. The procedures of Rule 43 shall apply to the request.

C(6) **Deposition of organization.** A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall provide notice of no fewer than three (3) days before the scheduled deposition, absent good cause or agreement of the parties and the deponent, designating the name(s) of one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and setting forth, for each person designated, the matters on which such person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

C(7) **Deposition by telephone.** Parties may agree by stipulation or the court may order that testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone pursuant to court order, the order shall designate the conditions of taking testimony, the manner of recording the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than pursuant to court order or stipulation made a part of the record, then objections as to the taking of testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording the deposition are waived unless seasonable objection thereto is made at the taking of the deposition. The oath or affirmation may be administered to the deponent, either in the presence of the person administering the oath or over the telephone, at the election of the party taking the deposition.

**D Examination; record; oath; objections.**

D(1) **Examination; cross-examination; oath.** Examination and cross-examination of deponents may proceed as permitted at trial. The person described in Rule 38 shall put the deponent on oath.

D(2) **Record of examination.** The testimony of the deponent shall be recorded either stenographically or as provided in subsection C(4) of this rule. If testimony is recorded pursuant to subsection C(4) of this rule, the party taking the deposition shall retain the

original recording without alteration, unless the recording is filed with the court pursuant to subsection G(2) of this rule, until final disposition of the action. Upon request of a party or deponent and payment of the reasonable charges therefor, the testimony shall be transcribed.

D(3) **Objections.** All objections made at the time of the examination shall be noted on the record. A party or deponent shall state objections concisely and in a non-argumentative and non-suggestive manner. Evidence shall be taken subject to the objection, except that a party may instruct a deponent not to answer a question, and a deponent may decline to answer a question, only:

(a) when necessary to present or preserve a motion under section E of this rule;

(b) to enforce a limitation on examination ordered by the court; or

(c) to preserve a privilege or constitutional or statutory right.

D(4) **Written questions as alternative.** In lieu of participating in an oral examination, parties may serve written questions on the party taking the deposition who shall propound them to the deponent on the record.

**E Motion for court assistance; expenses.**

E(1) **Motion for court assistance.** At any time during the taking of a deposition, upon motion and a showing by a party or a deponent that the deposition is being conducted or hindered in bad faith, or in a manner not consistent with these rules, or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or any party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope or manner of the taking of the deposition as provided in section C of Rule 36. The motion shall be presented to the court in which the action is pending, except that non-party deponents may present the motion to the court in which the action is pending or the court at the place of examination. If the order terminates the examination, it shall be resumed thereafter only on order of the court in which the action is pending. Upon demand of the moving party or deponent, the parties shall suspend the taking of the deposition for the time necessary to make a motion under this subsection.

E(2) **Allowance of expenses.** Subsection A(4) of Rule 46 shall apply to the award of expenses incurred in relation to a motion under this section.

**F Submission to witness; changes; statement.**

F(1) **Necessity of submission to witness for examination.** When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection C(4) of this rule, and if any party or the witness so requests at the time the deposition is taken, the recording or transcription shall be submitted to the witness for examination, changes, if any, and statement of correctness. With leave of court such request may be made by a party or witness at any time before trial.

F(2) **Procedure after examination.** Any changes which the witness desires to make shall be entered upon the transcription or stated in a writing to accompany the recording by the party taking the deposition, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons shall promptly be served upon all parties by the party taking the deposition. The witness shall then state in writing that the transcription or recording is correct subject to the changes, if any, made by the witness, unless the parties waive the statement or the witness is physically unable to make such statement or cannot be found. If the statement is not made by the witness within 30 days, or within a lesser time upon court order, after the deposition is submitted to the witness, the party taking the deposition shall state on the transcription or in a

writing to accompany the recording the fact of waiver, or the physical incapacity or absence of the witness, or the fact of refusal of the witness to make the statement, together with the reasons, if any, given therefor; and the deposition may then be used as fully as though the statement had been made unless, on a motion to suppress under Rule 41 D, the court finds that the reasons given for the refusal to make the statement require rejection of the deposition in whole or in part.

F(3) **No request for examination.** If no examination by the witness is requested, no statement by the witness as to the correctness of the transcription or recording is required.

**G Certification; filing; exhibits; copies.**

G(1) **Certification.** When a deposition is stenographically taken, the stenographic reporter shall certify, under oath, on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. When a deposition is recorded by other than stenographic means as provided in subsection C(4) of this rule, and thereafter transcribed, the person transcribing it shall certify, under oath, on the transcript that such person heard the witness sworn on the recording and that the transcript is a correct transcription of the recording. When a recording or a non-stenographic deposition or a transcription of such recording or non-stenographic deposition is to be used at any proceeding in the action or is filed with the court, the party taking the deposition, or such party's attorney, shall certify under oath that the recording, either filed or furnished to the person making the transcription, is a true, complete, and accurate recording of the deposition of the witness and that the recording has not been altered.

G(2) **Filing.** If requested by any party, the transcript or the recording of the deposition shall be filed with the court where the action is pending. When a deposition is stenographically taken, the stenographic reporter or, in the case of a deposition taken pursuant to subsection C(4) of this rule, the party taking the deposition shall enclose it in a sealed envelope, directed to the clerk of the court or the justice of the peace before whom the action is pending or such other person as may by writing be agreed upon, and deliver or forward it accordingly by mail or other usual channel of conveyance. If a recording of a deposition has been filed with the court, it may be transcribed upon request of any party under such terms and conditions as the court may direct.

G(3) **Exhibits.** Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party. Whenever the person producing materials desires to retain the originals, such person may substitute copies of the originals, or afford each party an opportunity to make copies thereof. In the event the original materials are retained by the person producing them, they shall be marked for identification and the person producing them shall afford each party the subsequent opportunity to compare any copy with the original. The person producing the materials shall also be required to retain the original materials for subsequent use in any proceeding in the same action. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

G(4) **Copies.** Upon payment of reasonable charges therefor, the stenographic reporter or, in the case of a deposition taken pursuant to subsection C(4) of this rule, the party taking the deposition shall furnish a copy of the deposition to any party or to the deponent.

**H Payment of expenses upon failure to appear.**

H(1) **Failure of party to attend.** If the party giving the notice of the taking of the deposition

fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court in which the action is pending may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney's fees.

H(2) **Failure of witness to attend.** If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the attending party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and the attorney for such other party in so attending, including reasonable attorney's fees.

**I Perpetuation of testimony after commencement of action.**

I(1) After commencement of any action, any party wishing to perpetuate the testimony of a witness for the purpose of trial or hearing may do so by serving a perpetuation deposition notice.

I(2) The notice is subject to subsections C(1) through (7) of this rule and shall additionally state:

I(2)(a) A brief description of the subject areas of testimony of the witness; and

I(2)(b) The manner of recording the deposition.

I(3) Prior to the time set for the deposition, any other party may object to the perpetuation deposition. Such objection shall be governed by the standards of Rule 36 C. At any hearing on such an objection, the burden shall be on the party seeking perpetuation to show that: (a) the witness may be unavailable as defined in ORS 40.465 (1)(d) or (e) or 45.250 (2)(a) through (c); or (b) it would be an undue hardship on the witness to appear at the trial or hearing; or (c) other good cause exists for allowing the perpetuation. If no objection is filed, or if perpetuation is allowed, the testimony taken shall be admissible at any subsequent trial or hearing in the action, subject to the Oregon Evidence Code.

I(4) Any perpetuation deposition shall be taken not less than seven days before the trial or hearing on not less than 14 days' notice. However, the court in which the action is pending may allow a shorter period for a perpetuation deposition before or during trial upon a showing of good cause.

I(5) To the extent that a discovery deposition is allowed by law, any party may conduct a discovery deposition of the witness prior to the perpetuation deposition.

I(6) The perpetuation examination shall proceed as set forth in section D of this rule. All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The court before which the testimony is offered shall rule on any objections before the testimony is offered. Any objections not made at the deposition shall be deemed waived. [CCP 12/2/78; §F amended by 1979 c.284 §25; §F amended by CCP 12/13/80; amended by CCP 12/13/86; amended by 1987 c.275 §2; §I amended by 1989 c.980 §5; §§C,E,G amended by CCP 12/12/92; §I amended by CCP 12/14/96; §§D,E amended by CCP 12/12/98; §C amended by CCP 12/1/12]

## RULE 40

DEPOSITIONS UPON WRITTEN QUESTIONS

**A Serving questions; notice.** Upon stipulation of the parties or leave of court for good cause shown, and after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided

in Rule 55. The deposition of a person confined in prison may be taken only as provided in Rule 39 B.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify such person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 39 C(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

**B Officer to take responses and prepare record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 39 D, F, and G, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer. [CCP 12/2/78; amended by CCP 12/4/82]

## RULE 41

EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS

**A As to notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

**B As to disqualification of officer.** Objection to taking a deposition because of disqualification of the officer administering the oath is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

**C As to taking of deposition.**

C(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

C(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

C(3) Objections to the form of written questions submitted under Rule 40 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 20 days after service of the last questions authorized.

**D As to completion and return of deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with under Rules 39 and 40 are waived unless a motion to suppress the deposition or some part thereof is

made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. [CCP 12/2/78]

## RULE 42 (Reserved for Expansion)

## RULE 43

PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

**A Scope.** Any party may serve on any other party any of the following requests:

A(1) **Documents or things.** A request to produce and permit the party making the request, or someone acting on behalf of the party making the request, to inspect and copy any designated documents (including electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices or software into reasonably usable form) or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 36 B and that are in the possession, custody, or control of the party on whom the request is served;

A(2) **Entering property.** A request to enter land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 36 B.

**B Procedure.**

B(1) **Generally.** A party may serve a request on the plaintiff after commencement of the action and on any other party with or after service of the summons on that party. The request shall identify any items requested for inspection, copying, or related acts by individual item or by category described with reasonable particularity, designate any land or other property on which entry is requested, and shall specify a reasonable place and manner for the inspection, copying, entry, and related acts.

B(2) **Time for response.** A request shall not require a defendant to produce or allow inspection, copying, entry, or other related acts before the expiration of 45 days after service of summons, unless the court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance with subsection B(1) of this rule, or such other time as the court may order or to which the parties may agree in writing, a party shall serve a response that includes the following:

B(2)(a) a statement that, except as specifically objected to, any requested item within the party's possession or custody is provided, or will be provided or made available within the time allowed and at the place and in the manner specified in the request, and that the items are or shall be organized and labeled to correspond with the categories in the request;

B(2)(b) a statement that, except as specifically objected to, a reasonable effort has been made to obtain any requested item not in the party's possession or custody, or that no such item is within the party's control;

B(2)(c) a statement that, except as specifically objected to, entry will be permitted as requested to any land or other property; and

B(2)(d) any objection to a request or a part thereof and the reason for each objection.

B(3) **Objections.** Any objection not stated in accordance with subsection B(2) of this rule is waived. Any objection to only a part of a request shall clearly state the part objected to. An objection does not relieve the requested party of the duty to comply with any request or part thereof not specifically objected to.

B(4) **Continuing duty.** A party served in accordance with subsection B(1) of this rule is under a continuing duty during the pendency of the action to produce promptly any item responsive to the request and not objected to that comes into the party's possession, custody, or control.

B(5) **Seeking relief under Rule 46 A(2).** A party who moves for an order under Rule 46 A(2) regarding any objection or other failure to respond or to permit inspection, copying, entry, or related acts as requested, shall do so within a reasonable time.

**C Writing called for need not be offered.** Though a writing called for by one party is produced by the other, and is inspected by the party calling for it, the party requesting production is not obliged to offer it in evidence.

**D Persons not parties.** A person not a party to the action may be compelled to produce books, papers, documents, or tangible things and to submit to an inspection thereof as provided in Rule 55. This rule does not preclude an independent action against a person not a party for permission to enter land.

**E Electronically stored information ("ESI").**

E(1) **Form in which ESI is to be produced.** A request for ESI may specify the form in which the information is to be produced by the responding party but, if no such specification is made, the responding party must produce the information in either the form in which it is ordinarily maintained or in a reasonably useful form.

E(2) **Meetings to resolve issues regarding ESI production; relevance to discovery motions.** In any action in which a request for production of ESI is anticipated, any party may request one or more meetings to confer about ESI production in that action. No meeting may be requested until all of the parties have appeared or have provided written notice of intent to file an appearance pursuant to Rule 69 B(1). The court may also require that the parties meet to confer about ESI production. Within 21 days of the request for a meeting, the parties must meet and confer about the scope of the production of ESI; data sources of the requested ESI; form of the production of ESI; cost of producing ESI; search terms relevant to identifying responsive ESI; preservation of ESI; issues of privilege pertaining to ESI; issues pertaining to metadata; and any other issue a requesting or producing party deems relevant to the request for ESI. Failure to comply in good faith with this subsection shall be considered by a court when ruling on any motion to compel or motion for a protective order related to ESI. The requirements in this subsection are in addition to any other duty to confer created by any other rule. [CCP 12/2/78; §A amended by 1979 c.284 §26; §D amended by CCP 12/15/90; §B amended by CCP 12/14/02; §B amended by CCP 12/9/06; §A amended by CCP 12/11/10; §E adopted by CCP 12/11/10; §§A,B,D,E amended by CCP 12/3/16]

## RULE 44

PHYSICAL AND MENTAL EXAMINATION OF PERSONS; REPORTS OF EXAMINATIONS

**A Order for examination.** When the mental or physical condition or the blood relationship of a party, or of an agent, employee, or person in the custody or under the legal control of a party (including the spouse of a party in an action to recover for injury to the spouse), is in controversy, the court may order the party to submit to a physical or mental examination by a physician or a mental examination by a psychologist or to produce for examination the person in such party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner,

conditions, and scope of the examination and the person or persons by whom it is to be made.

**B Report of examining physician or psychologist.** If requested by the party against whom an order is made under section A of this rule or the person examined, the party causing the examination to be made shall deliver to the requesting person or party a copy of a detailed report of the examining physician or psychologist setting out such physician's or psychologist's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows inability to obtain it. This section applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

**C Reports of examinations; claims for damages for injuries.** In a civil action where a claim is made for damages for injuries to the party or to a person in the custody or under the legal control of a party, upon the request of the party against whom the claim is pending, the claimant shall deliver to the requesting party a copy of all written reports and existing notations of any examinations relating to injuries for which recovery is sought unless the claimant shows inability to comply.

**D Report; effect of failure to comply.**

D(1) **Preparation of written report.** If an obligation to furnish a report arises under sections B or C of this rule and the examining physician or psychologist has not made a written report, the party who is obliged to furnish the report shall request that the examining physician or psychologist prepare a written report of the examination, and the party requesting such report shall pay the reasonable costs and expenses, including the examiner's fee, necessary to prepare such a report.

D(2) **Failure to comply or make report or request report.** If a party fails to comply with sections B and C of this rule, or if a physician or psychologist fails or refuses to make a detailed report within a reasonable time, or if a party fails to request that the examining physician or psychologist prepare a written report within a reasonable time, the court may require the physician or psychologist to appear for a deposition or may exclude the physician's or psychologist's testimony if offered at the trial.

**E Access to individually identifiable health information.** Any party against whom a civil action is filed for compensation or damages for injuries may obtain copies of individually identifiable health information as defined in Rule 55 H within the scope of discovery under Rule 36 B. Individually identifiable health information may be obtained by written patient authorization, by an order of the court, or by subpoena in accordance with Rule 55 H. [CCP 12/2/78; §§A,E amended by c.284 §§27,28; §E amended by CCP 12/4/82; §C amended by CCP 12/13/86; §§C,E amended by CCP 12/10/88 and 1/6/89; §§A,B,D amended by 1989 c.1084 §2; §E amended by CCP 12/14/02]

## RULE 45

REQUESTS FOR ADMISSION

**A Request for admission.** After commencement of an action, a party may serve on any other party a request for the admission by the latter of the truth of relevant matters within the scope of Rule 36 B specified in the request, including facts or opinions of fact, or the application of law to fact, or of the genuineness of any relevant documents or physical objects

described in or exhibited with the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. The request may, without leave of court, be served on the plaintiff after commencement of the action and on any other party with or after service of the summons and complaint on that party. The request for admissions shall be preceded by the following statement printed in capital letters in a font size at least as large as that in which the request is printed: "FAILURE TO SERVE A WRITTEN ANSWER OR OBJECTION WITHIN THE TIME ALLOWED BY ORCP 45 B WILL RESULT IN ADMISSION OF THE FOLLOWING REQUESTS."

**B Response.** The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint on that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that reasonable inquiry has been made and that the information known or readily obtainable by the answering party is insufficient to enable the answering party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 46 C, deny the matter or set forth reasons why the party cannot admit or deny it.

**C Motion to determine sufficiency.** The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to trial. The provisions of Rule 46 A(4) apply to the award of expenses incurred in relation to the motion.

**D Effect of admission.** Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the case will be furthered and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining that party's case or that party's defense on the merits. Any admission made by a party pursuant to this rule is for the purpose of the pending action only, and neither constitutes an admission by that party for any other purpose nor may be used against that party in any other action.

**E Form of response.** The request for admissions shall be so arranged that a blank space shall be provided after each separately numbered request. The space shall be reasonably calculated to enable the answering party to insert the admissions, denials, or objections within the space. If sufficient space is not provided, the answering party may attach additional papers with the admissions, denials, or objections and refer to them in the space provided in the request.

**F Number.**

F(1) **Generally.** Excluding requests identified in subsection F(2) of this rule, a party may serve more than one set of requested admissions on an adverse party but the total number of requests shall not exceed 30, unless the court otherwise orders for good cause shown after the proposed additional requests have been filed. In determining what constitutes a request for admission for the purpose of applying this limitation in number, it is intended that each request be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another request, and however the requests may be grouped, combined, or arranged.

F(2) **Requests related to admissibility of business records.** Notwithstanding subsection F(1) of this rule, and in addition to any requests made under that subsection, a party may serve a reasonable number of additional requests for admission to establish the authenticity and admissibility of documents under ORS 40.460 (6) (Rule 803(6) of the Oregon Evidence Code). [CCP 12/2/78; §§A,B amended by 1979 c.284 §§29,30; §§A,B,D,F amended by CCP 12/3/16]

## RULE 46

FAILURE TO MAKE DISCOVERY; SANCTION

**A Motion for order compelling discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order compelling discovery as follows:

A(1) **Appropriate court.**

A(1)(a) **Parties.** A motion for an order directed against a party may be made to the court in which the action is pending and, on matters relating to a deponent's failure to answer questions at a deposition, a motion may also be made to the circuit court for the county where the deponent is located.

A(1)(b) **Non-parties.** A motion for an order directed against a deponent who is not a party shall be made to the circuit court for the county where the non-party deponent is located.

A(2) **Motion.** If a party fails to furnish a report under Rule 44 B or C, or if a deponent fails to answer a question propounded or served under Rule 39 or Rule 40, or if a corporation or other entity fails to make a designation under Rule 39 C(6) or Rule 40 A, or if a party fails to respond to a request for a copy of an insurance agreement or policy under Rule 36 B(2), or if a party in response to a request for production or inspection submitted under Rule 43 fails to produce or to permit inspection as requested, the discovering party may move for an order compelling discovery in accordance with the request. Any motion made under this subsection shall identify at the beginning of the motion the items that the moving party seeks to discover. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make any protective order it would have been empowered to make on a motion made pursuant to Rule 36 C.

A(3) **Evasive or incomplete answer.** For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

A(4) **Award of expenses of motion.** If the motion is granted, the court may, after an opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both of them, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is denied, the court may, after an opportunity for hearing, require the moving party or the attorney advising the motion, or both of them, to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

**B Failure to comply with order.**

B(1) **Sanctions by court in the county where the deponent is located.** If a deponent fails to be sworn or to answer a question after being directed to do so by a circuit court judge of the county in which the deponent is located, the failure may be considered a contempt of court.

B(2) **Sanctions by court in which action is pending.** If a party or an officer, director, or managing agent or a person designated under Rule 39 C(6) or Rule 40 A to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section A of this rule or Rule 44, the court in which the action is pending may make any order in regard to the failure as is just including, but not limited to, the following:

B(2)(a) **Establishment of facts.** An order that the matters that caused the motion for the sanction or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

B(2)(b) **Designated matters.** An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence.

B(2)(c) **Strike, stay, or dismissal.** An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

B(2)(d) **Contempt of court.** In lieu of or in addition to any of the orders listed in paragraph B(2)(a), B(2)(b), or B(2)(c) of this rule, an order treating as a contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

B(2)(e) **Inability to produce person.** Any of the orders listed in paragraph B(2)(a), B(2)(b), or B(2)(c) of this rule when a party has failed to comply with an order under Rule 44 A requiring the party to produce another person for examination, unless the party failing to comply shows inability to produce the person for examination.

B(3) **Payment of expenses.** In lieu of or in addition to any order listed in subsection B(2) of this rule, the court shall require the party failing to obey the order or the attorney advising that party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**C Expenses on failure to admit.** If a party fails to admit the genuineness of any document or the

truth of any matter, as requested under Rule 45, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admission may apply to the court for an order requiring the other party to pay the party requesting the admission the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that: the request was held objectionable pursuant to Rule 45 B or C; the admission sought was of no substantial importance; the party failing to admit had reasonable grounds to believe that it might prevail on the matter; or there was other good reason for the failure to admit.

**D Failure of party to attend own deposition or to respond to request for production or inspection.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 39 C(6) or Rule 40 A to testify on behalf of a party fails to appear before the officer who is to take the deposition of that party or person, after being served with a proper notice, or to comply with or to serve objections to a request for production or inspection submitted under Rule 43, after proper service of the request, the court where the action is pending on motion may make any order in regard to the failure as is just including, but not limited to, any action authorized under paragraphs B(2)(a), B(2)(b), and B(2)(c) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this section may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 36 C. [CCP 12/2/78; §§A(2),D amended by CCP 12/13/80; §§A,B amended by CCP 12/12/92; §B amended by 1999 c.59 §4; §A amended by CCP 12/11/04; amended by CCP 12/6/14]

## RULE 47

SUMMARY JUDGMENT

**A For claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor upon all or any part thereof.

**B For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor as to all or any part thereof.

**C Motion and proceedings thereon.** The motion and all supporting documents shall be served and filed at least 60 days before the date set for trial. The adverse party shall have 20 days in which to serve and file opposing affidavits or declarations and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The court shall grant the motion if the pleadings, depositions, affidavits, declarations and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the adverse party, no objectively

reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motion as to which the adverse party would have the burden of persuasion at trial. The adverse party may satisfy the burden of producing evidence with an affidavit or a declaration under section E of this rule. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

**D Form of affidavits and declarations; defense required.** Except as provided by section E of this rule, supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or a declaration shall be attached thereto or served therewith. The court may permit affidavits or declarations to be supplemented or opposed by depositions or further affidavits or declarations. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of that party's pleading, but the adverse party's response, by affidavits, declarations or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue as to any material fact for trial. If the adverse party does not so respond, the court shall grant the motion if appropriate.

**E Affidavit or declaration of attorney when expert opinion required.** Motions under this rule are not designed to be used as discovery devices to obtain the names of potential expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for summary judgment, is required to provide the opinion of an expert to establish a genuine issue of material fact, an affidavit or a declaration of the party's attorney stating that an unnamed qualified expert has been retained who is available and willing to testify to admissible facts or opinions creating a question of fact, will be deemed sufficient to controvert the allegations of the moving party and an adequate basis for the court to deny the motion. The affidavit or declaration shall be made in good faith based on admissible facts or opinions obtained from a qualified expert who has actually been retained by the attorney who is available and willing to testify and who has actually rendered an opinion or provided facts which, if revealed by affidavit or declaration, would be a sufficient basis for denying the motion for summary judgment.

**F When affidavits or declarations are unavailable.** Should it appear from the affidavits or declarations of a party opposing the motion that such party cannot, for reasons stated, present by affidavit or declaration facts essential to justify the opposition of that party, the court may deny the motion or may order a continuance to permit affidavits or declarations to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

**G Affidavits or declarations made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits or declarations presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable attorney fees, and any offending party or

attorney may be subject to sanctions for contempt.

**H Multiple parties or claims; limited judgment.** If the court grants summary judgment for less than all parties and claims in an action, a limited judgment may be entered if the court makes the determination required by Rule 67 B. [CCP 12/2/78; §D amended by 1979 c.284 §31; §G amended by 1981 c.898 §6; amended by CCP 12/4/82; §C amended by CCP 12/8/84; §G amended by 1991 c.724 §30; §C amended by 1995 c.618 §5; §C amended by 1999 c.815 §1; amended by 2003 c.194 §9; §C amended by CCP 12/14/02; §H amended by 2003 c.576 §260; §§C,D,F amended by 2007 c.339 §§15,16,17]

## RULE 48 (Reserved for Expansion)

## RULE 49 (Reserved for Expansion)

## RULE 50

JURY TRIAL

**Jury trial of right.** The right of trial by jury as declared by the Oregon Constitution or as given by a statute shall be preserved to the parties inviolate. [CCP 12/2/78]

## RULE 51

ISSUES; TRIAL BY JURY OR BY THE COURT

**A Issues.** Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other.

**B Issues of law; how tried.** An issue of law shall be tried by the court.

**C Issues of fact; how tried.** The trial of all issues of fact shall be by jury unless:

C(1) The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial without a jury; or

C(2) The court, upon motion of a party or on its own initiative, finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of this state.

**D Advisory jury and jury trial by consent.** In all actions not triable by right to a jury, the court, upon motion of a party or on its own initiative, may try an issue with an advisory jury or it may, with the consent of all parties, order a trial to a jury whose verdict shall have the same effect as if trial to a jury had been a matter of right. [CCP 12/2/78]

## RULE 52

POSTPONEMENT OF CASES

**A Postponement.** When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a postponement. At its discretion, the court may grant a postponement, with or without terms, including requiring any party whose conduct made the postponement necessary to pay expenses incurred by an opposing party.

**B Absence of evidence.** If a motion is made for postponement on the grounds of absence of evidence, the court may require the moving party to submit an affidavit or a declaration stating the evidence which the moving party expects to obtain. If the adverse party admits that such evidence would be given and that it be considered as actually given at trial, or offered and overruled as improper, the trial shall not be postponed. However, the court may postpone the trial if, after the adverse party makes the admission described in this section, the moving party can show that such affidavit or declaration does not constitute an adequate substitute for the absent evidence. The court, when it allows the motion, may impose such conditions or

terms upon the moving party as may be just. [CCP 12/2/78; §A amended by CCP 12/13/80 and 12/14/96; §B amended by 2003 c.194 §10]

## RULE 53

CONSOLIDATION; SEPARATE TRIALS

**A Joint hearing or trial; consolidation of actions.** Upon motion of any party, when more than one action involving a common question of law or fact is pending before the court, the court may order a joint hearing or trial of any or all of the matters in issue in such actions; the court may order all such actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

**B Separate trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or issues, always preserving inviolate the right of trial by jury as declared by the Oregon Constitution or as given by statute. [CCP 12/2/78]

## RULE 54

DISMISSAL OF ACTIONS; COMPROMISE

**A Voluntary dismissal; effect thereof.**

A(1) **By plaintiff; by stipulation.** Subject to the provisions of Rule 32 D and of any statute of this state, a plaintiff may dismiss an action in its entirety or as to one or more defendants without order of court by filing a notice of dismissal with the court and serving the notice on all other parties not in default not less than 5 days prior to the day of trial if no counterclaim has been pleaded, or by filing a stipulation of dismissal signed by all adverse parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action against the same parties on or including the same claim unless the court directs that the dismissal shall be without prejudice. Upon notice of dismissal or stipulation under this subsection, a party shall submit a form of judgment and the court shall enter a judgment of dismissal.

A(2) **By order of court.** Except as provided in subsection A(1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon judgment of dismissal ordered by the court and upon any terms and conditions that the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the defendant may proceed with the counterclaim. Unless otherwise specified in the judgment of dismissal, a dismissal under this subsection is without prejudice.

A(3) **Costs and disbursements.** When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by contract, statute, or rule. Unless the circumstances indicate otherwise, the dismissed party shall be considered the prevailing party.

**B Involuntary dismissal.**

B(1) **Failure to comply with rule or order.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for a judgment of dismissal of an action or of any claim against that defendant.

B(2) **Insufficiency of evidence.** After the plaintiff in an action tried by the court without a jury has completed the presentation of plaintiff's evidence, the defendant, without

waiving the right to offer evidence in the event the motion is not granted, may move for a judgment of dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment of dismissal against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment of dismissal with prejudice against the plaintiff, the court shall make findings as provided in Rule 62.

B(3) **Dismissal for want of prosecution; notice.** Not less than 60 days prior to the first regular motion day in each calendar year, unless the court has sent an earlier notice on its own initiative, the clerk of the court shall mail notice to the attorneys of record in each pending case in which no action has been taken for one year immediately prior to the mailing of such notice that a judgment of dismissal will be entered in each such case by the court for want of prosecution unless, on or before such first regular motion day, a motion, either oral or written, is made to the court and good cause shown why it should be continued as a pending case. If a motion is not made or good cause is not shown, the court shall enter a judgment of dismissal in each such case. Nothing contained in this subsection shall prevent the dismissal by the court at any time for want of prosecution of any action upon motion of any party thereto.

B(4) **Effect of judgment of dismissal.** Unless the court in its judgment of dismissal otherwise specifies, a dismissal under this section operates as an adjudication without prejudice.

**C Dismissal of counterclaim, cross-claim, or third party claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third party claim.

**D Costs of previously dismissed action.**

D(1) **Previous action dismissed by plaintiffs.** If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make any order for the payment of any unpaid judgment for costs and disbursements against plaintiff in the action previously dismissed that it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

D(2) **Previous claim dismissed with prejudice.** If a party who previously asserted a claim, counterclaim, cross-claim, or third party claim that was dismissed with prejudice subsequently files the same claim, counterclaim, cross-claim, or third party claim against the same party, the court shall enter a judgment dismissing the claim, counterclaim, cross-claim, or third party claim and may enter a judgment requiring the payment of reasonable attorney fees incurred by the party in obtaining the dismissal.

**E Offer to allow judgment; effect of acceptance or rejection.**

E(1) **Offer.** Except as provided in ORS 17.065 to 17.085, any party against whom a claim is asserted may, at any time up to 14 days prior to trial, serve upon any other party asserting the claim an offer to allow judgment to be entered against the party making the offer for the sum, or the property, or to the effect therein specified. The offer shall not be filed with the court clerk or provided to any assigned judge, except as set forth in subsections E(2) and E(3) of this rule.

E(2) **Acceptance of offer.** If the party asserting the claim accepts the offer, the party asserting the claim or the party's attorney shall endorse the acceptance thereon and file the accepted offer with the clerk before trial, and within 7 days from the time the offer was served upon the party asserting the claim; and thereupon judgment shall be given accordingly as a stipulated judgment. If the offer does not state that it includes costs and disbursements or attorney fees, the party asserting the claim shall

submit any claim for costs and disbursements or attorney fees to the court as provided in Rule 68.

E(3) **Failure to accept offer.** If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence at trial and may be filed with the court only after the case has been adjudicated on the merits and only if the party asserting the claim fails to obtain a judgment more favorable than the offer to allow judgment. In such a case, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or attorney fees incurred after the date of the offer, but the party against whom the claim was asserted shall recover from the party asserting the claim costs and disbursements, not including prevailing party fees, from the time of the service of the offer.

**F Settlement conferences.** A settlement conference may be ordered by the court at any time at the request of any party or upon the court's own motion. Unless otherwise stipulated to by the parties, a judge other than the judge who will preside at trial shall conduct the settlement conference. [CCP 12/2/78; amended by 1979 c.284 §32; §E amended by CCP 12/13/80; §A amended by 1981 c.912 §2; §E amended by 1983 c.531 §1; §A amended by CCP 12/8/84; amended by 1995 c.618 §1; §E amended by CCP 12/11/04; §E amended by CCP 12/13/08; §§A,B,D,E amended by CCP 12/11/10; §§A,B,D,E amended by CCP 12/6/14]

## RULE 55

SUBPOENA

**A Defined; form.** A subpoena is a writ or order directed to a person and may require the attendance of the person at a particular time and place to testify as a witness on behalf of a particular party therein mentioned or may require the person to produce books, papers, documents, or tangible things and permit inspection thereof at a particular time and place. A subpoena requiring attendance to testify as a witness requires that the witness remain until the testimony is closed unless sooner discharged but, at the end of each day's attendance, a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and, if not then paid, the witness is not obliged to remain longer in attendance. Every subpoena shall state the name of the court, the case name, and the case number.

**B For production of books, papers, documents, or tangible things and to permit inspection.** A subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things in the possession, custody or control of that person at the time and place specified therein. A command to produce books, papers, documents, or tangible things and permit inspection thereof may be joined with a command to appear at trial or hearing or at deposition or, before trial, may be issued separately. A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things but not commanded to also appear for deposition, hearing, or trial may, within 14 days after service of the subpoena or before the time specified for compliance if that time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court in whose name the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move for an order at any time to compel production. In any

case, where a subpoena commands production of books, papers, documents, or tangible things the court, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

**C Purpose; issuance.**

C(1) **Purpose.**

C(1)(a) **Civil actions.** A subpoena may be issued to require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action pending therein or, if separate from a subpoena commanding the attendance of a person, to produce books, papers, documents, or tangible things and to permit inspection thereof.

C(1)(b) **Foreign depositions.** A subpoena may be issued to require attendance before any person authorized to take the testimony of a witness in this state under Rule 38 C, or before any officer empowered by the laws of the United States to take testimony.

C(1)(c) **Other uses.** A subpoena may be issued to require attendance out of court in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule, before a judge, justice, or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state.

C(2) **By whom issued.**

C(2)(a) **By the clerk of the court, or a judge or justice of the court for civil actions.** A subpoena may be issued in blank by the clerk of the court in which the action is pending or, if there is no clerk, by a judge or justice of that court.

C(2)(a)(i) **Requirements for subpoenas issued in blank.** Upon request of a party or attorney, any subpoena issued by a clerk of the court may be issued in blank and delivered to the party or attorney requesting it, who shall before service include on the subpoena the name of the person commanded to appear; or the books, papers, documents, or tangible things to be produced or inspected; and the particular time and location for the attendance of the person or the production or the inspection, as applicable.

C(2)(b) **By the clerk of the court for foreign depositions.** A subpoena for a foreign deposition may be issued as specified in Rule 38 C(2) by the clerk of a circuit court in the county in which the witness is to be examined.

C(2)(c) **By a judge, justice, or other officer.** A subpoena to require attendance out of court in cases not provided for in paragraph C(1)(a) or C(1)(b) of this rule may be issued by the judge, justice, or other officer before whom the attendance is required.

C(2)(d) **By an attorney.** A subpoena may be issued by an attorney of record of the party to the action on whose behalf the witness is required to appear, subscribed by the attorney.

**D Service; service on law enforcement agency; service by mail; proof of service.**

D(1) **Service.** Except as provided in subsection D(2) of this rule, a subpoena may be served by the party or any other person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and, whether or not personal attendance is required, one day's attendance fees. If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian, or guardian ad litem. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for the taking of a deposition, served upon an organization as provided in Rule 39

C(6), shall be served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i), D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). A copy of each subpoena commanding production of books, papers, documents, or tangible things and inspection thereof before trial that is not accompanied by a command to appear at trial or hearing or at deposition, whether the subpoena is served personally or by mail, shall be served on each party at least 7 days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

D(2) **Service on law enforcement agency.**

D(2)(a) **Designated individuals.** Every law enforcement agency shall designate an individual or individuals upon whom service of a subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of a subpoena pursuant to paragraph D(2)(b) of this rule may be made upon the officer in charge of the law enforcement agency.

D(2)(b) **Time limitation.** If a peace officer's attendance at trial is required as a result of the officer's employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required, the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

D(2)(c) **Notice to officer.** When a subpoena has been served as provided in paragraph D(2)(b) of this rule, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D(2)(d) "**Law enforcement agency" defined.** As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

D(3) **Service by mail.** Under the following circumstances, service of a subpoena to a witness by mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

D(3)(a) **Contact with willing witness.** The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed;

D(3)(b) **Payment to witness of fees and mileage.** The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D(3)(c) **Time limitations.** The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other form of mail that provides a receipt for the mail that is signed by the recipient and the attorney received a return receipt signed by the witness more than 3 days prior to trial.

D(4) **Service by mail of subpoena not accompanied by command to appear.** Service of a subpoena by mail may be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.

D(5) **Proof of service; qualifications.** Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server need not certify that the server is not a party in the action; an attorney for a party in the action; or an officer, director, or employee of a party in the action.

**E Subpoena for hearing or trial; prisoners.** If the witness is confined in a prison or jail in this state, a subpoena may be served on that person only upon leave of court and attendance of the witness may be compelled only upon the terms that the court prescribes. The court may order temporary removal and production of the prisoner for the purpose of giving testimony or may order that testimony only be taken upon deposition at the place of confinement. The subpoena and court order shall be served upon the custodian of the prisoner.

**F Subpoena for taking depositions or requiring production of books, papers, documents, or tangible things; place of production and examination.**

F(1) **Subpoena for taking deposition.** Proof of service of a notice to take a deposition as provided in Rule 39 C and Rule 40 A, or of notice of subpoena to command production of books, papers, documents, or tangible things before trial as provided in subsection D(1) of this rule or a certificate that notice will be served if the subpoena can be served, constitutes a sufficient authorization for the issuance by a clerk of court of subpoenas for the persons named or described therein.

F(2) **Place of examination.** A resident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein the person resides, is employed, or transacts business in person, or at any other convenient place that is fixed by an order of the court. A nonresident of this state who is not a party to the action may be required by subpoena to attend an examination or to produce books, papers, documents, or tangible things only in the county wherein the person is served with a subpoena, or at any other convenient place that is fixed by an order of the court.

F(3) **Production without examination or deposition.** A party who issues a subpoena may command the person to whom it is issued to produce books, papers, documents, or tangible things, other than individually identifiable health information as described in section H of this rule, by mail or otherwise, at a time and place specified in the subpoena, without commanding inspection of the originals or a deposition. In such instances, the person to whom the subpoena is directed complies if the person produces copies of the specified items in the specified manner and certifies that the copies are true copies of all of the items responsive to the subpoena or, if any items are not included, why they are not.

**G Disobedience of subpoena; refusal to be sworn or to answer as a witness.** Disobedience to a subpoena or a refusal to be sworn or to answer as a witness may be punished as contempt by a court before whom the action is pending or by the judge or justice issuing the subpoena. Upon hearing or trial, if the witness is a party and disobeys a subpoena or refuses to be sworn or to answer as a witness, that party's complaint, answer, or reply may be stricken.

**H Individually identifiable health information.**

H(1) **Definitions.** As used in this rule, the terms “individually identifiable health information” and “qualified protective order” are defined as follows:

H(1)(a) “**Individually identifiable health information.**” “Individually identifiable health information” means information that identifies an individual or that could be used to identify an individual; that has been collected from an individual and created or received by a health

care provider, health plan, employer, or health care clearinghouse; and that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

H(1)(b) "**Qualified protective order.**" "Qualified protective order" means an order of the court, by stipulation of the parties to the litigation or otherwise, that prohibits the parties from using or disclosing individually identifiable health information for any purpose other than the litigation for which the information was requested and that requires the return to the original custodian of the information or the destruction of the individually identifiable health information (including all copies made) at the end of the litigation.

H(2) **Procedure.** Individually identifiable health information may be obtained by subpoena only as provided in this section. However, if disclosure of any requested records is restricted or otherwise limited by state or federal law, then the protected records shall not be disclosed in response to the subpoena unless the requesting party has complied with the applicable law.

H(2)(a) **Supporting documentation.** The attorney for the party issuing a subpoena requesting production of individually identifiable health information must serve the custodian or other keeper of that information either with a qualified protective order or with an affidavit or declaration together with attached supporting documentation demonstrating that:

H(2)(a)(i) the party has made a good faith attempt to provide written notice to the individual or to the individual's attorney that the individual or the attorney had 14 days from the date of the notice to object;

H(2)(a)(ii) the notice included the proposed subpoena and sufficient information about the litigation in which the individually identifiable health information was being requested to permit the individual or the individual's attorney to object;

H(2)(a)(iii) the individual did not object within the 14 days or, if objections were made, they were resolved and the information being sought is consistent with that resolution; and

H(2)(a)(iv) the party issuing a subpoena certifies that he or she will, promptly upon request, permit the patient or the patient's representative to inspect and copy the records received.

H(2)(b) **Objection.** Within 14 days from the date of a notice requesting individually identifiable health information, the individual or the individual's attorney objecting to the subpoena shall respond in writing to the party issuing the notice, stating the reason for each objection.

H(2)(c) **Time for compliance.** Except as provided in subsection H(4) of this rule, when a subpoena is served upon a custodian of individually identifiable health information in an action in which the entity or person is not a party, and the subpoena requires the production of all or part of the records of the entity or person relating to the care or treatment of an individual, it is sufficient compliance with the subpoena if a custodian delivers by mail or otherwise a true and correct copy of all of the records responsive to the subpoena within 5 days after receipt thereof. Delivery shall be accompanied by an affidavit or a declaration as described in subsection H(3) of this rule.

H(2)(d) **Method of compliance.** The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the name of the court, case name and number of the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope or wrapper shall be enclosed in an outer envelope or wrapper and sealed. The outer envelope or wrapper shall be addressed as follows: if the subpoena directs attendance in

court, to the clerk of the court, or to the judge thereof if there is no clerk; if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; if no hearing is scheduled, to the attorney or party issuing the subpoena. If the subpoena directs delivery of the records to the attorney or party issuing the subpoena, then a copy of the proposed subpoena shall be served on the person whose records are sought, and on all other parties to the litigation, not less than 14 days prior to service of the subpoena on the entity or person. Any party to the proceeding may inspect the records provided and/or request a complete copy of the records. Upon request, the records must be promptly provided by the party who issued the subpoena at the requesting party's expense.

H(2)(e) **Inspection of records.** After filing and after giving reasonable notice in writing to all parties who have appeared of the time and place of inspection, the copy of the records may be inspected by any party or by the attorney of record of a party in the presence of the custodian of the court files, but otherwise shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing at the direction of the judge, officer, or body conducting the proceeding. The records shall be opened in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records that are not introduced in evidence or required as part of the record shall be returned to the custodian who produced them.

H(2)(f) **Service of subpoena.** For purposes of this section, the subpoena duces tecum to the custodian of the records may be served by first class mail. Service of subpoena by mail under this section shall not be subject to the requirements of subsection D(3) of this rule.

H(3) **Affidavit or declaration of custodian of records.**

H(3)(a) **Content.** The records described in subsection H(2) of this rule shall be accompanied by the affidavit or declaration of a custodian of the records, stating in substance each of the following:

H(3)(a)(i) that the affiant or declarant is a duly authorized custodian of the records and has authority to certify records;

H(3)(a)(ii) that the copy is a true copy of all the records responsive to the subpoena; and

H(3)(a)(iii) that the records were: prepared by the personnel of the entity or the person, acting under the control of either; prepared in the ordinary course of the entity's or the person's business; and prepared at or near the time of the act, condition, or event described or referred to therein.

H(3)(b) **When custodian has no records or fewer records than requested.** If the entity or person has none of the records described in the subpoena, or only a part thereof, the affiant or declarant shall so state in the affidavit or declaration and shall send only those records of which the affiant or declarant has custody.

H(3)(c) **Multiple affidavits or declarations.** When more than one person has knowledge of the facts required to be stated in the affidavit or declaration, more than one affidavit or declaration may be used.

H(4) **Personal attendance of custodian of records may be required.**

H(4)(a) **Required statement.** The personal attendance of a custodian of records and the production of original records is required if the subpoena duces tecum contains the following statement:

_____

_____

The personal attendance of a custodian of records and the production of original records is required by this subpoena. The procedure

authorized pursuant to Oregon Rule of Civil Procedure 55 H(2) shall not be deemed sufficient compliance with this subpoena.

_____

_____

H(4)(b) **Multiple subpoenas.** If more than one subpoena duces tecum is served on a custodian of records and personal attendance is required under each pursuant to paragraph H(4)(a) of this rule, the custodian shall be deemed to be the witness of the party serving the first such subpoena.

H(5) **Tender and payment of fees.** Nothing in this section requires the tender or payment of more than one witness and mileage fee or other charge unless there has been agreement to the contrary.

H(6) **Scope of discovery.** Notwithstanding any other provision, this rule does not expand the scope of discovery beyond that provided in Rule 36 or Rule 44. [CCP 12/2/78; §§A,C,H amended by 1979 c.284 §§33,34,35; §§D(1), F(2) amended by CCP 12/13/80; §D amended by CCP 12/4/82; §D amended by 1983 c.751 §5; §H(2) amended by CCP 12/13/86; §H(2) amended by CCP 12/10/88 and 1/6/89; §E amended by 1989 c.980 §3; §§A,B,C,D,F,H amended by CCP 12/15/90; §H amended by 1993 c.18 §3; §D amended by CCP 12/10/94 and 1995 c.79 §404; §§F,H amended by CCP 12/10/94; §I added by 1995 c.694 §1; §I amended by CCP 12/14/96; §D amended by 1997 c.249 §10; §C amended by 1999 c.59 §5; §I amended by CCP 12/12/98; §H amended by 2001 c.104 §3; §H amended by CCP 12/14/02 and 2003 c.194 §11; §I deleted by CCP 12/14/02; §F amended by CCP 12/9/06; §D amended by CCP 12/13/08 and 2009 c.364 §1; §H amended by CCP 12/1/12; amended by CCP 12/6/14]

## RULE 56

TRIAL BY JURY

**Trial by jury defined.**

**A Twelve-person juries.** A trial jury in the circuit court is a body of 12 persons drawn as provided in Rule 57. The parties may stipulate that a jury shall consist of any number less than 12 or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

**B Six-person juries.** Notwithstanding section A of this rule, a jury in circuit court shall consist of six persons if the amount in controversy is less than $10,000. [CCP 12/2/78; amended by 1995 c.658 §119]

## RULE 57

JURORS

**A Challenging compliance with selection procedures.**

A(1) **Motion.** Within 7 days after the moving party discovered, or by the exercise of diligence could have discovered, the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings or for other appropriate relief on the ground of substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury.

A(2) **Stay of proceedings.** Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the applicable provisions of ORS chapter 10 in selecting the jury, the moving party is entitled to present in support of the motion: the testimony of the clerk or court administrator; any relevant records and papers not public or otherwise available used by the clerk or court administrator; and any other relevant evidence. If the court determines that in selecting the jury there has been a substantial failure to comply with the applicable provisions of ORS chapter 10, the court shall stay the proceedings pending

the selection of a jury in conformity with the applicable provisions of ORS chapter 10, or grant other appropriate relief.

A(3) **Exclusive means of challenge.** The procedures prescribed by this section are the exclusive means by which a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the applicable provisions of ORS chapter 10.

**B Jury; how drawn.** When the action is called for trial, the clerk shall draw names at random from the names of jurors in attendance upon the court until the jury is completed or the names of jurors in attendance are exhausted. If the names of jurors in attendance become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or from the body of the county, so many qualified persons as may be necessary to complete the jury. Whenever the sheriff shall summon more than one person at a time from the bystanders, or from the body of the county, the sheriff shall return a list of the persons so summoned to the clerk. The clerk shall draw names at random from the list until the jury is completed.

**C Examination of jurors.** When the full number of jurors has been called, they shall be examined as to their qualifications, first by the court, then by the plaintiff, and then by the defendant. The court shall regulate the examination in such a way as to avoid unnecessary delay.

**D Challenges.**

D(1) **Challenges for cause; grounds.** Challenges for cause may be taken on any one or more of the following grounds:

D(1)(a) The want of any qualification prescribed by ORS 10.030 for a person eligible to act as a juror.

D(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

D(1)(c) Consanguinity or affinity within the fourth degree to any party.

D(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant, landlord and tenant, or debtor and creditor to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of, or being an attorney for or a client of the adverse party; or being surety in the action called for trial, or otherwise, for the adverse party.

D(1)(e) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, upon substantially the same facts or transaction.

D(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question involved therein.

D(1)(g) **Actual bias on the part of a juror.** Actual bias is the existence of a state of mind on the part of a juror that satisfies the court, in the exercise of sound discretion, that the juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging the juror. Actual bias may be in reference to: the action; either party to the action; the sex of the party, the party's attorney, a victim, or a witness; or a racial or ethnic group of which the party, the party's attorney, a victim, or a witness is a member, or is perceived to be a member. A challenge for actual bias may be taken for the cause mentioned in this paragraph, but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what the juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all of the circumstances, that the juror cannot

disregard such opinion and try the issue impartially.

D(2) **Peremptory challenges; number.** A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude such juror. Either party is entitled to no more than three peremptory challenges if the jury consists of more than six jurors, and no more than two peremptory challenges if the jury consists of six jurors. Where there are multiple parties plaintiff or defendant in the case, or where cases have been consolidated for trial, the parties plaintiff or defendant must join in the challenge and are limited to the number of peremptory challenges specified in this subsection except the court, in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

D(3) **Conduct of peremptory challenges.** After the full number of jurors has been passed for cause, peremptory challenges shall be conducted by written ballot or outside of the presence of the jury as follows: the plaintiff may challenge one and then the defendant may challenge one, and so alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall be filled and the additional juror passed for cause before another peremptory challenge shall be exercised, and neither party is required to exercise a peremptory challenge unless the full number of jurors is in the jury box at the time. The refusal to challenge by either party in the order of alternation shall not defeat the adverse party of such adverse party's full number of challenges, and such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the jurors once accepted by that party and, if that party's right of peremptory challenge is not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken as to any juror before the jury is completed and sworn, notwithstanding that the juror challenged may have been previously accepted, but nothing in this subsection shall be construed to increase the number of peremptory challenges allowed.

D(4) **Challenge of peremptory challenge exercised on basis of race, ethnicity, or sex.**

D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity, or sex. Courts shall presume that a peremptory challenge does not violate this paragraph, but the presumption may be rebutted in the manner provided by this section.

D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge on a basis prohibited under paragraph (a) of this subsection, the party may object to the exercise of the challenge. The objection must be made before the court excuses the juror. The objection must be made outside of the presence of the jurors. The party making the objection has the burden of establishing a prima facie case that the adverse party challenged the juror on the basis of race, ethnicity, or sex.

D(4)(c) If the court finds that the party making the objection has established a prima facie case that the adverse party challenged a prospective juror on the basis of race, ethnicity, or sex, the burden shifts to the adverse party to show that the peremptory challenge was not exercised on the basis of race, ethnicity, or sex. If the adverse party fails to meet the burden of justification as to the questioned challenge, the presumption that the challenge does not violate paragraph (a) of this subsection is rebutted.

D(4)(d) If the court finds that the adverse party challenged a prospective juror on the basis of race, ethnicity, or sex, the court shall disallow the peremptory challenge.

**E Oath of jury.** As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them will well and truly

try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

**F Alternate jurors.**

F(1) **Definition.** Alternate jurors are prospective replacement jurors empanelled at the court's discretion to serve in the event that the number of jurors required under Rule 56 is decreased by illness, incapacitation, or disqualification of one or more jurors selected.

F(2) **Decision to allow alternate jurors.** The court has discretion over whether alternate jurors may be empanelled. If the court allows, not more than six alternate jurors may be empanelled.

F(3) **Peremptory challenges; number.** In addition to challenges otherwise allowed by these rules or any other rule or statute, each party is entitled to: one peremptory challenge if one or two alternate jurors are to be empanelled; two peremptory challenges if three or four alternate jurors are to be empanelled; and three peremptory challenges if five or six alternate jurors are to be empanelled. The court shall have discretion as to when and how additional peremptory challenges may be used and when and how alternate jurors are selected.

F(4) **Duties and responsibilities.** Alternate jurors shall be drawn in the same manner; shall have the same qualifications; shall be subject to the same examination and challenge rules; shall take the same oath; and shall have the same functions, powers, facilities, and privileges as the jurors throughout the trial, until the case is submitted for deliberations. An alternate juror who does not replace a juror shall not attend or otherwise participate in deliberations.

F(5) **Installation and discharge.** Alternate jurors shall be installed to replace any jurors who become unable to perform their duties or are found to be disqualified before the jury begins deliberations. Alternate jurors who do not replace jurors before the beginning of deliberations and who have not been discharged may be installed to replace jurors who become ill or otherwise are unable to complete deliberations. If an alternate juror replaces a juror after deliberations have begun, the jury shall be instructed to begin deliberations anew. [CCP 12/2/78; §§C,F amended by 1979 c.284 §§36,37; §C amended by CCP 12/8/84; 1985 c.703 §20; §C amended by CCP 12/10/94; §D amended by 1995 c.530 §1 and 1995 c.707 §1; §D amended by 1997 c.801 §69; §§A,B,D,F amended by CCP 12/1/12; §F amended by CCP 12/3/16]

## RULE 58

TRIAL PROCEDURE

**A Manner of proceedings on trial by the court.** Trial by the court shall proceed in the manner prescribed in subsections (3) through (6) of section B of this rule, unless the court, for good cause stated in the record, otherwise directs.

**B Manner of proceedings on jury trial.** Trial by a jury shall proceed in the following manner unless the court, for good cause stated in the record, otherwise directs:

B(1) The jury shall be selected and sworn. Prior to voir dire, each party may, with the court's consent, present a short statement of the facts to the entire jury panel.

B(2) After the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions to witnesses if permitted, and the legal principles that will govern the proceedings.

B(3) The plaintiff shall concisely state plaintiff's case and the issues to be tried; the defendant then, in like manner, shall state defendant's case based upon any defense or counterclaim or both.

B(4) The plaintiff shall introduce the evidence on plaintiff's case in chief, and when

plaintiff has concluded, the defendant shall do likewise.

B(5) The parties respectively may introduce rebutting evidence only, unless the court in furtherance of justice permits them to introduce evidence upon the original cause of action, defense, or counterclaim.

B(6) When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The plaintiff may waive the opening argument, and if the defendant then argues the case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise.

B(7) Not more than two counsel shall address the jury on behalf of the plaintiff or defendant; the whole time occupied on behalf of either shall not be limited to less than two hours.

B(8) After the evidence is concluded, the court shall instruct the jury. The court may instruct the jury before or after the closing arguments.

B(9) With the court's consent, jurors shall be permitted to submit to the court written questions directed to witnesses or to the court. The court shall afford the parties an opportunity to object to such questions outside the presence of the jury.

**C Separation of jury before submission of cause; admonition.** The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case, they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

**D Proceedings if juror becomes sick.** If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform the duty of a juror, the court may order such juror to be discharged. In that case, unless an alternate juror, seated under Rule 57 F, is available to replace the discharged juror or unless the parties agree to proceed with the remaining jurors, a new juror may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards formed.

**E Failure to appear for trial.** When a party who has filed an appearance fails to appear for trial, the court may, in its discretion, proceed to trial and judgment without further notice to the non-appearing party. [CCP 12/2/78; §E adopted by CCP 12/10/94; §§A,B amended by CCP 12/9/00]

## RULE 59

INSTRUCTIONS TO JURY AND DELIBERATION

**A Proposed instructions.** Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted at the commencement of the trial. Proposed instructions upon questions of law developed by the evidence, which could not be reasonably anticipated, may be submitted at any time before the court has instructed the jury. The number of copies of proposed instructions and their form shall be governed by local court rule.

**B Charging the jury.** In charging the jury, the court shall state to the jury all matters of law necessary for its information in giving its verdict. Whenever the knowledge of the court is by statute made evidence of a fact, the court shall declare such knowledge to the jury, which is bound to accept it as conclusive. The court shall reduce, or require a party to reduce, the instructions to writing. The jury shall take the

court's written instructions with it while deliberating upon the verdict. The clerk shall file a copy of the written instructions given to the jury in the court file of the case.

**C Deliberation.**

C(1) **Exhibits.** Upon retiring for deliberation the jury may take with them all exhibits received in evidence, except depositions.

C(2) **Written statement of issues.** Pleadings shall not go to the jury room. The court may, in its discretion, submit to the jury an impartial written statement summarizing the issues to be decided by the jury.

C(3) **Copies of documents.** Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

C(4) **Notes.** Jurors may take notes of the testimony or other proceeding on the trial and may take such notes into the jury room.

C(5) **Custody of and communications with jury.** After hearing the charge and submission of the cause to them, the jury shall retire for deliberation. When they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon their verdict or are allowed by the court to separate or are discharged by the court. Unless by order of the court, the officer must not suffer any communication to be made to them, or make any personally, except to ask them if they are agreed upon a verdict, and the officer must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. Before any officer takes charge of a jury, this subsection shall be read to the officer who shall be then sworn to follow its provisions to the utmost of such officer's ability.

C(6) **Separation during deliberation.** The court in its discretion may allow the jury to separate during its deliberation when the court is of the opinion that the deliberation process will not be adversely affected. In such cases the court will give the jury appropriate cautionary instruction.

C(7) **Juror's use of private knowledge or information.** A juror shall not communicate any private knowledge or information that the juror may have of the matter in controversy to other jurors nor shall the juror be governed by the same in giving his or her verdict.

**D Further instructions.** After retirement for deliberation, if the jury requests information on any point of law, the judge may require the officer having them in charge to conduct them into court. Upon the jury being brought into court, the information requested, if given, shall be given either orally or in writing in the presence of, or after notice to, the parties or their counsel.

**E Comments on evidence.** The judge shall not instruct with respect to matters of fact, nor comment thereon.

**F Discharge of jury without verdict.**

F(1) **When jury may be discharged.** The jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court unless:

F(1)(a) At the expiration of such period as the court deems proper, it satisfactorily appears that there is no probability of an agreement; or

F(1)(b) An accident or calamity requires their discharge; or

F(1)(c) A juror becomes ill as provided in Rule 58 D.

F(2) **New trial when jury discharged.** Where the jury is discharged without giving a verdict, either during the progress of the trial or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

**G Return of jury verdict.**

G(1) **Declaration of verdict.** When the jurors have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G(2) **Number of jurors concurring.** In civil cases three-fourths of the jury may render a verdict.

G(3) **Polling the jury.** When the verdict is given, and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether the verdict is the juror's verdict. If fewer jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G(4) **Informal or insufficient verdict.** If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G(5) **Completion of verdict; form and entry.** When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

**H Necessity of noting exception on error in statement of issues or instructions given or refused.**

H(1) **Statement of issues or instructions given or refused.** A party may not obtain appellate review of an asserted error by a trial court in submitting or refusing to submit a statement of issues to a jury pursuant to subsection C(2) of this rule or in giving or refusing to give an instruction to a jury unless the party seeking review identified the asserted error to the trial court and made a notation of exception immediately after the court instructed the jury or at such other time as the trial court directed. The requirements of this rule do not preclude an appellate court from reviewing asserted errors in jury statements or instructions for legal errors that are apparent on the record.

H(2) **Exceptions must be specific and on the record.** The notation of exception required by subsection (1) of this section must be made orally on the record or in a writing filed with the court and must identify with particularity the points on which the exception is based. In noting an exception, a party may incorporate by reference the points that the party previously made with particularity on the record regarding the statement or instruction to which the exception applies. [CCP 12/2/78; §B amended by 1979 c.284 §38; §C amended by 1981 c.662 §1 and 1981 c.892 §97b; §B amended by CCP 12/4/82; §C(6) amended by CCP 12/10/88 and 1/6/89; §G amended by 1997 c.249 §11; §B amended by CCP 12/14/02; §H amended by CCP 12/11/04; §B amended by CCP 12/13/08; §H amended by CCP 12/1/12]

## RULE 60

MOTION FOR DIRECTED VERDICT

**Motion for a directed verdict.** Any party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury. If a motion for directed verdict is made by the party against whom the claim is asserted, the court may, at its discretion, give a judgment of dismissal without

prejudice under Rule 54 rather than direct a verdict. [CCP 12/2/78; amended by CCP 12/13/80]

## RULE 61

VERDICTS, GENERAL AND SPECIAL

**A General verdict.**

A(1) A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant.

A(2) When a general verdict is found in favor of a party asserting a claim for the recovery of money, the jury shall also assess the amount of recovery. A specific designation by a jury that no amount of recovery shall be had complies with this subsection.

**B Special verdict.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires such party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

**C General verdict accompanied by answer to interrogatories.** The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and the answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

**D Action for specific personal property.** In an action for the recovery of specific personal property, where any party who alleges a right to possession of such property is not in possession at the time of trial, in addition to any general verdict or other special verdict, the court shall require the jury to return a special verdict in the form of (1) a special written finding on the issue of the right to possession of any party alleging a right to possession, and (2) an assessment of the value of the property. [CCP 12/2/78]

## RULE 62

FINDINGS OF FACT

**A Necessity.** Whenever any party appearing in a civil action tried by the court so demands prior to the commencement of the trial, the court shall make special findings of fact, and shall state separately its conclusions of law thereon. In the absence of such a demand for special findings, the court may make either general or special findings. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact or conclusions of law appear therein.

**B Proposed findings; objections.** Within 10 days after the court has made its decision, any special findings requested by any party, or proposed by the court, shall be served upon all parties who have appeared in the case and shall be filed with the clerk; and any party may, within 10 days after such service, object to such proposed findings or any part thereof, and request other, different, or additional special findings, whether or not such party has previously requested special findings. Any such objections or requests for other, different, or additional special findings shall be heard and determined by the court within 30 days after the date of the filing thereof; and, if not so heard and determined, any such objections and requests for such other, different, or additional special findings shall conclusively be deemed denied.

**C Entry of judgment.** Upon (1) the determination of any objections to proposed special findings and of any requests for other, different, or additional special findings, or (2) the expiration of the time for filing such objections and requests if none is filed, or (3) the expiration of the time at which such objections or requests are deemed denied, the court shall enter the appropriate order or judgment. Any such judgment or order filed prior to the expiration of the periods above set forth shall be deemed not entered until the expiration of said periods.

**D Extending or lessening time.** Prior to the expiration of the times provided in sections B and C of this rule, the time for serving and filing special findings, or for objecting to and requesting other, different, or additional special findings, may be extended or lessened by the trial court upon the stipulation of the parties or for good cause shown; but in no event shall the time be extended more than 30 days.

**E Necessity.** Requests for findings of fact or objections to findings are not necessary for purposes of appellate review.

**F Effect of findings of fact.** In an action tried without a jury, except as provided in ORS 19.415 (3), the findings of the court upon the facts shall have the same force and effect, and be equally conclusive, as the verdict of a jury. [CCP 12/2/78; §F amended by CCP 12/14/02]

## RULE 63

JUDGMENT NOTWITHSTANDING THE VERDICT

**A Grounds.** When a motion for a directed verdict, made at the close of all the evidence, which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

**B Reserving ruling on directed verdict motion.** In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of the adverse party, submit the case to the jury with leave to the moving party to move for judgment in such party's favor if the verdict is otherwise than as would have been directed or if the jury cannot agree on a verdict.

**C Alternative motion for new trial.** A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the verdict, and unless so joined shall, in the event that a motion for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

D(1) **Time for motion and ruling.** A motion for judgment notwithstanding the verdict shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days of the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

D(2) **Effect of notice of appeal.** A motion for judgment notwithstanding the verdict filed within the time limit prescribed in subsection (1) of this section may be filed notwithstanding that another party has filed notice of appeal in the case and the trial court may decide the motion notwithstanding that notice of appeal has been filed. If a party files a motion for judgment notwithstanding the verdict after notice of appeal has been filed, the moving party shall serve a copy of the motion on the appellate court. If the trial court decides the motion by order, the moving party shall file a copy of the order in the appellate court within seven days of the date of entry of the order. Any necessary modification of the appeal required by the order shall be pursuant to rule of the appellate court.

**E Duties of the clerk.** The clerk shall, on the date an order made pursuant to this rule is entered or on the date a motion is deemed denied pursuant to section D of this rule, whichever is earlier, mail a notice of the date of entry of the order or denial of the motion to the attorney of record, if any, of each party who is not in default for failure to appear. If a party who is not in default for failure to appear does not have an attorney of record, such notice shall be mailed to the party. The clerk also shall make a note in the register of the mailing.

**F Motion for new trial after judgment notwithstanding the verdict.** The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 64 not later than 10 days after filing of the judgment notwithstanding the verdict. [CCP 12/2/78; §§D,E amended by CCP 12/13/80; §A amended by CCP 12/4/82; §E amended by 1995 c.79 §405; §E amended by 2003 c.576 §223; §D amended by CCP 12/9/06]

## RULE 64

NEW TRIALS

**A New trial defined.** A new trial is a re-examination of an issue of fact in the same court after judgment.

**B Jury trial; grounds for new trial.** A former judgment may be set aside and a new trial granted in an action where there has been a trial by jury on the motion of the party aggrieved for any of the following causes materially affecting the substantial rights of such party.

B(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having fair trial.

B(2) Misconduct of the jury or prevailing party.

B(3) Accident or surprise which ordinary prudence could not have guarded against.

B(4) Newly discovered evidence, material for the party making the application, which such party could not with reasonable diligence have discovered and produced at the trial.

B(5) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

B(6) Error in law occurring at the trial and objected to or excepted to by the party making the application.

**C New trial in case tried without a jury.** In an action tried without a jury, a former judgment may be set aside and a new trial granted on motion of the party aggrieved on any grounds set forth in section B of this rule where applicable. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

**D Specification of grounds of motion; when motion must be on affidavits or declarations.** In all cases of motion for a new trial, the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subsections (1) through (4) of section B of this rule, it shall be upon affidavit or declaration setting forth the facts upon which the motion is based. If the cause is newly discovered evidence, the affidavits or declarations of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their nonproduction.

**E When counteraffidavits or counterdeclarations are allowed; former proceedings considered.** If the motion is supported by affidavits or declarations, counteraffidavits or counterdeclarations may be offered by the adverse party. In the consideration of any motion for a new trial, reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

F(1) **Time of motion; counteraffidavits or counterdeclarations; hearing and determination.** A motion to set aside a judgment and for a new trial, with the affidavits or declarations, if any, in support thereof, shall be filed not later than 10 days after the entry of the judgment sought to be set aside, or such further time as the court may allow. When the adverse party is entitled to oppose the motion by counteraffidavits or counterdeclarations, such party shall file the same within 10 days after the filing of the motion, or such further time as the court may allow. The motion shall be heard and determined by the court within 55 days from the time of the entry of the judgment, and not thereafter, and if not so heard and determined within said time, the motion shall conclusively be deemed denied.

F(2) **Effect of notice of appeal.** A motion for new trial filed within the time limit prescribed in subsection (1) of this section may be filed notwithstanding that another party has filed notice of appeal in the case and the trial court may decide the motion notwithstanding that notice of appeal has been filed. If a party files a motion for new trial after notice of appeal has been filed, the moving party shall serve a copy of the motion on the appellate court. If the trial court decides the motion by order, the moving party shall file a copy of the order in the appellate court within seven days of the date of entry of the order. Any necessary modification of the appeal required by the order shall be pursuant to rule of the appellate court.

**G New trial on court's own initiative.** If a new trial is granted by the court on its own initiative, the order shall so state and shall be made within 30 days after the entry of the judgment. Such order shall contain a statement setting forth fully the grounds upon which the order was made, which statement shall be a part of the record in the case. [CCP 12/2/78; §B amended by 1979 c.284 §39; §§F,G amended by CCP 12/13/80; amended by 2003 c.194 §12; §F amended by CCP 12/9/06]

## RULE 65

REFEREES

**A In general.**

A(1) **Appointment.** A court in which an action is pending may appoint a referee who shall have such qualifications as the court deems appropriate.

A(2) **Compensation.** The fees to be allowed to a referee shall be as provided in ORS 21.400.

A(3) **Delinquent fees.** The referee may not retain the referee's report as security for compensation.

**B Reference.**

B(1) **Reference by agreement.** The court may make a reference upon the written consent of the parties. In any case triable by right to a jury, consent to reference for decision upon issues of fact shall be a waiver of right to jury trial.

B(2) **Reference without agreement.** Reference may be made in actions to be tried without a jury upon motion by any party or upon the court's own initiative. In absence of agreement of the parties, a reference shall be made only upon a showing that some exceptional condition requires it.

**C Powers.**

C(1) **Order of reference.** The order of reference to a referee may specify or limit the referee's powers and may direct the referee to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only. The order may fix the time and place for beginning and closing the hearings and for the filing of the referee's report.

C(2) **Power under order of reference.** Subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before the referee and to do all acts and take all measures necessary or proper for the efficient performance of duties under the order. The referee may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. Unless otherwise directed by the order of reference, the referee may rule upon the admissibility of evidence. The referee has the authority to put witnesses on oath and may personally examine such witnesses upon oath.

C(3) **Record.** When a party so requests, the referee shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as a court sitting without a jury.

**D Proceedings.**

D(1) **Meetings.**

D(1)(a) When a reference is made, the clerk or person performing the duties of that office shall forthwith furnish the referee with a copy of the order of reference. Upon receipt thereof, unless the order of reference otherwise provides, the referee shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys of the meeting date.

D(1)(b) It is the duty of the referee to proceed with all reasonable diligence. Any party, after notice to the parties and the referee, may apply to the court for an order requiring the referee to speed the proceedings and to make the report.

D(1)(c) If a party fails to appear at the time and place appointed, the referee may proceed ex parte or may adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

D(2) **Witnesses.** The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 55. If, without adequate excuse, a witness fails to appear or give evidence, that witness may be punished as for a contempt by the court and be subjected to the consequences, penalties, and remedies provided in Rule 55 G.

D(3) **Accounts.** When matters of accounting are in issue, the referee may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the referee may require a different form of statement to be furnished or the accounts or specific items thereof to be proved by oral examination of the accounting parties or in such other manner as the referee directs.

**E Report.**

E(1) **Contents.** The referee shall without delay prepare a report upon the matters submitted by the order of reference and, if required to make findings of fact and conclusions of law, the referee shall set them forth in the report.

E(2) **Filing.** Unless otherwise directed by the order of reference, the referee shall file the report with the clerk of the court or person performing the duties of that office and shall file a transcript of the proceedings and of the evidence and the original exhibits with the report. The referee shall forthwith mail a copy of the report to all parties.

E(3) **Effect.**

E(3)(a) Unless the parties stipulate to the contrary, the referee's findings of fact shall have the same effect as a jury verdict. Within 10 days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections to the report shall be by motion. The court after hearing may affirm or set aside the report, in whole or in part.

E(3)(b) In any case, the parties may stipulate that a referee's findings of fact shall be binding or shall be binding unless clearly erroneous. [CCP 12/13/80; §A amended by 2012 c.48 §14]

## RULE 66

SUBMITTED CONTROVERSY

**A Submission without action.** Parties to a question in controversy, which might have been the subject of an action with such parties plaintiff and defendant, may submit the question to the determination of a court having subject matter jurisdiction.

A(1) **Contents of submission.** The written submission shall consist of an agreed statement of facts upon which the controversy depends, a certificate that the controversy is real and that the submission is made in good faith for the purpose of determining the rights of the parties, and a request for relief.

A(2) **Who must sign the submission.** The submission must be signed by all parties or their attorneys as provided in Rule 17.

A(3) **Effect of the submission.** From the moment the submission is filed, the court shall treat the controversy as if it is an action pending

after a special verdict found. The controversy shall be determined on the agreed case alone, but the court may find facts by inference from the agreed facts. If the statement of facts in the case is not sufficient to enable the court to enter judgment, the submission shall be dismissed or the court shall allow the filing of an additional statement.

**B Submission of pending case.** An action may be submitted in a pending action at any time before trial, subject to the same requirements and attended by the same results as in a submission without action, and in addition:

B(1) **Pleadings deemed abandoned.** Submission shall be an abandonment by all parties of all prior pleadings, and the case shall stand on the agreed case alone; and

B(2) **Provisional remedies.** The submission must provide for any provisional remedy which is to be continued or such remedy shall be deemed waived. [CCP 12/13/80]

## RULE 67

JUDGMENTS

**A Definitions.** "Judgment" as used in these rules has the meaning given that term in ORS 18.005. "Order" as used in these rules means any other determination by a court or judge that is intermediate in nature.

**B Judgment for less than all claims or parties in action.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may render a limited judgment as to one or more but fewer than all of the claims or parties. A judge may render a limited judgment under this section only if the judge determines that there is no just reason for delay.

**C Relief granted.** Every judgment shall grant the relief to which the party in whose favor it is rendered is entitled. A judgment for relief different in kind from or exceeding the amount prayed for in the pleadings may not be rendered unless reasonable notice and opportunity to be heard are given to any party against whom the judgment is to be entered.

**D Judgment in action for recovery of personal property.** In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession of the property, or for the value of the property in case a delivery cannot be had, and for damages for the detention of the property. If the property has been delivered to the plaintiff and the defendant claims a return of the property, judgment for the defendant may be for a return of the property, or the value of the property in case a return cannot be had, and damages for taking and withholding the property.

**E Judgment in action against partnership, unincorporated association, or parties jointly indebted.**

E(1) **Partnership and unincorporated association.** Judgment in an action against a partnership or unincorporated association that is sued in any name that it has assumed or by which it is known may be entered against that partnership or association and shall bind the joint property of all of the partners or associates.

E(2) **Joint obligations; effect of judgment.** In any action against parties jointly indebted upon a joint obligation, contract, or liability, judgment may be taken against less than all of those parties and a default, dismissal, or judgment in favor of or against less than all of those parties in an action does not preclude a judgment in the same action in favor of or against the remaining parties.

**F Judgment by stipulation.**

F(1) **Availability of judgment by stipulation.** At any time after commencement of an action, a judgment may be given upon stipulation that a judgment for a specified amount or for a specific relief may be entered. The stipulation shall be by the party or parties against whom judgment is to be entered and the party or parties in whose favor judgment is to be entered. If the stipulation provides for attorney fees, costs, and disbursements, they may be entered as part of the judgment according to the stipulation.

F(2) **Filing; assent in open court.** The stipulation for judgment may be in a writing signed by the parties, their attorneys, or their authorized representatives. That writing shall be filed in accordance with Rule 9. The stipulation may be subjoined or appended to, and part of, a proposed form of judgment. If not in writing, the stipulation shall be assented to by all parties thereto in open court.

**G Judgment on portion of claim exceeding counterclaim.** The court may direct entry of a limited judgment as to that portion of any claim that exceeds a counterclaim asserted by the party or parties against whom the judgment is entered, if the party or parties have admitted the claim and asserted a counterclaim amounting to less than the claim. [CCP 12/13/80; §§A,B,G amended by 2003 c.576 §§90,261,568; §C amended by CCP 12/11/04; §§C,D,E,F,G amended by CCP 12/6/14]

## RULE 68

ALLOWANCE AND TAXATION OF ATTORNEY FEES AND COSTS AND DISBURSEMENTS

**A Definitions.** As used in this rule:

A(1) **Attorney fees.** "Attorney fees" are the reasonable value of legal services related to the prosecution or defense of an action.

A(2) **Costs and disbursements.** "Costs and disbursements" are reasonable and necessary expenses incurred in the prosecution or defense of an action, other than for legal services, and include the fees of officers and witnesses; the expense of publication of summonses or notices, and the postage where the same are served by mail; any fee charged by the Department of Transportation for providing address information concerning a party served with summons pursuant to Rule 7 D(4)(a)(ii); the compensation of referees; the expense of copying of any public record, book, or document admitted into evidence at trial; recordation of any document where recordation is required to give notice of the creation, modification, or termination of an interest in real property; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by any other rule or statute. The court, acting in its sole discretion, may allow as costs reasonable expenses incurred by a party for interpreter services. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

**B Allowance of costs and disbursements.** In any action, costs and disbursements shall be allowed to the prevailing party unless these rules or any other rule or statute direct that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court otherwise directs. If, under a special provision of these rules or any other rule or statute, a party has a right to recover costs, that party shall also have a right to recover disbursements.

**C Award of and entry of judgment for attorney fees and costs and disbursements.**

C(1) **Application of this section to award of attorney fees.** Notwithstanding Rule 1 A and the procedure provided in any rule or statute permitting recovery of attorney fees in a particular case, this section governs the

pleading, proof, and award of attorney fees in all cases, regardless of the source of the right to recover such fees, except when:

C(1)(a) attorney fees are claimed as damages arising prior to the action;

C(1)(b) attorney fees are granted by order, rather than entered as part of a judgment; or

C(1)(c) a statute refers to this rule but provides for a procedure that varies from the procedure specified in this rule.

C(2)(a) **Alleging right to attorney fees.** A party seeking attorney fees shall allege the facts, statute, or rule that provides a basis for the award of fees in a pleading filed by that party. Attorney fees may be sought before the substantive right to recover fees accrues. No attorney fees shall be awarded unless a right to recover fees is alleged as provided in this paragraph or in paragraph C(2)(b) of this rule.

C(2)(b) **Alternatives.** If a party does not file a pleading but instead files a motion or a response to a motion, a right to attorney fees shall be alleged in the party's motion or response, in similar form to the allegations required in a pleading.

C(2)(c) **Specific amount not required.** A party shall not be required to allege a right to a specific amount of attorney fees. An allegation that a party is entitled to "reasonable attorney fees" is sufficient.

C(2)(d) **Pleadings or motions responding to allegations of right to attorney fees.** Any allegation of a right to attorney fees in a pleading, motion, or response shall be deemed denied and no responsive pleading shall be necessary. The opposing party may make a motion to strike the allegation or to make the allegation more definite and certain. Any objection to the form or specificity of the allegation of the facts, statute, or rule that provides a basis for the award of fees shall be waived if not alleged prior to trial or hearing.

C(3) **Proof.** The items of attorney fees or costs and disbursements shall be submitted in the manner provided by subsection C(4) of this rule, without proof being offered during the trial.

C(4) **Procedure for seeking attorney fees or costs and disbursements.** The procedure for seeking attorney fees or costs and disbursements shall be as specified in this subsection.

C(4)(a) **Filing and serving statement of attorney fees and costs and disbursements.** A party seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of a judgment:

C(4)(a)(i) file with the court a signed and detailed statement of the amount of attorney fees or costs and disbursements that explains the application of any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements, together with proof of service, if any, in accordance with Rule 9 C; and

C(4)(a)(ii) serve, in accordance with Rule 9 B, a copy of the statement on all parties who are not in default for failure to appear.

C(4)(b) **Filing and serving objections.** A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by a written objection to the statement. The objection and supporting documents, if any, shall be filed and served within 14 days after service on the objecting party of a copy of the statement. The objection shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading. The objecting party may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

C(4)(c) **Response to objections.** The party seeking an award of attorney fees may file a response to an objection filed pursuant to paragraph C(4)(b) of this rule. The response and

supporting documents, if any, shall be filed and served within 7 days after service of the objection. The response shall be specific and may address issues of law or fact. The party seeking attorney fees may present affidavits, declarations, and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

C(4)(d) **Amendments and enlargements of time.**

C(4)(d)(i) **Amendments; supplements.** Statements, objections, and responses may be amended or supplemented in accordance with Rule 23.

C(4)(d)(ii) **Discretion related to time of filing.** The court may, in its discretion and upon any terms that may be just, allow a statement, an objection, or a response to be filed and served after the time specified in paragraph C(4)(a), C(4)(b), or C(4)(c) of this rule, or by an order enlarge such time.

C(4)(e) **Hearing on objections.** No hearing shall be held and the court may rule on the request for attorney fees based upon the statement, objection, response, and any accompanying affidavits or declarations unless a party has requested a hearing in the caption of the objection or response or unless the court sets a hearing on its own motion.

C(4)(e)(i) **How determined.** If a hearing is requested, the court, without a jury, shall hear and determine all issues of law and fact raised by the objection.

C(4)(e)(ii) **Court's ruling.** The court shall deny or award in whole or in part the amounts sought as attorney fees or costs and disbursements.

C(4)(f) **No timely objections.** If objections are not timely filed, the court may award attorney fees or costs and disbursements sought in the statement.

C(4)(g) **Findings and conclusions.** On the request of a party, the court shall make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party must make a request pursuant to this paragraph by including a request for findings and conclusions in the caption of the statement of attorney fees or costs and disbursements, objection, or response filed pursuant to paragraph C(4)(a), C(4)(b), or C(4)(c) of this rule. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

C(5) **Judgment concerning attorney fees or costs and disbursements.**

C(5)(a) **As part of judgment.** If all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment, the court shall include any award or denial of attorney fees or costs and disbursements in that judgment.

C(5)(b) **After entry of a judgment.**

C(5)(b)(i) **After entry of a general or supplemental judgment.** If any issue regarding attorney fees or costs and disbursements is not decided before entry of a general or supplemental judgment, any award or denial of attorney fees or costs and disbursements shall be made by supplemental judgment.

C(5)(b)(ii) **After entry of a limited judgment.** Attorney fees or costs and disbursements may be awarded or denied following entry of a limited judgment if the court determines that there is no just reason for delay. In such cases, any award or denial of attorney fees or costs and disbursement shall be made by limited judgment.

C(6) **Avoidance of multiple collection of attorney fees and costs and disbursements.**

C(6)(a) **Separate judgments for separate claims.** If more than one judgment is entered in an action, the court shall take any steps that are necessary to avoid the multiple taxation of the

same attorney fees or costs and disbursements in those judgments.

C(6)(b) **Separate judgments for the same claim.** If more than one judgment is entered for the same claim (when separate actions are brought for the same claim against several parties who might have been joined as parties in the same action or, when pursuant to Rule 67 B, separate limited judgments are entered against several parties for the same claim), attorney fees or costs and disbursements may be entered in each judgment as provided in this rule, but satisfaction of one judgment bars recovery of attorney fees or costs and disbursements included in all other judgments.

C(7) **Procedure for seeking attorney fees or costs and disbursements incurred in enforcing judgments.**

C(7)(a) **Frequency.** If a party has alleged a basis for the award of attorney fees as provided in paragraph C(2)(a) or C(2)(b) of this rule, and the party incurs attorney fees or costs and disbursements in collecting or enforcing a judgment, that party may file a supplemental statement of attorney fees or costs and disbursements. A party may file a supplemental statement at any time after entry of the judgment being enforced; however, unless good cause is shown, not more than one supplemental statement may be filed and served under this paragraph in the first year after entry of that judgment, and only one such supplemental statement may be filed and served annually after the filing of the previous supplemental statement.

C(7)(b) **Procedure.** The procedure for seeking attorney fees or costs and disbursements in collecting or enforcing judgments shall otherwise be as specified in subparagraph C(4)(a)(i) through paragraph C(4)(g) of this rule. [CCP 12/13/80; amended by 1981 c.898 §7; §C amended by 1983 c.728 §6; §A(2) amended by CCP 12/8/84; §A amended by 1987 c.586 §43; §C(2) amended by CCP 12/10/88 and 1/6/89; §C amended by CCP 12/15/90; §A amended by CCP 12/12/92; §C amended by 1993 c.18 §4; §A amended by CCP 12/14/96; §A amended by 1997 c.872 §17; §C amended by CCP 12/12/98; §C amended by CCP 12/14/02, 2003 c.194 §13 and 2003 c.576 §262; §C amended by 2005 c.22 §4 and 2005 c.568 §31a; amended by CCP 12/1/12; amended by CCP 12/6/14]

## RULE 69

DEFAULT ORDERS AND JUDGMENTS

**A In general.**

A(1) When a party against whom a judgment for affirmative relief is sought has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of the court and has failed to appear by filing a motion or answer, or otherwise to defend as provided in these rules or applicable statute, the party seeking affirmative relief may apply for an order of default and a judgment by default by filing motions and affidavits or declarations in compliance with this rule.

A(2) The provisions of this rule apply whether the party entitled to an order of default and judgment by default is a plaintiff, a third party plaintiff, or a party who has pleaded a counterclaim or cross-claim.

A(3) In all cases a judgment by default is subject to the provisions of Rule 67 B.

**B Intent to appear; notice of intent to apply for an order of default.**

B(1) For the purposes of avoiding a default, a party may provide written notice of intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.

B(2) If the party against whom an order of default is sought has filed an appearance in the action, or has provided written notice of intent to file an appearance, then notice of the intent to apply for an order of default must be filed and served at least 10 days, unless shortened by

the court, prior to applying for the order of default. The notice of intent to apply for an order of default cannot be served before the time required by Rule 7 C(2) or other applicable rule or statute has expired. The notice of intent to apply for an order of default must be in the form prescribed by Uniform Trial Court Rule 2.010 and must be filed with the court and served on the party against whom an order of default is sought.

**C Motion for order of default.**

C(1) The party seeking default must file a motion for order of default. That motion must be accompanied by an affidavit or declaration to support that default is appropriate and contain facts sufficient to establish the following:

C(1)(a) that the party to be defaulted has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of the court;

C(1)(b) that the party against whom the order of default is sought has failed to appear by filing a motion or answer, or otherwise to defend as provided by these rules or applicable statute;

C(1)(c) whether written notice of intent to appear has been received by the movant and, if so, whether written notice of intent to apply for an order of default was filed and served at least 10 days, or any shortened period of time ordered by the court, prior to filing the motion;

C(1)(d) whether, to the best knowledge and belief of the party seeking an order of default, the party against whom judgment is sought is or is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005; and

C(1)(e) whether the party against whom the order is sought is or is not a person in the military service, or stating that the movant is unable to determine whether or not the party against whom the order is sought is in the military service as required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C. §521, as amended.

C(2) If the party seeking default states in the affidavit or declaration that the party against whom the order is sought:

C(2)(a) is incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005, an order of default may be entered against the party against whom the order is sought only if a guardian ad litem has been appointed or the party is represented by another person as described in Rule 27;

C(2)(b) is a person in the military service, an order of default may be entered against the party against whom the order is sought only in accordance with the Servicemembers Civil Relief Act.

C(3) The court may grant an order of default if it appears the motion and affidavit or declaration have been filed in good faith and good cause is shown that entry of such an order is proper.

**D Motion for judgment by default.**

D(1) A party seeking a judgment by default must file a motion, supported by affidavit or declaration. Specifically, the moving party must show:

D(1)(a) that an order of default has been granted or is being applied for contemporaneously;

D(1)(b) what relief is sought, including any amounts due as claimed in the pleadings;

D(1)(c) whether costs, disbursements, and/or attorney fees are allowable based on a contract, statute, rule, or other legal provision, in which case a party may include costs, disbursements, and attorney fees to be awarded pursuant to Rule 68.

D(2) The form of judgment submitted shall comply with all applicable rules and statutes.

D(3) The court, acting in its discretion, may conduct a hearing, make an order of reference, or order that issues be tried by a jury, as it

deems necessary and proper, in order to enable the court to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter. The court may determine the truth of any matter upon affidavits or declarations.

**E Certain motor vehicle cases.** No order of default shall be entered against a defendant served with summons pursuant to Rule 7 D(4)(a)(i) unless, in addition to the requirements in Rule 7 D(4)(a)(i), the plaintiff submits an affidavit or a declaration showing:

E(1) that the plaintiff has complied with Rule 7 D(4)(a)(i);

E(2) whether the identity of the defendant's insurance carrier is known to the plaintiff or could be determined from any records of the Department of Transportation accessible to the plaintiff; and

E(3) if the identity of the defendant's insurance carrier is known, that the plaintiff not less than 30 days prior to the application for an order of default mailed a copy of the summons and the complaint, together with notice of intent to apply for an order of default, to the insurance carrier by first class mail and by any of the following: certified, registered, or express mail, return receipt requested; or that the identity of the defendant's insurance carrier is unknown to the plaintiff.

**F Setting aside an order of default or judgment by default.** For good cause shown, the court may set aside an order of default. If a judgment by default has been entered, the court may set it aside in accordance with Rule 71 B and C. [CCP 12/13/80; §B amended by 1981 c.898 §8; amended by CCP 12/13/86; §§A,B(2) amended by CCP 12/10/88 and 1/6/89; §B amended by CCP 12/15/90; amended by CCP 12/12/92; §B amended by 1995 c.79 §406 and 1995 c.664 §101; §C deleted and §§D,E,F redesignated by CCP 12/10/94; §A amended by CCP 12/14/96; §B amended by 2001 c.418 §1; amended by 2003 c.194 §14; §B amended by CCP 12/9/06; §§A,B amended by CCP 12/13/08; §§A,B,C,D,E amended by CCP 12/11/10; §F adopted by CCP 12/11/10; §§B,C amended by CCP 12/6/14]

## RULE 70

[CCP 12/13/80; §C amended by 1981 c.898 §9; §A amended by 1987 c.873 §19; amended by 1989 c.768 §1; §C amended by CCP 12/15/90; §A amended by 1991 c.202 §20; §A amended by 1993 c.763 §3; §A amended by 1999 c.195 §4; §A amended by 2001 c.417 §2; §A amended by 2003 c.194 §15 and 2003 c.380 §5; repealed by 2003 c.576 §580]

## RULE 71

RELIEF FROM JUDGMENT OR ORDER

**A Clerical mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own motion or on the motion of any party and after such notice to all parties who have appeared, if any, as the court orders. During the pendency of an appeal, a judgment may be corrected as provided in subsection (2) of section B of this rule.

**B Mistakes; inadvertence; excusable neglect; newly discovered evidence, etc.**

B(1) **By motion.** On motion and upon such terms as are just, the court may relieve a party or such party's legal representative from a judgment for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 64 F; (c) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the

judgment is void; or (e) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. A motion for reasons (a), (b), and (c) shall be accompanied by a pleading or motion under Rule 21 A which contains an assertion of a claim or defense. The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after receipt of notice by the moving party of the judgment. A copy of a motion filed within one year after the entry of the judgment shall be served on all parties as provided in Rule 9 B, and all other motions filed under this rule shall be served as provided in Rule 7. A motion under this section does not affect the finality of a judgment or suspend its operation.

B(2) **When appeal pending.** A motion under sections A or B may be filed with and decided by the trial court during the time an appeal from a judgment is pending before an appellate court. The moving party shall serve a copy of the motion on the appellate court. The moving party shall file a copy of the trial court's order in the appellate court within seven days of the date of the trial court order. Any necessary modification of the appeal required by the court order shall be pursuant to rule of the appellate court.

**C Relief from judgment by other means.** This rule does not limit the inherent power of a court to modify a judgment within a reasonable time, or the power of a court to entertain an independent action to relieve a party from a judgment, or the power of a court to grant relief to a defendant under Rule 7 D(6)(f), or the power of a court to set aside a judgment for fraud upon the court.

**D Writs and bills abolished.** Writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion or by an independent action. [CCP 12/13/80; §§A,B(2) amended by CCP 12/10/88 and 1/6/89; §B amended by CCP 12/11/10]

## RULE 72

STAY OF PROCEEDINGS TO ENFORCE JUDGMENT

**A Immediate execution; discretionary stay.** Execution or other proceeding to enforce a judgment may issue immediately upon the entry of the judgment, unless the court directing entry of the judgment, in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. The court shall have authority to stay execution of a judgment temporarily until the filing of a notice of appeal and to stay execution of a judgment pending disposition of an appeal, as provided in ORS 19.335, 19.340 and 19.350 or other provision of law.

**B Other stays.** This rule does not limit the right of a party to a stay otherwise provided for by these rules or other statute or rule.

**C Stay or injunction in favor of public body.** The federal government, any of its public corporations or commissions, the state, any of its public corporations or commissions, a county, a municipal corporation, or other similar public body shall not be required to furnish any bond or other security when a stay is granted by authority of section A of this rule in any action to which it is a party or is responsible for payment or performance of the judgment.

**D Stay of judgment as to multiple claims or multiple parties.** If a court enters a limited judgment under the provisions of Rule 67 B, the court may stay enforcement of the judgment and may prescribe such conditions as are necessary to secure the benefit thereof to the

party in whose favor the judgment is entered. [CCP 12/13/80; §A amended by CCP 12/14/96; §A amended by 1997 c.71 §18; §D amended by 2003 c.576 §263]

## RULE 73

JUDGMENTS BY CONFESSION

**A Judgments that may be confessed.**

A(1) **For money due; where allowed.** Judgment by confession may be entered without action for money due in the manner prescribed by this rule and may be entered in any court having jurisdiction over the subject matter. The application to confess judgment shall be made in the county in which the defendants, or one of them, reside or may be found at the time of the application. A judgment entered by any court in any other county has no force or validity, notwithstanding anything in the defendant's statement to the contrary.

A(2) **Consumer transactions.** No judgment by confession may be entered without action upon a contract, obligation, or liability that arises out of the sale of goods or the furnishing of services for personal, family, or household use; out of a loan or other extension of credit for personal, family, or household purposes; or upon a promissory note that is based upon such sale or extension of credit.

**B Statement by defendant.** A statement in writing must be made, signed by any party against whom judgment is to be entered or a person authorized to bind that party, and verified by oath, as follows:

B(1) it must authorize the entry of judgment for a specified sum;

B(2) it must state concisely the facts out of which the judgment arose, and show that the sum confessed therefor is justly and presently due;

B(3) it must contain a statement that the person or persons signing the judgment understands that the statement authorizes entry of judgment without further proceeding that would authorize execution to enforce payment of the judgment; and

B(4) it must have been executed after the date or dates when the sums described in the statement were due.

**C Filing of statement by plaintiff; entry, enforcement of judgment.** Judgment by confession may be ordered by the court upon the filing of the statement required by section B of this rule. The judgment may be entered and enforced in the same manner and with the same effect as a judgment in an action.

**D Confession by joint debtors.** One or more joint debtors may confess a judgment for a joint debt due. Where all of the joint debtors do not unite in the confession, the judgment shall be entered and enforced against only those debtors who confessed it and the judgment is not a bar to an action against the other joint debtors upon the same demand. [CCP 12/13/80; amended by CCP 12/6/14]

## RULE 74 (Reserved for Expansion)

## RULE 75 (Reserved for Expansion)

## RULE 76 (Reserved for Expansion)

## RULE 77 (Reserved for Expansion)

## RULE 78

ORDER OR JUDGMENT FOR SPECIFIC ACTS

**A Judgment requiring performance considered equivalent thereto.** A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply with the judgment, be deemed to be equivalent thereto.

**B Enforcement; contempt.** The court or judge thereof may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided in ORS 33.015 to 33.155.

**C Application.** Section B of this rule does not apply to an order or judgment for the payment of money, except orders and judgments for the payment of sums ordered pursuant to ORS 107.095 and 107.105 (1)(i), and money for support, maintenance, nurture, education, or attorney fees, in:

C(1) Actions for dissolution or annulment of marriage or separation from bed and board.

C(2) Proceedings upon support orders entered under ORS chapter 108, 109 or 110, or under ORS 416.400 to 416.465, 419B.400 or 419C.590. [CCP 12/13/80; 1985 c.610 §1; §C amended by CCP 12/13/86; §B amended by 1991 c.724 §31; §D repealed by 1991 c.724 §32; §C amended by 1993 c.33 §365; §C amended by 1995 c.608 §41; §C amended by 2003 c.14 §14; §C amended by 2007 c.71 §4]

## RULE 79

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

**A Availability generally.**

A(1) **Circumstances.** Subject to the requirements of Rule 82 A(1), a temporary restraining order or preliminary injunction may be allowed under this rule:

A(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 E, F(4) and H(2) are applicable, whether or not provisional relief is ordered under those provisions.

A(2) **Time.** A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

**B Temporary restraining order.**

B(1) **Notice.** A temporary restraining order may be granted without written or oral notice to the adverse party or to such party's attorney only if:

B(1)(a) It clearly appears from specific facts shown by an affidavit, a declaration or a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B(1)(b) The applicant or applicant's attorney submits an affidavit or a declaration setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit or declaration required in this paragraph shall not be required for orders granted by authority of ORS 107.095 (1)(c), (d), (e), (f) or (g).

B(2) **Contents of order; duration.** Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith, shall define the injury and state why it is irreparable, and

shall state why the order was granted without notice.

B(2)(a) Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B(2)(b) The 10-day limit of paragraph (a) of this subsection does not apply to orders granted by authority of ORS 107.095 (1)(c), (d), (e), (f) or (g).

B(3) **Hearing on preliminary injunction.** In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B(4) **Adverse party's motion to dissolve or modify.** On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B(5) **Temporary restraining orders not extended by implication.** If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with subsection C(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order as permitted by subsection (4) of this section, and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

**C Preliminary injunction.**

C(1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

C(2) **Consolidation of hearing with trial on merits.** Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction, which would be admissible upon the trial on the merits, becomes part of the record on trial and need not be repeated upon the trial.

**D Form and scope of injunction or restraining order.** Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance, shall be specific in terms, shall describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained, and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with any of them who receive actual notice of the order by personal service or otherwise.

**E Scope of rule.**

E(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.735, 124.005 to 124.040 or 163.760 to 163.777.

E(2) This rule does not apply to temporary restraining orders or preliminary injunctions

granted pursuant to ORCP 83 except for the application of section D of this rule.

E(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

**F Writ abolished.** The writ of ne exeat is abolished. [CCP 12/13/80; §E amended by 1995 c.666 §27; §B amended by 2003 c.194 §16; §A amended by 2005 c.22 §4a; §E amended by 2007 c.71 §5; §E amended by 2013 c.687 §18]

## RULE 80

RECEIVERS

**A Receiver defined; applicability.**

A(1) A receiver is a person appointed by a circuit court, or judge thereof, to take charge of property during the pendency of a civil action or upon a judgment or order therein, and to manage and dispose of it as the court may direct.

A(2) The provisions of the Oregon Receivership Code control over conflicting provisions of this rule with respect to receiverships governed by the Oregon Receivership Code.

**B When appointment of receiver authorized.** Subject to the requirements of Rule 82 A(2), a receiver may be appointed by a circuit court in the following cases:

B(1**) Provisionally to protect property.** Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B(2) **To effectuate judgment.** After judgment to carry the same into effect.

B(3) **To dispose of property, to preserve during appeal or when execution unsatisfied.** To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B(4) **Creditor's action.** In an action brought by a creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

B(5) **Attaching creditor.** At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

B(6) **Protect, preserve, or restrain property subject to execution.** At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

B(7) **Corporations and associations; when provided by statute.** In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

B(8) **Corporations and associations; to protect property or interest of stockholders or creditors.** When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

**C Appointment of receivers; notice.** No receiver shall be appointed without notice to the adverse

party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

**D Form of order appointing receivers.** Every order or judgment appointing a receiver:

D(1) Shall contain a reasonable description of the property included in the receivership;

D(2) Shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, and (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;

D(3) Shall, when a general receiver is appointed to liquidate and wind up affairs, set a time within which creditors and claimants shall file their claims or be barred; and

D(4) May require periodic reports from the receiver.

**E Notice to persons interested in receivership.** A general receiver appointed to liquidate and wind up affairs shall under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the receiver's attorney, or the clerk of the court, within such time as the court directs.

**F Special notices.**

F(1) **Required notice.** Creditors filing claims with the receiver, all persons making contracts with the receiver, all persons having known claims against the receiver, all persons actually or constructively known to be claiming any interest in receivership property, and all persons against whom the receiver asserts claims shall receive notice of any proposed action by the court affecting their rights.

F(2) **Request for special notice.** At any time after a receiver is appointed, any person interested in the receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of the receivership:

F(2)(a) Filing of motions for sales, leases, or mortgages of any property in the receivership;

F(2)(b) Filing of accounts;

F(2)(c) Filing of motions for removal or discharge of the receiver; and

F(2)(d) Such other matters as are officially requested and approved by the court.

A request shall state the post-office address of the person, or such person's attorney.

F(3) **Form and service of notices.** Any notice required by this section shall be served in the manner provided in Rule 9, at least five days before the hearing on any of the matters above described, unless a different period is fixed by order of the court.

**G Termination of receiverships.** A receivership may be terminated only upon motion served with at least 10 days' notice upon all parties who have appeared in the proceeding. The court may require that a final account and report be filed and served, and may provide for the filing of written objections to such account within a specified time. At the hearing on the motion to terminate, the court shall hear all objections to the final account and shall take such evidence as is appropriate, and shall make such orders as are just concerning the termination of the receivership, including all necessary orders on the fees and costs of the receivership. [CCP 12/13/80; §§C,F amended by 1981 c.898 §§9a,10; §F(3) amended by CCP 12/10/88 and 1/6/89; §A amended by 2017 c.358 §43]

## RULE 81

DEFINITIONS; SERVICE; ADVERSE CLAIMANTS

**A Definitions.** As used in Rules 81 through 85, unless the context otherwise requires:

A(1) **Attachment.** "Attachment" is the procedure by which an unsecured plaintiff obtains a judicial lien on defendant's property prior to judgment.

A(2) **Bank.** "Bank" includes commercial and savings banks, trust companies, savings and loan associations, and credit unions.

A(3) **Clerk.** "Clerk" means clerk of the court or any person performing the duties of that office.

A(4) **Consumer goods.** "Consumer goods" means consumer goods as defined in ORS 79.0102.

A(5) **Consumer transaction.** "Consumer transaction" means a transaction in which the defendant becomes obligated to pay for goods sold or leased, services rendered, or monies loaned, primarily for purposes of the defendant's personal, family, or household use.

A(6) **Issuing officer.** "Issuing officer" means any person who on behalf of the court is authorized to issue provisional process.

A(7) **Levy.** "Levy" means to create a lien upon property prior to judgment by any of the procedures provided by Rules 81 through 85 that create a lien.

A(8) **Plaintiff and defendant.** "Plaintiff" includes any party asserting a claim for relief whether by way of claim, third party claim, cross-claim, or counterclaim, and "defendant" includes any person against whom such claim is asserted.

A(9) **Provisional process.** "Provisional process" means attachment under Rule 84, claim and delivery under Rule 85, temporary restraining orders under Rule 83, preliminary injunctions under Rule 83, or any other legal or equitable judicial process or remedy which before entry of a judgment enables a plaintiff, or the court on behalf of the plaintiff, to take possession or control of, or to restrain use or disposition of, or fix a lien on property in which the defendant claims an interest, except an order appointing a provisional receiver under Rule 80 or granting a temporary restraining order or preliminary injunction under Rule 79.

A(10) **Security interest.** "Security interest" means a lien created by agreement, as opposed to a judicial or statutory lien.

A(11) **Sheriff.** "Sheriff" includes a constable of a justice court.

A(12) **Writ.** A "writ" is an order by a court to a sheriff or other official to aid a creditor in attachment.

**B Service of notices or orders; proof of service.**

B(1) **Service.** Except where some other method is expressly permitted, any notice or order to show cause required or permitted to be served by Rules 81 through 85 shall be served in the manner in which a summons may be served.

B(2) **Proof of service.** Copies of all notices or orders to show cause shall be filed together with proof of service as provided in Rule 9 C.

**C Adverse claimants.** A person other than the defendant claiming to be the actual owner of property subject to provisional process, or any interest in such property, may move the court for an order establishing the claimant's title or interest, extinguishing the plaintiff's lien, or other appropriate relief. A hearing upon such motion shall be conducted within 20 days after service pursuant to Rule 9. After hearing:

C(1) **Summary release of attachment.** In a case where there is no genuine issue as to any material fact and the claimant is entitled to relief as a matter of law, the court may make an order establishing claimant's title or interest, extinguishing or limiting the plaintiff's lien, or granting other appropriate relief. In such case, the court may enter an order directing the plaintiff to pay the claimant the reasonable

expenses incurred in securing such order, including attorney fees.

C(2) **Continuation of attachment.** In all other cases, the court shall order the provisional process continued pending judgment. Such order protects the sheriff but is not an adjudication between the claimant and the plaintiff. [CCP 12/13/80; amended by 1981 c.883 §36; §C amended by 1981 c.883 §37; §A amended by 1995 c.658 §120; §A amended by 2001 c.445 §186; §A amended by 2003 c.576 §264]

## RULE 82

SECURITY; BONDS AND UNDERTAKINGS; JUSTIFICATION OF SURETIES

**A Security required.**

A(1) **Restraining orders; preliminary injunctions.**

A(1)(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A(1)(b) No security will be required under this subsection where:

A(1)(b)(i) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A(1)(b)(ii) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A(2) **Receivers.** No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A(3) **Attachment or claim and delivery.**

A(3)(a) Before any property is attached under Rule 84 or taken by the sheriff under Rule 85, the plaintiff must file with the clerk a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond or letter of credit.

A(3)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond or letter of credit, the court may require the plaintiff to give additional security.

A(3)(c) No bond or letter of credit shall be required before property is taken by the sheriff under Rule 85 if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A(4) **Other provisional process.** No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A(5) **Form of security or bond.** Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186, or a letter of credit issued by an insured institution, as defined in ORS 706.008.

A(6) **Modification of security requirements by court.** The court may waive, reduce, or limit

any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon an ex parte showing of good cause and on such terms as may be just and equitable.

**B Security; proceedings against sureties.** Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, or in the form of an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, each surety and each letter of credit issuer submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's or such issuer's agent upon whom any papers affecting the surety's or issuer's liability on the bond, undertaking or letter of credit may be served. Any surety's or issuer's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties or issuers if their addresses are known.

**C Approval by clerk.** Except where approval by a judge is otherwise required, the clerk is authorized to approve all irrevocable letters of credit, undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under subsection D(2) of this rule, or where the same are issued by an insured institution, as defined in ORS 706.008.

**D Qualifications of sureties.**

D(1) **Individuals.** Each individual surety must be a resident of the state. If there is one individual surety, that surety must be worth twice the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities; where there is more than one individual surety, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D(2) **Corporations.** A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

**E Affidavits or declarations of sureties.**

E(1) **Individuals.** The bond or undertaking must contain an affidavit or a declaration of each surety which shall state that such surety possesses the qualifications prescribed by section D of this rule.

E(2) **Corporations.** The bond or undertaking of a corporate surety must contain affidavits or declarations showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E(3) **Service.** When an irrevocable letter of credit, bond or undertaking is given for the benefit of a party, a copy of such letter of credit, bond or undertaking shall be served on that party promptly in the manner prescribed in Rule 9 A. Proof of service thereof shall thereupon be filed promptly in the court in which the letter of credit, bond or undertaking has been filed.

**F Objections to sureties.** If the party for whose benefit an irrevocable letter of credit, bond or undertaking is given is not satisfied with the sufficiency of the issuers or sureties, that party may, within 10 days after the receipt of a copy of the letter of credit or bond, serve upon the party giving the letter of credit or bond, or the attorney for the party giving the letter of credit or bond, a notice that the party for whose benefit the letter of credit or bond is given objects to the sufficiency of such issuers or sureties. If the party for whose benefit the letter

of credit or bond is given fails to do so, that party is deemed to have waived all objection to the issuers or sureties.

**G Hearing on objections to sureties.**

G(1) **Request for hearing.** Notice of objections to an issuer or a surety as provided in section F of this rule shall be filed in the form of a motion for hearing on objections to the irrevocable letter of credit or bond. Upon demand of the objecting party, each issuer or surety shall appear at the hearing of such motion and be subject to examination as to such issuer's or surety's pecuniary responsibility or the validity of the execution of the letter of credit or bond. Upon hearing of such motion, the court may approve or reject the letter of credit or bond as filed or require such amended, substitute, or additional letter of credit or bond as the circumstances will warrant.

G(2) **Information to be furnished.** Sureties on any bond or undertaking and any irrevocable letter of credit issuers shall furnish such information as may be required by the judge approving the same.

G(3) **Surety insurers.** It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Director of the Department of Consumer and Business Services or a certified copy thereof. [CCP 12/13/80; §D amended by 1981 c.898 §13; amended by 1991 c.331 §2; §G amended by 1995 c.79 §407; §§A,B,C amended by 1997 c.631 §§561,562,563; §E amended by 2003 c.194 §17]

## RULE 83

PROVISIONAL PROCESS

**A Requirements for issuance.** To obtain an order for issuance of provisional process the plaintiff shall cause to be filed with the clerk of the court from which such process is sought a sworn petition and any necessary supplementary affidavits or declarations requesting specific provisional process and showing, to the best knowledge, information, and belief of the plaintiff, affiant or declarant that the action is one in which provisional process may issue, and:

A(1) The name and residence or place of business of the defendant;

A(2) Whether the underlying claim is based on a consumer transaction and whether provisional process in a consumer good is sought;

A(3)(a) If the provisional process sought is claim and delivery, a description of the claimed property in particularity sufficient to make possible its identification, and the plaintiff's estimate of the value and location of the property;

A(3)(b) If the provisional process sought is a restraining order, a statement of the particular acts sought to be restrained;

A(4) Whether the plaintiff's claim to provisional process is based upon ownership, entitlement to possession, a security interest or otherwise;

A(5) A copy or verbatim recital of any writing or portion of a writing, if plaintiff relies upon a writing, which evidences the origin or source of the plaintiff's claim to provisional process;

A(6) Whether the claimed property is wrongfully detained by the defendant or another person;

A(7) Whether the claimed property has been taken by public authority for a tax, assessment, or fine;

A(8) If the plaintiff claims that the defendant has waived the right to be heard, a copy of the writing evidencing such waiver and a statement of when and in what manner the waiver occurred;

A(9) Facts, if any, which tend to establish that there is a substantial danger that the defendant or another person is engaging in, or is about to engage in, conduct which would place

the claimed property in danger of destruction, serious harm, concealment, removal from this state, or transfer to an innocent purchaser;

A(10) Facts, if any, which tend to establish that without restraint immediate and irreparable injury, damage, or loss will occur;

A(11) Facts, if any, which tend to establish that there is substantial danger that the defendant or another person probably would not comply with a temporary restraining order; and

A(12) That there is no reasonable probability that the defendant can establish a successful defense to the underlying claim.

**B Provisional process prohibited in certain consumer transactions.** No court shall order issuance of provisional process to effect attachment of a consumer good or to effect attachment of any property if the underlying claim is based on a consumer transaction. Provisional process authorized by Rule 85 may issue in consumer transactions.

**C Evidence admissible; choice of remedies available to court.**

C(1) The court shall consider the affidavit, declaration or petition filed under section A of this rule and may consider other evidence including, but not limited to, an affidavit, a declaration, a deposition, an exhibit or oral testimony.

C(2) If from the affidavit, declaration or petition or other evidence, if any, the court finds that a complaint on the underlying claim has been filed and that there is probable cause for sustaining the validity of the underlying claim, the court shall consider whether it shall order issuance of provisional process, as provided in section D of this rule, or a restraining order, as provided in section E of this rule, in addition to a show cause order. The finding under this subsection is subject to dissolution upon hearing.

**D Issuance of provisional process where damage to property threatened.** Subject to section B of this rule, if the court finds that before hearing on a show cause order the defendant or other person in possession or control of the claimed property is engaging in, or is about to engage in, conduct which would place the claimed property in danger of destruction, serious harm, concealment, removal from this state, or transfer to an innocent purchaser or that the defendant or other person in possession or control of the claimed property would not comply with a temporary restraining order, and if Rule 82 A has been complied with, the court shall order issuance of provisional process in property which probably would be the subject of such destruction, harm, concealment, removal, transfer, or violation. Where real property is subject to provisional process as provided by this section, the plaintiff shall have recorded in the County Clerk Lien Record a certified copy of that order.

**E Restraining order to protect property.** Subject to section B of this rule, where hearing on a show cause order is pending or where the court finds that because of impending injury, destruction, transfer, removal, or concealment of the property in which provisional process is sought there is probable cause to believe that immediate and irreparable injury, damage, or loss to the plaintiff is imminent, and if Rule 82 A has been complied with, the court in its discretion may issue a temporary order directed to the defendant and each other person in possession or control of the claimed property restraining the defendant and each such other person from injuring, destroying, transferring, removing, or otherwise disposing of property and requiring the defendant and each such other person to appear at a time and place fixed by the court and show cause why such restraint should not continue during pendency of the proceeding on the underlying claim. Such order

shall conform to the requirements of Rule 79 D. A restraining order under this section does not create a lien.

**F Appearance; hearing; service of show cause order; content; effect of service on person in possession of property.**

F(1) Subject to section B of this rule, the court shall issue an order directed to the defendant and each person having possession or control of the claimed property requiring the defendant and each such other person to appear for hearing at a place fixed by the court and at a fixed time after the third day after service of the order and before the seventh day after service of the order to show cause why provisional process should not issue. Upon request of the plaintiff the hearing date may be set later than the seventh day.

F(2) The show cause order issued under subsection (1) of this section shall be served on the defendant and on each other person to whom the order is directed.

F(3) The order shall:

F(3)(a) State that the defendant may file affidavits or declarations with the court and may present testimony at the hearing; and

F(3)(b) State that if the defendant fails to appear at the hearing the court will order issuance of the specific provisional process sought.

F(4) If at the time fixed for hearing the show cause order under subsection (1) of this section has not been served on the defendant but has been served on a person in possession or control of the property, and if Rule 82 A has been complied with, the court may restrain the person so served from injuring, destroying, transferring, removing, or concealing the property pending further order of the court or continue a temporary restraining order issued under section E of this rule. Such order shall conform to the requirements of Rule 79 D. Any restraining order issued under this subsection does not create a lien.

**G Waiver; order without hearing.** If after service of the order issued under subsection F(1) of this rule, the defendant by a writing executed by or on behalf of the defendant after service of the order expressly declares that defendant is aware of the right to be heard and does not want to be heard, that defendant expressly waives the right to be heard, that defendant understands that upon signing the writing the court will order issuance of the provisional process sought so that the possession or control of the claimed property will be taken from the defendant or another person, the court, subject to section B of this rule without hearing shall order issuance of provisional process.

**H Authority of court on sustaining validity of underlying claim; provisional process; restraining order.**

H(1) Subject to section B of this rule, if the court on hearing on a show cause order issued under section F of this rule finds that there is probable cause for sustaining the validity of the underlying claim and if Rule 82 A has been complied with, the court shall order issuance of provisional process. The order shall describe with particularity the provisional process which may be issued.

H(2) Subject to section B of this rule, if the court on hearing on a show cause order issued under section F of this rule finds that there is probable cause for sustaining the validity of the underlying claim but that the provisional process sought cannot properly be ordered, and if Rule 82 A has been complied with, the court in its discretion may continue or issue a restraining order of the nature described in section E of this rule. If a restraining order is issued, it shall conform to the requirements of Rule 79 D. A restraining order under this subsection does not create a lien. [CCP 12/13/80; §E amended by 1987 c.586 §44; §A amended by 1991 c.83 §6; §D amended by 1991 c.83 §7; amended by 2003 c.194 §18; §§A,C,H,I amended and §D deleted

and §§E,F,G,H,I redesignated by CCP 12/11/04; §F amended by 2005 c.22 §4b]

## RULE 84

ATTACHMENT

**A Actions in which attachment allowed.**

A(1) **Order for provisional process.** Before a writ of attachment may be issued or any property attached by any means provided by this rule, the plaintiff must obtain, and have recorded in the County Clerk Lien Record, an order under Rule 83 that provisional process may issue.

A(2) **Actions in which attachment allowed.** The plaintiff, at the time of issuing the summons or any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, in the following cases:

A(2)(a) An action upon a contract, expressed or implied, for the direct payment of money, when the contract is not secured by mortgage, lien, or pledge, or when it is so secured but such security has been rendered nugatory by act of the defendant.

A(2)(b) An action against a defendant not residing in this state to recover a sum of money as damages for breach of any contract, expressed or implied, other than a contract of marriage.

A(2)(c) An action against a defendant not residing in this state to recover a sum of money as damages for injury to property in this state.

A(3) **Exception for financial institution.** Notwithstanding subsection (2) of this section, no attachment shall be issued against any financial institution, as that term is defined in ORS 706.008, or against the property of a financial institution.

**B Property that may be attached.** Only the following kinds of property are subject to lien or levy before judgment:

B(1) In actions in circuit court, real property;

B(2) Tangible personal property, including negotiable instruments and securities as defined in ORS 78.1020 except a certificate of an account or obligation or interest therein of a savings and loan institution;

B(3) Debts; and

B(4) The interest of a distributee of a decedent's estate.

**C Attachment by claim of lien.**

C(1) **Property subject to claim of lien.** When attachment is authorized, the plaintiff may attach the defendant's real property by filing a claim of lien.

C(2) **Form of claim; filing.**

C(2)(a) **Form.** The claim of lien must be signed by the plaintiff or plaintiff's attorney and must:

C(2)(a)(i) Identify the action by names of parties, court, case number, and judgment demanded;

C(2)(a)(ii) Describe the particular property attached in a manner sufficient to identify it;

C(2)(a)(iii) Have a certified copy of the order authorizing the claim of lien attached to the claim of lien.

C(2)(a)(iv) State that an attachment lien is claimed on the property.

C(2)(b) **Filing.** A claim of attachment lien in real property shall be filed with the clerk of the court that authorized the claim and with the county clerk of the county in which the property is located. The county clerk shall certify upon every claim of lien so filed the time when it was received. Upon receiving the claim of lien, the county clerk shall immediately record it in the County Clerk Lien Record. When the claim of lien is so recorded, the lien in favor of the plaintiff attaches to the real property described in the claim of lien. Whenever such lien is discharged, the county clerk shall enter upon the margin of the page on which the claim of lien is recorded a minute of the discharge.

**D Writ of attachment.**

D(1) **Issuance; contents; to whom directed; issuance of several writs.** If directed by an order authorizing provisional process under Rule 83, the clerk shall issue a writ of attachment. The writ shall be directed to the sheriff of any county in which property of the defendant may be, and shall require the sheriff to attach and safely keep all the property of the defendant within the county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time to the sheriffs of different counties.

D(2) **Manner of executing writ.** The sheriff to whom the writ is directed and delivered shall note upon the writ the date of such delivery, and shall execute the writ without delay, as follows:

D(2)(a) **Personal property not in possession of third party.** Tangible personal property not in the possession of a third person shall be attached by taking it into the sheriff's custody. If any property attached is perishable, or livestock, where the cost of keeping is great, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by the sheriff to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Plaintiff's lien shall attach when the property is taken into the sheriff's custody.

D(2)(b) **Other personal property.** Tangible and intangible personal property in the possession, control or custody of or debts or other monetary obligations owing by a third person shall be attached by writs of garnishment issued by the clerk of a court or by an attorney as provided in ORS 18.600 to 18.850.

D(3) **Notice to defendant.** After taking property into custody under subsection (2)(a) of this section, the sheriff shall promptly mail or deliver to the defendant, at the last-known address of the defendant, a copy of the writ of attachment, a copy of the claim of lien filed pursuant to section C of this rule, if any, a notice of exemptions form provided by ORS 18.845, and a challenge to garnishment form provided by ORS 18.850. The sheriff may meet the requirements of this subsection by mailing the documents to the last-known address of the defendant as provided by the plaintiff. The sheriff may withhold execution of the writ until the plaintiff provides such address or a statement that the plaintiff has no knowledge of the defendant's address. The sheriff shall have no duty under this subsection if the plaintiff provides a statement that the plaintiff has no knowledge of the defendant's address.

D(4) **Return of writ; inventory.** When the writ of attachment has been fully executed or discharged, the sheriff shall return the same, with the sheriff's proceedings indorsed thereon, to the clerk of the court where the action was commenced, and the sheriff shall make a full inventory of the property attached and return the same with the writ.

D(5) **Indemnity to sheriff.** Whenever a writ of attachment is delivered to the sheriff, if the sheriff has actual notice of any third party claim to the personal property to be levied on or is in doubt as to ownership of the property, or of encumbrances thereon, or damage to the property held that may result by reason of its perishable character, such sheriff may require the plaintiff to file with the sheriff a surety bond, indemnifying the sheriff and the sheriff's bondsmen against any loss or damage by reason of the illegality of any holding or sale on execution, or by reason of damage to any personal property held under attachment. Unless a lesser amount is acceptable to the sheriff, the bond shall be in double the amount of the estimated value of the property to be seized.

**E Disposition of attached property after judgment.**

E(1) **Judgment for plaintiff.** If judgment is recovered by the plaintiff against the defendant, and it shall appear that property has been attached in the action, and has not been sold as perishable property or discharged from the attachment, the court shall order the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the sheriff shall apply the property attached by the sheriff or the proceeds thereof, upon the execution, and if any such property or proceeds remain after satisfying such execution, the sheriff shall, upon demand, deliver the same to the defendant; or if the property attached has been released from attachment by reason of the giving of the undertaking by the defendant, as provided by section F of this rule, the court shall upon giving judgment against the defendant also give judgment in like manner and with like effect against the surety in such undertaking.

E(2) **Judgment not for plaintiff.** If judgment is not recovered by the plaintiff, all the property attached, or the proceeds thereof, or the undertaking therefor, shall be returned to the defendant upon service upon the sheriff of a certified copy of the order discharging the attachment.

**F Redelivery of attached property.**

F(1) **Order and bond.** If an attachment deprives the defendant or any other person claiming the property of the possession or use of the property, the defendant or such person may obtain redelivery or possession thereof upon a court order authorizing such redelivery or possession. The moving party shall file a surety bond undertaking, in an amount fixed by the court, to pay the value of the property or the amount of plaintiff's claim, whichever is less, if the same is not returned to the sheriff upon entry of judgment against the defendant. A motion seeking an order authorizing such redelivery or possession must state the moving party's claim of the value of the attached property and must be served upon plaintiff as provided in Rule 9 at least five days prior to any hearing on such motion, unless the court orders otherwise. The property shall be released to the defendant upon the filing of the bond.

F(2) **Defense of surety.** In an action brought upon such undertaking against the principal or the sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom the writ was issued. [CCP 12/13/80; §§C,D amended by 1981 c.883 §§38,39; §§A,C amended by 1987 c.586 §§45,46; §D amended by 1987 c.873 §20; amended by 1997 c.439 §9; §A amended by 1997 c.631 §564; §D amended by 2001 c.249 §79; §§A,B,C amended by 2003 c.576 §§224,265,266]

## RULE 85

CLAIM AND DELIVERY

**A Claim and delivery.** In an action to recover the possession of personal property, the plaintiff, at any time after the action is commenced and before judgment, may claim the immediate delivery of such property, as provided in Rule 83.

**B Delivery by sheriff under provisional process order.** The order of provisional process issued by the court as provided in Rule 83 may require the sheriff of the county where the property claimed may be to take the property from the defendant or another person and deliver it to the plaintiff.

**C Custody and delivery of property.** Upon receipt of the order of provisional process issued by the court as provided in Rule 83, the sheriff shall forthwith take the property described in the order, if it be in the possession of the defendant or another person, and retain

it in the sheriff's custody. If any part of the property is concealed in a building or other enclosure, the sheriff shall demand delivery of the property. If the property is not delivered, the sheriff shall break open the building or enclosure and take the property into possession. The sheriff shall keep the property in a secure place and deliver it to the party entitled thereto upon receiving the lawful fees for taking, and the necessary expenses for keeping the same. The court may waive the payment of such fees and expenses upon a showing of indigency.

**D Filing of order by sheriff.** The sheriff shall file the order, with the sheriff's proceedings thereon, including an inventory of the property taken, with the clerk of the court in which the action is pending, within 10 days after taking the property; or, if the clerk resides in another county, shall mail or forward the same within that time.

**E Dismissal prohibited.** If property is taken by the sheriff pursuant to this rule, the plaintiff shall not dismiss the action under ORCP 54 A(1) until 30 days after such taking. [CCP 12/13/80; §C amended by 2003 c.85 §24]

# UNIFORM TRIAL COURT RULES

## CHAPTER 1 – General Provisions

### UTCR 1.010

SCOPE OF THESE RULES

(1) Effective October 1, 1985, these rules apply uniformly to all proceedings and actions in circuit court except those proceedings and actions specified in UTCR 1.010(3) or proceedings and actions for which a limited application is specifically provided by these rules.

(2) These rules shall be construed so as to achieve consistency with statutory provisions and to promote the just, speedy and inexpensive determination of every proceeding and action as well as the efficient use of judicial time and resources.

(3) Chapters 2 to 13 of the UTCR do not apply to small claims or violations or parking violations, except that:

(a) UTCR 7.050 applies to all cases that may be subject to a federal bankruptcy stay, including small claims cases.

(b) SLR relating to these subjects are placed in chapters as provided by UTCR 1.080(3).

(4) These rules apply to attorneys and to persons representing themselves.

### UTCR 1.020

AMENDMENT OF THESE RULES; EFFECTIVE DATE

(1) The UTCR may be amended by order of the Chief Justice.

(2) The effective date of any amendments to the UTCR shall be August 1 of each year, unless otherwise ordered by the Chief Justice.

(3) Proposed amendments to the UTCR will be posted on the Oregon Judicial Department website (http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx) and will allow no less than a 49-day period for public comment, unless otherwise ordered by the Chief Justice.

(4) Once approved by the Chief Justice, the final rules with any amendments which are adopted will be posted on the Oregon Judicial Department website (http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx) no less than 49 days before their effective date, unless otherwise ordered by the Chief Justice.

(5) When either of the time limits set forth in subsections (3) and (4) of this rule have been waived by order of the Chief Justice, the amendment shall be posted for public comment as soon after adoption as is practicable, and the amendment shall be placed on the agenda of the next regularly scheduled UTCR Committee meeting.

(6) The UTCR Reporter may correct typographical errors, grammatical errors, and inaccurate website addresses if the correction does not change the substance of the rule. The UTCR Reporter shall give appropriate notice of corrections to the public.

### UTCR 1.030

TRANSITION TO THESE RULES

(1) On their effective date, these rules, and any amendments, shall apply to all actions and proceedings pending on or commenced after that date, except to the extent that, in the opinion of the court, application of the

amendments in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event, the former rules or procedures apply.

(2) Upon the effective date of these rules, and any amendments, all supplementary local rules (SLR) or portions thereof which are inconsistent with these rules or their amendments, are superseded, except that, when justice requires, a judge may order that an action or proceeding pending on that date be governed by the previous SLR or practice of the court.

## UTCR 1.040

LOCAL RULES OF COURT NOT PERMITTED; EXCEPTION

No circuit court may make or enforce any local rule except as provided in UTCR 1.030, 1.050 and 1.060.

## UTCR 1.050

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

(1) Promulgation of SLR

(a) Pursuant to ORS 3.220, a court may make and enforce local rules consistent with and supplementary to these rules for the purpose of giving full effect to these rules and for the prompt and orderly dispatch of the business of the court.

(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement ("local practice") with which the court expects or requires parties and attorneys to comply. Except as provided in paragraph (e), a court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, Chief Justice Orders, Supreme Court Orders, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that do not create requirements or have potential consequences for parties or attorneys.

(c) Every court must promulgate an SLR governing the scheduling and notification of parties for criminal trials, show cause hearings, and motions. A temporary rule may be issued for a specified period of time with Chief Justice approval if the procedures are under revision or study by the affected court.

(d) All forms required by 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.

(2) Review of SLR

(a) The presiding judge must give written notice of any new rules and changes to existing rules to the president(s) of the bar association(s) in the affected district and allow the bar association(s) at least 49 days before the date of submission of the rules to the Office of the State Court Administrator (OSCA) to provide the presiding judge with public comment. Subsequent changes made to those SLR in response to recommendations from the UTCR Committee do not need to be submitted to the president(s) of the bar association(s) in the affected district.

(b) Proposed local rules will be considered by the Chief Justice or designee not more often than once each year. To be considered, the proposed rules and a written explanation of each proposed new rule and change to an existing rule must be received by OSCA on or before September 1.

(c) The Chief Justice or designee shall issue any disapprovals on or before December 15 of the same year.

(d) Judicial districts shall file with OSCA a final certified copy and a final electronic copy in PDF which must be received by OSCA no later than January 1 of the next year. Those SLR shall

become effective on February 1 of the next year.

(e) Proposed local rules submitted to the Chief Justice for review under subsection (2)(b) of this rule must show the proposed changes to the local rule as follows: proposed new wording in the SLR and proposed new SLR will be in bold and underlined and have braces placed before and after the new wording ({ …} ), wording proposed to be deleted and SLR proposed to be repealed will be in italics and have brackets placed before and after the deleted wording ([...]). When final SLR are submitted to the State Court Administrator after review under subsection (2)(b) of this rule, changes shall not be indicated as required by this subsection.

(f) The Chief Justice may waive the time limits in this section upon a showing of good cause.

(g) If a local rule is disapproved, notice of that action shall be given to the presiding judge of the court submitting the rule.

(3) Enforceability of Local Practices Not Contained in SLR

When any local practice is not contained in a court's SLR, the court may not enforce such local practice or impose any sanction therefore, unless the court has first afforded the party or attorney a reasonable opportunity to cure the violation by complying with the local practice.

1987 Commentary:

Subsection (2) renumbered as paragraph (1)(c) as of August 1, 1994: This subsection requires a court to promulgate local rules governing the scheduling and notification of counsel for trials, show cause hearings, and for motions. The purpose of this subsection is to give counsel, everywhere in the state, notice of how critical case events are scheduled by each local court. The purpose of this subsection, therefore, is not to promote any particular calendaring procedure, but rather to eliminate unwritten rules of court.

## UTCR 1.060

NUMBERING OF COURT RULES

UTCR shall be numbered as follows:

(1) Chapters and sections shall be numbered with Arabic numerals. Chapters shall be designated to the left of the decimal point. Sections shall be designated to the right of the decimal point. There shall be three decimal places to the right of the decimal point.

(2) When a section consists of more than one primary paragraph, each shall be numbered with an Arabic number in parentheses.

(3) If a section contains only one primary paragraph, which includes secondary paragraphs, the primary paragraph shall not be numbered, but the secondary paragraphs shall be numbered with Arabic numbers in parentheses.

(4) If a section contains more than one primary paragraph, any one or more of which includes a secondary paragraph, the secondary paragraphs shall be designated by lower case letters in parentheses.

(5) The use of paragraphs beyond primary and secondary paragraphs should be avoided.

(6) SLR approved pursuant to UTCR 1.050 must conform to this rule.

## UTCR 1.070

CITATION OF COURT RULES

(1) The Uniform Trial Court Rules (UTCR) shall be cited as UTCR by chapter and section

number. Paragraph numbers and letters shall be included in the citation when appropriate.

(2) Supplementary local rules of the trial courts shall be cited as SLR by chapter and section number. Paragraph numbers and letters shall be included in the citation when appropriate. Identification of the particular court, county or judicial district which issued the rules also shall be included when such identification is necessary.

## UTCR 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) Each page of the SLR must include a footer that shows the following: the page number, the revision date applicable to the set of SLR, the judicial district number, and the name of the court.

(3) A court that wishes to have a chapter dedicated to alternative dispute resolution (ADR) must use Chapter 12 for all rules pertaining to the court's ADR program. All other SLR must be numbered as closely as possible to and in the same chapter as related UTCR, without using numbers reserved for UTCR. The following chapter numbers are reserved for the placement of SLR related to the subjects described for the chapter numbers:

(a) Chapter 12, SLR relating to mediation.

(b) Chapter 14, SLR relating to reference judges.

(c) Chapter 15, SLR relating to small claims.

(d) Chapter 16, SLR relating to violations.

(e) Chapter 17, SLR relating to local parking violations.

(f) Chapter 18, SLR relating to Forcible Entry and Detainer (FED) actions.

(g) Chapter 20, SLR relating to voluntary arbitration.

1991 Commentary:

For purposes of UTCR 1.080(3) the Committee did not intend that SLR required by UTCR 1.050(1)(c) be placed in Chapter 1 but intended that such SLR be placed in Chapter 7 or other chapters related to the particular subject.

## UTCR 1.090

SANCTIONS

(1) For failure to file a pleading or other document in the manner, the form or the time required by these rules or SLR, the court may strike the pleading or document.

(2) For willful and prejudicial resistance or refusal to comply with UTCR or SLR, the court, on its own motion or that of a party after opportunity for a hearing, may do any of the following:

(a) Assess against the noncompliant party or attorney or both reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.

(b) Otherwise award reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.

(c) Strike the offending pleading or other document.

(d) Treat as established an allegation or claim.

## UTCR 1.100

RELIEF FROM APPLICATION OF COURT RULES

Relief from application of these rules or SLR in an individual case may be given by a judge on good cause shown if necessary to prevent hardship or injustice.

## UTCR 1.110

DEFINITIONS

As used in these rules:

(1) "Court contact information" means the following information about a person submitting a document: the person's name, a mailing address, a telephone number, and an email address and a facsimile transmission number, if any, sufficient to enable the court to communicate with the person and to enable any other party to the case to serve the person under UTCR 2.080(1). Court contact information can be other than the person's actual address or telephone or fax number, such as a post office box or message number, provided that the court and adverse parties can contact the person with that information.

(2) "Days" mean calendar days, unless otherwise specified in these rules.

(3) "Defendant" or "Respondent" means any party against whom a claim for relief is asserted.

(4) "Document" means any instrument filed or submitted in any type of proceeding, including any exhibit or attachment referred to in the instrument. Depending on the context, "document" may refer to an instrument in either paper or electronic form.

(5) "Party" means a litigant or the litigant's attorney.

(6) "Plaintiff" or "Petitioner" means any party asserting a claim for relief, whether by way of claim, third-party claim, crossclaim, or counterclaim.

(7) "Trial Court Administrator" means the court administrator, the administrative officer of the records section of the court, and where appropriate, the trial court clerk.

## UTCR 1.120

DISBURSING MONIES; MOTION AND ORDER

(1) The trial court administrator will not disburse monies without order of the court in any instance where the trial court administrator is unable to determine any of the following:

(a) The amount to be disbursed including, but not limited to, instances where the trial court administrator is required to calculate interest, past payments, or proceeds remaining from a sale.

(b) The specific party or parties to whom the trial court administrator is to disburse monies.

(2) In any instance described under subsection (1), the trial court administrator must give notice to the presiding judge and to any parties the trial court administrator can reasonably determine might have an interest in the monies. The following apply to notice under this subsection:

(a) Notice must be in writing.

(b) Notice must include all the following to the extent possible: an indication that it is being given under this section, the amount of the money in question, identification of the source from which the trial court administrator received the money, a copy of any document received with the money, a description of the circumstances of receiving the money, identification of any case to which the trial court administrator can determine the monies may be related, and a description of the reasons for not disbursing monies.

(c) The trial court administrator shall enter in the register the fact of giving the notice, the time of giving notice, the manner of giving notice, and the persons to whom notice was given.

(3) At any time the trial court administrator does not disburse monies for reasons described under subsection (1) of this section or for any

other reason, the court or any person with an interest in the money may submit a motion for an order to disburse the monies. The following apply to a motion under this subsection:

(a) Notice of the motion must be given to persons which the submitting party reasonably determines might have an interest in the money.

(b) The motion must indicate that it is being submitted under this section.

(c) The motion must include all the following: an explanation of the party's interest in the money, supporting mathematical calculations showing the amount of money that should be disbursed, any supporting documentation or affidavits that might assist the court in its determination, the name and address of the person to whom the monies should be disbursed, a proposed order to disburse.

(d) The motion is not a new filing or appearance but a continuation of an existing proceeding and no fee is required for filing the motion.

(4) If the court determines money is to be disbursed, the court must enter an order to disburse directing specific amounts of money held by the trial court administrator to be disbursed and specific persons to whom the trial court administrator is to disburse the monies.

(5) A trial court administrator must hold any monies subject to this section in the court trust account and follow the established accounting procedures until the trial court administrator receives the order to disburse.

1990 Commentary (statutory citations updated August 1, 2014):

Situations to which this section applies include, but are not limited to, a trial court administrator receiving and being unable to disburse monies under ORS 18.422(3), 18.872(2), 18.950, 87.475(3), or 88.100.

## UTCR 1.130

TIME COMPUTATION

ORCP 10 shall be followed in computing any time period prescribed by these rules.

## UTCR 1.140

REQUESTS FOR EXTENDED RETENTION OF COURT RECORDS

(1) Notwithstanding the retention period established in the schedule adopted by the State Court Administrator under ORS 8.125, the following procedures allow persons to extend records retention as described:

(a) AUTOMATIC EXTENSION. Any party to a case may request an automatic extension of retention for records described in this paragraph that are related to the person's case. A trial court administrator will automatically grant a request under this paragraph. The court will not discard records subject to the request before one year from the date of entry of the request for automatic extension in the register of actions. A party may submit a new request under this paragraph prior to the expiration of a previous request. An automatic extension of records retention under this paragraph can apply only to the following records for the requestor's case:

(i) Records shown by the register maintained under ORS 7.020 as having been received by the court in the case, other documents maintained in the court file specifically established for the case, and the register of actions and judgment docket for that specific case.

(ii) The audio or video recordings and logs, court reporter notes or transcripts for that case which the court has and which are identified with the case number.

(b) JUDICIAL EXTENSION. Any person may request a judicial extension of the retention period for any records maintained by a court as described by this paragraph. Granting a request under this paragraph is at the court's discretion. The court will not discard records for which an extension is granted under this paragraph before the date certain set in the extension order. Where an extension order under this paragraph does not establish a specific date for extended retention, the extension runs for one year from the date an order granting the extension is entered in the register of actions. A request for a judicial extension under this paragraph can be made:

(i) For records not covered by paragraph (a) of this subsection.

(ii) By a person seeking an extension for records subject to paragraph (a) of this subsection for a period longer than provided under paragraph (a).

(iii) By any person not allowed to request an automatic extension under paragraph (a) of this subsection.

(2) EVERY REQUEST under this rule must:

(a) Be in writing, or where available, on the form specified by the court.

(b) Be submitted to the trial court administrator for the court where the records are maintained.

(c) Where the records subject to a request relate to a specific case, specify the case number and case title for the applicable case.

(d) Indicate that the request is being made under this rule.

(3) In addition to the requirements under subsection (2) of this rule, every request for an AUTOMATIC EXTENSION under this rule must:

(a) Be accompanied by an affidavit.

(b) Specify the records described under paragraph (1)(a) of this rule to which the request applies.

(c) Be a separate request for each case.

(4) In addition to the requirements under subsection (2) of this rule, every request for a JUDICIAL EXTENSION under this rule must:

(a) Be accompanied by a supporting affidavit giving the reason for the request.

(b) Include a proposed order which provides a specific date to which the extended retention will run.

(c) If the request relates to records not described under paragraph (1)(a) of this rule, specify the records with sufficient detail for the court clerk to be able to identify the records to be retained. A request does not meet the requirement to specify records with sufficient detail for purposes of this paragraph if a request requires a clerk to perform substantial research to either identify the records or determine whether the records exist.

(d) If the request relates to records described under paragraph (1)(a) of this rule, specify the records described under paragraph (1)(a) of this rule to which the request applies.

(5) No fee will be charged for a request under this rule.

(6) Where the schedule adopted under ORS 8.125 specifies that a retention period runs from last document entry in the register of actions, entry in the register of a request or order granting or denying a request under this rule changes that retention period only to the extent granted under, according to the provisions of, and for the times established by this rule.

## UTCR 1.160

FILING OF DOCUMENTS WITH COURTS; LOCAL SLR

(1) A document to be filed with the court, including any document submitted to a judge or judicial staff, is not considered filed until it is

accepted by court staff designated by the trial court administrator to accept court filings.

(2) A local court may adopt an SLR to designate where a filing may be submitted. SLR 1.161 is reserved for courts to designate where filings may be submitted.

(3) Proposed orders and judgments awaiting judicial signature may be delivered to a judge or judicial staff as otherwise permitted or required under these rules.

(4) A judicial district must accept a filing that is substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, if the proper fee is tendered when required and the document is filed in compliance with all applicable statutes and rules.

## UTCR 1.170

COURT WEBSITES; HOURS OF COURT OPERATION

1) SLR 1.171 is reserved for each judicial district to identify the website addresses of its court. Links to these websites may also be found at the Oregon Judicial Department website: http://www.courts.oregon.gov/Pages/default.aspx.

(2) Each judicial district must announce on its website the following information: when each court location in the judicial district is open to conduct business; the hours when documents will be received for filing at each location, if different from when the court location is open to conduct business; and special arrangements, if any exist or may be made, for delivery of documents for filing at times when the court location is not open to conduct business, other than by electronic filing.

## UTCR 1.200

INFORMATION ON FREE OR LOW-COST LOCAL LEGAL SERVICES

Each judicial district must post in a conspicuous location information, including the telephone numbers, of any free or low-cost legal services and other relevant services available in the district and the nature of those services.

# CHAPTER 2 – Standards for Pleadings and Documents

## UTCR 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) "Printed document," as used in this rule, means any document wholly or partially printed.

(2) Size of Documents

All documents, except exhibits and wills, must be prepared in a manner that, if printed, would be letter-size (8-1/2 x 11 inches), except that smaller sizes may be used for bench warrants, commitments, uniform citations and complaints and other documents otherwise designated by the court.

(3) Documents Must be Printed or Typed; Binding Documents; Use of Staples Generally Prohibited

(a) All documents must be printed or typed, except that blanks in preprinted forms may be completed in handwriting and notations by the trial court administrator or judge may be made in handwriting.

(b) Pleadings and other documents submitted to the court for filing that are not electronically filed must be bound by paperclip or binder clip and must not contain staples. If the document includes an attachment, including a documentary exhibit, an affidavit, or a declaration, then the attachment must be bound in one packet to the document being filed by paperclip or binder clip.

(c) A document or document with attachments submitted to chambers must be stapled as one packet or otherwise bound as practical, depending on the size of the document and attachments.

(4) Spacing, Paging and Numbered Lines

(a) All pleadings, motions and requested instructions must be double-spaced and prepared with numbered lines.

(b) All other documents may be single-spaced and the lines need not be numbered.

(c) On the first page of each pleading or similar document, two inches at the top of the page shall be left blank.

(d) All documents, except exhibits and wills, shall be prepared with a one-inch margin on each side.

(5) Backing Sheets

The use of backing sheets is prohibited.

(6) Party Signatures and Electronic Court signatures

(a) The name of the party or attorney signing any pleading or motion must be typed or printed immediately below the signature. All signatures must be dated.

(b) The court may issue judicial decisions electronically and may affix a signature by electronic means.

(i) The trial court administrator must maintain the security and control of the means for affixing electronic signatures.

(ii) Only the judge and the trial court administrator, or the judge's or trial court administrator's designee, may access the means for affixing electronic signatures.

(7) Attorney or Litigant Information

All documents must include the author's court contact information under UTCR 1.110(1) and, if prepared by an attorney, the name, email address, and the Bar number of the author and the trial attorney assigned to try the case. Any document not bearing the name and Bar number of an attorney as the author or preparer of the document must bear or be accompanied by a certificate in substantially the form as set out in Form 2.010.7 in the UTCR Appendix of Forms.

(8) Distinct Paragraphs

All paragraphs in a pleading or motion must be numbered consecutively in the center of the page with Arabic numerals, beginning with the first paragraph of the document and continuing through the last. Subdivisions within a paragraph must be designated by lower case letters, enclosed in parentheses, placed at the left margin of each subdivision.

(9) Exhibits

(a) When an exhibit is appended to a filed document, each page of the exhibit must be identified by the word "Exhibit" or "Ex" to appear at the bottom right-hand side of the exhibit, followed by an Arabic numeral identifying the exhibit. Each page number of the exhibit must appear in Arabic numerals immediately below the exhibit number;

e.g.: "Exhibit 2
Page 10"

(b) Exhibits appended to a pleading may be incorporated by reference in a later pleading.

(c) Except where otherwise required by statute, an exhibit appended to a document

must be limited to only material, including an excerpt from another document, that is directly and specifically related to the subject of, and referred to in, the document. A responding party may timely file an additional excerpt or the complete document that the party believes is directly and specifically related. The court may require a party to file an additional excerpt or the complete document.

(d) A party shall not file a non-documentary exhibit without prior leave of the court. A non-documentary exhibit consisting of an electronic recording may be transcribed and filed in documentary format consistent with this rule. If the court grants leave to file a non-documentary exhibit, the exhibit must be conventionally filed on a medium, including appropriate software where necessary, that allows the exhibit to be played or viewed on existing court equipment. Non-documentary exhibits may be returned to the custody of counsel for the submitting party pursuant to UTCR 6.120. The court may charge a reasonable fee to restore or clean, pursuant to Judicial Department policy and standards, court equipment used to play or view a non-documentary electronic exhibit. This rule does not apply to evidence submitted in electronic format pursuant to UTCR 6.190.

(10) Information at Bottom of Each Page

The name of the document, and the page number expressed in Arabic numerals, must appear at the bottom left-hand side of each page of each document.

(11) Caption

(a) Each document submitted to the court for filing must include a caption located near the top of the first page that identifies the following:

(i) The court to which the document is being submitted for filing;

(ii) The names of the parties;

(iii) An identification of the parties' roles;

(iv) The case number; and

(v) A document title that identifies the document being filed, for example, "complaint," "answer," or "motion for stay." Except for the complaint or petition initiating the case, or the initial answer or response, the document title must identify the filing party, for example, "Defendant's Motion for Summary Judgment." When there are multiple parties on a side, the document title must suitably identify the party submitting the document, for example, "Plaintiff Smith's Motion for Stay" or "Defendant MegaCorp.'s Motion to Dismiss."

(b) The document title of each complaint or petition must indicate the type of claim, such as "personal injury," "breach of contract," "specific performance," or "reformation of contract." If more than one claim for relief is requested, then the body of the pleading also must indicate the type of claim, at the beginning of each claim for relief.

(c) Every motion directed at a pleading must show in the document title the name of the pleading against which it is directed.

(12) Orders, Judgments or Writs

(a) The judge's signature portion of any order, judgment or writ prepared for the court must appear on a page containing at least two lines of the text. Except for electronically filed documents subject to UTCR 21.040(3), orders, judgments or writs embodying the ruling of a particular judge must have the name of the judge typed, stamped or printed under the signature line.

(b) If the order, judgment or writ is prepared by a party, the name and identity of the party submitting the order must appear therein, preceded by the words "submitted by." See the commentary to this subsection, located at the end of this rule.

(c) A motion must be submitted as a separate document from any proposed form of order deciding the motion. A motion submitted

as a single document with an order may not be filed unless the order has been ruled upon and signed by a judge.

(13) Citation of Oregon Cases

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.

(14) Notice of Address or Telephone Number Change

An attorney or self-represented party whose court contact information changes must immediately provide notice of that change to the trial court administrator and all other parties.

(15) 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) 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).

1993 Commentary to section (12)(b):

Subsection (b) of Section (12) requires that the information include the author's name (signature not required), followed by an identification of 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.

## UTCR 2.020

CERTIFICATE OF SERVICE

(1) A certificate of service must include:
(a) If the opposing party was served electronically by the court's eFiling system pursuant to UTCR 21.100, a statement that service was accomplished at the party's email address as recorded on the date of service in the eFiling system.
(b) If the opposing party was served by facsimile pursuant to ORCP 9 F, the telephone number at which the party was served.
(c) If the opposing party was served by email pursuant to ORCP 9 G, the email address at which the party was served.
(d) If the opposing party was served by any other means, the physical address or postal address at which the party was served, as applicable.

(2) When a summons or other civil process is served by one other than a sheriff or deputy sheriff, the certificate of service must include

the name, telephone number and address of the person who served the summons or process.

## UTCR 2.030

MATTERS UNDER ADVISEMENT MORE THAN 60 DAYS

(1) If any judge shall have any matter under advisement for a period of more than 60 days, it shall be the duty of all parties to call the matter to the court's attention forthwith, in writing.

(2) If the matter remains under advisement for 90 days, all parties are required again to call the matter to the judge's attention forthwith, in writing, with copies to the presiding judge, if any, and the Chief Justice.

## UTCR 2.050

ATTORNEY FEES ON WRITTEN INSTRUMENTS

When attorney fees are based on a written instrument, the original or a true copy of the instrument must be submitted to the court with the requested judgment, unless a true copy is attached to or set out in the pleadings. This rule also applies to reciprocal fees claimed under ORS 20.096. If an original or copy is not available, the court may require proof by affidavit or testimony.

## UTCR 2.060

ENTERING JUDGMENT ON FACE OF NEGOTIABLE INSTRUMENT

(1) In all cases when a judgment is to be based on a negotiable instrument, as defined in ORS 73.0104, the party obtaining judgment must tender the original instrument to the court before the entry of judgment, unless the court has found that such party is entitled to enforce the instrument under ORS 73.0309, and the court must enter a notation of the judgment on the face of the instrument.

(2) The trial court administrator shall return the original instrument only after filing a certified copy of the instrument.

1987 Commentary:

The rule is silent on the time when the judgment notation is to be entered on the face of the instrument. The rule permits the holding of documents submitted at the time the judgment is entered while delaying endorsement until after the court receives confirmation of the sheriff's sale.

## UTCR 2.070

NOTICE IN PLEADINGS

The title of a pleading, including a claim, counterclaim, cross claim, or third-party claim, must comply with UTCR 13.060 regarding Arbitration; UTCR 5.090 (1) regarding Water Rights Cases; and, UTCR 5.090 (2) regarding claims subject to sections 7, 13, 21 and 23, chapter 5 Oregon Laws 2013 – actions against a health care practitioner or health care facility.

## UTCR 2.080

COMMUNICATION WITH COURT

(1) Except as exempted by statute, UTCR 2.100, or UTCR 2.110, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing or delivery.

(2) All written communication to the court shall refer to the title of the cause and the case number.

## UTCR 2.090

FILINGS FOR CONSOLIDATED CASES

(1) Cases that are consolidated are consolidated for purposes of hearing or trial only. A party filing any pleading, memorandum, or other document applicable to more than one case must file the document in each case using existing case numbers and captions unless otherwise ordered by the court or provided by SLR. If such a document is not electronically filed, the filing party must provide the trial court administrator with sufficient copies.

(2) A court order or SLR under this rule may permit designation of a lead case and require that parties file documents using only the case number and caption of the lead case.

(3) Unless otherwise ordered by the court, a party filing a document applicable to only one case must file only in that case.

## UTCR 2.100

PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, REQUIREMENTS AND PROCEDURES TO SEGREGATE WHEN SUBMITTING

(1) Purpose

(a) This rule establishes procedures for a person to identify and segregate protected personal information when submitting a document to a court in a case and to request the information be kept from inspection by the general public.

(b) This rule establishes a process for a court, when it grants a request under this rule, to protect the segregated, protected personal information from nonprotected information in a uniform way with an appropriate record.

(c) UTCR 2.130 establishes separate procedures and processes for protecting personal information in proceedings brought under ORS chapters 25, 106, 107, 108, 109, 110, and 416 or initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763.

(2) Information Covered. As used in this rule:

(a) "Protected personal information" means specific individual facts that, unless segregated, would otherwise be in a submitted document to identify a person submitting the document or another person beyond that person's name or to identify the financial activities of either and which the court is allowed or required by law to keep confidential.

(b) "Protected personal information" includes, but is not limited to:

(i) Social Security numbers, credit card numbers, bank or other financial account numbers, bank or other financial account locations, driver license numbers, financial account access numbers, or similar information that is used for financial transactions and can be kept confidential under ORS 192.502(2).

(ii) Maiden names, birth dates, and places of birth that can be kept confidential under ORS 192.502(2).

(iii) Facts about a person's identity or the identity of the person's financial activities that is other than contact information and that can be exempt from public inspection under the Oregon Public Records Law (OPRL, ORS 192.410 to 192.505).

(iv) Facts other than contact information that can otherwise be protected under specific law, including, but not limited to, information protected by existing court orders.

(c) "Protected personal information" does not include entire documents, contact information, or, except as ordered by a court, information that is not both personal and related to a person's identity beyond their name or their financial activities.

(d) "Contact information" means: the name of a person submitting a document or of a person on whose behalf a document is being submitted; telephone numbers; personal or

business addresses; email addresses; employer identification and address; or similar facts that make it possible for another to contact a person who is named in a document.

(3) Relationship to Other Law. The following all apply to this rule:

(a) Parties to proceedings under ORS 107.085 or 107.485 must segregate all Social Security numbers from all documents they submit related to the proceedings in the manner provided by UTCR 2.130. These Social Security numbers are confidential in the custody of the court as ORS 107.840 provides. Other than as this paragraph, UTCR 2.130, or SLR 2.101 of a court provides, this rule is not the exclusive means for a court to protect personal information from public inspection.

(b) All judicial districts must allow requests to segregate protected personal information under this rule as a way to keep it separate from information subject to public inspection. However, courts may use SLR to establish other procedures related to identifying and protecting information courts are allowed or required to keep confidential. But, SLR 2.101 is preserved for purposes of a court to:

(i) Require use of forms or procedures under this rule as the exclusive way to identify specific protected personal information so a court can segregate the information and protect it from public inspection; and

(ii) Establish requirements supplemental to this rule as necessary to help administer this rule.

(c) Nothing in this rule precludes a court from protecting information by appropriate court order.

(d) Nothing in this rule affects or applies to procedures for identifying and protecting contact information:

(i) Of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).

(ii) That can be made confidential under ORS 25.020(8)(d), 109.767(5), 110.575, or 192.445.

(4) Procedure to Follow. A person may only request protected personal information be segregated and protected under this rule when submitting it to a court in a case. The procedures under this rule may be used to identify and separately present protected personal information from any submitted document or form that is used to give information to a court. To do so, a person must do the following:

(a) Place in the document from which the protected personal information is being segregated a written notation to the effect that the information is being separately submitted under UTCR 2.100.

(b) Complete an affidavit in substantially the form provided in UTCR Form 2.100.4a. The affidavit must describe generally the protected personal information and set out the legal authority for protecting the information.

(c) Complete an information sheet in substantially the form provided in UTCR Form 2.100.4b to duplicate the protected personal information sought to be segregated. The information sheet must be submitted as a separate document, not as an attachment to the affidavit prepared under UTCR 2.100(4)(b).

(d) File the completed forms and attachments with the court along with, but not attached to, the document from which the protected personal information is segregated.

(e) For purposes of UTCR 2.080, mail or deliver to parties a copy of the affidavit only, and not the information sheet or any attachments to the information sheet.

(5) More Than Once in a Case. If a court segregates specific protected personal

information from a specific document under this rule:

(a) The court is under no obligation to look for or segregate the same protected personal information from other documents in the file for that case or other cases that were not specifically addressed by a request under this rule or from any documents subsequently submitted to the court except when procedures under this rule to segregate from the specific document are again used.

(b) As long as the specific protected personal information remains current, a person need not submit an affidavit and information sheet under this rule each subsequent time the already segregated information would be submitted in that case. The person may simply add a written notation to any document subsequently submitted to the effect that the information has already been submitted in that case under UTCR 2.100.

(6) Court Response. When a completed request is filed under this rule and the court grants the request to segregate, the court will do the following:

(a) Maintain the UTCR Form 2.100.4b and any attachments to it as not subject to public inspection unless there is a question about the court's legal authority to keep the specific information from public inspection. The requestor need not obtain the signature of a judge. As official custodian of the case file under the OPRL, the trial court administrator will resolve any question about whether, or the extent to which, information may be kept from disclosure under this rule unless statute or court order expressly provides otherwise. A request under this rule to keep information confidential, segregated, or exempt from public inspection is not subject to challenge and hearing except as specifically required by law.

(b) Keep the affidavit in the case file.

(c) Send notice confirming that a request is granted or denied only if the person includes a self-addressed, postage prepaid postcard that the court can use for that task. The postcard must also include the following text, to be filled in as indicated for the court to mail:

"Dear _____ (*person requesting print your name here*), Your request of _____(*insert date of request*) to segregate specific protected personal information from information the general public can inspect in the case file for case number _____(*insert case number*) in the Circuit Court for _____(*insert county*) County (*the court will check and complete the appropriate following response before mailing*):

☐ Was granted on _____(*court will insert date*) and the segregated information sheet you submitted will be maintained separately from information available for public inspection. _____ (*initial of appropriate court employee*)

☐ Was denied in part or entirely because (*court will explain and provide contact information for further action*):

_____
_____."

(7) Limits on Protection. When the court grants a request under this rule, the court will protect the submitted Form 2.100.4b from being placed where the general public can inspect it. However, the following limits apply to this confidentiality:

(a) A person may inspect the information sheet or attachments that person submitted.

(b) A person other than the person who submitted the information sheet or attachments may inspect the information sheet or attachments with a currently effective release by the person whose information is protected. The release must be signed by the person giving the release, dated, and establish a period during which the release will be effective.

(c) Any person who has a right by law to inspect the information sheet or attachments may do so. This includes Oregon Judicial Department personnel who require the information for their work.

(d) Courts will share the information sheets and attachments with other government agencies as required or allowed by law, without court order or application under subsection (8) of this rule, for purposes of the business of those agencies. Those agencies are required to maintain the information as confidential as provided under ORS 192.502(10).

(e) Courts will share the information sheets and attachments with the entity primarily responsible for providing support enforcement services under ORS 25.080 and under the requirements of 42 USC 666 without application under subsection (8) of this rule in any case in which spouse or child support is ordered.

(8) Inspecting or Copying Protected Personal Information.

(a) Except as specifically provided in subsection (7) of this rule, any person who seeks to inspect or copy information segregated and kept from public inspection under this rule must make the request by using a form substantially like UTCR Form 2.100.8 and copy the requestor shown on the affidavit and parties to the case as required by UTCR 2.080. A court will only grant a request if the person requesting has a right by law, including this rule, to see the information. The court will indicate on the form its response to the request and maintain a copy of all the request forms, with its response, in the case file as a public record.

(b) Any person inspecting information segregated and kept from public inspection under this rule must not further disclose the information, except:

(i) Within the course and scope of the client-lawyer relationship, unless limited or prohibited by court order;

(ii) As authorized by law; or

(iii) As ordered by the court.

(c) Violation of subsection (b) of this section may subject a person to contempt of court under ORS 33.015 to 33.155.

(9) Denied Requests. If a court denies a request under this rule:

(a) For every piece of personal information on a UTCR Form 2.100.4b, the court will attach the affidavit and form to the document from which the information was segregated and place all in the case file.

(b) For only some of the personal information on a UTCR Form 2.100.4b, the court will:

(i) Create a copy of the form where the information to be protected is redacted,

(ii) Protect the original form as otherwise provided in this rule, and

(iii) Attach the affidavit and the redacted copy of the form to the document from which the information was segregated and place the affidavit and redacted copy of the form in the case file.

## UTCR 2.110

PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, PROCEDURES TO SEGREGATE WHEN INFORMATION ALREADY EXISTS IN A CASE FILE

(1) Purpose. This rule establishes:

(a) Procedures for a person to identify and segregate protected personal information when that information already exists in a document in a court case file and to request the information be kept from inspection by the general public.

(b) A process for a court, when it grants a request under this rule, to segregate and protect personal information from

nonprotected information in the case file in a uniform way with an appropriate record.

(2) Information Covered. This rule may be followed to segregate and protect the same information already existing in a case file that could be segregated and protected at the time of submission under UTCR 2.100 and UTCR 2.130. The definitions in UTCR 2.100 apply to this rule.

(3) Relationship to Other Law. The following all apply to this rule:

(a) This rule is not the exclusive means for a court to protect personal information in case files from public inspection.

(b) Courts may use SLR to establish other procedures related to identifying and protecting information courts are allowed or required to keep confidential. But, SLR 2.111 is preserved for purposes of a court to:

(i) Require use of forms or procedures under this rule to identify specific protected personal information so that a court can segregate the information and protect it from public inspection; and

(ii) Establish requirements supplemental to this rule as necessary to help administer this rule.

(c) Nothing in this rule affects or applies to procedures for identifying and protecting contact information:

(i) Of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).

(ii) That can be made confidential under ORS 25.020(8)(d), 109.767(5), 110.375, or 192.445.

(4) Procedure to Follow. A person may only request protected personal information be segregated under this rule when the information is already in a document that has become part of a court case file. To do so, a person must do all the following:

(a) Complete an affidavit in substantially the form provided in UTCR Form 2.110.4a. The affidavit must:

(i) Describe generally the protected personal information and set out the legal authority for protecting the information.

(ii) Specifically identify the case file, document in the case file, and the page number of the page that is sought to be redacted.

(iii) Be accompanied by a copy of that page sought to be redacted showing specifically the protected personal information to be redacted.

(b) Complete an information sheet in substantially the form provided in UTCR Form 2.100.4b to duplicate the protected personal information sought to be segregated. The information sheet must be submitted as a separate document not as an attachment to the affidavit prepared under UTCR 2.110(4)(a).

(c) File the completed forms and attachments with the court.

(d) Pay the required fee set by Chief Justice Order.

(e) For purposes of UTCR 2.080, mail or deliver to parties a copy of the affidavit only and not the information sheet or any attachments to the information sheet.

(5) Court Response. When a completed request is filed under this rule and granted by the court, the court will do the following:

(a) Segregate and protect the specifically identified protected personal information from the specific location in the specific document that is the object of the request unless there is a question about the court's legal authority to keep the specific information from public inspection. The requestor need not obtain the signature of a judge. As official custodian of the case file under the OPRL, the trial court administrator will resolve any question about whether, or the extent to which, information may be kept from disclosure under this rule

unless statute or court order expressly provides otherwise. A request under this rule to keep information confidential, segregated, or exempt from public inspection is not subject to challenge and hearing except as specifically provided by law.

(b) Separate and maintain the information sheet and any attachments as not subject to public inspection. Once the information sheet is separated, place the affidavit in the case file.

(c) Replace any page from which the specific information is removed with a redacted copy of the page and keep the original, unmodified page with the information sheet and its attachments. Any substitute page from which the specific information is removed will include a notation of the date and responsible individual and that the redacting was done under this rule. Courts will separate information and redact documents under this rule according to the State Court Administrator's direction, or as otherwise specifically provided by law.

(d) Send a notice confirming completion of work, that work cannot be completed for some reason, or that a request is denied only if the person includes a self-addressed, postage prepaid postcard that the court can use for that task. The postcard must also include the following text to be filled in as indicated for the court to mail:

"Dear _____ *(person requesting print your name here*), Your request of _____ (*insert date of request*) to segregate specific personal information from information the general public can inspect in the case file for case number _____ (*insert case number*) in the Circuit Court for _____ _____ (*insert county*) County (*court will check and complete the appropriate following response*):

☐ Was completed on _____ *(insert date)*. _____ (*initials of appropriate court employee*)

☐ Could not be completed because (*explain and provide contact information for further action*): _____.

☐ Was denied because *(explain and provide contact information for further action)*: _____ _____ _____."

(6) Time Limits, Court Authority to Refuse Request Based on Resources. This rule sets no time limit for courts to segregate information from existing court records when requested under this rule. Courts have a reasonable time given their ordinary workload and resources available. And, notwithstanding other parts of this rule, a court is not required to segregate information from existing court records based on a request under this rule if the workload created would adversely affect the resources available for a court to perform its ordinary duties.

(7) Parts of UTCR 2.100 and UTCR 2.130 that apply to this rule. The following subsections of UTCR 2.100 are applicable to this rule: (2), (5), (7), (8), and (9). The following subsections of UTCR 2.130 are applicable to this rule: (1), (6), (9), and (10).

## UTCR 2.120

AFFIDAVITS

Unless otherwise mandated by statute or UTCR, a declaration under penalty of perjury, in substantially the same form as specified in ORCP 1 E, may be used in lieu of an affidavit required or allowed by these rules.

## UTCR 2.130

CONFIDENTIAL PERSONAL INFORMATION IN FAMILY LAW AND CERTAIN PROTECTIVE ORDER PROCEEDINGS

(1) Definitions. As used in this rule:

(a) "Confidential personal information" means a party's or a party's child's Social Security number; date of birth; driver license number; former legal names; and employer's name, address, and telephone number.

(b) "Confidential Information Form" (CIF) means a document substantially in the form provided at http://www.courts.oregon.gov/forms/Pages/default.aspx.

(c) "Inspect" means the ability to review and copy a CIF to the same extent as any other document contained in a court file.

(2) Mandatory Use of the CIF

(a) When confidential personal information is required by statute or rule to be included in any document filed in a proceeding initiated under ORS chapters 25, 106, 107, 108, 109, 110, or 416, or initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763, the party providing the information:

(i) Must file the information in a CIF,

(ii) Must not include the information in any document filed with the court, and

(iii) Must redact the information from any exhibit or attachment to a document filed with the court, but must not redact the information from a court-certified document required to be filed by statute or rule.

(b) This rule does not apply to:

(i) The information required in a money award under ORS 18.042,

(ii) The former legal name of a party pursuant to a name change request under ORS 107.105(1)(h), or

(iii) A document filed in an adoption proceeding initiated under ORS 109.309.

(c) Documents filed in a contempt action filed in a proceeding under ORS chapters 25, 106, 107, 108, 109, 110, or 416, or a proceeding initiated under ORS 24.190, ORS 30.866, ORS 124.010, or ORS 163.763, are also subject to this rule.

(d) A party must file a separate CIF for each person about whom the party is required to provide confidential personal information.

(e) The confidential personal information of a minor child must be included in the CIF of the party providing the information.

(3) Amending the CIF. A party must file an amended CIF when filing a document requiring confidential personal information about any party that has changed or is not contained in a previous CIF.

(4) Form. A CIF or an amended CIF must be substantially in the form provided at http://www.courts.oregon.gov/forms/Pages/default.aspx.

(5) Segregation. The court must segregate the CIF from documents that are subject to public inspection. Public inspection of a CIF is prohibited except as authorized by this rule or other provision of law.

(6) Access and Confidentiality

(a) A party may inspect a CIF that was filed by that party.

(b) A party to a proceeding may inspect a CIF filed by another party:

(i) Upon filing an affidavit of consent, signed and dated by the party whose information is to be inspected, that states the dates during which the consent is effective; or

(ii) Upon entry of an order allowing inspection under UTCR 2.130(10)(a); or

(iii) If the CIF sought to be inspected contains only the inspecting party's confidential personal information.

(c) A person other than a party to the proceeding may inspect a CIF upon filing an affidavit of consent, signed and dated by the party whose information is to be inspected, that states the dates during which the consent is effective.

(d) Notwithstanding UTCR 2.120, a declaration under penalty of perjury may not

be used in lieu of an affidavit required by this subsection.

(e) This rule does not limit a person's legal right to inspect a CIF as otherwise allowed by statute or rule.

(f) Oregon Judicial Department personnel may have access to a CIF when required for court business.

(g) Courts will share a CIF with the entity primarily responsible for providing support enforcement services under ORS 25.080 or 42 USC 666. A person receiving information under this section must maintain its confidentiality as required by ORS 25.260(2) and 192.502(10).

(h) Courts will share a CIF with other government agencies as required or allowed by law for agency business. Those agencies must maintain the confidentiality of the information as required by ORS 192.502(10).

(i) Any person inspecting a CIF must not further disclose the confidential personal information except:

(i) Within the course and scope of the client-lawyer relationship, unless limited or prohibited by court order;

(ii) As authorized by law; or

(iii) As ordered by the court.

(j) An order entered under UTCR 2.130(10)(d) may further limit disclosure of confidential personal information.

(k) Violation of subsection (i) or (j) in this section may subject a person to contempt of court under ORS 33.015 to 33.155.

(7) Notation on Documents. When a statute or rule requires a party to provide confidential personal information in a document filed with the court, the party must not provide the information in the document and must note on the document that the information has been separately filed under UTCR 2.130.

(8) Mail or Delivery to Other Parties. A party filing an original or amended CIF must mail or deliver notice to all parties to the proceeding that a CIF or amended CIF has been filed and must file a certificate of mailing or delivery. The notice must be substantially in the form provided at http://www.courts.oregon.gov/forms/Pages/default.aspx.

(9) Court Under No Obligation to Review File for Protected Information. Subject to UTCR 2.110, the court is not required to redact confidential personal information from any document, regardless of when filed.

(10) Motion or Request to Inspect a CIF

(a) A party may file a motion and supporting affidavit for an order allowing inspection of a CIF containing the confidential personal information of another party. The court may grant the motion only after service on all parties and an opportunity for objection and hearing.

(b) Any person not a party to the proceeding may file a request and supporting affidavit requesting inspection of a CIF. The person must serve the request and supporting affidavit on all parties to the proceeding in the manner prescribed for service of summons in a civil action or by certified mail, return receipt requested. The court must allow the requesting person to inspect the CIF if the court finds, after notice and an opportunity for a hearing, that the requesting person is legally entitled to inspect the CIF, subject to subsection (c) below.

(c) The court must deny a motion or request to inspect a CIF if the court finds any of the following:

(i) A Finding of Risk and Order for Nondisclosure of Information has been entered by the Administrator of the Oregon Child Support Program under OAR 137-055-1160 for the party whose CIF is sought to be inspected.

(ii) A restraining order or other protective order is in effect that protects the party or the party's children from the person requesting inspection of the CIF.

(iii) The health, safety, or liberty of the party or the party's children whose CIF is sought to be inspected would be jeopardized or unreasonably put at risk by disclosure of the CIF to another person.

(d) If the court grants a motion or request for an order allowing inspection of a CIF,

(i) The court may limit the extent of disclosure and may enter such protective orders as are necessary to balance the personal, privacy, and safety interests of the parties or children with the legal interest of the person seeking access; and

(ii) The requesting party must mail or deliver a copy of the order to all other parties and must file a certificate of mailing or delivery.

(11) Other Court Orders

(a) This rule is not the exclusive means for a court to protect personal information from public inspection.

(b) Nothing in this rule:

(i) Precludes a court from protecting information by appropriate court order.

(ii) Limits procedures for identifying and protecting contact information of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).

(iii) Limits the availability of procedures for protecting information, other than confidential personal information protected by this rule, under ORS 25.020(8)(d), 109.767(5), 110.575, 192.445, or any other rule or law.

## UTCR 2.140

APPLICATION FOR WAIVER OR DEFERRAL OF FEES OR COURT COSTS

(1) The court must segregate an application for waiver or deferral of fees or court costs filed under ORS 21.698 from documents that are subject to public inspection. Public inspection of an application for waiver or deferral of fees or court costs is prohibited except as authorized by this rule or other provision of law.

(2) Access and Confidentiality

(a) A party may inspect an application described in subsection (1) that was filed by that party.

(b) No other party to a proceeding may inspect an application described in subsection (1) filed by another party.

(c) This rule does not limit a person's legal right to inspect an application described in subsection (1) as otherwise allowed by ORS 21.698 or other provision of law.

(d) Oregon Judicial Department personnel may have access to an application described in subsection (1) when required for court business.

# CHAPTER 3 – Decorum in Proceedings

## UTCR 3.010

PROPER APPAREL

(1) All persons attending the court must be dressed so as not to detract from the dignity of court. Members of the public not dressed in accordance with this rule may be removed from the courtroom.

(2) When appearing in court, all attorneys and court officials must wear appropriate attire.

## UTCR 3.020

PROPER APPAREL FOR INCARCERATED WITNESSES AND DEFENDANTS APPEARING IN CRIMINAL PROCEEDINGS

Incarcerated witnesses and defendants appearing for trial must be dressed in neat, clean civilian clothing, unless otherwise ordered by the court.

## UTCR 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.

## UTCR 3.040

ADVICE TO CLIENTS AND WITNESSES OF COURTROOM FORMALITIES

Attorneys must advise their clients and witnesses of the formalities of the court and must encourage their cooperation. Self-represented parties must similarly advise their witnesses and encourage their cooperation.

## UTCR 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.

## UTCR 3.060

DEFENDANT IN CRIMINAL TRIAL

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

## UTCR 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.

## UTCR 3.080

PROCEDURE FOR SWEARING WITNESSES

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

## UTCR 3.090

UNDUE RECOGNITION OR FAMILIARITY BY JUDGE

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

## UTCR 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.

## UTCR 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.

## UTCR 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.

## UTCR 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.

## UTCR 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 DR 2-110.

## UTCR 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.

## UTCR 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.

## UTCR 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 member 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 $500 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.;

(b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 USC §1903; and

(c) One of the following:

(i) If the applicant represents an Indian tribe, the Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; or

(ii) If the applicant represents a parent or Indian custodian, the tribe has affirmed the child's membership or eligibility of membership under tribal law.

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.

## UTCR 3.180

ELECTRONIC RECORDING AND WRITING ON COURTHOUSE PREMISES

(1) As used in this rule:

(a) "Electronic recording" includes video recording, audio recording, live streaming, 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, instant messages, and postings to social media and networking services.

(2) Upon request made prior to the start of a proceeding, and after notice to all parties, electronic recording shall be allowed in any courtroom except as provided under this rule. The court shall permit one video camera, one still camera and one audio recorder. The court may permit additional electronic recording consistent with this rule.

(3) A person who seeks to electronically record all or any portion of a court proceeding must obtain express permission from the court prior to any proceeding. No fee may be charged. The granting of such permission to any individual person or entity 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.

(4) 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) There is 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) There is 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 (3) 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.

(5) Except with the express prior permission of the court, a person may not:

(a) Electronically record any court proceeding;

(b) Electronically record in any area under the control and supervision of the court;

(c) Engage in electronic writing;

(d) Even if granted permission to record, send any electronic recording from within a courtroom; or

(e) Even if granted permission to engage in electronic writing, send any electronic writing from within a courtroom.

(6) The provisions of subsections 5(c) and (e) of this rule do not apply to attorneys or to agents of attorneys unless otherwise ordered by the court.

(7) The court may limit electronic recording of particular components of the proceeding if the court finds that:

(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; or

(c) The electronic recording of a particular witness would endanger the welfare of the witness or materially hamper the testimony of the witness.

(8) 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.

(9) 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.

(10) The court may prescribe the location of and the manner of operating electronic equipment within a courtroom. Artificial lighting is not permitted. Any pooling arrangement made necessary by limitations on equipment or personnel imposed by the court is the sole responsibility of the persons seeking to electronically record. The court will not mediate disputes. If the persons 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.

(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.

(12) For the purpose of determining whether this rule or other requirements imposed by the court have been violated, or to assure 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.

(13) 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.

NOTE:

UTCR 3.180 was adopted by the entire Oregon Supreme Court, and any changes to the rule will be made only with the consent of the Supreme Court.

## CHAPTER 4 – Proceedings in Criminal Cases

### UTCR 4.010

TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

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

different time is permitted by the court for good cause shown.

## UTCR 4.030

PROCEDURE FOR ORDER OF TRANSPORTATION

(1) Any motion that a person held in custody be transported from the place of confinement to a designated place must be accompanied by a separate proposed court order directing the sheriff to transport the person to and from the designated place at the appointed time.

(2) All proposed orders of transportation must contain the dates and times on which the person in custody is to appear at the designated place and is to be returned to the place of confinement, the exact location of the designated place and, if the person in custody is to appear as a witness in a court proceeding, the caption and number of the case. A person in custody appearing as a witness must be returned to the place of confinement only after execution of an order of release signed by the judge presiding over the court proceeding.

## UTCR 4.050

ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

(1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response, except that the court is not required to grant oral argument on a motion to postpone trial. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.

(2) Counsel for either the state or the defense may request that a motion not requiring testimony be heard by telecommunication. The following apply to a request for oral argument by telecommunication:

(a) A request must be in the caption of the motion or response. If oral argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request, the position of opposing counsel, and whether the defendant has waived in writing the right to appear at the hearing.

(b) A request by counsel for defense must be granted if counsel for defense represents that the defendant agrees to the procedure and provides a signed waiver of personal appearance.

(c) A request by the state must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.

(d) The party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.

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

## UTCR 4.060

MOTION TO SUPPRESS EVIDENCE

(1) All motions to suppress evidence:

a) Must cite any constitutional provision, statute, rule, case, or other authority upon which it is based; and

(b) Must include in the motion document the moving party’s brief, which must sufficiently apprise the court and the adverse party of the arguments relied upon.

(2) Any response to a motion to suppress:

(a) Together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed, absent a showing

of good cause, not more than 7 days after the motion to suppress has been filed;

(b) Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and

(c) Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.

(3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.

(4) Failure to file a written response shall not preclude a hearing on the merits.

1991 Commentary:

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

## UTCR 4.070

DISMISSAL OF CHARGES FOLLOWING SUCCESSFUL COMPLETION OF DIVERSION

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

## UTCR 4.080

APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

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

(a) Telephone;

(b) Television;

(c) Video conference; and

(d) Internet.

(2) SLR 4.081 is reserved for judicial districts to adopt a local rule regarding appearance at criminal proceedings by means of simultaneous electronic transmission.

## UTCR 4.090

ELECTRONIC CITATIONS

(1) As used in this rule:

(a) "Electronic citation" means a violation complaint or a criminal citation electronically filed in circuit court by a filing agency pursuant to ORS 153.770 or ORS 133.073.

(b) "Filing agency" means a law enforcement agency or a parking enforcement agency filing an electronic citation.

(c) "Trial court administrator" means the trial court administrator for the circuit court in which the electronic citation is filed.

(2) Requests for authorization to use electronic citations must be submitted to the Odyssey Change Control Workgroup (OCCW) for review. The OCCW must:

(a) Submit the results of its review to the State Court Administrator, and

(b) Obtain approval from the State Court Administrator before authorizing use of electronic citations.

(3) The State Court Administrator may establish appropriate conditions and procedures to be followed by a court and its partners in an electronic citation program to assure that the process for electronic citations can be accommodated by Oregon Judicial Department systems and computer technology.

(4) The transmission of information and images as provided in this rule must be tested and meet completely the system requirements for electronically uploading information and images into the Oregon Judicial Department's automated information systems. Testing shall be administered by Oregon Judicial Department staff.

(5) A filing agency must satisfy all of the following requirements when filing an electronic citation in circuit court:

(a) The filing agency must obtain from the trial court administrator written approval before filing electronic citations.

(b) For a violation complaint, the electronic citation information must include all of the information required by ORS 153.770(2)(a).

(c) For a criminal citation, the electronic citation information must include all of the information required by ORS 133.073(2)(a).

(d) The electronic citation must contain a unique identification number for the law enforcement or parking enforcement officer issuing the citation, the officer's name, the officer's eSignature, and the identity of the agency employing the officer.

(e) The filing agency must number the electronic citation using a number series approved by the trial court administrator.

(f) The filing agency must assign to the citation a unique number that does not duplicate the number on any electronic citation previously filed by the filing agency.

(g) A criminal citation with a form of complaint must not be filed until after the district attorney has conducted the review required by ORS 133.069(2).

(h) The filing agency must transmit to the circuit court an image of the electronic citation for public inspection under ORS 153.770(2)(c) and ORS 133.073(2)(c).

(i) If the circuit court in which the electronic citation is to be filed has a Supplementary Local Rule (SLR) on electronic citations, the filing agency must comply with all procedures and requirements in the SLR.

(6) Subject to the restrictions under ORS 133.066(4) and (5) regarding the types of offenses that can be included in a citation, an electronic citation may contain up to ten offenses on a single citation.

(7) An electronic citation is deemed filed at the time the information for the citation is entered in the register of the court.

(8) A circuit court may scan uniform traffic citations filed in paper format, along with any supporting documentation and correspondence, and reformat them to an electronic record.

(9) Citations that are electronically filed or manually scanned, including those to which additional information, judicial orders, judgments, and judicial signatures have been added, are the original and legal court record.

## UTCR 4.100

CRIME VICTIMS' RIGHTS—PROSECUTOR'S NOTIFICATION AND CRIME VICTIMS' RIGHTS VIOLATION CLAIM

(1) The prosecuting attorney must file a notification of compliance as provided in ORS 147.510, in substantially the form set out in Form 4.100.1a or 4.100.1b in the UTCR Appendix of Forms.

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

## UTCR 4.110

DEFENDANT MOTION FOR REIMBURSEMENT

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

(2) A defendant may request reimbursement of costs, fines, fees, and restitution imposed by the court as a result of conviction and paid by the defendant to the court pursuant to a criminal judgment if:

(a) The criminal judgment has been reversed or vacated by a reviewing court; and

(b) All opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor.

(3) A defendant seeking reimbursement must file and serve on the prosecutor a motion in the criminal case that states:

(a) Information showing that the criminal judgment has been reversed or vacated by a reviewing court;

(b) The name of the reviewing court, the reviewing court case number, and the date of the reviewing court decision;

(c) Information showing that all opportunities to seek a criminal judgment through retrial on remand and appeal are time barred or have been waived by the prosecutor; and

(d) The itemized amounts that the defendant has paid to the court in costs, fines, fees, and restitution.

(4) This rule does not apply to fees imposed by the court on a defendant independent of conviction or acquittal, including indigent defense application fees, contribution fees, and attorney's fees.

# CHAPTER 5 – Proceedings in Civil Cases

NOTE:

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

## UTCR 5.010

CONFERRING ON MOTIONS UNDER ORCP 21, 23 AND 36-46

(1) The court will deny any motion made pursuant to ORCP 21 and 23, except a motion to dismiss: (a) for failure to state a claim; or, (b) for lack of jurisdiction, unless the moving party, before filing the motion, makes a good faith effort to confer with the other party(ies) concerning the issues in dispute.

(2) The court will deny any motion made pursuant to ORCP 36 through 46, unless the moving party, before filing the motion, makes a good faith effort to confer with the other parties concerning the issues in dispute.

(3) The moving party must file a certificate of compliance with the rule at the same time the motion is filed. The certificate will be sufficient if it states either that the parties conferred or contains facts showing good cause for not conferring.

(4) Upon certification that a motion is unopposed, it may be submitted *ex parte*.

## UTCR 5.020

AUTHORITIES IN MOTIONS AND OTHER REQUIREMENTS

(1) Every motion document must include a memorandum of law or a statement of authority explaining how any relevant authorities support the contentions of the moving party.

(2) If a pleading is moved against in more than two particulars under ORCP 21 D or E, there must be attached to the motion a copy of the pages of the pleading moved against with the parts of the pleading to be stricken shown in parentheses and the parts to be made more definite and certain underlined.

## UTCR 5.030

OPPOSING PARTY'S RESPONSE; TIME FOR FILING RESPONSE AND REPLY

In matters other than motions for summary judgment:

(1) An opposing party may file a written memorandum of authorities in response to the matters raised in any motion not later than 14 days from the date of service of the motion.

(2) A reply memorandum, if any, must be filed within 7 days of the service of the responding memorandum.

## UTCR 5.040

MOTIONS TO BE DETERMINED BY THE PRESIDING JUDGE OR DESIGNEE

The presiding judge or designee shall hear and determine all motions.

## UTCR 5.050

ORAL ARGUMENT ON MOTIONS IN CIVIL CASES; APPEARANCE AT NONEVIDENTIARY HEARINGS AND MOTIONS BY TELECOMMUNICATION

(1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.

(2) A party may request that a nonevidentiary hearing or a motion not requiring testimony be heard by telecommunication.

(a) A request for a nonevidentiary hearing or oral argument by telecommunication must be in the caption of the pleading, motion, response, or other initiating document.

(b) If appearance or argument by telecommunication is requested, the first paragraph of the pleading, motion, response, or other initiating document must include the names and telephone numbers of all parties served with the request. The request must be granted.

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

(3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other and permits official court reporting when requested. When recording is requested, telecommunications hearings must be recorded by the court if suitable equipment is available; otherwise, it will be provided at the expense of the party requesting recording.

## UTCR 5.060

STIPULATED AND EX PARTE MATTERS

(1) A judicial district may adopt a local rule regarding specific stipulated or *ex parte* matters for which the documents must be presented conventionally as defined in UTCR 21.010 and may not be electronically filed. SLR 2.501 is reserved for judicial districts to adopt a local rule for that purpose.

(2) Any stipulated or *ex parte* matter that may be presented conventionally may be delivered

by mail or messenger to the trial court administrator for distribution to a judge for signature. An *ex parte* default, a stipulated order, or a stipulated judgment that may be presented conventionally also may be personally presented to a judge by the attorney or the attorney's agent. Other types of *ex parte* matters personally presented to a judge must be presented by the attorney.

(3) A motion for an *ex parte* order must contain the term "*ex parte*" in the caption and must be accompanied by a proposed order.

(4) *Ex parte* matters that are presented conventionally shall be presented anytime during court hours, except as modified by SLR promulgated pursuant to UTCR 1.050. Until such local rules are adopted, stipulated and *ex parte* matters may be personally presented anytime during court hours.

## UTCR 5.070

MOTION FOR LEAVE TO AMEND PLEADING

(1) Except as provided in section (2) of this rule, whenever a motion for leave to amend a pleading, including a motion to amend to assert a claim for punitive damages, is submitted to the court, it must include, as an exhibit attached to the motion, the entire text of the proposed amended pleading. The text of the pleading must be formatted in the following manner:

(a) Any material to be added to the pleading must be underlined and in bold with braces at each end.

(b) Any material to be deleted from the pleading must be italicized with brackets at each end.

(2) If the motion to amend is for a pleading that was composed using preprinted forms that have been completed by filling in the blanks, the moving party may comply with this rule by making a copy of the filed pleading and formatting the text of the pleading in the following manner:

(a) Any material to be added to the pleading must be interlineated and underlined with braces at each end.

(b) Any material to be deleted from the pleading must have brackets at each end.

## UTCR 5.080

STATEMENT FOR ATTORNEY FEES, COSTS, AND DISBURSEMENTS

In civil cases, the statement for attorney fees, costs, and disbursements must be filed in substantially the form set forth in Form 5.080 in the UTCR Appendix of Forms.

## UTCR 5.090

NOTICE TO COURT IN WATER RIGHTS CASES; NOTICE TO COURT IN CASES SUBJECT TO SECTIONS 7, 13, 21 AND 23, CHAPTER 5 OREGON LAWS 2013, REGARDING COMMENCING AN ACTION AGAINST A HEALTH CARE PROVIDER OR A HEALTH CARE FACILITY

(1) Notice to Court in Water Rights Cases
If at any time during a case a party asserts a disputed water right, the party must give notice to the court that the case involves water rights. If not stated in the caption of the original complaint that begins the court case, the notice shall be in the following form:

(a) Be filed as a separate document.

(b) Include the caption of the case and the case number.

(c) Include a statement that the case involves water rights.

(d) Be signed by the attorney or party.

(2) Notice to court in cases subject to sections 7, 13, 21 and 23, chapter 5 Oregon Laws 2013, Regarding Actions Against A Health Care Provider Or A Health Care Facility.

A party must place the following in the title of a pleading in the case if the pleading contains a claim which creates a duty upon the court to provide notice to the parties under sections 7, 13, 21, and 23, chapter 5 Oregon Laws 2013 (including any claim, counterclaim, cross claim, or third-party claim): "ADVERSE HEALTH CARE INCIDENT SUBJECT TO COURT NOTICE". This language must not be in the title of a pleading for any other purpose. A party's signature on pleadings constitutes the party's certificate under ORCP 17 that the pleading contains a claim which requires notice by the court under section 7, chapter 5 Oregon Laws 2013 if the language is present and does not contain any such claim if the language is omitted.

## UTCR 5.100

SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

(1) Except as provided in subsection (3) of this rule, any proposed judgment or proposed order submitted to the court for signature must be:

(a) Served on each counsel not less than 3 days prior to submission to the court, or

(b) Accompanied by a stipulation by each counsel that no objection exists as to the judgment or order, or

(c) Served on a self-represented party not less than 7 days prior to submission to the court and be accompanied by notice of the time period to object.

(2) Except as provided in subsection (4) of this rule, any proposed judgment or order submitted to the court must include, following the space for judicial signature, a dated and signed certificate that describes:

(a) The manner of compliance with any applicable service requirement under this rule; and

(b) The reason that the submission is ready for judicial signature or otherwise states that any objection is ready for resolution, identifying the reason in substantially the following form:

"This proposed order or judgment is ready for judicial signature because:

"1. [ ] Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.

"2. [ ] Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.

"3. [ ] I have served a copy of this order or judgment on each party entitled to service and:

"a. [ ] No objection has been served on me.

"b. [ ] I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

"c. [ ] After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.

"4. [ ] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

"5. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.

6. [ ] Other:_____ ."

(3) The requirements of subsection (1) of this rule do not apply to:

(a) A proposed order or judgment presented in open court with the parties present;

(b) A proposed order or judgment for which service is not required by statute, rule, or otherwise;

(c) A proposed judgment subject to UTCR 10.090;

(d) An uncontested probate or protective proceeding, or a petition for appointment of a temporary fiduciary under ORS 125.605(2); and

(e) Matters certified to the court under ORS 416.422, ORS 416.430, ORS 416.435, and ORS 416.448, unless the proposed order or judgment is ready for judicial signature without hearing.

(4) The requirements of subsection (2) of this rule do not apply to a proposed order or judgment presented and signed in open court with the parties present.

(5) Any proposed judgment containing an award of punitive damages shall be served on the Director of the Crime Victims' Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, not less than 3 days prior to submission to the court.

(6) The certificate required under subsection (2) may be combined with any certificate of service required by another statute or rule.

REPORTER'S NOTE (08/01/2016):

This rule does not apply in the following types of cases: criminal; contempt cases seeking punitive sanctions; juvenile under ORS chapter 419A, 419B, or 419C; or violations, parking violations, or small claims (see UTCR 1.010(3)). Nothing in this rule prohibits a court from adopting an SLR that applies this rule to matters under SLR chapters other than chapter 5.

Pursuant to UTCR 1.130, computation of Uniform Trial Court Rule time requirements is subject to ORCP 10.

## UTCR 5.110

CLASS ACTIONS

Rules relating to class actions may be found at Oregon Rule of Civil Procedure 32 and Oregon Rule of Appellate Procedure 12.15.

## UTCR 5.120

NOTICE TO THE DEPARTMENT OF JUSTICE, CRIME VICTIMS' ASSISTANCE SECTION, OF PUNITIVE DAMAGES

(1) The notices required by ORS 31.735(3), concerning verdicts and judgments that include punitive damages, shall substantially be in the form specified in Form 5.120.1 in the UTCR Appendix of Forms.

(2) The prevailing party shall promptly file with the court a copy of each notice and the proof of service.

## UTCR 5.130

INTERSTATE DEPOSITION INSTRUMENTS—OBTAINING AN OREGON COMMISSION

(1) A party shall request a commission pursuant to ORCP 38 to permit a deposition to be taken in a foreign jurisdiction for an action pending in an Oregon circuit court by presenting a motion, affidavit, and form of order at *ex parte*. (See Form 5.130.1a in the UTCR Appendix of Forms). If the motion is allowed, the party shall file the motion, affidavit, and signed order with the trial court administrator in the pending civil action. When the order granting the commission is filed, the trial court administrator or the trial court administrator's designee shall issue the commission (see Form 5.130.1b in the UTCR Appendix of Forms).

(2) Unless otherwise requested by the party in its motion and ordered by the court, the commission shall be effective for 28 days from the date of issue.

(3) The commission may also serve to authorize the issuance of Subpoenas *Duces Tecum* in a foreign jurisdiction.

## UTCR 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 declaration and request for issuance of a subpoena pursuant to ORCP 38 C. substantially in the form specified in Form 5.140.1c in the UTCR Appendix of 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) To obtain discovery in the State of Oregon for a proceeding pending in a foreign jurisdiction not subject to ORCP 38 C, a party must file a writ, mandate, commission, letter rogatory, or order executed by the appropriate authority in the foreign jurisdiction with a circuit court of this state. The party in the foreign proceeding or an active member in good standing of the Oregon State Bar must present in person at *ex parte* the original document or a certified copy from the foreign jurisdiction, a petition, and an order to register the document. (See Form 5.140.2 in the UTCR Appendix of Forms.) If approved by the court, the matter will be assigned a circuit court case number and appropriate process may be issued by the Oregon attorney.

(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 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 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.

## UTCR 5.150

EXPEDITED CIVIL JURY CASES

(1) A civil case eligible for jury trial may be designated as an expedited case. The availability of the designation may vary by judicial district and is dependent on the availability of staff, judges, and courtrooms. A party seeking the designation must confer with the court to determine whether the designation is available. If it is available, a party seeking the designation must do all of the following:

(a) Obtain the agreement of all other parties to designate the case as an expedited civil jury case.

(b) Submit a joint motion and an order to the presiding judge in substantially the form of UTCR Forms 5.150.1a and 5.150.1b.

(2) The decision to accept or reject a case for designation as an expedited case is within the sole discretion of the presiding judge or designee. The judge will consider the request on an expedited basis, when possible, and enter an order granting or denying the motion. If the judge grants the motion and designates the case as an expedited case, the judge will:

(a) Exempt or remove the case from mandatory arbitration, pursuant to ORS 36.405(2)(a) and (b), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.

(b) Set a trial date certain no later than four months from the date of the order with a pretrial conference to be set no later than 14 days before trial.

(3) The parties in an expedited case may file a written agreement with the court, in substantially the form of UTCR Form 5.150.1a, section 4, stating all of the following:

(a) The scope, nature, and timing of discovery.

(b) The date by which discovery will be complete, which must be not later than 21 days before trial.

(c) Stipulations regarding the conduct of the trial, which may include stipulations for the admission of exhibits and the manner of submission of expert testimony.

(4) If the parties in an expedited case do not file a discovery agreement pursuant to subsection (3) of this rule, then each party must do all of the following:

(a) Provide to all other parties within four weeks of the expedited case designation:

(i) The names and, if known, addresses and telephone numbers of all persons, other than expert witnesses, likely to have knowledge that the party may use to support its claims or defenses, unless the use would be solely for impeachment.

(ii) A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

(iii) A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 B(2).

(b) Take no more than two depositions after a party has requested an expedited case designation.

(c) Serve no more than one set of requests for production after a party has requested an expedited case designation.

(d) Serve no more than one set of requests for admission after a party has requested an expedited case designation.

(e) Serve all discovery requests no later than 60 days before the trial date.

(f) Complete all discovery no later than 21 days before trial.

(5) After an order designating the case as an expedited case, a party shall not file a pretrial motion without prior leave of the court.

(6) A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the expedited case trial date.

## UTCR 5.160

SEALED DOCUMENTS

(1) A party seeking an order to file documents or materials under seal must file a motion with the court that specifies all of the following:

(a) The statutory authority for sealing the documents or materials.

(b) The reasons for protecting the documents or materials from public inspection.

(c) A description of the documents or materials to be sealed.

(2) At the direction of the judge hearing the motion, the moving party must submit the documents to the court for *in camera* review.

(3) The court's order on the motion may include directions to the clerk's office to do one of the following:

(a) File the documents or materials, unsealed, in the court file.

(b) File the documents or materials under seal in the court file.

(c) Return the documents, unfiled, to the moving party.

(4) When documents or materials are filed under seal, the filing party must present the clerk with a copy of the signed court order and submit the documents or materials in a sealed envelope marked "SEALED DOCUMENTS OR MATERIALS" and with a notation that identifies the case caption and the party making the submission. In addition, all documents ordered to be filed under seal must have the words "FILED UNDER SEAL BY COURT ORDER" located directly below the document title.

## UTCR 5.170

LIMITED SCOPE REPRESENTATION

(1) Applicability

This rule applies to limited scope representation in civil cases subject to this chapter, when an attorney intends to appear in court on behalf of a party.

(2) Notice of Limited Scope Representation

When an attorney intends to appear in court on behalf of a party, the attorney shall file and serve, as soon as practicable, a Notice of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (http://www.courts.oregon.gov/forms/Pages/default.aspx).

(3) Termination of Limited Scope Representation

When the attorney has completed all services within the scope of the Notice of Limited Scope Representation, the attorney shall file and serve a Notice of Termination of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website (http://www.courts.oregon.gov/forms/Pages/default.aspx), in accordance with UTCR 3.140.

(4) Service of Documents

After an attorney files a Notice of Limited Scope Representation in accordance with this section, service of all documents shall be made upon the attorney and the party represented on a limited scope basis. The service requirement terminates as to the attorney when a Notice of Termination of Limited Scope Representation is

filed and served, or when an attorney withdraws.

## CHAPTER 6 – Trials

### UTCR 6.010

CONFERENCES IN CIVIL PROCEEDINGS

(1) In any civil proceeding the court may, in its discretion, direct the parties to appear before the court for a conference to consider:

(a) The simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof or delay;

(d) The limitation of the number of expert witnesses;

(e) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(f) A reference in whole or in part;

(g) The possible settlement of the case; and

(h) Such other matters as may aid in the disposition of the action.

(2) All conferences may be by personal appearance except that any party may apply, or the court may arrange for, a conference by telecommunication.

1991 Commentary:

Settlement conferences are required as provided by each court by its SLR 6.012 and under UTCR 6.200.

### UTCR 6.020

COURT NOTIFICATION ON SETTLEMENT OR CHANGE OF PLEA

(1) In criminal cases, the parties must notify the court immediately of any decision that a case will be dismissed or a change of plea entered.

(2) In all other cases, the parties must immediately notify the court of a decision to settle, dismiss, or otherwise resolve a case. After receipt of the notice, a court may require the parties to put the decision on the record, give written notice to the parties that the case will be dismissed unless an appropriate judgment is tendered to the court within 28 days, or both.

(3) If parties to a civil action fail to notify the court of a settlement before 12:00 p.m. (noon) of the last judicial day preceding a jury trial, or if the case settles after 12:00 p.m. (noon) of such day, the court may assess on one or both parties the per diem fees and mileage costs of bringing in the jury panel for that particular trial.

### UTCR 6.030

POSTPONEMENT OF TRIAL

(1) A request to postpone a trial must be by motion.

(2) A motion to postpone a trial must be signed by the attorney of record and contain a certificate stating that counsel has advised the client of the request and must set forth:

(a) The date scheduled for trial,

(b) The reason for the requested postponement,

(c) The dates previously set for trial,

(d) The date of each previous postponement, and

(e) Whether any parties to the proceeding object to the requested postponement.

(3) If the motion to postpone is based upon a conflicting proceeding in another court, it must

set forth, in addition to the information required by subsection (2) of this section:

(a) The name of the court in which the conflict exists,

(b) The date of the conflict,

(c) The date on which the other proceeding is to begin,

(d) The case number and the date of filing of the conflicting case,

(e) The date on which the conflicting case was set for trial, and

(f) The information required by UTCR 6.040(2).

(4) If a motion to postpone a civil trial is based upon stipulation of the parties:

(a) The new trial date must be within the time periods set forth in UTCR 7.020(5),

(b) The motion must be filed at least 28 days before the date then set for trial,

(c) The motion must be signed by the attorneys of record,

(d) The motion must contain a certificate stating that the attorneys have advised their clients of the stipulation and the clients agree to the postponement, and

(e) The motion must set forth the date scheduled for trial, the new trial date requested, and that the new date is available on the court's trial docket.

(5) The motion may be decided by a summary determination without a hearing.

(6) Motions to postpone are not subject to UTCR Chapter 5, except UTCR 5.040 and 5.060.

1993 Commentary:

The court has discretion to allow or deny any motion for postponement under ORCP 52 and this rule, but the Committee recommends that the court generally allow a motion under subsection (4) of this rule if the new trial date requested can be reasonably accommodated on the court's docket.

## UTCR 6.040

RESOLVING SCHEDULING CONFLICTS

(1) When a party is scheduled to appear in more than one court at the same time, and has been unable to obtain a postponement in one of the courts, the scheduling conflict will be resolved by the presiding judges of the affected courts on motion of the affected party in both courts.

(2) In resolving scheduling conflicts, the following must be considered:

(a) Statutory preference;

(b) The custodial status of a criminal defendant;

(c) The filing date of the case;

(d) The dates on which the courts sent notices of the trial date;

(e) The relative complexity of the cases;

(f) The availability of competent, prepared substitute counsel; and

(g) The inconvenience to the parties, the witnesses or the court.

(3) If the scheduling conflict cannot be resolved by the affected presiding judges after consultation with each other, the conflict must be referred by them to the Chief Justice for summary resolution.

## UTCR 6.050

SUBMISSION OF TRIAL MEMORANDA AND TRIAL EXHIBITS

(1) A party must file any trial memorandum. The court also may require that a party submit a copy of the trial memo, in the manner and time that the court specifies.

(2) All trial memoranda must be served on the opposing party.

(3) Trial exhibits must be delivered or submitted as ordered by the assigned judge and not filed with the court.

## UTCR 6.060

PROPOSED JURY INSTRUCTIONS AND VERDICT FORMS

(1) A party must file any requested jury instruction or verdict form. The party must also submit a copy of the jury instructions and verdict forms to the trial judge in the manner and time specified by the judge.

(2) All requested jury instructions and verdict forms must be in writing and served on the opposing party.

(3) Requested instructions may include any Uniform Oregon Jury Instruction by reference only to its instruction number and title: such as "Instruction No. 70.04 - Lookout." If the uniform instruction contains blanks or alternative choices, the appropriate material to complete the instruction must be supplied in the request.

(4) Requested jury instructions, including references to Uniform Oregon Jury Instructions, must be prepared as follows:

(a) Requested uniform instructions must be identified in accordance with UTCR 6.060(3).

(b) Instructions, including uniform instructions, must be numbered consecutively, beginning with the number "1" for the first requested instruction.

(c) Except for requested uniform instructions, not more than one proposed instruction must appear on each page.

(d) If any requested jury instruction requires more than one page to be set out, each of the pages must be numbered at the lower left-hand corner; the number must contain the consecutively assigned requested jury instruction number provided pursuant to subparagraph (b) of this paragraph, followed by a hyphen, followed by the consecutive number for each page.

(e) The designation of the party requesting the instruction must be typed on each page.

(f) Below each requested instruction must be a statement citing the statute, decision or other legal authority which supports the requested instruction.

(5) The court must inform the parties before argument of the instructions that it proposes to give.

(6) Proposed verdict forms and written interrogatories, if any, must be prepared without the name of the attorney or the name of the firm and must be submitted at commencement of trial and as otherwise allowed by the court.

## UTCR 6.070

JURY INSTRUCTIONS

No identifying information relating to the parties or any other extraneous material, including authorities, shall appear on submitted jury instructions.

## UTCR 6.080

MARKING EXHIBITS

(1) Before the commencement of the trial, parties must mark all exhibits in the following manner:

(a) Plaintiff's exhibits must be marked consecutively from 1 through 99.

(b) Defendant's exhibits must be marked consecutively from 101 through 199.

(c) On request, the court must assign additional blocks of numbers.

(d) In cases involving multiple parties or large numbers of exhibits, the parties shall agree on the assignment of the numbers. If the parties cannot reach agreement, or if for any reason the numbering system cannot accommodate the parties, then the court may direct the parties to use any other numbering system not inconsistent with the intent of this section.

(2) Upon request, the trial court administrator shall provide a party with appropriate stamps, labels or tags for exhibit marking.

(3) The parties must submit to the court at the time of trial a list of premarked exhibits.

(4) Exhibits not available at the commencement of trial, exhibits not reasonably anticipated to be used and exhibits intended for impeachment purposes need not be premarked.

(5) At the time of trial or hearing involving a covered offense, a party introducing an exhibit that contains biological evidence must provide the court in writing with the name, agency, mailing address, and telephone number for the custodian responsible for each exhibit that contains biological evidence. Counsel also must indicate whether the biological evidence was collected by the defense. For a trial, this information must be submitted with the list of premarked exhibits required under subsection (3) of this rule.

(6) For purposes of this rule, the following definitions apply:

(a) "Biological evidence" has the meaning given in ORS 133.705.

(b) "Covered offense" has the meaning given in ORS 133.705.

(c) "Custodian" has the meaning given in ORS 133.705.

1988 Commentary:

Subsection (4) cannot and does not change discovery rules as established for criminal cases by statute.

## UTCR 6.090

PEREMPTORY CHALLENGES IN CIVIL CASES

In civil trials, peremptory challenges must be taken in writing by secret ballot unless the parties stipulate to taking the challenges orally and the court agrees.

## UTCR 6.100

EXAMINATION OF WITNESSES

Except for good cause shown, no more than one attorney for each party shall examine a witness or present argument on an issue.

## UTCR 6.110

SPECIAL AND GENERAL FINDINGS IN SEPARATE DOCUMENT

Special or general findings or conclusions must be included in a document separate from the judgment.

## UTCR 6.120

DISPOSITION OF EXHIBITS

(1) Unless otherwise ordered or except as otherwise provided in ORS 133.707, all exhibits shall be returned to the custody of counsel for the submitting parties upon conclusion of the trial or hearing. Such counsel must sign an acknowledgment of receipt for the exhibits returned. Counsel to whom any exhibits have been returned must retain custody and control until final disposition of the case unless the exhibits are returned to the trial court pursuant to subsections (2) or (3) of this rule. Both documentary and nondocumentary exhibits

submitted by parties not represented by counsel shall be retained by the trial court, subject to subsection (4) of this rule.

(2) Upon the filing of a notice of appeal by any party, the trial court administrator promptly shall notify all counsel that they are required to return all documentary exhibits in their custody to the trial court within 21 days of receipt of the trial court's request. All counsel are required to comply with the notice. The trial court promptly will transmit the documentary exhibits to the appellate court, when requested to do so by the appellate court, under ORAP 3.25.

(3) Upon request by an appellate court for transmission of nondocumentary exhibits, under ORAP 3.25, the trial court shall notify the party in whose custody the nondocumentary exhibits have been placed. The party must resubmit the designated exhibits to the custody of the trial court for transmittal to the appellate court.

(4) Exhibits not returned to the parties shall be processed as follows:

(a) Such exhibits shall be retained by the trial court until the appeal period has elapsed and there is a final disposition of the case.

(b) After final disposition of the case, a notice shall be sent to the parties of record that, unless they withdraw their respective exhibits within 30 days, the exhibits will be disposed of by the court.

(5) Nothing contained in this rule shall prevent parties to any matter before the court from seeking the release or return of exhibits before the times specified in this rule.

(6) Exhibits in the court's custody shall not be removed from the trial court administrator's control except by stipulation or by order of the court.

(7) For purposes of this rule, "documentary exhibits" include text documents, photos and maps, if not oversized, and audio and video tapes. An oversized document is one larger than standard letter size or legal size.

## UTCR 6.130

WAIVER OF JURY TRIAL IN CIVIL CASES

No waiver of trial by jury in civil cases in circuit court shall be deemed to have occurred unless the parties notify the court of such a waiver before 5:00 p.m. of the last judicial day before trial. Thereafter, a jury trial may not be waived without the consent of the court. Failure to timely notify the court of a waiver before the day of trial may result in an assessment by the judge on one or both of the parties for the per diem fee and mileage costs of bringing in the jury panel for that trial.

## UTCR 6.140

PROCEDURES FOR USE OF HAZARDOUS SUBSTANCE

(1) If a party intends to offer into evidence any hazardous substance at an evidentiary hearing or trial, the party must file a motion no later than 28 days prior to the hearing or trial seeking an order from the court regulating the handling, use and disposition of the hazardous substance.

(2) "Hazardous substance" in this rule is defined as any substance listed or hereafter added to the Department of Transportation Hazardous Substances List and the Oregon State Police List of Chemicals and Precursors for Methamphetamine Production and any other hazardous substance designated by SLR.

(3) The court, in its discretion, may issue an order concerning any of the following matters:

(a) A jury view and/or photograph in lieu of transportation of the hazardous substance to the courthouse;

(b) Appointment of a custodian;

(c) Appointment of a disposition expert;

(d) Appointment of a medical expert;

(e) The amount to be transported or viewed;

(f) The container in which the hazardous substance is to be stored;

(g) The location and duration of handling and storage of the hazardous substance;

(h) The disposition of the hazardous substance; and

(i) Other matters intended by the court to safeguard the public and the evidentiary record.

(4) Failure to file a timely motion under subsection (1) of this rule may be grounds for excluding any hazardous substance from the courthouse.

1989 Commentary:

To prevent hardship or injustice, relief from application of this rule in an individual case may be sought under UTCR 1.100.

## UTCR 6.150

WEAPONS AND DANGEROUS INSTRUMENTS IN THE COURTROOM

If a party intends to offer into evidence any weapons or other hazardous materials at an evidentiary hearing or trial, before bringing the items into the courtroom, the party must:

(1) For weapons:

(a) All firearms, BB guns, and pellet guns intended to be offered in evidence must be unloaded and either rendered inoperable or have a trigger guard installed.

(b) Guns and ammunition must be kept separate at all times.

(c) Knives, scissors, and any other sharp objects that could penetrate the skin must be sealed in puncture-proof containers, provided with secure and protective sheaths, or otherwise rendered harmless.

(2) For other hazardous materials:

(a) Hypodermic needles must be provided with covers over needle points and sealed in a transparent puncture-proof bag.

(b) An unbreakable, transparent tube that locks on one end must be provided for safe handling and viewing of chemicals, pharmaceuticals, and biological substances.

1990 Commentary:

The court should be mindful that the court may grant exception to the above for good cause shown under UTCR 1.100 and that the Committee intended that there be exceptions granted if any part of the rule would affect the mechanical operation when mechanical operation was an evidentiary issue.

## UTCR 6.160

CONTROLLED SUBSTANCES IN THE COURTROOM

(1) Unless otherwise ordered by the court, only a representative sample of controlled substances shall be brought into the courtroom to be presented as evidence. Such sample must have been placed in a see-through, heat-sealed container prior to coming into the custody of the court and must not be opened except by order of the court. The remainder may be presented by photograph, videotape, or may be available for viewing by the jury in some secure setting.

(2) At all times between the receipt of the controlled substances and the return of controlled substances to the submitting party under UTCR 6.120 or destruction or transmittal

of the controlled substances to the appellate courts, the controlled substances shall be in the court's evidence locker in the custody and possession of a member of the court staff or in the custody of such appropriate law enforcement agency as the court orders.

## UTCR 6.170

JUROR HANDLING OF CONTROLLED, HAZARDOUS, OR INFECTIOUS SUBSTANCES AND CHEMICALS

Jurors must be advised if any controlled, hazardous, or infectious substances or chemicals to be handled in the jury room present a danger and must be provided instructions on safe handling, including providing protective devices, if necessary.

## UTCR 6.180

WEAPONS AND HAZARDOUS SUBSTANCES IN THE COURT FACILITIES

Unless otherwise ordered by the court, no person except a law enforcement officer shall possess in a court facility a firearm, knife, device, or hazardous substance capable of inflicting death or physical injury.

## UTCR 6.190

EVIDENCE SUBMITTED IN AN ELECTRONIC FORMAT

(1) Any exhibit or testimony to be presented to the court in an electronic format shall be compatible with the court's electronic equipment.

(2) Prior to trial or hearing, a party intending to offer electronic evidence must make sure it is in a format compatible with the court's equipment. A party is responsible for the cost, if any, incurred by the court as a result of the party's use of the court's electronic equipment or in repairing the court's electronic equipment as a result of a party's use of it.

(3) Parties may use their own equipment to present electronic evidence. However, parties using their own equipment may need to make their equipment available to the court, opposing parties, and the jury.

(4) It is a party's responsibility to provide any technical support needed in presenting the party's evidence and in making its evidence compatible with the court's electronic equipment or in using the party's own equipment.

## UTCR 6.200

PRETRIAL SETTLEMENT CONFERENCES

(1) Each judicial district may adopt an SLR 6.012, or an SLR in Chapter 12 if that chapter is dedicated to alternative dispute resolution, providing for a uniform pretrial settlement conference procedure for use in all circuit court civil cases, including dissolution of marriage and postjudgment modification proceedings. The SLR shall be designed to most effectively meet the needs of the judges, lawyers, and litigants in each district and to promote early pretrial settlements.

(2) Each SLR under this section, if adopted, should include the following provisions:

(a) If one party requests a pretrial settlement conference, the settlement conference must be held and must be conducted according to the procedure set forth in the SLR. However, the pretrial settlement conference will not be required if the opposing party demonstrates good cause why the settlement conference should not be held.

(b) Each party or representative of a corporation or insurance company who has full authority to settle and compromise the

litigation must personally appear at the pretrial settlement conference; however, the judge may permit telephone appearances for good cause.

(c) Each settlement conference shall be scheduled to allow adequate time for meaningful settlement discussions. Additional settlement conferences may be scheduled by the judge or by agreement of all attorneys and parties.

(d) The pretrial settlement conferences shall not delay the trial scheduling.

(3) Each SLR under this UTCR section, if adopted, should specify:

(a) Whether the settlement conference judge shall be permitted to act as trial judge if the case does not settle.

(b) Whether a pretrial statement or other document must be submitted to the judge prior to the pretrial settlement conference, when it should be submitted, and whether it should be confidential or nonconfidential.

(c) Whether and under what circumstances materials or notes prepared by the pretrial settlement judge may be placed in the trial court file in the event that the case does not settle.

(d) The methods for reporting settlement and removing the case from the active trial docket.

(e) Whether a trial-setting conference shall be held prior to the pretrial settlement conference.

(4) SLR 6.012 is reserved for SLR adopted under this UTCR section.

## CHAPTER 7 – Case Management and Calendaring

### UTCR 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, 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.

1988 Commentary:

Relief from application of the deadlines set by this rule is subject to UTCR 1.100, as are all UTCR provisions.

1990 Commentary:

As used in this section, arraignment means the initial appearance of the defendant in the court having jurisdiction to dispose of the case.

Relief from time set in this section is subject to UTCR 1.100, as are all UTCR provisions. The purpose of this rule, among others, is to give certainty in trial dockets. Therefore, the last date for entry of a plea will change with changes in trial dates.

Section 4.010 of UTCR should be read in conjunction with this section. In this regard, the parties may request that the court decide any legal issue, including motions to suppress, before plea negotiations are concluded. Nothing requires the court to allow that request.

## UTCR 7.020

SETTING TRIAL DATE IN CIVIL CASES

(1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.

(2) If no return or acceptance of service has been filed by the 63rd day after the filing of the complaint, written notice shall be given to the plaintiff that the case will be dismissed for want of prosecution 28 days from the date of mailing of the notice unless proof of service is filed within the time period, good cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order, or the defendant has appeared.

(3) If proof of service has been filed and any defendant has not appeared by the 91st day from the filing of the complaint, the case shall be deemed not at issue and written notice shall be given to the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution 28 days from the date of mailing of the notice unless one of the following occurs:

(a) An order of default has been filed and entry of judgment has been applied for.

(b) Good cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order.

(c) The defendant has appeared.

(4) If all defendants have made an appearance, the case will be deemed at issue 91 days after the filing of the complaint or when the pleadings are complete, whichever is earlier.

(5) The trial date must be no later than one year from date of filing for civil cases or six months from the date of the filing of a third-party complaint under ORCP 22 C, whichever is later, unless good cause is shown to the presiding judge or designee.

(6) Parties have 14 days after the case is at issue or deemed at issue to:

(a) Agree among themselves and with the presiding judge or designee on a trial date within the time limit set forth above.

(b) Have a conference with the presiding judge or designee and set a trial date.

(7) If the parties do neither (a) nor (b) of (6) above, the calendar clerk will set the case for trial on a date that is convenient to the court.

1987 Commentary:

Nothing in this rule precludes a court from issuing its trial notices prior to 91 days after filing of the complaint.

1988 Commentary:

It is recognized that some cases may not be appropriate for trial setting “in the ordinary course” of the court’s business. Special settings of trial dates in complex or other appropriate cases is permissible and may be initiated by any party or the court.

## UTCR 7.030

COMPLEX CASES

(1) Any party in a case may apply to the presiding judge to have the matter designated as a “complex case.”

(2) The criteria used for designation as a "complex case" may include, but shall not be limited to, the following: the number of parties involved, the complexity of the legal issues, the expected extent and difficulty of discovery, and the anticipated length of trial.

(3) A presiding judge shall assign any matter designated as a "complex case" to a specific judge who shall thereafter have full or partial responsibility for the case as determined by the presiding judge.

(4) A "complex case" shall not be subject to the time limitation or trial setting procedures set forth in UTCR 7.020(5), (6) and (7); however, any such case will be set for trial as soon as practical, but in any event, within two years from the date of filing unless, for good cause shown, the trial date is extended by the assigned judge.

## UTCR 7.040

NOTIFY COURT OF SETTLEMENTS AND OTHER MATTERS

The parties shall report immediately to the court any resolution of any matter scheduled on the court's docket.

## UTCR 7.050

EFFECT OF BANKRUPTCY PETITION

(1) Upon notice that proceedings in an action are subject to a federal bankruptcy stay, the court must stay the action until it is shown to the court's satisfaction that the federal bankruptcy stay has been terminated or is not applicable to the action.

(2) Upon motion of any party, the court may sever a claim that continues to be subject to the federal bankruptcy stay or a claim as it applies to the bankruptcy debtor and proceed with the remainder of the action if:

(a) The action includes multiple claims or multiple parties; and

(b) It is shown to the court's satisfaction that, as to one or more claims, the federal bankruptcy stay has been terminated or is not applicable.

(3) A court must not dismiss the action stayed under this rule solely because of the bankruptcy filing. Nothing in this rule limits a court's ability to initiate the process to dismiss an action stayed under this rule for want of prosecution under ORCP 54 B(3) or as provided by statute. However, if a party to the action responds to the court notice concerning dismissal for want of prosecution by timely application to continue the action because bankruptcy proceedings are ongoing:

(a) The ongoing bankruptcy proceedings constitute good cause to continue the action for purposes of ORCP or statute; and

(b) The court must continue the action as a pending case.

(4) Time periods established by UTCR 7.020 or by SLR for proceeding with an action are not applicable during the stay to that action or part of an action stayed under this rule. For all or part of the action stayed under this rule, time periods held in abeyance under this subsection continue when the court proceeds and only as to that part of the action with which the court proceeds.

(5) Nothing in this section limits a court's ability to grant dismissal of an action stayed under this rule as provided under ORCP 54 A.

(6) References in this rule to federal bankruptcy stays are to a stay under provisions of 11 USC Sections 105, 362, 1201, or 1301. As provided under UTCR 1.010(3), this rule is applicable to

all cases that may be subject to a federal bankruptcy stay, including small claims cases.

## UTCR 7.060

AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION

(1) If an accommodation under the ADA is needed for an individual in a court proceeding, the party needing accommodation for the individual must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.

(2) Notification to the court must provide:

(a) The name of the person needing accommodation;

(b) The case number;

(c) Charges (if applicable);

(d) The nature of the proceeding;

(e) The person's status in the proceeding;

(f) The time, date, and estimated length of the proceeding;

(g) The type of disability needing accommodation; and

(h) The type of accommodation, interpreter, or auxiliary aid needed or preferred.

## UTCR 7.070

FOREIGN LANGUAGE INTERPRETERS

(1) If a foreign language interpreter is needed for a court proceeding, the party in need of an interpreter must notify the court in the manner required by the court as soon as possible, but no later than four judicial days in advance of the proceeding. For good cause shown, the court may waive the four-day advance notice.

(2) Notification to the court must include:

(a) The name of the person needing an interpreter;

(b) The case number;

(c) Charges (if applicable);

(d) The nature of the proceeding;

(e) The person's status in the proceeding;

(f) The time, date, and estimated length of the proceeding; and

(g) The language to be interpreted.

## UTCR 7.080

INTERPRETERS' REQUESTS FOR INFORMATION

If requested by a neutral court interpreter, parties in civil and criminal cases shall provide a list of specialized terminology expected to be used in the proceeding in which the interpreter will be providing services. The list shall be provided prior to the commencement of the proceeding. The list shall be kept confidential by the interpreter and is not discoverable.

# CHAPTER 8 – Domestic Relations Proceedings

## UTCR 8.010

ACTIONS FOR DISSOLUTION OF MARRIAGE, SEPARATE MAINTENANCE AND ANNULMENT, AND CHILD SUPPORT

(1) Petitioners, when serving respondents, must attach to the petition a copy of the Notice to Parties of A Marriage Dissolution as required by ORS 107.092. Copies of the notice may be obtained from the trial court administrator's office or from the Oregon Judicial Department website.

(2) Unless otherwise ordered by the court, general judgments in all uncontested actions for annulment or dissolution of marriage or for separation shall be entered on the basis of the affidavit set forth in ORS 107.095(4) in lieu of a hearing on the merits.

(3) In all contested dissolution of marriage, separate maintenance or annulment actions, each party must file with the trial court administrator and serve on the other party a statement listing all marital and other assets and liabilities, the claimed value for each asset and liability and the proposed distribution of the assets and liabilities. In the alternative, the parties may elect to file with the trial court administrator a joint statement containing this information.

(4) In all proceedings under ORS chapter 107, 108, or 109 wherein child support or spousal support is contested, each party must file with the trial court administrator and serve on the other party a Uniform Support Declaration in the form specified at http://www.courts.oregon.gov/forms/Pages/default.aspx. A Uniform Support Declaration required by this subsection must be completed as follows:

(a) In all such cases, the parties must complete the declaration and required attachments.

(b) In all such cases, the parties must also complete the schedules and the attachments required by the schedules if:

(i) Spousal support is requested by either party, or

(ii) Child support is requested by either party in an amount that deviates from the uniform support guidelines.

(5) If the Division of Child Support (DCS) of the Department of Justice or a district attorney child support office (DA) either initiates or responds to a proceeding falling under section (4) of this rule, the DCS or DA must be allowed to file and serve, in lieu of the Uniform Support Declaration, an affidavit which sets out the following information:

(a) The name of the legal or physical custodian of the child(ren).

(b) The name and date of birth of each child for whom support services is being sought.

(c) A statement of the amount of public assistance being provided.

(d) A statement of the value of food stamp benefits being provided.

(e) A statement of whether medical insurance (Medicaid) is being provided.

(f) A statement of any other known income of the physical custodian.

(g) A statement concerning any special circumstances which might affect the determination of support.

(6) In the absence of an SLR to the contrary, the documents required to be filed under subsection (3) above must be filed and served not less than 14 days before the hearing on the merits unless both parties stipulate otherwise, but in any event before the beginning of trial. Subject to the requirements of UTCR 8.040 or UTCR 8.050, when applicable, and in the absence of an SLR to the contrary, the documents required to be filed under subsections (4) and (5) above must be filed and served within 30 days of service of a petition or other pleading that seeks child support or spousal support on other than a temporary basis.

(7) No judgment under this chapter shall be signed, filed or entered without the filing with the trial court administrator of all relevant documents, including all of the following:

(a) An affidavit of completed service.

(b) An affidavit of nonmilitary service and the proposed order of default, if the respondent is in default.

(c) The affidavit described in ORS 107.095(4) if the matter is uncontested.

(d) A completed Oregon State Health Division Record of Dissolution of Marriage form.

(e) If child support or spousal support is an issue, a Uniform Support Declaration for each party, except where that issue is resolved by stipulation or default. A Uniform Support Declaration required by this paragraph must be completed as provided under subsection (4) of this rule.

(f) If child support is an issue, the Division of Child Support (DCS) work sheets described under UTCR 8.060.

(g) A proposed judgment.

(8) Parties to proceedings under ORS 107.085 or 107.485 must follow UTCR 2.130 to segregate all Social Security numbers from documents the parties submit in the proceedings so the numbers will be protected as required by ORS 107.840.

## UTCR 8.020

SUPPORT ORDERS

(1) Every proposed order or judgment providing for the support of any person under ORS chapters 107, 108, 109, 110, 416 or 419A, 419B, or 419C, or modifying any order or judgment for support of any person under those chapters, must set forth the due date of the first support payment to be made thereunder, the means of payment and the person to whom payment must be made.

(2) Every proposed order or judgment that includes a provision concerning child support must include notice that, if services are provided by the Division of Child Support, the obligor and obligee must inform the administrator, as defined in ORS 25.010(1), in writing of any change in private health insurance enrollment status within 10 days of the change.

## UTCR 8.040

PREJUDGMENT RELIEF UNDER ORS 107.095(1)

(1) An order for relief authorized by ORS 107.095(1) may be granted on motion supported by affidavit setting forth sufficient facts to establish a right to the requested relief.

(2) Any motion regarding temporary custody of a minor child must be supported by an affidavit which must state the present location of the minor child, the person with whom the child presently resides, the persons with whom and the places where the child has resided for the last 6 months, including the length of time with each person and at each residence, and the reasons why a temporary custody order is sought.

(3) Any motion regarding temporary support must be accompanied by a Uniform Support Declaration in the form specified at http://www.courts.oregon.gov/forms/Pages/default.aspx. A Uniform Support Declaration required by this subsection must be completed as provided under subsection (4) of UTCR 8.010.

(4) The opposing party also must serve and file a Uniform Support Declaration on the moving party, when support is to be an issue. The Uniform Support Declaration required by this subsection must be completed in the form specified at http://www.courts.oregon.gov/forms/Pages/default.aspx and as provided for completion of the declaration under subsection (4) of UTCR 8.010. The Uniform Support Declaration must be filed and served at the time designated in the relevant SLR. In the absence of an SLR to the contrary, the Uniform Support Declaration must be filed and served within 14 days of service of the motion regarding temporary support.

## UTCR 8.050

JUDGMENT MODIFICATION PROCEEDINGS

(1) Modification proceedings must be initiated by an order to show cause based on a motion supported by an affidavit setting forth the factual basis for the motion or by other procedure established by SLR. The initiating documents must contain a notice to the served party, substantially in the form set out at ORCP 7. This notice may be a separate document or included in an Order to Show Cause or Motion. When support is to be an issue, a Uniform Support Declaration, as set out at http://www.courts.oregon.gov/forms/Pages/default.aspx, must also be filed with the motion and completed as provided under subsection (4) of UTCR 8.010.

(2) Initiating documents must be served by delivering a certified copy of each document and Uniform Support Declaration, if applicable, in the manner necessary to obtain jurisdiction.

(3) The opposing party also must serve and file a Uniform Support Declaration on the moving party, when support is to be an issue. The Uniform Support Declaration must be completed in the form at http://www.courts.oregon.gov/forms/Pages/default.aspx and as provided for completion of the declaration under subsection (4) of UTCR 8.010. The Uniform Support Declaration must be filed and served at the time designated in the relevant SLR. In the absence of an SLR to the contrary, the Uniform Support Declaration must be filed and served within 30 days of service of the order to show cause.

(4) If the Division of Child Support (DCS) of the Department of Justice or a district attorney child support office (DA) either initiates or responds to a support modification proceeding, the DCS or DA must be allowed to file and serve, in lieu of the Uniform Support Declaration, an affidavit which sets out the following information:

(a) The name of the legal or physical custodian of the child(ren).

(b) The name and date of birth of each child for whom support modification is being sought.

(c) A statement of the amount of public assistance being provided.

(d) A statement of the value of food stamp benefits being provided.

(e) A statement of whether medical insurance (Medicaid) is being provided.

(f) A statement of any other known income of the physical custodian.

(g) A statement concerning any special circumstances which might affect the determination of support.

(5) A party who files an *ex parte* temporary custody or parenting time order pursuant to ORS 107.139 must file a motion for permanent modification of custody or have one pending at the time this application is made.

## UTCR 8.060

FILING DCS WORK SHEETS REQUIRED IN CHILD SUPPORT CASES

Parties must submit the completed Division of Child Support (DCS) child support calculation work sheets that are available at http://www.doj.state.or.us/child-support/calculators-forms/forms/ as required by the following:

(1) If child support is an issue at the time of trial, the UTCR 8.010 statement of each party must include the work sheets.

(2) If child support is awarded, the judgment must incorporate the work sheet as an exhibit evidencing the basis for the court's award.

(3) In cases involving temporary child support, the moving party must serve the adverse party with the work sheets, and financial affidavits

filed by parties with the court must include the work sheets.

(4) If child support is an issue at the time of hearing, each party must submit the work sheets to the court.

(5) If an award of child support is modified, the amending judgment must incorporate the work sheet as an exhibit evidencing the basis for the court's award.

## UTCR 8.070

STANDARDIZED PARENTING PLANS

(1) SLR 8.075 is reserved for judicial districts to announce that they have adopted a standardized parenting plan.

(2) The standardized parenting plan shall be placed in an appendix to the SLR or on the court's website or both.

## UTCR 8.080

STATUTORY RESTRAINING ORDER TO PREVENT DISSIPATION OF ASSETS IN CERTAIN DOMESTIC RELATIONS ACTIONS

(1) The form of notice specified in Form 8.080.1 in the UTCR Appendix of Forms must be used for the statutory restraining order established by ORS 107.093. The petitioner must ensure that a copy of the notice is attached to the summons as required by ORS 107.093(5). The notice need not be signed by a judge.

(2) The form of notice specified in Form 8.080.2 in the UTCR Appendix of Forms must be used for the statutory restraining order established by ORS 109.103(5). The petitioner must ensure that a copy of the notice is attached to the summons as required by ORS 109.103(5)(d). The notice need not be signed by a judge.

(3) The request for hearing required by ORS 107.093(3) or 109.103(5)(b) shall be in substantially the same form as specified in Form 8.080.3 in the UTCR Appendix of Forms.

## UTCR 8.090

CERTIFICATE REGARDING PENDING CHILD SUPPORT PROCEEDINGS AND/OR EXISTING CHILD SUPPORT ORDERS AND/OR JUDGMENTS

A certificate regarding other pending child support proceedings and existing orders or judgments shall be placed at the end, immediately before the signature line, of any motion or petition filed pursuant to ORS 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, and 125.025, as required by ORS 107.085(3), 107.135(2)(b), 107.431(2)(b), 108.110(4), 109.100(3), 109.103(3), 109.165(3), and 125.025(4)(b). The certificate must indicate whether any pending child support proceeding, or any child support order or judgment, exists between the parties. The pleading also must include the name of the court or agency handling a pending proceeding, the case number, and date of any existing order or judgment, but that information need not be included in the certificate. A model form containing the information required by this rule is available on OJD's website (http://www.courts.oregon.gov/forms/Pages/default.aspx).

## UTCR 8.100

PROCEDURE FOR WAIVER OF MARRIAGE FEE UNDER ORS 106.120

(1) To obtain a waiver of the fee required to be paid under ORS 106.120 before a circuit, appellate, or tax court judge can perform weddings in certain circumstances, both persons wishing to be married must do all the following:

(a) Complete a UTCR Form 8.100.1a in the attached UTCR Appendix of Forms.

(b) Submit the completed form to a circuit court judge serving the county where the wedding will be performed for review and appropriate action.

(c) If the request is granted by the judge under (b) of this subsection, give the copy of the signed waiver to the judge who will solemnize the ceremony.

(2) If the request is denied by the judge, there is no waiver. Those persons who made application must either reapply under this rule or pay the fee. However, neither person may again make a request of any judge to waive the fee for 30 days from the date a judge signs an order denying a waiver under this rule.

(3) If a person is requested to pay the fee under ORS 106.120 while applying for a marriage license or by a court clerk, the person may show a valid waiver of fee granted to that person under this rule and will not have to pay the fee. A waiver granted under this rule is valid for only 30 days from the date the judge signs the order allowing the waiver and does not waive any other fees which may legally be charged related to the marriage or wedding.

(4) Upon receipt of a request for waiver under this rule, a judge will do all the following:

(a) Review the request to determine whether the judge can make a determination on the request. Only circuit court judges serving in the county where the wedding will be performed can grant a waiver under this rule. A judge will deny a request for a waiver under this rule if the request has been made to any other judge within 30 days.

(b) Determine whether exigent circumstances exist allowing the judge to waive the fee. The determination of exigent circumstances is at the sole discretion of the judge, but can, by statute, specifically include indigency of the parties to the marriage.

(c) Sign the waiver form indicating the judge's decision; give a copy of the completed, signed form to the parties to the impending marriage; and file a copy with the trial court administrator for that circuit court.

(5) When solemnizing a marriage a judge, under ORS 106.120(9), will accept a copy of a valid waiver granted under this rule in lieu of proof of payment of the fee required under ORS 106.120(9). The judge will maintain the copy of the waiver with other records of the marriage for as long as the judge is required to maintain the other records.

## UTCR 8.110

LIMITED SCOPE REPRESENTATION (Repealed)

REPORTER'S NOTE:

UTCR 8.110 was repealed effective August 1, 2017. UTCR 5.170 (Limited Scope Representation) became effective that date and applies to domestic relations proceedings, so UTCR 8.110 was no longer needed.

## UTCR 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 in substantially the form specified in Form 8.120.1 in the UTCR Appendix of 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) The Informal Domestic Relations Trial will be conducted as follows:

(a) At the beginning of an Informal Domestic Relations Trial the parties will be asked to affirm that they understand the rules and procedures of the Informal Domestic Relations Trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the Informal Domestic Relations Trial process.

(b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.

(c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.

(d) The parties will not be subject to cross-examination. However, the Court will ask the non-moving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.

(e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

(f) Expert reports will be received as exhibits. Upon the request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.

(g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.

(h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.

(i) The parties or their counsel will be offered the opportunity to make a brief legal argument.

(j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement but best efforts will be made to issue prompt judgments.

(k) The Court may modify these procedures as justice and fundamental fairness requires.

(4) The Court may refuse to allow the parties to utilize the Informal Domestic Relations Trial procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an Informal Domestic Relations Trial has been commenced but before judgment has been entered.

(5) A party who has previously agreed to proceed with an Informal Domestic Relations Trial 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.

## CHAPTER 9 – Probate and Adoption Proceedings

### UTCR 9.010

MAILING PROBATE MATERIALS TO THE COURT

Except for a document that is electronically filed, any petition, motion, order or judgment not requiring a court appearance may be mailed to the trial court administrator, with a self-addressed stamped envelope or postcard for response.

## UTCR 9.020

APPROVAL OF BONDS

A supporting affidavit, signed by the guardian, conservator, personal representative or attorney of record, must be filed if there is a request for approval of a surety bond in an amount less than the aggregate value of the property in the estate as disclosed by the petition. The requirement of this section may be satisfied by a statement in the petition for appointment.

## UTCR 9.030

ADDRESSES AND TELEPHONE NUMBERS REQUIRED

(1) The contact information required by UTCR 2.010(7) must be typed or printed on the last page of every document submitted to the court.

(2) The name, address, and telephone number of the guardian, conservator, or personal representative must be typed or printed on the last page of every order.

(3) The trial court administrator must be promptly notified by separate document of any change in address or telephone number of any attorney of record, self-represented party, guardian, conservator, or personal representative.

## UTCR 9.040

SETTLEMENT OF PERSONAL INJURY CLAIMS IN PROBATE CASES

A petition for approval of a settlement of a personal injury claim must be accompanied by an affidavit setting forth all relevant information concerning the settlement, including medical reports covering the nature and extent of the injuries sustained and the prognosis. The court may require further information.

## UTCR 9.050

RESTRICTED ACCOUNTS

When assets of an estate or conservatorship are placed with a depository subject to withdrawal only on order of the court, a writing signed by the depository showing the assets held and that they are subject to withdrawal only on further order must be filed with the court within 30 days of entry of the order unless the order allows a longer period of time. Prompt procurement of the writing is the responsibility of the attorney for the fiduciary. Any asset restricted by court order shall be identified in the inventory or annual accountings as restricted with reference to the date and title of the order imposing the restriction.

## UTCR 9.060

FEES IN ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Attorney fees requested in protective proceedings under ORS chapter 125 must be supported by affidavit setting out the justification for the amount requested.

(2) Attorney fees requested for a decedent's estate must be supported by affidavit in compliance with ORS 116.183.

(3) Personal representative fees requested in excess of the statutory amounts provided in ORS 116.173(1) must be supported by affidavit setting out justification for the additional claimed amount.

(4) All fiduciary and attorney fee applications and accountings in decedents' estates, guardianships and conservatorships must be served in the manner and on the persons described in ORS 116.093, 125.475, and acts amendatory thereof.

## UTCR 9.070

SUMMARY DETERMINATION OF CLAIM UNDER ORS 115.145(1)(A) AND 115.165

A party requesting a summary determination of a claim under ORS 115.145(1)(a) and 115.165 must:

(1) Indicate in the caption of the request that a summary determination is being requested; and

(2) Tender the appropriate fee with the request.

## UTCR 9.080

ORAL OBJECTIONS IN PROTECTIVE PROCEEDINGS AND NOTICE OF FREE AND LOW-COST LEGAL SERVICES

(1) Every court exercising probate jurisdiction must adopt an SLR designating the manner in which oral objections may be made under ORS 125.075 to petitions or motions in protective proceedings. SLR number 9.081 is reserved for this purpose.

(2) Every court exercising probate jurisdiction shall post, at the place where oral objections may be made pursuant to subsection (1) of this rule, information regarding any free or low-cost legal services available in the area sufficient to satisfy the requirements of ORS 125.070.

## UTCR 9.160

FORM OF ACCOUNTINGS

Accountings substantially in the form specified in Form 9.160 in the UTCR Appendix of Forms, as further explained in this rule, must be accepted by all judicial districts. Accountings in this format may be made mandatory by SLR. SLR 9.161 is reserved for purposes of making such format mandatory in the judicial district:

(1) Preliminary information. The beginning of the accounting shall state:

(a) The first and last date of the accounting period. For annual accountings, the last day of the accounting period shall be within 30 days of the anniversary of appointment.

(b) If no bond is required, the date of the court order waiving the bond or a reference to the statute exempting the fiduciary from filing a bond. If a bond is required, the accounting shall state the current amount of the total bond. If a bond is required, an accounting shall also provide the following information.

(i) The total value of the assets as of the last date of the current accounting period;

(ii) The income estimated to be received during the next accounting period;

(iii) Total assets and income (the sum of items (i) and (ii));

(iv) The value of the total assets and income which have been restricted by court order and a reference to the dates of all orders restricting assets;

(v) Unrestricted assets and income (the difference between (iii) and (iv), generally the amount which should be bonded);

(vi) The fiduciary's request for any change in the amount of the existing bond or in restrictions on assets or income.

(vii) If appropriate, an explanation for any difference between the amount of the requested bond and the amount that should be bonded.

(2) Asset Schedule. There shall be a separate asset schedule with a summary of all property of the estate or conservatorship. All assets listed in the Inventory, any Amended or Supplemental Inventory, or the previous accounting and all assets subsequently acquired shall be listed in this schedule if they are owned at any time during the accounting period.

(a) This schedule shall have at least five columns.

(i) Description of Asset. The first column shall describe each asset owned by the estate or conservatorship at any time during the accounting period. The description of any asset that has been restricted pursuant to court order shall include the date and title of the order. The description of any asset acquired or disposed of during the accounting period shall include the date of acquisition or disposal. If an asset consists of a depository account into which funds are received or from which funds are disbursed, the description shall include a reference to any separate paragraph or exhibit containing the statement of receipts and disbursements for the depository account.

(ii) Beginning Value. If the asset was owned by the estate or conservatorship at the beginning of the accounting period, the second column shall state the value of the asset at the beginning of the accounting period.

(iii) Value of Later-Acquired Asset. If the asset was acquired after the beginning of the accounting period, the third column shall state the value at acquisition.

(iv) Value at Disposition. If the asset was disposed of before the end of the accounting period, the fourth column shall state the value at disposition.

(v) Current Value. If the asset is in existence at the end of the accounting period, the fifth column shall state the current value.

(b) The sums of the second through fifth columns shall be provided at the bottoms of those columns.

(c) The schedule may have additional information such as original cost, increase or decrease in value, the source of an acquisition or the reason for disposition of assets, and any other information which would aid in accounting for assets.

(d) For the purpose of this schedule, total value of household goods and personal belongings may be listed on one line.

(e) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(f) A trust company acting as a fiduciary is exempt from the requirement to file an asset schedule as provided above. Instead, a trust company acting as a fiduciary may provide a schedule of assets in existence at the beginning of the accounting period and a schedule of assets in existence at the end of the accounting period.

(3) Receipts and Disbursements. The accounting of receipts and disbursements shall meet the following requirements for each depository account:

(a) For each account, receipts and disbursements shall be separately listed in chronological order, with the date and value of each transaction. For each account, the total of each list of receipts and disbursements shall be provided at the end of each list.

(b) Each receipt into the account shall show the source and shall have a brief explanation of the source or purpose of the entry. The first entry in the list of receipts shall be the beginning balance for the account.

(c) Each disbursement from the account shall show the payee or recipient and shall have a brief explanation of its purpose. If the disbursement is by check or similar instrument, the name on the disbursement shall match the payee on the instrument. The sum of the total disbursements plus the ending balance in the account shall be shown.

(d) A sale of real property shall be evidenced by a copy of the seller's closing statement from escrow or, if none is available, third-party documentation of the details of the transaction.

(e) Any transfers between depository accounts shall be so labeled with reference to the source or destination of the deposit or withdrawal.

(f) Any difference between the closing balance shown for the account in the accounting and the closing balance shown for the account in a depository statement filed in accordance with these rules shall be reconciled.

(g) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(h) A trust company acting as a fiduciary is exempt from the requirements of UTCR 9.160(3)(a). Instead, a trust company acting as a fiduciary may provide a chronological list of receipts and disbursements, with a total for the amount of receipts and a total for the amount of disbursements.

(4) Narrative. The accounting shall include a description of any changes in the assets of the estate or conservatorship or the financial life of the protected person not clearly shown in the Asset Schedule including, but not limited to, corrections to previously declared values, omitted assets, the closing of an account, the sale or purchase of an asset, a significant change in living expenses, or a stock split.

(5) Other forms of accounting. In its discretion, the court may allow other forms of accounting.

## UTCR 9.170

FIDUCIARY DISCLOSURE IN ACCOUNTINGS

The narrative of an accounting shall specifically disclose and explain all of the following transactions during the accounting period unless previously approved by the court:

(1) All gifts.

(2) Transactions with a person or entity with whom the fiduciary has a relationship which could compromise or otherwise affect decisions made by the fiduciary. The disclosure shall include, but is not limited to, payment for goods, services, rent, reimbursement of expenses, and any other like transactions.

(3) Any payment for goods or services provided either:

(a) By a person who is not engaged in an established business of providing similar goods or services to the general public; or

(b) At a rate higher than that ordinarily charged to the general public.

## UTCR 9.180

VOUCHERS AND DEPOSITORY STATEMENTS

(1) Unless otherwise provided by statute, SLR, or order of the court, a voucher for each disbursement reported in the accounting must accompany the accounting as a separate exhibit or shall be attached to a cover page showing the case caption. Vouchers required by statute or order of the court must be documents evidencing each disbursement and showing the name of the payee, date, and amount.

(2) Unless the fiduciary is excused from the requirement of filing vouchers, the accounting shall include depository statements for each account. An opening depository statement must evidence the account beginning balance,

unless one was submitted with a previous accounting. A closing depository statement must evidence the balance in the account within 30 days of the close of the accounting period or on the date of closing of an account closed during the accounting period.

(3) In a proceeding involving fiduciary accounts for which the depository does not issue regular statements, the court must accept a Depository Certification of Funds on Deposit that is substantially in the form specified in Form 9.180.3 in the UTCR Appendix of Forms.

(4) For purposes of this rule, a "depository" is an entity holding assets of the estate or conservatorship, including a bank, stock and bond broker, mutual fund, or similar entity.

(5) Copies of vouchers and depository statements need not be served on persons entitled to copies of the accountings or on persons who have requested notice in the proceedings.

## UTCR 9.190

RETURN OF VOUCHERS AND DEPOSITORY STATEMENTS

Vouchers and depository statements submitted under UTCR 9.180 may, in the court's discretion, be returned to a personal representative, conservator, guardian or attorney of record at any time after expiration of the time for appeal or, if an appeal is taken, after final determination of the case. A person requesting return of vouchers or depository statements shall submit a self-addressed envelope with adequate postage with the documents filed.

## UTCR 9.300

APPOINTMENT OF GUARDIANS IN ADOPTIONS

Except in cases when one or more of the petitioners, or a state or private agency, is the legal or natural guardian of the minor child, when a petition is filed for leave to adopt a minor child and the required consent thereto has been filed, the attorney for the petitioner must prepare and submit to the court an order providing for the appointment of the petitioner, or other suitable person, as guardian of the person of the minor child pending further order of the court or entry of a judgment.

## UTCR 9.310

PRESENTATION OF ADOPTION JUDGMENTS

Proposed adoption judgments may be presented to the court without the necessity of a personal appearance by the attorney or the adoptive parents.

## UTCR 9.320

CHANGE OF NAME AND CHANGE OF SEX PROCEEDINGS (Repealed)

REPORTER'S NOTE:

UTCR 9.320 was repealed effective January 1, 2018.

## UTCR 9.400

COURT VISITOR'S REPORT

A court visitor must file the court visitor's report in an adult guardianship in substantially the form of UTCR 9.400.1 unless the judicial district in which the report will be filed has adopted another form by SLR or by Presiding Judge Order pursuant to ORS 125.165(1)(b) and the form adopted by that judicial district includes all of the information required by UTCR Form 9.400.1.

## UTCR 9.410

PROTECTIVE PROCEEDING—CONFIDENTIAL INFORMATION ORDER

A person who submits to the court confidential and protected information from the Department of Human Services or the Oregon Health Authority pursuant to ORS 125.012 must at the same time submit a proposed order in substantially the form of UTCR Form 9.410.1. The person must serve a copy of the order signed by the court on all parties to the proceeding.

# CHAPTER 10 – Proceedings Relating to Vehicle Laws and Driving Privilege Suspensions

## UTCR 10.010

PETITION FOR REVIEW OF ORDER OF SUSPENSION UNDER ORS 813.410

A petition for review of a final order of the Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV) must be filed with the trial court administrator. Copies of the petition must be served on the DMV and the Attorney General. The petition filed with the trial court administrator must contain a certificate of service of the above copies. The petition as filed and served must be accompanied by a copy of the final order of the DMV from which the appeal is taken. The petition for review and the certificate of service must be substantially in the form specified in Form 10.010.a and Form 10.010.b in the UTCR Appendix of Forms.

## UTCR 10.020

10.020 PREPARATION AND DELIVERY OF THE RECORD ON REVIEW

(1) When a petition is served on the DMV, the DMV must prepare the record of the proceeding, including a transcription of the oral proceedings, or the agreed portion thereof if the parties have stipulated to shorten the record, and all exhibits introduced and made a part of the record at the hearing. The DMV must serve certified true copies of the record on the petitioner and the Attorney General. The DMV must file the original record with the trial court administrator within 30 days of service of the petition for review. The record must be accompanied by proof of service. On good cause shown, the court may extend the time for filing of the record.

2) The record, preceded by an index of its contents, must be securely fastened in a suitable cover or folder showing on the outside the title and agency number of the case, the name of the administrative law judge,and the date and location of the hearing. The pages of the record must be consecutively numbered at the bottom center of each page.

(3) When the court has entered its judgment and the period for appeal has elapsed without an appeal being taken, the record will be returned to the agency, unless the court otherwise directs.

## UTCR 10.030

FORM OF TRANSCRIPT OF ORAL PROCEEDINGS

A written transcript of the oral proceedings must meet the following specifications:

(1) It must be typewritten, double-spaced, on paper with numbered lines and prepared on one side only. Typewriting must be first impression; clear and legible; and on good quality white, opaque, unglazed paper 8-1/2 x 11 inches in size.

(2) Each page must be consecutively numbered at the top right corner, and to the left thereof must be given the name of the witness followed by a notation indicating whether the testimony is on direct, cross, redirect or recross examination, indicated by "D," "X," "ReD" or "ReX." Appropriate notation must similarly be made of other proceedings.

(3) Pages must contain no more than 25 lines, with margins of 1-1/2 inches on the left and ½ inch on the right.

(4) Type must be standard pica or equivalent size.

## UTCR 10.040

SETTLEMENT OF THE RECORD

A motion to correct the record may be filed within 7 days of the filing of the record. Unless a motion to correct is filed, the record is deemed settled. Upon filing with the trial court administrator of a motion to correct the record, the court shall direct the making of such corrections as may be appropriate, and shall fix the time within which such corrections will be made. Upon filing with the trial court administrator of the record so corrected, the record shall be deemed settled.

## UTCR 10.050

PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES

(1) The petitioner must file a memorandum of points and authorities in support of the challenge to the validity of the final order of the DMV. Points must be concise statements of the arguments supporting the petitioner's challenge to the validity of the final order. Each point must be accompanied by a reference to the page number of the record where the matter is found. Each point must be followed by a citation of authorities for that point. Points not accompanied by a reference to the record or a statement of authorities need not be considered by the court.

(2) The petitioner's memorandum of points and authorities, including proof of service on the Attorney General at the address shown in the Certificate of Service required under UTCR 10.010, must be filed with the trial court administrator no later than 14 days after the date of settlement of the record.

## UTCR 10.060

OPPOSING PARTY'S RESPONSE

The respondent may file a written memorandum of points and authorities in response to the matters raised in the petitioner's memorandum, including proof of service on the petitioner, not fewer than three days before the date set for hearing. The respondent's memorandum must refer to each point in the petitioner's memorandum being addressed, and each point must be followed by a statement of authorities in support of the respondent's position.

## UTCR 10.070

SETTING HEARING DATE

(1) Unless waived in writing by both parties, the court shall schedule the hearing within 35 days of the filing of the petitioner's memorandum of points and authorities or the settlement of the record, whichever occurs later. The court shall notify the parties of the date at least ten days before the scheduled hearing.

(2) A party may request that the hearing be conducted by a conference call between the court and the opposing parties. The request must be granted if the office making the request is located more than 25 miles from the

courthouse. UTCR 10.090 and all applicable rules of decorum in proceedings must be observed by the parties and enforced by the court during the conduct of a conference call hearing.

## UTCR 10.080

ORAL ARGUMENT AT HEARING

(1) At oral argument, the petitioner shall be entitled to open and close. Unless the court otherwise orders, the petitioner shall be limited to ten minutes oral argument and the respondent shall be limited to ten minutes; but, the petitioner may reserve up to five minutes for rebuttal.

(2) No point raised by a party's memorandum of points and authorities shall be deemed waived by the party's failure to present the point in oral argument.

(3) If a party fails to appear at the hearing, the court shall deem the cause as to that party submitted without oral argument. A party's failure to appear shall not preclude oral argument by the other party.

## UTCR 10.090

ENTRY OF JUDGMENT

The court shall enter its judgment within 7 days of the hearing or, if no hearing is held, within 7 days of the time provided for hearing in UTCR 10.070(1).

# CHAPTER 11 – Juvenile Court Proceedings

## UTCR 11.010

APPLICATION FOR COURT APPOINTED COUNSEL

(1) An application for a court appointed counsel and a sworn statement of financial condition shall be provided for each affected adult and child on intake or at the earliest practicable other time.

(2) Counsel may be appointed for a child in any case, but counsel will not be appointed for any adult person unless that person files a verified financial statement and any other information in writing and under oath that the court may require or that the applicant desires to submit relating to the applicant's financial ability to retain counsel.

(3) On receipt of an application, the court shall promptly rule in the matter. If the application is granted, the court shall promptly appoint counsel and notify counsel of the appointment.

## UTCR 11.020

COMPENSATION AND APPOINTMENT OF COURT APPOINTED COUNSEL

(1) Allowance of attorney fees in juvenile proceedings shall be governed by ORS 135.055.

(2) Unless otherwise specified by written court order, an order for appointment of counsel shall expire when the time for taking an appeal has expired.

## UTCR 11.040

ADMISSION OR STIPULATION TO JURISDICTION; DISMISSAL

In juvenile cases, after having knowledge thereof, the parties must immediately notify the court of an admission or stipulation of jurisdiction or of a dismissal before the jurisdictional or dispositional hearing.

## UTCR 11.050

TIME REQUIRED FOR HOLDING DISPOSITIONAL HEARING (Repealed)

This rule was repealed effective August 1, 2013.

## UTCR 11.060

PREDISPOSITION INVESTIGATION

(1) If an investigation report is prepared under ORS 419A.012, 419B.112(2)(a), and 419C.300, it shall be made available to the parties at least 7 days before the dispositional hearing, unless the parties stipulate to a shorter time.
(2) If jurisdiction is contested, the court shall not read the report until after jurisdiction has been established.

(3) If the investigation produces information which the Juvenile Department or other agency preparing the report concludes should not be divulged to the child, parents or counsel, that information must, on notice to the parties, be separated from the predisposition reports and must be divulged only pursuant to court order. If the court does not issue an order to divulge such information, the court shall set forth the reasons for its action.

## UTCR 11.070

TEMPORARY SUSPENSION OF VISITATION RIGHTS WHEN TERMINATION PETITION FILED

Parental visitation rights with respect to children who are wards of the court shall not be suspended while a petition to terminate parental rights is pending, unless ordered by the court on good cause shown.

## UTCR 11.100

SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS IN DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES

(1) Except as provided in subsection (3) of this rule, any proposed judgment or proposed order submitted to the court for signature must be:

(a) Served on each counsel not less than 3 days prior to submission to the court, or

(b) Accompanied by a statement by counsel that no objection exists as to the judgment or order, or

(c) Served on a self-represented party not less than 7 days prior to submission to the court and be accompanied by notice of the time period to object.

(2) Except as provided in subsection (4) of this rule, any proposed judgment or order submitted to the court must include, following the space for judicial signature, a dated and signed certificate that describes:

(a) The manner of compliance with any applicable service requirement under this rule; and

(b) The reason that the submission is ready for judicial signature or otherwise states that any objection is ready for resolution, identifying the reason in substantially the following form:

"This proposed order or judgment is ready for judicial signature because:

"1. [ ] Each party, with the exception of an unrepresented child, has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.

"2. [ ] Each party, with the exception of an unrepresented child, has communicated approval of the order or judgment to me.

"3. [ ] I have served a copy of this order or judgment on each party entitled to service and:

"a. [ ] No objection has been served on or communicated to me.

"b. [ ] I received objections as attached.

"c. [ ] After conferring about objections, [role and name of party] agreed to independently file any remaining objection.

"4. [ ] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

"5. [ ] Other:_____."

(3) The requirements of subsection (1) of this rule do not apply to:

(a) A proposed order or judgment presented in open court with the parties present;

(b) A proposed order or judgment for which service is not required by statute, rule, or otherwise;

(c) A proposed order or judgment filed in a juvenile delinquency proceeding, and

(d) Proposed orders for transport of in-custody parties.

(4) The requirements of subsection (2) of this rule do not apply to:

(a) A proposed order or judgment presented and signed in open court with the parties present; and

(b) A proposed order or judgment filed in a juvenile delinquency proceeding.

(5) The certificate required under subsection (2) may be combined with any certificate of service required by another statute or rule.

REPORTER'S NOTE (08/01/2017):

Pursuant to UTCR 1.130, computation of Uniform Trial Court Rule time requirements is subject to ORCP 10.

## CHAPTER 12 – Mediation

REPORTER'S NOTE: UTCR 12.500 - 12.760, Form 12.540.1a, and Form 12.540.2 were repealed effective August 1, 2005. Replacement rules will be adopted by Chief Justice Order as stand-alone mediation rules. These replacement rules will not be part of the UTCR nor will they be subject to the UTCR process. They will be posted at: http://www.courts.oregon.gov/rules/Pages/other.aspx. http://www.ojd.state.or.us/Web/OJDPublications.nsf/Mediation?OpenView&count=1000

## CHAPTER 13 – Arbitration

### UTCR 13.010

APPLICATION OF CHAPTER

(1) This UTCR chapter applies to arbitration under ORS 36.400 to 36.425 and Acts amendatory thereof but, except as therein provided, does not apply to any of the following:

(a) Arbitration by private agreement.

(b) Arbitration under any other statute.

(c) Matters exempt by ORS 36.400.

(d) Any civil action exempt from arbitration by action of a presiding judge under ORS 36.405.

(2) Notwithstanding subsection (1), each judicial district may adopt an SLR requiring arbitration proceedings under ORS 742.505 and ORS 742.521 to be conducted pursuant to UTCR 13.140, 13.150, 13.170, 13.180, and 13.190.

(3) This UTCR chapter on arbitration is not designed to address every question that may arise during the arbitration hearing. These rules give considerable discretion to the arbitrator. The arbitrator should not hesitate to exercise that discretion.

### UTCR 13.030

ARBITRATION COMMISSION

(1) Each court must establish an arbitration commission.

(2) The function of the arbitration commission is to supervise the arbitration program and to give advisory opinions relating to arbitration.

(3) The arbitration commission must include both judge and attorney members and, as an ex officio member, the court administrator.

## UTCR 13.040

RELATIONSHIP TO COURT JURISDICTION AND APPLICABLE RULES

(1) A case filed in the circuit court remains under the jurisdiction of that court in all phases of the proceedings, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the court of jurisdiction.

(2) Until a case is assigned to the arbitrator, Oregon Rules of Civil Procedure apply. After a case is assigned to an arbitrator, these arbitration rules apply except where an arbitration rule states that a Rule of Civil Procedure applies.

(3) Once a case is assigned to arbitration, all motions against the pleadings, all motions for discovery, and all similar pretrial motions not then resolved will be submitted to the arbitrator only and determined by the arbitrator. The arbitrator's determination, however, will apply only during the arbitration proceeding. If a request for trial *de novo* is filed, such matters may be raised again. If the arbitrator's decision on a pretrial motion will prejudice a party on trial *de novo*, that party may file an appropriate motion with the court.

## UTCR 13.050

ARBITRATION WHEN CASE ALREADY SET FOR TRIAL

(1) Cases will not be assigned to arbitration within 63 days of the set trial date, except by order of the court.

(2) A court order is not necessary if by stipulation the parties agree upon an arbitrator and agree upon a hearing date at least 28 days before the scheduled trial date.

## UTCR 13.060

PLEADINGS IN CASES SUBJECT OR NOT SUBJECT TO ARBITRATION

(1) All civil actions (including domestic relations cases described under ORS 36.405(1)(b)) will be assigned to arbitration unless one of the following occurs:

(a) The title of a pleading contains the words "CLAIM NOT SUBJECT TO MANDATORY ARBITRATION" in compliance with subsection (3) of this rule.

(b) Any party files a notice, prior to the assignment to arbitration, that the case is not subject to mandatory arbitration. The notice must state grounds sufficient to exempt the case from mandatory arbitration.

(c) The court orders the case removed from mandatory arbitration under ORS 36.405(2).

(2) Notice under part (1)(a) or (1)(b) of this rule does not prevent any party from asserting by appropriate motion, that the case is subject to mandatory arbitration.

(3) A party must place one or the other of the following in the title of a pleading in the case (including a claim, counterclaim, cross claim, third-party claim, petition, and response): "SUBJECT TO MANDATORY ARBITRATION" or "CLAIM NOT SUBJECT TO MANDATORY ARBITRATION." When a party places the "NOT SUBJECT" language in the title of the pleading, the party gives notice to the court and other parties that the case is exempted from mandatory arbitration either clearly by statute or under these rules. This language must not be in the title of a pleading for any other purpose. A party's signature on pleadings containing such language constitutes the party's certificate of such notice under ORCP 17. In all other instances, the party will place the language in the title indicating the case is subject to mandatory arbitration.

## UTCR 13.070

EXEMPTION FROM ARBITRATION

Within 14 days after notification by the court that the case is assigned to arbitration, any party seeking exemption from arbitration must file and serve a "Motion for Exemption from Arbitration."

## UTCR 13.080

ASSIGNMENT TO ARBITRATOR

(1) The parties may select an arbitrator by stipulation.

(2) At the time of giving notice of the assignment to arbitration, the trial court administrator shall furnish a list of proposed arbitrators as well as a copy of the procedures for the selection of arbitrators and for setting an arbitration hearing. The procedures for selection of arbitrators shall be established by the arbitration commission.

(3) An arbitrator shall be assigned under (1) or (2) of this rule within 21 days after the assignment to arbitration.

## UTCR 13.090

ARBITRATORS

(1) Unless otherwise ordered or stipulated, an arbitrator must be an active member in good standing of the Oregon State Bar, who has been admitted to any Bar for a minimum of five years, or a retired or senior judge. The parties may stipulate to a nonlawyer arbitrator.

(2) An arbitrator who is not a retired or senior judge or stipulated nonlawyer arbitrator must be an active member in good standing of the Oregon State Bar at the time of each appointment. During any period of suspension from the practice of law or in the event of disbarment, an arbitrator will be removed from the court's list of arbitrators and may reapply when the attorney is reinstated or readmitted to the bar.

(3) Arbitrators will conduct themselves in the manner prescribed by the Code of Judicial Conduct.

## UTCR 13.100

AUTHORITY OF ARBITRATORS

An arbitrator has the authority to do all of the following, but may exercise the authority conferred only after the case is assigned to a specific arbitrator and any disputes over the assignment have been settled:

(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to arbitrability or the qualification of an arbitrator. The court may entertain a challenge to the qualification of an arbitrator on grounds that could not be discovered prior to assignment of the arbitrator to the case.

(2) Invite, with reasonable notice, the parties to submit trial briefs.

(3) After notice to the parties, examine any site or object relevant to the case.

(4) Issue a subpoena, enforceable in the manner described in ORS 36.675.

(5) Administer oath or affirmations to witnesses.

(6) Rule on the admissibility of evidence in accordance with these rules.

(7) Determine the facts, apply the law and make an award; perform other acts as authorized by these rules.

(8) Determine the place, time and procedure to present a motion before the arbitrator, including motions for Summary Award (known as Summary Judgment under ORCP).

(9) Require a party, an attorney advising each party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure of such party or attorney or both, to obey an order of the arbitrator.

(10) Award attorney fees as authorized by these rules, by contract or by law.

## UTCR 13.110

ARBITRATOR'S OATH

Arbitrators will be required to execute the following oath in writing on a form provided by the trial court administrator at the time of appointment:

I solemnly affirm that I will faithfully and fairly hear and examine the matters in controversy and that I will make a just award to the best of my understanding.

## UTCR 13.120

COMPENSATION OF ARBITRATOR

(1) The arbitration commission shall establish a compensation schedule for arbitrators. If the arbitrator suggests that extraordinary conditions justify a different fee, and the parties concur, the fee may be adjusted accordingly. If the parties, or any of them, do not concur, the arbitrator shall direct an inquiry to the court for determination of the appropriate fee.

(2) Within 14 days of the appointment of the arbitrator, each party must tender to the arbitrator a pro rata share of the preliminary payment for the arbitrator. Any deposit in excess of the arbitrator's actual fee will be refunded to the parties. Regardless of whether the arbitration hearing is conducted, the parties must pay a proportionate share of the arbitrator's fee. The arbitrator must submit to each party an itemized statement.

(3) Relief from the payment of arbitration fees, in whole or in part, as provided for in ORS 36.420(3) must be applied for immediately upon a case or a small claim becoming eligible for arbitration. The court will provide the arbitrator with a copy of any order waiving or deferring all or any part of the fees.

(4) If a party fails to tender to the arbitrator the party's pro rata share of the preliminary payment under subsection (2) of this rule and fails to obtain a waiver or deferral of arbitration fees under subsection (3) of this rule, the arbitrator may preclude the party from appearing or participating in the arbitration. The failure of a party to appear or participate in the arbitration proceeding by reason of failing to pay the arbitrator fee or obtain a waiver or deferral of the fee does not affect the ability of the party to appeal the arbitrators decision and award in the manner provided by ORS 36.425.

(5) Any dispute as to the amount of the arbitrator's fee must be submitted to the court.

(6) The arbitrator's fee may be considered a recoverable item of costs.

(7) At the conclusion of the arbitration process, the court may enter a judgment in the arbitrator's favor and against any party who has not paid the arbitrator's fee in accordance with the schedule established under paragraph (1).

## UTCR 13.130

RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES AND ATTORNEYS

Unless all parties otherwise agree, no disclosure of any offers or settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator, regarding the merits of the case, except in the presence of, or on reasonable notice to, all other parties.

Except for Rules 1, 4.1 to 4.3, 4.5 to 4.10, and 5 of the Code of Judicial Conduct, all rules of professional conduct concerning Bench and Bar apply in the arbitration process.

## UTCR 13.140

DISCOVERY

Discovery shall be conducted in accordance with Oregon Rules of Civil Procedure, and all motions shall be determined by the arbitrator. The arbitrator shall balance the benefits of discovery against the burdens and expenses. The arbitrator shall consider the nature and complexity of the case, the amount of controversy, and the possibility of unfair surprise that may result if discovery is restricted.

## UTCR 13.150

SUBPOENA

In accordance with the Oregon Rules of Civil Procedure, a lawyer of record or the arbitrator may issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing.

## UTCR 13.160

SCHEDULING OF THE HEARING

(1) The arbitrator shall set the time, date and place of hearing and shall give reasonable notice of the hearing date to the parties and comply with ORS 36.420. The arbitrator shall also give notice of the hearing date and any continuance to the trial court administrator.

(2) A court may adopt a supplementary local rule establishing a deadline for the arbitration hearing and a process for obtaining a postponement or continuance. A supplementary local rule may not allow the arbitration process to extend more than six months from the date the case is assigned to an arbitrator. In the absence of a supplementary local rule adopted pursuant to this section, the requirements set forth below in sections (3) and (4) shall apply.

(3) Except for good cause shown, the hearing must be scheduled to take place not sooner than 14 days, or later than 49 days, from the date of assignment of the case to the arbitrator. The parties may stipulate to a postponement or continuance only with the permission of the arbitrator. Such postponements or continuances must also be within the 49-day period. Any continuances or postponements beyond such period require the arbitrator to obtain approval of the presiding judge. The arbitrator must give notice of any continuance to the trial court administrator.

(4) Continuances and postponements shall not be granted except in the more unusual circumstances. Approximately two months are allocated for the arbitration process. The arbitrator is given the power to enforce the rules and will be required to maintain the schedule.

## UTCR 13.170

PREHEARING STATEMENT OF PROOF

(1) At least 14 days prior to the date of the arbitration hearing, each party must submit to

the arbitrator and serve upon all other parties all the following:

(a) A list of all exhibits to be offered showing or accompanied by a description of the document and the name, address and telephone number of its author or maker and complying with UTCR 13.190(2)(c). Each party, upon request, must make any exhibits available for inspection and copying by other parties.

(b) A list of witnesses the party intends to call at the arbitration hearing with their addresses and telephone numbers and a statement of the matters about which each witness will be called to testify.

(c) An estimate as to the expected length of the hearing.

(2) A party failing to comply with this rule, or failing to comply with a discovery order, may not present at the hearing any witness or exhibit required to be disclosed or made available, except with the permission of the arbitrator.

(3) Each party must also furnish the arbitrator, at least 14 days prior to the arbitration hearing, with copies of pleadings and other documents contained in the court file which that party deems relevant.

## UTCR 13.180

CONDUCT OF HEARING

(1) Arbitration hearings shall be informal and expeditious. The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to do the following:

(a) Make the interrogation and presentation effective for the ascertainment of the facts.

(b) Avoid needless consumption of time.

(c) Protect witnesses from harassment or undue embarrassment.

(2) A witness shall be placed under oath or affirmation prior to presenting testimony, a violation of which oath shall be deemed contempt of court, in addition to other penalties that may be provided by law. The arbitrator may question the witness. The extent to which the rules of evidence will be applied shall be determined in the discretion of the arbitrator.

(3) The hearing may be recorded electronically or otherwise by any party or the arbitrator. The cost of such recording is not a recoverable item of cost.

## UTCR 13.190

CERTAIN DOCUMENTS ADMISSIBLE

(1) The documents listed in subsection (2) of this rule, if relevant, are admissible at an arbitration hearing, but only if:

(a) The party offering the document has included in the prehearing statement of proof a description of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing; and

(b) The party offering the document promptly has made available, after request, to all other parties, all other documents from the same author or maker.

(2) The following documents are subject to this rule:

(a) A bill, report, chart or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider on a letterhead or a printed bill.

(b) A bill for drugs, medical appliances or other related expenses on a letterhead or a printed bill.

(c) A bill for, or an estimate of, property damage on a letterhead or a printed bill. In the case of an estimate, the party intending to offer

the estimate must forward with the prehearing statement of proof under UTCR 13.170 a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid.

(d) A police, weather, wage loss or traffic signal report or standard life expectancy table.

(e) A photograph, x-ray, drawing, map, blueprint or similar documentary evidence.

(f) The written statement of any witnesses, including the written report of an expert witness which may include a statement of the expert's qualifications, and including a statement of opinion which the witness would express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury.

(g) A document not specifically covered by any of the foregoing provisions, but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the policies, purposes and interests of justice.

(3) Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination.

## UTCR 13.200

ABSENCE OF PARTY AT HEARING

(1) The arbitration hearing may proceed and an award may be made in the absence of any party who, after due notice, fails to participate or to obtain a continuance or postponement.

(2) If a defendant is absent, the arbitrator shall require the plaintiff to submit evidence sufficient to support an award.

(3) In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award damages against the defendant or defendants who are absent.

(4) The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award.

## UTCR 13.210

FORM AND CONTENT OF AWARD

(1) The award must be in writing and prepared on a form prescribed by the court and signed by the arbitrator.

(2) The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages, costs and attorney fees where allowed under applicable law.

(3) Findings of fact, conclusions of law and written opinions are not required.

(4) The award must contain the caption of the case and all the following information:

(a) The date of the hearing, if any.

(b) The prevailing party and the amount of relief awarded.

(c) Whether any part of the award was based on the failure of any party to appear and the identity of that party.

(d) The name and office address of the arbitrator.

(e) Provision for costs and for attorney fees where allowed under applicable law.

(f) Interest in accordance with applicable law specifying the rate of interest and the date from which it accrues.

(5) Within 28 days after the conclusion of the arbitration hearing, the arbitrator shall send

the award to the parties without filing with the court and shall establish procedures for determining attorney fees and costs.

(6) In dissolution cases, the arbitrator shall send the award to the parties within 28 days after the conclusion of the arbitration hearing and shall direct a party to prepare and submit a form of judgment. The arbitrator, upon request of any party, shall give the parties an opportunity to be heard on the form of judgment. The arbitrator shall then approve a form of judgment and file the award, along with the approved form of judgment, per UTCR 13.220.

1988 Commentary:

It is the intent of the Committee that 13.210(2) applies in dissolution cases.

1994 Commentary:

The Committee intends that the arbitrator determine all costs to which the prevailing party may be entitled, including the prevailing fee and share of the arbitrator's fee.

## UTCR 13.220

FILING OF AN AWARD

(1) In all cases, the arbitrator shall file the award with the trial court administrator, together with proof of service of a copy of the award upon each party, within 42 days after the conclusion of the arbitration hearing.

(2) An arbitrator may request an extension of time for filing of the award by presenting a written *ex parte* request to the trial court administrator. The trial court administrator may grant or deny the request, subject to review of the presiding judge. The arbitrator shall give the parties notice of any extension granted.

(3) The arbitrator may file with the trial court administrator and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the court to amend.

(4) After the award is filed, the arbitrator must return all documents and exhibits to the parties who originally offered them. All other documents and materials relating to the case must be delivered to the trial court administrator. The parties must retain all exhibits returned by the arbitrator until a final judgment is entered in the case.

## UTCR 13.240

JUDGMENT ON AWARD

If no request for trial *de novo* is filed within the time established by ORS 36.425(3), the arbitration decision and award will be entered and have the effect provided in that statute.

## UTCR 13.250

REQUEST FOR TRIAL DE NOVO

(1) A party who qualifies under ORS 36.425(2) may obtain a trial *de novo* on the case determined by completing the service, filing, payment of trial or jury fee and deposit as required under ORS 36.425(2).

(2) In addition to the provisions under ORS 36.425 relating to a trial *de novo*, the following provisions apply:

(a) In addition to filing a written notice of appeal and request for trial *de novo* with the trial court administrator, the party must serve on the parties a copy of the written notice of appeal and request for a trial *de novo* filed with the trial court administrator, and proof of such

service must be filed with the trial court administrator.

(b) When cases are consolidated for arbitration and a party has filed an appeal from the arbitration award in one or more of the consolidated cases, any other party who otherwise qualifies under ORS 36.425(2) may serve and file with the trial court administrator a request for trial *de novo*, with proof of service on all other parties, within 20 days from the filing of the arbitration award or within two judicial days after the service of the initial written request for trial *de novo*, notwithstanding the lapse of 20 days from the filing of the arbitration award.

(c) If the trial *de novo* request is withdrawn, or abandoned, such appealing party must obtain permission of the court or there must be a stipulation of all parties to the abandonment of the appeal and the terms thereof.

(d) Cross appeal is not necessary to preserve issues raised in a counterclaim, because the trial *de novo* encompasses all claims raised by any party in the particular case appealed.

(e) The court may assess statutory costs against a party who withdraws a request for trial *de novo*.

## UTCR 13.260

PROCEDURE AT TRIAL DE NOVO

The trial court administrator must seal any award if a trial *de novo* is requested. Neither judge nor jury will be informed of the arbitration result. The sealed arbitration award will not be opened until after the verdict is received and filed in a jury trial or until after the judge has rendered a decision in a court trial.

## UTCR 13.280

TRIAL DOCKET

Every case assigned to arbitration shall maintain its approximate position on the civil trial docket as if the case had not been assigned to arbitration, unless, at the discretion of the court, the docket position should be modified.

## UTCR 13.300

PRETRIAL SETTLEMENT CONFERENCES AND ARBITRATION

Cases assigned to arbitration or the pendency of an arbitration hearing does not exclude a case from participating in a court pretrial settlement conference.

# CHAPTER 14 – Reference Judges

This chapter reserved for future use.

# CHAPTER 15 – Small Claims

## UTCR 15.010

SMALL CLAIMS FORMS

(1) The following small claims documents shall be accepted, when the proper fee is tendered, by all judicial districts that accept small claims filings:

(a) Small Claim and Notice of Small Claim substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, to commence a small claims action pursuant to ORS 46.425 and 46.445 or 30.642 – 30.650 In an action by an inmate, the inmate must include the inmate's identification number in the caption.

(b) Motion for Default Judgment and Defendant Status Declaration substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/de

fault.aspx, to request a default judgment pursuant to ORS 46.475(2).

(c) Declaration of Noncompliance and Request for Judgment substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, to request a judgment for failure to comply with a Small Claims Agreement.

(d) Small Claims Judgment and Money Award substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, as a form for use to enter judgment in a small claims action under ORS 46.475(2), 46.485, and 46.488.

(e) Defendant's Response substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, as a form for use to respond to a claim and notice of claim in a small claims action pursuant to ORS 46.455.

(f) Small Claims Agreement substantially in the form of the corresponding document made available to the public on http://www.courts.oregon.gov/forms/Pages/default.aspx, as a form for use when the parties agree to resolve a small claims action.

(2) Forms in these formats may be made mandatory by SLR. SLR 15.011 is reserved for making such formats mandatory in the judicial district.

## UTCR 15.020

DISMISSAL OF SMALL CLAIMS FOR WANT OF PROSECUTION

(1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.

(2) If no return or acceptance of service is filed by the 63rd day after the filing of the complaint, the court may dismiss the case for want of prosecution.

(3) If proof of service is filed and any defendant does not appear by the 35th day after the proof of service is filed, the court may dismiss the complaint against each nonappearing defendant for want of prosecution unless the plaintiff has applied for a default judgment.

# CHAPTER 16 – Violations

This chapter reserved for future use.

# CHAPTER 17 – Local Parking Violations

REPORTER'S NOTE:
UTCR 17.010 was repealed out-of-cycle by Chief Justice Order No. 05-032, dated July 29, 2005, effective immediately.

# CHAPTER 18 – Forcible Entry and Detainer (FED) Actions

This chapter reserved for future use.

# CHAPTER 19 – Contempt Proceedings

NOTE:

The rules in UTCR Chapter 19 were adopted pursuant to ORS 33.145 by the Oregon Supreme Court. They were originally adopted as Temporary Oregon Contempt Rules (TOCR) by the Supreme Court on the 27th of September, 1991, by Supreme Court Order No. 91-078. Although not originally adopted as UTCR, these rules were amended by the Supreme Court and added to the UTCR effective August 1, 1993, by Supreme Court Order No. 93-035. Even though added to the UTCR for purposes of citation, comment, and proposed changes, the rules in this UTCR

chapter will continue to be changed only by action of the Supreme Court as provided under ORS 33.145.

## UTCR 19.010

SCOPE, CONSTRUCTION, APPLICATION

(1) The rules in this UTCR chapter govern contempt proceedings under ORS 33.015 to 33.155 and are intended to promote efficient and fair resolution of contempt proceedings. The rules in this chapter will be changed only by action of the entire Supreme Court.

(2) The rules in this chapter do not preclude courts from exercising their inherent authority in contempt proceedings over matters not covered by rule or statute, so long as that exercise fosters efficient and fair resolution of the matter

## UTCR 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) An accusatory instrument in a contempt proceeding under ORS 33.065 (punitive) must state, as applicable:

(a) In the caption, 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, 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.

(5) 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.

## UTCR 19.030

ALLOWING REMEDIAL SANCTIONS

Rules that apply to allowing remedial sanctions in a proceeding for only remedial sanctions under ORS 33.055 also apply to allowing remedial sanctions in a proceeding for punitive sanctions under ORS 33.065.

## UTCR 19.040

APPLICABILITY OF ORCP AND OTHER UTCR

(1) To the extent rules in this chapter are inconsistent with other applicable rules, the rules in this chapter govern contempt proceedings under ORS 33.015 to 33.155. Except as otherwise provided in this chapter:

(a) Oregon Rules of Civil Procedure (ORCP) and Oregon Rules of Appellate Procedure (ORAP) apply respectively to original and appellate contempt proceedings for remedial sanctions under ORS 33.055;

(b) UTCR that govern civil proceedings apply to original proceedings for remedial sanctions under ORS 33.055;

(c) UTCR and ORAP that govern criminal proceedings apply respectively to original and appellate contempt proceedings for punitive sanctions under ORS 33.065.

(2) On its own motion or that of a party in a contempt proceeding for remedial sanctions, a court may determine that a specific rule of procedure would not foster the fair and efficient resolution of the contempt proceeding.

(a) When a court makes that determination, it may modify the specific rule or adopt a different rule for all or part of the proceeding, so long as the modified or new rule fosters the fair and efficient resolution of the proceeding. Under this rule, the court may increase or decrease time limits or may limit or exclude responsive pleadings, or both, and may also modify other rule provisions.

(b) The court must give all parties to the proceeding notice that describes the modified or new rule. The notice must be in writing or on the record or both.

## UTCR 19.050

EXCEPTIONS TO AND LIMITATIONS ON APPLICABLE ORCP IN REMEDIAL PROCEEDINGS

Notwithstanding UTCR 19.040, in contempt proceedings for remedial sanctions:

(1) Unless the court determines that other claims should be joined for fair resolution of the contempt matter, only the following claims may be joined with a contempt claim:

(a) Claims that arise out of the order or judgment that the contemnor allegedly violated;

(b) Claims that involve facts and issues that would necessarily be determined in the contempt proceeding; and

(c) Other claims for contempt arising out of a related matter.

(2) ORCP references to "complaint" include the initiating instrument in a contempt proceeding.

(3) ORCP applicable to juries and jury trials apply only when a statute or constitution provides a specific right to jury trial in a contempt proceeding and a party claims that right.

(4) A party may amend a pleading only on motion and with the court's approval.

(5) The following ORCP do not apply: 3, 5, 21 C, 21 D, 21 E, 23 A, 24 A, 24 B, 25 A, 32, 54 A(1), 54 E, 66, 73, 81 A, 81 C, 82 A(3), 84, and 85.

## CHAPTER 20 – Voluntary Arbitration

This chapter is reserved for future use.

## CHAPTER 21 – Filing and Service by Electronic Means; Electronic Files of the Court

### UTCR 21.010

DEFINITIONS

The following definitions apply to this chapter:

(1) "Conventional filing" means a process whereby a filer files a paper document with the court.

(2) "Electronic filing" means the process whereby a filer electronically transmits to a court a document in an electronic form to initiate an action or to be included in the court file for an action.

(3) "Electronic filing system" means the system provided by the Oregon Judicial Department for the electronic filing and the electronic service of a document via the Internet, excluding the electronic filing of a criminal citation under ORS 133.073. A filer may access the system through the Oregon Judicial Department's website (http://www.courts.oregon.gov/Pages/default.aspx).

(4) "Electronic service" means the electronic transmission of a notice of filing by the electronic filing system to the electronic mail (email) address of a party who has consented to electronic service under UTCR 21.100(1). The notice will contain a hyperlink to access a document that was filed electronically for the purpose of accomplishing service.

(5) "Filer" means a person registered with the electronic filing system who submits a document for filing with the court.

(6) "Service contact" means any party to be served electronically by the electronic filing system, through email notification.

(7) "Other service contact" means any person associated with the filer for purposes of an action whom the filer wishes to receive email notification from the electronic filing system of documents electronically served in the action. An "other service contact" includes another lawyer, administrator, or staff from the filer's place of business, or another person who is associated with the filer regarding the action or otherwise has a legitimate connection to the action.

### UTCR 21.020

LOCAL RULES OF COURT NOT PERMITTED

No circuit court may make or enforce any local rule, other than those local rules authorized by

UTCR 4.090, governing the electronic filing and electronic service of documents.

## UTCR 21.030

FILERS

(1) Authorized Filers

(a) Any person who completes an online registration form and obtains a login under subsection (b) of this section is an authorized filer in the electronic filing system.

(b) A filer must complete an online registration form to request a login for access to the electronic filing system and must execute a user agreement. The filer must provide information sufficient to establish the filer's technical capacity to send and receive electronic filings and court notices. On receipt of the required information, the electronic filing system will send an email to the filer with an activation link and login information.

(2) Conditions of Electronic Filing

To have access to the electronic filing system, each filer agrees to, and must:

(a) Register for access to the electronic filing system;

(b) Comply with the registration conditions when using the electronic filing system;

(c) Maintain one or more operative email addresses at which the filer agrees to accept email notifications from the electronic filing system and electronic service of documents, provided that the filer has consented to electronic service in an action as provided in UTCR 21.100(2); and

(d) Furnish required information for case processing.

## UTCR 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. 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) Except as provided in subsections (a) or (b) of this section, when a document to be electronically filed incorporates a documentary exhibit, an affidavit, a declaration, a certificate of service, or another document, the electronic filing must be submitted as a unified single PDF file, rather than as separate electronically filed documents, to the extent practicable. An electronic filing submitted under this section that exceeds 25 megabytes must comply with section (1) of this rule.

(a) If an electronic filing consists of a motion or similar document and a corresponding proposed order, judgment, or any other document that requires court signature, the filer must submit the document requiring court signature through the eFiling system as a separate electronically filed document from the motion. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Summary Judgment" and "Proposed Order Granting Motion for Summary Judgment."

(b) If an electronic filing is filed in a case that is not confidential by statute or rule, but includes an incorporated document that is confidential or otherwise exempt from disclosure, the filer must submit the

incorporated document through the eFiling system as a separate electronically filed document. When submitting a confidential document through the eFiling system under this subsection, a filer must designate the document as confidential. A filer submitting separate documents under this subsection must include in the Filing Comments field for each submission a description that clearly identifies the filing, for example, "Motion for Stay" and "Confidential Attachment to Motion for Stay." A filer otherwise eFiling any confidential document, or any document in a case that is confidential by statute or rule, also must comply with UTCR 21.070(6) and (7).

(c) The reference in section (2) to an affidavit and a declaration applies to only an affidavit or a declaration that is an incorporated document.

(3) A proposed order or judgment, or any other document that requires court signature that is submitted electronically, must include, for the purpose of affixing a signature and signature date, a blank space of not less than 1.5 inches and a blank line following the last line of text.

Example:

Petitioner's motion for a stay is granted. The proceedings in this action are held in abeyance pending further notification from petitioner of completion of the conditions set out in this order.

*(at least 1.5 inches of blank space following last line of text)*

_____

(4) When viewed in an electronic format and when printed, a submitted document must comply with the requirements of ORCP 9 E and UTCR 2.010 except as to any requirement that a document bear a physical signature when filed.

(5) When submitting an electronic filing that creates a new case or adds a party to an existing case,

(a) A filer must enter into the "Add Party" screen the names of all known parties or all parties being added; and

(b) A filer must enter party names in proper case, for example, "John Doe" and not "JOHN DOE."

(6) The court may reject submitted documents that do not comply with these provisions as provided in UTCR 21.080(5).

## UTCR 21.050

PAYMENT OF FEES

(1) Payment Due on Filing.

A filer must pay the filing fees for filing a document electronically at the time of electronic filing.

(2) Fee Waivers and Deferrals

(a) Except as provided in subsection (b) of this rule, a filer may apply for a waiver or deferral of court fees and costs, as provided in ORS 21.682 and ORS 21.685, when submitting for electronic filing a document that constitutes an appearance, motion, or pleading for which a fee is required, with an accompanying application for a waiver or deferral of a required fee. The document will not be accepted for filing unless the court grants the fee waiver or deferral.

(b) A filer may not electronically apply for a waiver or deferral of court fees when submitting a document that initiates an action, as provided in UTCR 21.070(3)(b).

## UTCR 21.060

FILES OF THE COURT

(1) Electronic Filing

(a) The electronic filing of a document is accomplished when a filer submits a document electronically to the court, the electronic filing system receives the document, and the court accepts the document for filing.

(b) When the court accepts the electronic document for filing, the electronic document constitutes the court's record of the document.

(2) Converting a Conventional Filing into an Electronic Format

The court may digitize, microfilm, record, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a document that is filed conventionally in accordance with the protocols established by the State Court Administrator under ORS 8.125(11) and ORS 7.124.

(3) Register of Actions

The following apply whether or not a document is electronically filed with the court:

(a) For the purpose of ORS 7.020(1) and (2), the date that a document was filed displays in the date column of the register of actions for the case in the court's electronic case management system.

(b) For the purpose of ORS 7.020(2), entry occurs on the date an event is created in the register of actions.

## UTCR 21.070

SPECIAL FILING REQUIREMENTS

(1) Courtesy Copies and Other Copies

(a) The court may require that a filer submit, in the manner and time specified by the court, a copy of the document that was filed electronically and a copy of the submission or acceptance email from the electronic filing system.

(b) When a filer submits a document for conventional filing or electronic filing, the filer need not submit for filing additional copies of that document unless otherwise required by the court.

(c) If the petitioner in a post-conviction relief proceeding filed under ORS 138.510 intends to rely on the contents of the underlying circuit court criminal case file to support the allegations in the petition filed under ORS 138.580, then the petitioner must so state in the petition. If the petitioner intends to rely on some, but not all, of the contents of the underlying case file, then the petitioner must identify with reasonable specificity the materials on which the petitioner intends to rely. The petitioner need not attach to the petition, as part of evidence supporting the allegations, any document from the underlying case file.

(i) This subsection applies only if the underlying criminal case was filed on or after the date that the circuit court in which the conviction was entered began using the Oregon eCourt Case Information system.

(ii) The date that each circuit court began using the Oregon eCourt Case Information system is available at http://www.courts.oregon.gov/programs/ecourt/Pages/Implementation-Map-2011-2016.aspx.

(2) Court Order Requiring Electronic Filing and Electronic Service

Except for any document that requires service under ORCP 7 or that requires personal service, the court may, on the motion of any party or on its own motion, order any party not already otherwise so required to file or serve all documents electronically, after finding that such an order would not cause undue hardship or significant prejudice to any party.

(3) Documents that Must be Filed Conventionally

The following documents must be filed conventionally:

(a) An accusatory instrument that initiates a criminal action, except as otherwise provided by ORS 133.073.

(b) A petition that initiates a juvenile delinquency proceeding under ORS 419C.250.

(c) A document that initiates an extradition proceeding under ORS 133.743 to 133.857.

(d) An initiating instrument in a contempt proceeding, 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) A notice of appeal from a justice court or municipal court judgment under ORS 138.057 or ORS 157.020(1), a justice court order under ORS 157.020(2), or a municipal court conviction under ORS 221.359.

(f) A document that initiates an action that is accompanied by an application for a waiver or deferral of a required fee.

(g) A document filed under seal or subject to *in camera* inspection, including a motion requesting that a simultaneously filed document be filed under seal or subject to *in camera* inspection, except that a document may be electronically filed in an adoption case.

(h) Except as provided in UTCR 21.090(4), a document that is required by law to be filed in original form, such as, but not limited to, an original will, a certified document, or a document under official seal.

(i) If applicable law requires an original document to be filed simultaneously with another document that is electronically filed, the filer must electronically file an image of the original document with the other electronically filed document and then conventionally file the original document within 7 business days after submitting the electronic filing. An original document conventionally filed under this paragraph is deemed filed on the date of filing of the electronically filed image of the same document.

(ii) If the filer elects to electronically file an image of an original document as set out in paragraph (h)(i) of this subsection, the filer must include in the Filing Comments field a statement that the electronic filing submission includes an image of an original document and that the filer will conventionally file the original document within 7 business days.

(iii) If the filer elects to electronically file an image of an original document as set out in paragraph (h)(i) of this subsection, when conventionally filing the original document, the filer must include a notification to the court that the image was previously electronically filed.

(i) A negotiable instrument tendered under UTCR 2.060 for entry of notation of judgment.

(j) A document delivered to the court under ORCP 55 (H)(2)(c).

(k) A Driver and Motor Vehicle Services Branch of the Oregon Department of Transportation (DMV) record, as defined in UTCR 10.020(1).

(l) A petition or motion for waiver of the mandatory eFiling requirement, as set out in UTCR 21.140(3).

(m) Any stipulated or *ex parte* matter listed in SLR 2.501 in a Judicial District's Supplementary Local Rules.

(n) An undertaking that is accompanied by a deposit as security for the undertaking.

(o) A demonstrative or oversized exhibit.

(p) Trial exhibits, which must be submitted or delivered as provided in UTCR 6.050.

(q) A non-documentary exhibit filed pursuant to UTCR 2.010(9)(d).

(4) Consolidated Cases

Unless provided otherwise by court order or SLR adopted under UTCR 2.090, a party electronically filing a document that is applicable to more than one case file must electronically file the document in each case using existing case numbers and captions.

(5) Expedited Filings

A filer who submits an expedited filing through the eFiling system:

(a) Must include the words "EXPEDITED CONSIDERATION REQUESTED" in the Filing Comments field when submitting the filing; and

(b) May notify the court by email or telephone, as designated on the court's judicial district website, that an expedited filing has been eFiled in the case.

(6) Filings in Confidential Cases Made Confidential by Statute or Rule, and Other Confidential Filings

(a) Except as provided in subsection (b) of this section, if a case is confidential by statute or rule, a filer submitting a document in the case through the eFiling system must not designate the document as confidential, because the case itself already is designated as confidential.

(b) Notwithstanding subsection (a) of this section, and as additionally provided in section (7) of this rule, if a particular document type is deemed confidential by statute or rule within a case type deemed confidential by statute or rule, a filer submitting such a document through the eFiling system must designate the document as confidential.

(c) If a confidential document is being submitted in a case that is not confidential by statute or rule, a filer submitting such a document through the eFiling system must designate the document as confidential.

(7) Filings in Adoption Cases

(a) Initiating documentation in an adoption case must be submitted as a unified single PDF file, rather than as separate electronically filed documents, to the extent practicable and except as otherwise provided in subsection (c) of this section. An electronic filing submitted under this subsection that exceeds 25 megabytes must comply with UTCR 21.040(1).

(b) The petition and related exhibits required under ORS 109.315(3) and 109.385(9) must be filed as a unified single PDF. Filers in adoption proceedings initiated under ORS 419B.529 must submit the initiating document and related exhibits as a unified single PDF. When submitting a filing identified in this subsection through the eFiling system, a filer must not designate the filing as confidential, because the case type "adoption" already is designated as confidential.

(c) An Adoption Summary and Segregated Information Statement (ASSIS) and related exhibits filed under ORS 109.317(2), ORS 109.385(10), and ORS 419B.529(2) must be filed separately from the petition or initiating document and related exhibits as a unified single PDF that includes both the ASSIS and any ASSIS exhibit. When submitting a filing identified in this subsection through the eFiling system, a filer must designate the document as confidential because the unified document containing the ASSIS and any ASSIS exhibit is segregated from other documents in the case file.

## UTCR 21.080

ELECTRONIC FILING DEADLINES

(1) A filer may use the electronic filing system at any time, except when the electronic filing system is temporarily unavailable.

(2) The filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone where the court is located on the day the document must be filed.

(3) The court considers a document submitted for an electronic filing when the electronic filing system receives the document. The electronic filing system will send an email to the filer that includes the date and time of receipt, unless the filer has elected through system settings not to receive the email.

(4) If the court accepts the document for filing, the date and time of filing entered in the register relate back to the date and time the electronic filing system received the document. When the court accepts the document, the electronic filing system will affix the date and time of submission on the document, thereby indicating the date and time of filing of the document. When the court accepts a document for filing, the electronic filing system sends an email to the filer, unless the filer has elected through system settings not to receive the email.

(a) The provisions of this subsection do not apply to a proposed order or judgment that is electronically filed.

(b) When the court accepts a proposed order or judgment through the electronic filing system, the document is deemed submitted for judge review.

(5) If the court rejects a document submitted electronically for filing, the electronic filing system will send an email to the filer that explains why the court rejected the document, unless the filer has elected through system settings not to receive the email. The email will include a hyperlink to the document.

(a) A filer who resubmits a document within 3 days of the date of rejection under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements. If the third day following rejection is not a judicial day, then the filer may resubmit the filing with a request under this subsection on the next judicial day. For purposes of this subsection, resubmission means submission of the document through the electronic filing system under section (3) of this rule or physical delivery of the document to the court. A filer who resubmits a document under this subsection must include:

(i) A cover letter that sets out the date of the original submission and the date of rejection and that explains the reason for requesting that the date of filing relate back to the original submission, with the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the subject line of the cover letter; and

(ii) If an electronic resubmission, the words "RESUBMISSION OF REJECTED FILING, RELATION-BACK DATE OF FILING REQUESTED" in the Filing Comments Field.

(b) A responding party may object to a request under subsection (a) of this section within the time limits as provided by law for the type of document being filed. For the purpose of calculating the time for objection provided by law under this subsection, if applicable, the date of filing is the date that the document was resubmitted to the court under subsection (a) of this section.

(6) If the eFiling system is temporarily unavailable or if an error in the transmission of the document or other technical problem prevents the eFiling system from receiving a document, the court may, upon satisfactory proof, permit the filing date of the document to relate back to the date that the eFiler first attempted to file the document to meet filing requirements. Technical problems with the filer's equipment or attempted transmission within the filer's control will not generally excuse an untimely filing.

(a) A filer seeking relation-back of the filing date due to system unavailability or transmission error described in this section

must comply with the requirements in subsection (5)(a) of this rule.

(i) The cover letter described in subsection (5)(a)(i) must include the date of the original attempted submission and the date that the filer was notified that the submission was not successful, and explain the reason for requesting that the date of filing relate back to the original submission, with the words "RESUBMISSION OF FILING, SUBMISSION UNSUCCESSFUL, RELATION-BACK DATE OF FILING REQUESTED" in the subject line of the cover letter.

(ii) The Filing Comment field notification for an electronic resubmission described in subsection (5)(a)(ii) must include the words "RESUBMISSION OF FILING, SUBMISSION UNSUCCESSFUL, RELATION-BACK DATE OF FILING REQUESTED."

(iii) The filer may include supporting exhibits that substantiate the system malfunction together with the filer's cover letter.

(b) A responding party may object in the same manner and subject to the same time calculations as in subsection (5)(b) of this rule.

## UTCR 21.090

ELECTRONIC SIGNATURES

(1) The use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required.

(2) In addition to information that law or rule requires to be in the document, a document filed electronically must include an electronic symbol intended to substitute for a signature, such as a scan of the filer's handwritten signature or a signature block that includes the typed name of the filer preceded by an "s/" in the space where the signature would otherwise appear.

Example of a signature block with "s/":

s/ John Q. Attorney
JOHN Q. ATTORNEY
OSB #
Email address
Attorney for Plaintiff Smith Corporation, Inc.

(3) When more than one party joins in filing a document, the filer must show all of the parties who join by one of the following:

(a) Submitting an imaged document containing the signatures of all parties joining in the document;

(b) A recitation in the document that all such parties consent or stipulate to the document; or

(c) Identifying in the document the signatures that are required and submitting each such party's written confirmation no later than 3 days after the filing.

(4) Except as provided in subsection (5) of this section, when a document to be electronically filed requires a signature under penalty of perjury, or the signature of a notary public, the declarant or notary public shall sign a printed form of the document The printed document bearing the original signatures must be imaged and electronically filed in a format that accurately reproduces the original signatures and contents of the document. The original document containing the original signatures and content must be retained as required in UTCR 21.120.

(5) When the filer is the same person as the declarant named in an electronically filed document for purposes of ORCP 1 E, the filer must include in the declaration an electronic symbol intended to substitute for a signature, such as a scan of the filer's handwritten signature or a signature block that includes the typed name of the filer preceded by an "s/" in

the space where the signature would otherwise appear.

Example of a signature block with "s/":

s/ John Q. Attorney
JOHN Q. ATTORNEY

2011 Commentary:

The Committee does not intend the requirement to include an email address in a signature block to constitute consent to receipt of service of documents by email. Electronic service of documents may only be accomplished as specified in UTCR 21.100.

## UTCR 21.100

ELECTRONIC SERVICE

(1) Consent to Electronic Service and Withdrawal of Consent

(a) A filer who electronically appears in the action by filing a document through the electronic filing system that the court has accepted is deemed to consent to accept electronic service of any document filed by any other registered filer in an action, except for any document that requires service under ORCP 7 or that requires personal service.

(b) A filer who is dismissed as a party from the action or withdraws as a lawyer of record in the action may withdraw consent to electronic service by removing the filer's contact information as provided in subsection (2)(a) of this rule.

(c) Except as provided in subsection (b) of this section, a filer may withdraw consent to electronic service only upon court approval based on good cause shown.

(2) Contact Information

(a) At the time of preparing the filer's first electronic filing in the action, a filer described in subsection (1) of this rule must enter in the electronic filing system the name and service email address of the filer, designated as a service contact on behalf of an identified party in the action. If the filer withdraws consent to electronic service under subsection (1)(b) or (1)(c) of this rule, then the filer must remove the filer's name and service email address as a designated service contact for a party.

(b) A filer described in subsection (1)(a) of this rule may enter in the electronic filing system, as an other service contact in the action:

(i) An alternative email address for the filer; and

(ii) The name and email address of any additional person whom the filer wishes to receive electronic notification of documents electronically served in the action, as defined in UTCR 21.010(7). If a lawyer enters a client's name and contact information as an other service contact under this subsection, then the lawyer is deemed to have consented for purposes of Rule of Professional Conduct 4.2 to delivery to the client of documents electronically served by other filers in the action.

(c) A filer is responsible for updating any contact information for any person whom the filer has entered in the electronic filing system as either a service contact for a party or as an other service contact in an action.

(d) A filer may seek court approval to remove a person entered by another filer as an other service contact in an action if the person does not qualify as an other service contact under UTCR 21.010(7).

(3) Selecting Service Contacts and Other Service Contacts

When preparing an electronic filing submission with electronic service, a filer is responsible for selecting:

(a) The appropriate service contacts in the action, for the purpose of accomplishing

electronic service as required by law of any document being electronically filed; and

(b) The appropriate other service contacts in the action, if any, for the purpose of delivering an electronic copy of any document being electronically filed.

(4) Court Notification and Transmission Constituting Service

When the court accepts an electronic document for filing under UTCR 21.060(1)(a), the electronic filing system sends an email to the email address of each person whom the filer selected as a service contact or other service contact under section (3) of this rule. The email contains a hyperlink to access the document or documents that have been filed electronically. Transmission of the email by the electronic filing system to the selected service contacts in the action constitutes service.

(5) Completion and Time of Electronic Service

Electronic service is complete when the electronic filing system sends the email to the selected service contacts in the action.

(6) Service Other than by Electronic Means

The filing party is responsible for accomplishing service in any manner permitted by the Oregon Rules of Civil Procedure and for filing a proof of service with the court for the following documents:

(a) A document required to be filed conventionally under this chapter;

(b) A document that cannot be served electronically on a party who appeared in the action; and

(c) A document subject to a protective order.

## UTCR 21.110

HYPERLINKS

(1) A document that is filed electronically may contain hyperlinks to other parts of the same document or hyperlinks to a location on the Internet that contains a source document for a citation or both.

(2) A hyperlink to cited authority does not replace standard citation format. A filer must include the complete citation within the text of the document. Neither a hyperlink, nor any site to which it refers, is part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in a document filed electronically.

(3) The Oregon Judicial Department neither endorses nor accepts responsibility for any product, organization, or content at any hyperlinked site, or to any site to which that site refers.

## UTCR 21.120

RETENTION OF DOCUMENTS BY FILERS AND CERTIFICATION OF ORIGINAL SIGNATURES

(1) Unless the court orders otherwise, if a filer electronically files an image of a document that contains the original signature of a person other than the filer, the filer must retain the document in the filer's possession in its original paper form for no less than 30 days.

(2) When a filer electronically files a document described in section (1) of this rule, the filer certifies by filing that, to the best of the filer's knowledge after appropriate inquiry, the signature purporting to be that of the signer is in fact that of the signer.

## UTCR 21.130

PROTECTED INFORMATION

The use of information contained in a document filed electronically or information accessed through the electronic filing system must be consistent with state and federal law.

## UTCR 21.140

MANDATORY ELECTRONIC FILING

(1) An active member of the Oregon State Bar must file a document using the electronic filing system, instead of using conventional filing, unless:

(a) The document is required to be conventionally filed under UTCR 21.070(3); or

(b) The filer has obtained a waiver under subsection (2) of this rule.

(2) An active member of the Oregon State Bar may seek a waiver of the requirement in section (1) of this rule as follows:

(a) The Bar member must file one of the following:

(i) A petition for waiver in all cases in a specific judicial district for a specific period of time.

(ii) A motion in an existing case for waiver in that specific case.

(b) A petition or motion must include an explanation describing good cause for the waiver.

(c) A separate petition for waiver must be filed in each judicial district in which the person desires a waiver.

(d) If the court grants a petition for waiver, the Bar member obtaining the waiver must

(i) File a copy of the court's order in each case subject to the waiver; and

(ii) Include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed during the duration of the waiver.

(e) If the court grants a motion for waiver, the Bar member obtaining the waiver must include the words "Exempt from eFiling per Waiver Granted [DATE]" in the caption of all documents conventionally filed in the case.

(3) If the electronic filing system is continuously unavailable for a period of more than 24 hours, an active member of the Oregon State Bar may file documents using conventional filing until the end of the first full business day after the day on which the electronic filing system becomes available.

(4) If a filer submits a document for conventional filing in contravention of section (1) of this rule and the filer has not obtained a waiver pursuant to section (2) of this rule nor is the electronic system unavailable as described in section (3) of this rule, then court staff may, to the extent allowed by policy adopted by the presiding judge, take any of the following actions:

(a) Direct the filer to the court's kiosk to complete the filing electronically.

(b) Refuse to accept the document for filing.

(c) Return the document to the filer as unfiled.

(d) Refer the filing to a judge for consideration of sanctions under UTCR 1.090.

# CHAPTER 22 – Enterprise Content Management System

This chapter reserved for future use.

# CHAPTER 23 – Oregon Complex Litigation Court

## UTCR 23.010

OREGON COMPLEX LITIGATION COURT

(1) The criteria used for assignment of a case to the Oregon Complex Litigation Court (OCLC), pursuant to UTCR 23.020, may include, but are not limited to, the number of parties, the

complexity of the legal issues, the complexity of the factual issues, the complexity of discovery, and the anticipated length of trial.

(2) The UTCR apply to cases in the OCLC except where the rules in this chapter specifically provide otherwise.

(3) Absent a motion and order for a change of venue pursuant to ORS 14.110, assignment of a case to the OCLC does not change the venue of a case.

(4) The OCLC will be managed by a panel of three circuit court presiding judges appointed by the Chief Justice of the Oregon Supreme Court.

## UTCR 23.020

ASSIGNMENT OF CASES TO THE OCLC

(1) Assignment of a case to the OCLC requires agreement of the parties, the presiding judge or designee of the court with venue, and the managing panel of the OCLC.

(2) The following must occur for a case to be considered for assignment to the OCLC:

(a) The parties and the presiding judge or designee of the court with venue must confer to determine whether there is agreement to assign the case to the OCLC and to determine the special needs, facts, and issues of the case.

(b) The presiding judge or designee of the court with venue and the managing panel of the OCLC must confer to discuss whether the case is appropriate for assignment to the OCLC and to discuss the special needs, facts, and issues of the case.

(3) If the agreement required by UTCR 23.020(1) is reached and the managing panel accepts a case into the OCLC, the parties must submit a stipulated order for assignment of the case to the OCLC to the presiding judge or designee of the court with venue over the case and to the managing panel of the OCLC.

(4) Once a case is accepted into the OCLC, the managing panel of the OCLC will assign the case to a single OCLC judge.

(5) The parties must:

(a) Share equally, unless otherwise agreed, the cost of copying and providing the entire court file to the OCLC judge assigned to the case.

(b) Make all necessary arrangements to have a copy of the entire court file delivered to the OCLC judge within 14 days of assignment of the case to the OCLC judge.

(c) Continue, after assignment of the case to the OCLC judge, to file all documents in the court with venue and provide copies of all filed documents to the OCLC judge.

## UTCR 23.030

REMOVAL OF CASES FROM THE OCLC

(1) When an OCLC judge finds good cause to remove a case from the OCLC, the judge must confer with the managing panel of the OCLC. If the managing panel agrees that the case should be removed, the managing panel will discuss the removal and return of the case with the presiding judge or designee of the court with venue before any action is taken.

(2) If venue has not been changed, the case may then be returned to the originating circuit court.

(3) If venue has been changed, the case may then be returned to the circuit court with current venue absent a motion and order for change of venue pursuant to ORS 14.110 and 14.120.

## UTCR 23.040

CASE MANAGEMENT

(1) Cases assigned to the OCLC are under the direct supervision of a single OCLC judge for all purposes including referral to mediation, assignment to a settlement judge, and trial.

(2) Before the date set by the court for a case management conference, all parties must do all of the following:

(a) Explore early resolution of the case and prepare a discovery plan.

(b) Confer concerning the matters to be raised at the conference.

(c) Attempt to reach agreement on as many of the issues as possible.

(d) Report the results of their conference to the court at the case management conference.

(3) No later than 10 days prior to trial, unless the OCLC judge has ordered otherwise, the parties must do all of the following:

(a) Confer and disclose to each other all exhibits, except impeachment exhibits.

(b) Number all exhibits.

(c) Reach, to the extent possible, agreement on the admissibility of exhibits.

(d) File with the court and provide to the OCLC judge a list of exhibits indicating the status of each exhibit.

(e) Reach, to the extent possible, agreement on foundation for other exhibits to which they might have substantive objections. Any agreement must be noted on the exhibit list filed with the court.

(4) Upon compliance with UTCR 23.040(3) (a)-(e), the OCLC judge will confer with the parties to resolve any disputes on exhibits or other matters upon which a stipulation might be reached to make the trial more efficient.

## UTCR 23.050

CASE MANAGEMENT CONFERENCE; CASE MANAGEMENT ORDER

(1) A case management conference will be held within 30 days of assignment of a case to an OCLC judge or at such other time as the court may order. The purpose of the case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome, or duplicative discovery and other pretrial procedures to ensure the prompt resolution of the dispute. The case management conference may include discussion of the following:

(a) The trial date.

(b) The need for additional parties.

(c) Time limits for filing of third party complaints or bringing in additional parties.

(d) Severance, consolidation, or coordination with other actions.

(e) A discovery plan, including a schedule for the exchange of documents, conducting discovery from third parties, use of common number systems for documents production and exhibits identification, a schedule for conducting depositions, the need for protective orders or other limitations allowed by ORCP 36 C, and a date for the close of discovery.

(f) A time schedule for motion practice and date for submission of dispositive motions.

(g) Mediation or settlement, and the identity of the assigned neutral facilitator. If the case has not settled within 45 days of the trial date, the case may be assigned for settlement conference to a judge other than the OCLC judge.

(h) Use of technology in discovery and at trial, such as electronic or physical document depositories, videotaping of depositions, videoconferencing, and teleconferencing,

(i) A master list of contact information.

(j) The method of jury selection and resolution of disputes relating to forms for juror questionnaires, if any.

(k) Scheduling of a Rule 104 hearing on scientific issues, if necessary.

(l) Scheduling of further conferences.

(m) Other matters the court or the parties deem appropriate to manage or expedite the case such as whether the parties will mutually employ a court reporter to serve for the creation of the official record, use of a trial plan having timelines for the submission and resolution of pretrial motions, motions in limine, deposition designations, submission of trial memoranda and jury instructions, and timelines for the examination of witnesses and evidentiary presentations by the parties.

(2) Following the case management conference, the OCLC judge will issue a case management order. The case management order will encompass the matters addressed at the case management conference and any other matters the judge considers appropriate for the order.

(3) The case management order may be modified or revised, as the OCLC judge deems necessary, to meet the purpose of the OCLC rules. The parties must not deviate from deadlines and requirements established in the case management order unless authorized by the OCLC judge.

## UTCR 23.060

SETTLEMENTS AND DISCONTINUANCES

If a case in the OCLC is settled or dismissed, the parties must immediately inform the OCLC judge assigned to the case by telephone or email.

# SUPPLEMENTAL LOCAL RULES – LANE COUNTY

## CHAPTER 1 – General Provisions

### RULE 1.002

ADDRESSES AND TELEPHONE NUMBERS

(1) Defendants in Criminal and Violation Cases.

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

(2) Unrepresented Parties in Civil and Small Claims Cases.

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

### RULE 1.161

FILING OF DOCUMENTS

(1) The Office of the Trial Court Administrator receives documents for filing at the court clerk's office. Juvenile documents may be filed at the juvenile court clerk's office.

(2) At the direction of a judge, documents may be filed in the courtroom during the pendency of a proceeding.

(3) Documents delivered by mail to the court are received for filing when delivered in the normal course of distribution of documents from the mail room to the appropriate division of the court clerk's office.

(4) In all cases, if the document requires a fee, the fee must be paid prior to, or simultaneous to submitting the document for filing.

(5) Documents transmitted via facsimile (FAX) will not be received for filing.

(6) Mandatory Electronic Filing is required for members of the Oregon State Bar per UTCR 21.140. SLR 2.501 details which documents must be filed conventionally by attorneys.

### RULE 1.171

COURT WEB SITE

The Lane County Circuit website is http://courts.oregon.gov/Lane/. A link for this site can be found at the Oregon Judicial Department website http://courts.oregon.gov/OJD/ in the Circuit Courts section.

## CHAPTER 2 – Standards for Pleadings and Documents

### RULE 2.015

RETURN OF A DOCUMENT TO A PARTY

In addition to the authority to decline to receive or file a document under ORCP 9E, a document may be returned to the party who submitted it in the following situations:

(1) A document with an existing case number and case caption from another jurisdiction unless filed pursuant to an order signed by a judge allowing a change of venue or authorizing the filing on some other basis;

(2) A document which requires a fee but the fee payment or an order to waive or defer the fee is not provided;

(3) A document without sufficient identifying information to determine in which case it should be filed or entered;

(4) A document with a case caption from a jurisdiction not recognized by the Oregon constitution or established by the Oregon Legislature;

(5) A judgment or decree purportedly issued by a nonexistent court;

(6) A lien or bond issued by or to a nonexistent court or agency;

(7) A document submitted by fax transmission.

## RULE 2.501

STIPULATED OR EX PARTE MATTERS FOR WHICH THE DOCUMENTS MUST BE PRESENTED CONVENTIONALLY AND MAY NOT BE ELECTRONICALLY FILED

In the following subject matter areas, the listed stipulated or ex parte documents requiring a judge's signature and any document that will be served simultaneously with a document listed in this rule, must be presented conventionally and may not be electronically filed.

(1) Family Case Matters. To be presented pursuant to SLR 5.061:

(a) Emergency Custody and Parenting Relief based on Immediate Danger

(b) Pre-Judgment Temporary Protective Order of Restraint

(c) Temporary Order of Financial Restraint

(d) Order of Assistance

(e) Guardian ad Litem Appointment Order

(f) Post Judgment Status Quo Order to Show Cause

(g) Order for Modification or Dismissal of Abuse Protective Order

(2) Civil Case Matters. To be presented pursuant to SLR 5.061:

(a) Guardian Ad Litem Appointment Order

(b) Judgment Debtor Bench Warrant

(c) Preliminary Injunction Show Cause

(d) Provisional Process Show Cause

(e) Receivership Show Cause

(f) Writ of Assistance

(g) Writ of Mandamus Show Cause

(h) Writ of Review

(i) Identity case orders (change of name or sex)

(3) Protective Order Initiating Matters. To be presented to the judge assigned by the presiding judge for that day:

(a) Family Abuse Prevention Act

(b) Elderly Persons and Persons with Disabilities Abuse Prevention Act

(c) Sexual Abuse Prevention Act

(4) Presiding Judge Matters. To be presented to the presiding judge in court or chambers:

(a) Order to Disqualify Judge

# CHAPTER 3 – Decorum in Proceedings; Resignation of Counsel

## RULE 3.011

APPROPRIATE ATTIRE DEFINED

"Appropriate attire," as used in UTCR 3.010(2), for the male shall be coat and tie, and for the female, correspondingly professional attire.

## RULE 3.141

RESIGNATION OF COUNSEL

(1) Criminal Cases

(a) In criminal cases, including appeals from Justice and Municipal Courts, application for withdrawal or discharge of counsel shall be in open court at 35 day call, or at an arraignment; after notice to opposing counsel and with the defendant present unless the defendant's whereabouts are unknown.

(b) A motion to withdraw by defense counsel in a criminal case shall begin with a reference to the trial date or a statement that the case has not been set for trial. If the case is set for trial, the motion must recite whether, how and when defendant was notified of the trial date. Upon filing a motion to withdraw, it shall be the responsibility of the defense counsel in criminal cases to have the matter placed upon the appropriate court docket for the appearance required by this rule and to give notice of the appearance date and time to the defendant and the District Attorney.

(2) Civil Cases—Withdrawal as Counsel for Non-Person Parties.

In a motion to withdraw as attorney where the client is a corporation or other similarly situated party, the withdrawing lawyer is required to submit an affidavit indicating the following:

(a) That they have notified the client that it is required by law to appear through an attorney and the client cannot proceed self-represented or file documents with the court and;

(b) That upon motion of the opposing party, previous filings may be stricken and;

(c) That an order striking previously filed documents could result in entry of a default judgment against the client following a 10 day notice of intent to take default.

## RULE 3.142

ATTORNEY OF RECORD IN PENDING CASES

(1) Telephone calls or statements by a litigant at arraignment or otherwise are not sufficient to designate an attorney-of-record.

(2) When one attorney is substituted for another, the filed and served notice of substitution is sufficient to change the attorney-of-record.

## RULE 3.181

ELECTRONIC RECORDING AND WRITING ON COURTHOUSE PREMISES

(1) Electronic recording in areas outside the courtrooms is limited to the space behind and to the south of the yellow lines on the floor of the second, third and fourth floors of the Lane County Courthouse.

(2) No electronic recording is allowed in the lobby of Lane County Adult Corrections, 101 W 5th Ave, Eugene, OR for purposes of Circuit Court proceedings being conducted in the jail's courtroom.

## RULE 3.182

PERSONAL COMMUNICATION DEVICES

(1) Definition: For the purposes of this rule, personal communication devices include, but are not limited to: cellular telephones, laptop computers, and tablets.

(2) Limitations on Use:

(a) Courtrooms: Unless permitted by the judge presiding over the proceeding, personal communication devices must be turned off while in a courtroom.

(b) Common Areas Outside Courtrooms: Personal communication devices may be turned on when not in a courtroom, however, such devices may only be used for electronic recording in the spaces behind and to the south of the yellow lines on the floor of the second,

third and fourth floors of the Lane County Courthouse.

(c) Jurors: Unless permitted by the judge presiding over the trial, members of a seated jury shall not possess personal communication devices in the courtroom or jury deliberation room. After the jury is seated, the courtroom clerk will collect all devices and retain them in a secure location. The devices will be returned to jurors for the duration of the noon recess and other recesses as allowed by the judge, and at the conclusion of each day's proceedings.

## CHAPTER 4 – Proceedings in Criminal Cases

### RULE 4.006

TESTIMONY BY JUDGE OF THE CIRCUIT COURT, TRIAL COURT ADMINISTRATOR, STAFF

Any matter requiring testimony of a judge of the Lane County Circuit Court, the trial court administrator, and/or trial court staff will be subject to a preliminary conference to determine scheduling of the witness and what the testimony is intended to elicit. The party seeking the testimony shall request the conference no later than 5 days before the scheduled trial or hearing date. This rule is not intended to preempt ORCP 55, nor prevent the service and acceptance of any subpoena.

### RULE 4.051

MOTIONS AND DEMURRERS IN CRIMINAL CASES

(1) All criminal motions, demurrers, other challenges to an indictment, and matters subject to ORS 135.805 to 135.873 will be considered on the third succeeding Tuesday after the same shall have been filed, unless otherwise ordered by the Court.

(2) Any pretrial motion or demurrer in a case assigned to a judge shall be decided by the judge to whom the case has been assigned, unless the presiding judge designates some other judge to decide it.

(3) Opposing counsel may, on or before Monday of the week preceding the time for consideration, file a memorandum of authorities. The moving party may file a reply memorandum not later than Friday of the week before the motion or demurrer is to be considered.

(4) A party moving to postpone or accelerate the consideration of matters on the motion docket, including requests for expedited hearing, shall ascertain the position of all other parties regarding the postponement or acceleration, and shall include a statement of those positions in its motion. The statement shall also indicate whether or not the other parties wish to respond to the motion to postpone or accelerate. In the absence of such statement, the motion to postpone or accelerate will be denied and the matter considered in the normal course.

## CHAPTER 5 – Proceedings in Civil Cases

### RULE 5.001

ORAL STIPULATIONS

Oral stipulations, except those made in open court and on the record, will not be recognized.

### RULE 5.005

MOTIONS IN CIVIL CASES

(1) All pretrial motions, including motions for summary judgment, will be considered on the fifth succeeding motion day after the motion is filed, unless otherwise ordered by the Court. Upon written stipulation of counsel filed not later than the Thursday of the week preceding the day for consideration, the consideration may be continued to a later motion day. No

motion may be continued more than once, nor additional time to file memoranda allowed, unless ordered by the Court. When a party requests telephonic argument, the clerk will set a specific time for argument on the customary motion day docket.

(2) The first sentence of every motion shall state whether the case is set for trial and if so, shall state the date.

(3) Except when a stipulation is filed pursuant to (1) above, a party moving to postpone or accelerate the consideration of matters on the motion docket, including requests for expedited hearing, shall ascertain the position of all other parties regarding the postponement or acceleration, and shall include a statement of those positions in its motion. The statement shall also indicate whether or not the other parties wish to respond to the motion to postpone or accelerate. In the absence of such statement, the motion to postpone or accelerate will be denied and the matter considered in the normal course.

(4) A party moving to amend its pleadings shall ascertain the positions of all other parties regarding amendment, and, if the motion is unopposed, it shall so state in its heading. Unopposed motions to amend shall be immediately considered by the court. Opposed motions to amend shall be considered by the court in the normal course.

## RULE 5.006

TESTIMONY BY JUDGE OF THE CIRCUIT COURT, TRIAL COURT ADMINISTRATOR, STAFF

Any matter requiring testimony of a judge of the Lane County Circuit Court, the trial court administrator, or trial court staff will be subject to a preliminary conference to determine scheduling of the witness and what the testimony is intended to elicit. The party seeking the testimony shall request the conference no later than 5 days before the scheduled trial or hearing date. This rule is not intended to preempt ORCP 55, nor prevent the service and acceptance of any subpoena.

## RULE 5.051

INITIATING CONFERENCE CALL FOR NONEVIDENTIARY HEARING

Subject to UTCR 5.050, if a request for teleconference is granted, the first party requesting oral argument by telephone shall be responsible for initiating and bearing the costs of the call. The responsible party shall initiate the call at the time set by the court. The responsible party shall initiate the call in such a manner that the court can receive the call from all of the parties or call in and join the conference call with all the parties.

## RULE 5.061

PRESENTATION OF EX PARTE ORDERS

(1) Ex parte orders presented by an attorney must be filed via mandatory electronic filing unless excluded from electronic filing under SLR 2.501. If excluded from electronic filing, the order must be presented by an attorney with knowledge of the subject matter in the designated courtroom Monday through Friday between 8:30 a.m. and 8:50 a.m., and not otherwise except in case of emergency.

(2) Ex parte orders presented by a self-represented litigant may be presented in the designated courtroom Monday through Friday between 8:30 a.m. and 8:50 a.m. or may be presented by electronic filing unless excluded from electronic filing under SLR 2.501.

(3) Ex parte orders postponing trials (including stipulations), shall be presented only to the

presiding judge, unless the presiding judge otherwise directs.

(4) Except where otherwise authorized by statute, all motions and affidavits seeking an ex parte order and/or judgment of default shall state the method of service and date and time service was made and perfected. In addition to a declaration in the affidavit this information shall be set forth in the first line of the motion.

(5) All motions to continue filed in response to a UTCR 7.020 notice to dismiss shall include the date of the original case filing, whether service has been made and, if so, the date and method of service, and whether any previous motions to continue have been filed. This information is in addition to the facts in each case needed to establish good cause for the continuance.

## CHAPTER 6 – Trials

## RULE 6.012

SETTLEMENT CONFERENCES

(1) Scheduling:

(a) Any party may request a settlement conference by contacting the calendar clerk to request an available date on the trial docket, in advance of the trial date. Early requests are encouraged.

(b) Parties who wish to have the settlement conference assigned to a particular judge must contact that judge to determine if the judge is willing to hear the settlement conference. If so, the party must get a selection of available dates from that judge and then contact the calendar clerk to determine one that is available on the trial docket.

(2) On the settlement conference date, trial assignments take precedence. The presiding judge will attempt to assign out all settlement conferences. Requests for assignment to a particular judge will be honored if possible.

(3) The settlement conference judge shall not act as trial judge unless agreed to by the parties. The assigned settlement judge will determine whether a pretrial statement or other document must be submitted to the judge prior to the settlement conference, when it should be submitted, and whether it will be confidential or non-confidential. Materials or notes prepared by the pretrial settlement judge will remain confidential and will not be placed in the court record. The assigned settlement judge will determine the appropriate method for reporting settlement and removing the case from the active trial docket and will determine whether a trial setting conference must be held prior to the pretrial settlement conference.

(4) If one party requests a pretrial settlement conference, the settlement conference must be held and must be conducted according to the procedure set forth in this SLR. However, the pretrial settlement conference will not be required if the opposing party demonstrates good cause why the settlement conference should not be held.

(5) Each trial attorney and party or representative of a corporation or insurance company who has full authority to settle and compromise the litigation must personally appear at the pretrial settlement conference. The judge may permit telephone appearances for good cause shown.

(6) Each settlement conference shall be scheduled to allow adequate time for meaningful settlement discussions. Additional settlement conferences may be scheduled by the judge or by agreement of all attorneys and parties.

(7) The pretrial settlement conference shall not delay the trial scheduling.

## RULE 6.031

MOTION TO POSTPONE

(1) All motions for postponement including stipulations must be filed more than one week prior to the trial date. The presiding judge may allow a motion or stipulation for postponement filed within one week of the trial date upon good cause shown.

(2) In addition to the requirements of UTCR 6.030(2), all motions to postpone must also state whether a party is in custody.

(3) All motions and stipulations for postponement must include a proposed new trial date agreeable to all parties and approved by the court calendar clerk's office.

## RULE 6.081

EXHIBITS—AUDIO AND VIDEO RECORDINGS

The proponent of any audio or video exhibit shall be responsible for arranging for playback equipment, with footage counter when required, for use during the trial or other proceeding.

## RULE 6.215

HEARING OF POST-TRIAL MOTIONS

All motions for new trial, for judgment notwithstanding a verdict, and other post-trial motions and objections to cost bills shall be heard by the judge before whom the cause was tried, at a time to be set by that judge.

# CHAPTER 7 – Case Management and Calendaring

## RULE 7.002

SCHEDULES OF VACATION AND OTHER UNAVAILABLE DAYS

(1) Every attorney handling criminal or juvenile cases must file with the appropriate clerk written schedules of unavailable days at least ninety (90) days prior to any court day on which the attorney will not be available for trial for any reason.

(2) Each police agency must file with the calendar clerk written schedules of unavailable days at least ninety (90) days prior to any court day on which the police officer will not be available for traffic violation trials in this court for any reason.

## RULE 7.004

ASSIGNMENT OF CASES FOR TRIAL

Cases set for trial shall be assigned to a judge for trial at 9:30 a.m. on the day of the trial in the courtroom of the presiding judge. The attorneys who will try the case and the parties shall appear for case assignment.

## RULE 7.005

SETTLEMENT OF DOMESTIC RELATIONS CASES

(1) Unless settlement documents have been previously tendered to the court, all parties in domestic relations cases and their attorneys must appear on the scheduled trial date at the 9:30 a.m. Trial Call prepared for trial. Settlement agreements and proposed orders or judgments that have been reduced to writing and not previously filed shall be presented to the court at that time. Settlements which have not been reduced to writing must be placed on the record

at that time and must be full and complete settlements of all issues. Written documentation of any settlements so placed on the record must be presented to the court within fourteen (14) days thereafter, or the case will be dismissed.

(2) If the parties are unable to place a full and complete settlement on the record at Call, the case will be referred out for trial. Upon request, the calendar clerk will place a case on the 9:30 a.m. trial call docket in advance of the scheduled trial date for the purpose of placing a settlement on the record.

## RULE 7.006

HOURS OF TRIAL

Unless the trial judge shall otherwise direct, trial of cases takes place Tuesday through Friday and shall commence at the hour of 10:00 a.m. and continue until 12:00 noon, and shall reconvene at 1:30 p.m. and continue until 5:00 p.m.

## RULE 7.007

MOTION DAYS

(1) Monday is motion day for civil motions. When Monday is a legal holiday, Tuesday will be motion day for civil motions. Tuesday is the motion day for criminal motions described in SLR 4.051.

(2) In cases where oral argument has been requested, argument shall be at 9:00 a.m. in the courtroom of the judge assigned to hear civil motions and 8:30 a.m. in the courtroom of the judge assigned to hear criminal motions.

## RULE 7.008

SHOW CAUSE HEARINGS

Show cause proceedings except post-judgment modification motions and other miscellaneous hearings shall be heard on Mondays. When Monday is a legal holiday, they will be heard on Tuesday. They will be docketed as follows:

(1) 8:30 a.m. DA Docket - child support contempt; restraining order contempt

9:00 a.m. Stalking order hearings; Judgment debtor exams; Show cause contempt on judgment debtor exams / garnishee show causes, etc.; FAPA contested hearings; Attorney show cause docket

(2) 1:30 p.m. Claim of exemption hearings; De novo appeals on child support; Registration of foreign judgments and misc.

Any hearing expected to take more than one (1) hour will not be heard on Mondays unless special arrangements are made in advance with the show cause judge or the presiding judge. The parties should contact the calendar clerk and arrange to have lengthy hearings set on the regular trial docket.

## RULE 7.009

PARENTING TIME ENFORCEMENT PROCEEDINGS

See SLR 8.052

## RULE 7.011

35 DAY CALL

Defendants and their attorneys must appear in person for 35 day call at 2:30 p.m. on the date assigned at arraignment to making the report required by UTCR 7.010(3). At the proceeding, the parties will report the status of the case to the presiding judge. If a settlement has not been reached, the case will be assigned to a judge for a settlement conference to be held that day.

Prior to reporting for the settlement conference, the defendant and the defendant's attorney must go to the calendar clerk's office for a trial date if one has not already been scheduled. A bench warrant will be issued for any defendant who fails to appear.

### RULE 7.031

COMMERCIAL COURT

(1) Assignment to Commercial Court

A party or the court may move to have a case assigned to the Commercial Court. The presiding judge or the presiding judge's designee shall hear the motion. The ruling on the motion is final and is not subject to review or appeal, except that the presiding judge or the presiding judge's designee may, for good cause shown, remove a case from Commercial Court.

(2) Cases Filed in Other Judicial Districts

A party to a case filed in another judicial district who seeks assignment to the Commercial Court shall first confer with the other parties and the Lane County presiding judge or designee to determine whether the case is appropriate for assignment to the Commercial Court. That party shall then apply for change of venue pursuant to ORS 14.110(1)(c). The Lane County Presiding Judge shall consult with the presiding judge of the originating district prior to a ruling on the motion for change of venue. After the change of venue has been completed, that party shall move to have the case assigned to the Commercial Court pursuant to section (1) of this rule.

## CHAPTER 8 – Domestic Relations Proceedings

### RULE 8.001

SETTLEMENT OF DOMESTIC RELATIONS CASES

See SLR 7.005.

### RULE 8.002

CONTEMPT SHOW CAUSE PROCEDURES

(1) Contempt proceedings in domestic relations cases shall be initiated by a Motion to Show Cause supported by an Affidavit which sets out the facts constituting the alleged contempt.

(2) Unless otherwise ordered, hearings on contempt proceedings initiated by private attorneys or persons proceeding pro se shall be held pursuant to SLR 7.008.

(3) The proposed order to show cause shall require the opposing party to appear at a specified time and date on the motion docket pursuant to SLR 7.008 that is not less than thirty (30) days after the motion, affidavit, and order have been served. The opposing party shall be required to show cause why the allegations in the motion and supporting affidavit should not be granted.

### RULE 8.011

CUSTODY OR PARENTING TIME ISSUES IN PATERNITY CASES

(1) In proceedings to establish or modify custody or parenting time where paternity has been established in a separate proceeding and is an issue, the moving party must file a motion and proposed order to consolidate the cases with the petition.

(2) Custody or parenting time proceedings are subject to mediation. See Chapter 12 of these rules.

### RULE 8.012

MANDATORY PARENT EDUCATION PROGRAM

(1) APPLICATION: Lane County has established a parent education program of the type authorized by ORS 3.425. The program shall provide information on the impact of family restructuring on children and skills for successful co-parenting after separation for parties in the following types of proceedings:

(a) Annulment or dissolution of marriage;

(b) Legal Separation;

(c) Petitions to establish custody or parenting time, including paternity cases when those issues are present;

(d) Post-judgment litigation involving custody and/or parenting time.

The parent education program shall provide information regarding the impact of family restructuring on children and skills for successful co-parenting after separation. The class may be held in conjunction with the mandatory mediation orientation class, at the discretion of the program administrator.

(2) PARENT EDUCATION REQUIREMENT: All parents, where the interest of a child under the age of 18 years is involved in a case described in subsection (1) above, shall successfully complete the parent education program offered by the Lane County Family Mediation Program, or an alternative education program preapproved by the Lane County Family Mediation Program.

(3) NOTICE: A copy of a notice regarding this requirement outlined in subsection (2) of this rule and an explanation of the class provided by the Lane County Family Mediation Program shall be given to the initiating party by the trial court clerk accepting the filing at the time the initiating party's documents are filed. The initiating party shall serve a copy of this notice on the opposing party together with the Summons or other initiating document in the manner provided by ORCP 7, and the return of service on the opposing party shall indicate service of this notice as well as the other documents requiring service.

(4) REGISTRATION: Parties shall register for the class or make application for approval of an alternative program within 15 days of receiving notice of the education requirement.

(5) FEE: Each party shall pay a fee determined by the program provider to cover the program costs. The fee may be waived or reduced by the program provider.

(6) CERTIFICATE OF COMPLETION: Each party who successfully completes the court's program or a preapproved alternative program shall file a certificate of completion with the court before trial or judgment.

(7) WAIVER: A party completing the parent education class, or a preapproved alternative, within 90 days prior to the filing of the pending action may request waiver of this rule. The request shall be made to the program supervisor of the parent education program, and the decision of the program supervisor may be reviewed by the court upon request of either party.

(8) FAILURE TO COMPLETE: Court action in these cases shall not be delayed by a party's refusal, failure or delay in registering for or completing this program or the failure to comply with the requirements of this rule, unless the non-complying party is the initiating party. If a party fails to complete the education program or fails to comply with the requirements of this rule, the court may take appropriate action against that party, including but not limited to: (1) denying the relief sought by that party; (2) considering the noncompliance when ruling on issues related to custody and parenting time; or (3) bringing contempt proceedings against that party. Further, a party that has completed the program may request entry of an order from the

court to compel the non-complying party's completion of the program.

## RULE 8.013

PROPERTY LISTS

If there are any disputes regarding the value or disposition of items of personal property, the parties may confer and jointly prepare a list of all personal property the court will be asked to distribute. The list must indicate each party's opinion regarding the market value of each item and each party's proposed distribution of the property.

## RULE 8.041

ORDERS TO SHOW CAUSE PRIOR TO TRIAL

(1) All orders to show cause shall be served not less than twenty-one (21) days prior to the time set for hearing or appearance unless another time is ordered by the Court or provided by law. Except for orders for temporary support, the order to show cause shall contain a notice plainly and specifically stating the hearing date and time.

(2) Orders to show cause presented conventionally pursuant to SLR 2.501 shall be filed with the clerk immediately after being signed by a judge.

(3) The order shall require the adverse party, if the adverse party desires to appear and be heard or to otherwise contest the issues, either in whole or in part, to file a responding affidavit within fourteen (14) days following service or as the court may otherwise direct. The responding affidavit shall respond to the original affidavit and allege matters to the extent the adverse party wishes to put matters of fact at issue. Except for good cause shown, no further filings are required or permitted.

(4) If the relief requested includes support, a blank uniform support declaration shall be served on the adverse party with the order to show cause for use of the adverse party should such party desire to respond.

(5) Temporary support pendente lite shall be determined without testimony, based on the affidavits filed by the parties. The moving party may respond to the adverse party's responding uniform support declaration. In any case involving temporary child support, the financial affidavits filed by the parties with the court shall include applicable child support computation worksheets. When the matter is ready for decision, the moving party shall so notify the court by filing a notice of readiness for decision. A sample of this form is included at the end of these rules.

(6) Except in matters of temporary support, it shall be the duty of counsel for the moving party in a show cause proceeding to be present in court at the time set. If the moving party fails to appear, the matter shall be considered abandoned.

## RULE 8.042

PRE-JUDGMENT TEMPORARY CUSTODY AND PARENTING TIME

Hearings requested as provided for in ORS 107.097(4), shall be heard at 9 a.m. on the third Monday after the day the requests are filed.

## RULE 8.043

BIFURCATION OF CUSTODY ISSUE

Upon motion supported by affidavit showing good cause, the custody issue may be segregated and accelerated for trial on the merits.

## RULE 8.051

POST-JUDGMENT MODIFICATION PROCEEDINGS: STATUS QUO HEARINGS

(1) The order to show cause shall require the adverse party to file a written response in answer to the Motion and Affidavit, with a responding Uniform support declaration if the issue of support is to be contested, within the time prescribed by ORS 107.135(14).

(2) The order to show cause presented conventionally pursuant to SLR 2.501 shall be filed with the clerk immediately after being signed by a judge.

(3) The order to show cause shall advise the adverse party that if such written appearance is not timely filed, a default order shall be applied for by the moving party. Thereafter, the proceedings shall be conducted in the same manner and form as provided for in non-jury actions.

(4) Hearings on temporary status quo orders entered under ORS 107.138(2), shall be held on Mondays at 9:00 a.m. as a part of the show cause docket.

## RULE 8.052

PARENTING TIME ENFORCEMENT PROCEEDINGS

(1) Proceedings for expedited parenting time enforcement pursuant to ORS 107.434 shall be initiated by motion and order to show cause. Such proceedings shall be heard on the show cause docket at 9:00 a.m. as provided in SLR 7.008 if the motion seeks only to enforce an existing order establishing parenting time through one or more of the remedies listed in ORS 107.434, section (2)(b), (c),(d) or (e), and the hearing is not expected to exceed one hour. If the motion seeks to enforce parenting time through one or more of the remedies listed in ORS 107.434, section (2) (a), (f), or (g), or if the hearing is expected to exceed one hour, the proceeding shall be heard on the regular trial docket, but is subject to the 45-day timeline.

(2) Unless another time is ordered by the court, the moving party in a proceeding to be set at 9:30 a.m. shall serve the other party with the motion and order to show cause and supporting papers at least 21 days prior to the time set for hearing. If timely service is not accomplished, the moving party shall be deemed to have agreed to a hearing date beyond the 45-day limit.

(3) An order to show cause in a proceeding that has been set for 9:00 a.m. shall be served immediately and in any event not less than 10 days before the hearing date.

(4) Generally, unless good cause is shown, the parties will be referred to mediation if modification of a parenting time or custody order is sought by the moving party (ORS 107.434 (2)(a) or (g)). However, the parties will not be referred to mediation if the existing parenting time order was entered in a Family Abuse Prevention Act proceeding. If the court refers the matter to mediation, the mediator may decline mediation if, for good cause, the mediator determines that the proceeding is either inappropriate for mediation, or if mediation cannot reasonably take place before the hearing date. If mediation is so declined, the mediator shall advise the court and the parties in writing,

## RULE 8.091

CUSTODY AND PARENTING TIME MEDIATION

See SLR Chapter 12 for custody and mediation rules.

## CHAPTER 9 – Probate and Adoption Proceedings

### RULE 9.001

PROBATE COMMISSIONER

(1) The probate commissioner appointed by the presiding judge of this court shall assist in the administration of decedents' estates, guardianships, conservatorships and other similar proceedings.

(2) The powers of the probate commissioner include the following:

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

(b) To make and enter orders on behalf of the court appointing court visitors.

(c) To set the amount of the bond for special administrators, personal representatives, guardians and conservators.

(d) To approve such bonds.

### RULE 9.002

FILING PROBATE MATTERS

Probate matters requiring authorization, approval, or signature of the probate judge or designee shall be filed at the court clerk’s office.

### RULE 9.003

EX PARTE ORDERS IN DECEDENTS’ ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS

All ex parte orders and judgments in decedents' estates, guardianships and conservatorships may be filed at any time without the necessity of the appearance of attorney for the fiduciary.

### RULE 9.004

SCHEDULING CONFERENCES AND HEARINGS

Conferences and hearings may be scheduled by request to the probate commissioner. Before requesting a conference or hearing, requesting counsel shall confer with other counsel and advise the commissioner of the estimated time required and mutually acceptable dates.

### RULE 9.005

FILING DELINQUENCIES OR DEFICIENCIES

In the event of a delinquency or deficiency in filing any document required by statute, court rule, or court order, the attorney of record shall be sent a courtesy notice. The personal representative, conservator, or guardian is expected to promptly cure the defect or delinquency. If the deficiency is not corrected within the time specified by the court in its notice, a status hearing requiring personal appearance of the attorney and/or party will be set by the court. If the delinquency or deficiency has not been corrected by the time of the hearing, appropriate sanctions will be imposed. If the attorney and or/party do not appear at the status hearing and the deficiency has not been corrected, an order to show cause may be issued.

### RULE 9.006

REPRESENTATION

(1) If a personal representative or conservator intends to appear on behalf of the estate or protected person without an attorney, the personal representative or conservator shall provide notice of that intent to the court and proof of competence to so appear. If the proof is not sufficient to assure the court the estate will be protected and properly administered, the court will take appropriate action.

(2) A person other than a personal representative or conservator, or a corporation may appear in person without counsel in any matter coming before the probate judge if otherwise allowed by law.

## RULE 9.022

NOTICE TO SURETY

If a bond has been posted, the surety must be notified of the resignation or substitution of counsel, with appropriate proof provided to the court.

## RULE 9.041

PERSONAL INJURY SETTLEMENT PETITIONS

A petition for approval of a settlement of a personal injury claim shall be accompanied by an affidavit which sets forth the following:

(1) A description of the incident causing the injury;

(2) A description of the injuries;

(3) The amount of the prayer and proposed settlement, and if a structured settlement is proposed, the present value of the future payments of that settlement;

(4) The amount of the attorney fees and costs;

(5) The proposed distribution of the settlement proceeds;

(6) A concise statement explaining the reasons for the settlement.

## RULE 9.081

OBJECTION TO PETITION FOR APPOINTMENT OF GUARDIAN/CONSERVATOR

(1) A respondent or protected person may object to a petition or motion either in writing or orally. A respondent or protected person may make an oral objection to a petition or motion by:

(a) Appearing in person at the Circuit Court clerk's office during regular business hours (125 East 8th Ave, Eugene) and asking for the probate clerk. The respondent or protected person should advise the probate clerk that they wish to make an oral objection.

(b) Notifying the court visitor who shall record the objection in writing in the visitor's report.

(2) Any interested person, as described in ORS 125.075(1), other than the respondent or protected person, may object to a motion only by written objection. That person may object to a petition either in writing or orally. The oral objection to a petition may be made by:

(a) Appearing in person at the Circuit Court clerk's office during regular business hours (125 East 8th Ave, Eugene) and asking for the probate clerk. The objecting party should advise the probate clerk that the objecting party wishes to make an oral objection to the petition.

(b) The probate clerk shall provide the objecting party with the objection form provided as Appendix B of these rules, as a means of reducing the oral objection to a signed writing for the purpose of filing the objection.

(3) Upon receipt of an objection the court will schedule a hearing.

## RULE 9.091

GUARDIANSHIPS

(1) Upon receipt of a petition seeking appointment of a guardian, the probate staff shall prepare an order appointing a visitor. The proposed guardian shall tender the visitor's fee to the visitor upon receipt of a copy of the appointment. The visitor will not undertake an

investigation pursuant to ORS 125.150 or an interview as required by ORS 125.605(4) until the fee has been tendered to the visitor unless the fee has been waived or deferred by the court after receipt and review of an affidavit of indigence.

## RULE 9.092

GUARDIANS

(1) A guardian shall promptly notify the court in writing of any change of name or address.

(2) Within 30 days after each anniversary of appointment, a guardian for a minor shall file with the court a written report. Copies of the guardian's report must be given to those persons specified in ORS 125.060(3). The report shall be in the form prescribed by the court. A sample Minor Guardianship Report form is provided at the end of these rules.

## RULE 9.093

NON-PROFESSIONAL FIDUCIARY EDUCATIONAL PROGRAM

(1) The following court appointed non-professional fiduciaries are subject to this rule:

(a) All non-professional guardians and conservators appointed pursuant to ORS Chapter 125.

(b) Any guardian or conservator appointed pursuant to ORS Chapter 125, regardless of appointment date, who is directed to appear in court for a deficiency in the handling of fiduciary duties.

(2) All non-professional fiduciaries described under subsection (1) above shall:

(a) Register for an education class for non-professional fiduciaries with a curriculum as prescribed by the presiding judge no later than 20 days from appointment as fiduciary;

(b) Successfully complete the education class within 90 days of appointment as fiduciary; and

(c) File with the probate department, upon successful completion of the education class, a certificate of completion stating the date the class was taken and the provider of the class.

(3) A professional fiduciary, as defined in ORS 125.240(5), is exempt from this rule.

(4) Fees for the court-required class shall be considered a cost of administration of the protective proceeding.

(5) Upon a showing of good cause, a non-professional fiduciary may request a waiver of the requirements of this rule. The request must be made by motion, supported by affidavit.

(6) The court may require a non-professional fiduciary to retake the class.

(7) Failure to timely comply with this rule may result in removal of the non-professional fiduciary by the court.

## RULE 9.161

FORM OF ACCOUNTS

All accounts, filed with the court, in estates, conservatorships and trusts shall be in the format as set out in UTCR 9.160.

## RULE 9.162

PRESENTATION OF ACCOUNTS IN DECEDENTS' ESTATES

(1) All accounts in decedent's estates shall be filed with the court clerk. The court need not and ordinarily will not enter an order approving an annual accounting.

(2) Objections

(a) If objections to a final account are filed the court will schedule a hearing on a Monday unless it is anticipated to take longer than 2 hours in which case the court will schedule the proceeding on the trial docket.

(b) If no objections to a final account are filed within the time fixed for filing objections, a proposed order approving the final account shall be delivered to the court clerk.

### RULE 9.163

PRESENTATION OF ACCOUNTS IN CONSERVATORSHIPS

(1) All accounts in a conservatorship shall be filed with the court clerk.

(2) Objections

(a) If objections to an account are filed the court will schedule a hearing on a Monday unless it is anticipated to take longer than 2 hours in which case the court will schedule the proceeding on the trial docket.

(b) If no objections to the account are filed within the time fixed for filing objections, and an order approving the account is desired, a proposed order shall be delivered to the probate center.

(3) In conservatorships where remaining assets are being held in restricted accounts and annual accountings have been waived, the Conservator shall file an annual statement with copies of the most recent bank statement of the financial institution and the balance in the restricted account.

## CHAPTER 11 – Juvenile

### RULE 11.005

APPEARANCE IN JUVENILE COURT FOR TERMINATION OF PARENTAL RIGHTS CASES

(1) A parent who is served with a summons for the first appearance in a petition to terminate parental rights case shall appear personally in court at the time and place specified in the summons. The purpose of the appearance is to deny the allegations of the petition and request a trial.

(2) At the first appearance, a parent may request a court appointed attorney to represent the parent at trial.

(3) A parent who fails to appear as summoned may be subject to entry of a judgment granting the petition to terminate the parental rights of that parent following a prima facie hearing.

(4) A parent who fails to appear at any hearing subsequent to the first appearance may be subject to entry of a judgment granting the petition to terminate the parental rights of that parent following a prima facie hearing.

## CHAPTER 12 – Mediation

### RULE 12.001

MANDATORY MEDIATION

Any matter described in ORS 107.765 and any other proceeding where child custody or parenting time is in issue shall be subject to mediation, except as provided in SLR 8.052. The court will not consider any contested custody or parenting time issue in a proceeding that results in a final judgment, and the court may decline to consider any contested custody or parenting time issue in a proceeding that results in a temporary order under ORS 107.095, unless notified by the mediation program, or an independent mediator, that the parties have proceeded through mediation in accordance with these rules.

## RULE 12.002

COURT CONTROL; AGREEMENTS

A domestic relations case filed in the Circuit Court remains under the control of the court in all phases of the proceedings, including mediation. The court may limit the scope of the mediator's authority in the case. Any agreements of the parties reached as a result of mediation for which court enforcement may be sought must be presented to the court, and the court shall retain final authority to accept, modify or reject the agreement. To preserve and promote the integrity of mediation as a dispute resolution technique, the court shall consider and may include all reasonable agreements reached by the parties in formulating its order in the case.

## RULE 12.003

NOTICE

A copy of a notice regarding this requirement and explanation of the mediation orientation provided by the Lane County Mediation Program shall be provided to the moving party by the trial court clerk accepting the filing at the time the moving party's documents are filed. The moving party shall serve a copy of this notice on the opposing party along with the Summons or other initiating documents in the manner provided by ORCP 7, and the return of service on the opposing party shall indicate service of this notice as well as the other documents requiring service.

## RULE 12.004

MEDIATION PROCESS—COURT-CONNECTED PROGRAM

(1) Each party must contact the mediation program to register for mediation orientation within 15 days of filing or receiving a response, respectively, if the response indicates a disagreement regarding custody or parenting time. Notwithstanding the foregoing, if a disagreement arises as early as the moving papers being filed or anytime during the proceeding, then each party must immediately contact the mediation program to attend mediation orientation.

(2) Each party will attend mediation orientation within 15 days of contacting the mediation program.

(3) The mediation orientation may be held in conjunction with the mandatory parent education program, at the discretion of the mediation program. The mediation program shall present a certificate of completion to the Court when each party has completed mediation orientation.

(4) If the parties express the desire to mediate after attending both the mediation orientation and the parent education class, the mediation program will schedule a mediation session with both parties.

(5) It is the responsibility of the parties and their attorneys to see that mediation is completed in a timely fashion so the trial of the case is not delayed. Failure to do so may result in dismissal of the case when called for trial, or postponement under such conditions as the court may decide.

(6) The Court may order mediation on its own motion. Further, a party that has completed the mediation orientation may request entry of an order from the court to compel the non-complying party to complete the mediation orientation.

(7) A party completing the mediation orientation within 90 days prior to the filing of the pending action may request waiver of this

rule. The request shall be made to the program supervisor of the mediation program, and the decision of the program supervisor may be reviewed by the court upon request of either party.

### RULE 12.005

MEDIATION PROCESS—INDEPENDENT MEDIATORS

(1) The parties may select by stipulation a mediator independent of the court system. The parties shall directly contract with the independent mediator and be responsible for payment of any agreed-upon fee for mediation service.

(2) If an independent mediator is selected, the parties or their attorney shall file with the court a written stipulation indicating the name of the mediator and the date set for the first mediation session. The mediator shall then notify the Court when the parties have attended mediation.

(3) If a stipulation for independent mediation is not filed by the time set for the hearing on any child custody or visitation dispute, the parties will be ordered to attend the court's program for mediation pursuant to Rule 12.003.

## CHAPTER 13 – Arbitration

### RULE 13.041

REFERRAL TO ARBITRATION; MOTIONS

(1) A case subject to arbitration will be transferred to arbitration when the case is at issue or 150 days have elapsed since its filing, whichever occurs first.

(2) After a case has been transferred to arbitration, the original of any motion must be filed with the arbitrator. Unless otherwise provided by rule or statute, all such motions will be decided by the arbitrator.

(3) In the event a motion to file an amended pleading is allowed by the arbitrator which causes the case no longer to be subject to mandatory arbitration, the party filing such a pleading must so notify the arbitration clerk. Unless the parties stipulate otherwise, the clerk will then remove the case from arbitration.

### RULE 13.121

COMPENSATION OF ARBITRATORS

(1) Any dispute as to the amount of the arbitrator's fee must be submitted to the court in the form of a motion to determine Arbitrator's Fee within seven (7) days of receipt by the complaining party of the arbitrator's itemized statement required by UTCR 13.120(2). The motion shall be supported by an affidavit and a memorandum supporting the party's position.

(2) The arbitrator shall file a response, supported by an affidavit, within seven (7) days of receipt of the motion, and the dispute will be resolved by the court in a summary fashion without further argument.

(3) If seven (7) days after the court's determination the arbitrator's fee has not been paid in full, or funds on deposit with the arbitrator in excess of the fee determined to be reasonable have not been refunded to the party(ies), the party/arbitrator to whom the money is owed may file a request with the court for entry of an appropriate judgment by the way of a Supplemental Judgment in the case.

## CHAPTER 15 – Small Claims

### RULE 15.001

APPLICABLE SUPPLEMENTARY LOCAL RULES

See rules listed under SLR 1.002

### RULE 15.002

MEDIATION

Small claims cases shall be subject to mediation, except for good cause acceptable to the court. The Small Claims judge will summarize the process and assign cases out for mediation on the date set for trial. The court may decline to consider any small claims matter until notified by the mediator that the matter has proceeded through the mediation process without resolution. Prior to 11:30 a.m., mediators shall present to the court any signed mediated agreements on cases which are resolved through the mediation process, or, shall notify the court concerning cases that have not been resolved. At 1:30 p.m., the Court will proceed to trial on those cases which have not been successfully mediated.

## CHAPTER 16 – Traffic, Boating and Violations

### RULE 16.001

VIOLATIONS BUREAU

By general order the Court has established a Violations Bureau for the disposition of all traffic, weighmaster, boating, park and recreation, pedestrian, and parking violations.

### RULE 16.002

VIOLATION CASES—ATTORNEYS

If a defendant is to be represented by an attorney at trial of a traffic, boating or other violation case, timely notification in writing of such intention together with proof of service on the district attorney must be filed with the clerk of the court.

### RULE 16.003

PRETRIAL MOTIONS AND DEMURRERS

The rules contained in Chapter 4 of the Lane County Supplementary Local Rules regarding pretrial motions and demurrers in criminal cases, shall apply to violations with respect to any pretrial motion or demurrer applicable by law in a violation case.

### RULE 16.004

OTHER APPLICABLE SUPPLEMENTARY LOCAL RULES

See rules listed under SLR 1.001 and SLR 1.002

### RULE 16.005

TRIAL BY AFFIDAVIT—VIOLATIONS

(1) Testimony in violation cases may be allowed by affidavit, or by declaration under penalty of perjury, after defendant has filed a waiver signed by defendant to the following effect:

"I agree that the Court may consider testimony of any witness by affidavit or by declaration under penalty of perjury."

(2) Defendant may also waive the right to an oral hearing by adding to the waiver, signed by defendant, a provision to the following effect:

"I give up my right to an oral hearing or to be present at any oral hearing and the Court may decide this case on the basis of any written or oral testimony received by the Court in my absence."

## CHAPTER 19 – Contempt Show Cause Procedure

See SLR 8.002

# OREGON EVIDENCE CODE

## GENERAL PROVISIONS

### RULE 100

**40.010**

SHORT TITLE

ORS 40.010 to 40.585 and 41.415 shall be known and may be cited as the Oregon Evidence Code. [1981 c.892 §1]

### RULE 101

**40.015**

APPLICABILITY OF OREGON EVIDENCE CODE

(1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The oed applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS 138.052 and 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to 136.785.

(e) Proceedings to revoke probation, except as required by ORS 137.090.

(f) Proceedings conducted in a reentry court under section 29, chapter 649, Oregon Laws 2013.

(g) Issuance of warrants of arrest, bench warrants or search warrants.

(h) Proceedings under ORS chapter 135 relating to conditional release, security release, release on personal recognizance, or preliminary hearings, subject to ORS 135.173.

(i) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2) and 419C.400 (4).

(j) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine whether a driving while under the influence of intoxicants diversion agreement should be allowed or terminated.

(k) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS 40.105 and 40.115. [1981 c.892 §2; 1983 c.784 §1; 1985 c.16 §444; 1987 c.441 §10; 1993 c.18 §13; 1993 c.33 §289; 1995 c.531 §1; 1995 c.650 §22; 1995 c.657 §22; 1995 c.658 §35; 1999 c.1055 §11; 2005 c.345 §2; 2005 c.463 §8; 2005 c.463 §13; 2005 c.843 §25; 2007 c.16 §2; 2009 c.178 §23; 2013 c.649 §32]

Note:

The amendments to 40.015 by section 37, chapter 649, Oregon Laws 2013, become operative July 1, 2023. See section 38, chapter 649, Oregon Laws 2013. The text that is operative on and after July 1, 2023, is set forth for the user's convenience.

**40.015**

(1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS 138.052 and 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to 136.785.

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(f) Issuance of warrants of arrest, bench warrants or search warrants.

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(j) Proceedings under ORS 147.530 relating to victims' rights, except for the provisions of ORS 40.105 and 40.115.

## RULE 102

**40.020**

PURPOSE AND CONSTRUCTION

The Oregon Evidence Code shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. [1981 c.892 §3]

## RULE 103

**40.025**

RULINGS ON EVIDENCE

(1) Evidential error is not presumed to be prejudicial. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(a) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(b) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(2) The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. It may direct the making of an offer in question and answer form.

(3) In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(4) Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court. [1981 c.892 §4]

## RULE 104

**40.030**

PRELIMINARY QUESTIONS

(1) Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of subsection (2) of this section. In making its determination the court is not bound by the rules of evidence except those with respect to privileges.

(2) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(3) Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if the accused so requests.

(4) The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(5) This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility. [1981 c.892 §5]

## RULE 105

**40.035**

LIMITED ADMISSIBILITY

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly. [1981 c.892 §6]

## RULE 106

**40.040**

WHEN PART OF TRANSACTION PROVED, WHOLE ADMISSIBLE

When part of an act, declaration, conversation or writing is given in evidence by one party, the whole on the same subject, where otherwise admissible, may at that time be inquired into by the other; when a letter is read, the answer may at that time be given; and when a detached act, declaration, conversation or writing is given in evidence, any other act, declaration, conversation or writing which is necessary to make it understood may at that time also be given in evidence. [1981 c.892 §6a]

# JUDICIAL NOTICE

## RULE 201(a)

**40.060**

SCOPE

ORS 40.060 to 40.085 govern judicial notice of adjudicative facts. ORS 40.090 governs judicial notice of law. [1981 c.892 §7]

## RULE 201(b)

**40.065**

KINDS OF FACTS

A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) Generally known within the territorial jurisdiction of the trial court; or

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. [1981 c.892 §8]

## RULES 201(c) and 201(d)

**40.070**

WHEN MANDATORY OR DISCRETIONARY

(1) A court may take judicial notice, whether requested or not.

(2) A court shall take judicial notice if requested by a party and supplied with the necessary information. [1981 c.892 §9]

## RULE 201(e)

**40.075**

OPPORTUNITY TO BE HEARD

A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. [1981 c.892 §10]

## RULE 201(f)

**40.080**

TIME OF TAKING NOTICE

Judicial notice may be taken at any stage of the proceeding. [1981 c.892 §11]

## RULE 201(g)

**40.085**

INSTRUCTING THE JURY

(1) In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact or law judicially noticed.

(2) In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed in favor of the prosecution. [1981 c.892 §12]

## RULE 202

**40.090**

LAW THAT IS JUDICIALLY NOTICED

Law judicially noticed is defined as:

(1) The decisional, constitutional and public statutory law of Oregon, the United States, any federally recognized American Indian tribal government and any state, territory or other jurisdiction of the United States.

(2) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, any federally recognized American Indian tribal government and any other state, territory or other jurisdiction of the United States.

(3) Rules of professional conduct for members of the Oregon State Bar.

(4) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States, any federally recognized American Indian tribal government or any state, territory or possession of the United States.

(5) Rules of court of any court of this state or any court of record of the United States, of any federally recognized American Indian tribal government or of any state, territory or other jurisdiction of the United States.

(6) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(7) An ordinance, comprehensive plan or enactment of any county or incorporated city in this state, or a right derived therefrom. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015. [1981 c.892 §13; 2007 c.63 §1]

## BURDEN OF PERSUASION; BURDEN OF PRODUCING EVIDENCE; PRESUMPTIONS

### RULE 305

**40.105**

ALLOCATION OF THE BURDEN OF PERSUASION

A party has the burden of persuasion as to each fact the existence or nonexistence of which the law declares essential to the claim for relief or defense the party is asserting. [1981 c.892 §14]

### RULE 306

**40.110**

INSTRUCTIONS ON THE BURDEN OF PERSUASION

The court shall instruct the jury as to which party bears the applicable burden of persuasion on each issue only after all of the evidence in the case has been received. [1981 c.892 §15]

### RULE 307

**40.115**

ALLOCATION OF THE BURDEN OF PRODUCING EVIDENCE

(1) The burden of producing evidence as to a particular issue is on the party against whom a finding on the issue would be required in the absence of further evidence.

(2) The burden of producing evidence as to a particular issue is initially on the party with the burden of persuasion as to that issue. [1981 c.892 §16]

### RULE 308

**40.120**

PRESUMPTIONS IN CIVIL PROCEEDINGS

In civil actions and proceedings, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. [1981 c.892 §17]

### RULE 309

**40.125**

PRESUMPTIONS IN CRIMINAL PROCEEDINGS

(1) The judge is not authorized to direct the jury to find a presumed fact against the accused.

(2) When the presumed fact establishes guilt or is an element of the offense or negates a defense, the judge may submit the question of guilt or the existence of the presumed fact to the jury only if:

(a) A reasonable juror on the evidence as a whole could find that the facts giving rise to the presumed fact have been established beyond a reasonable doubt; and

(b) The presumed fact follows more likely than not from the facts giving rise to the presumed fact. [1981 c.892 §18]

## RULE 310

**40.130**

CONFLICTING PRESUMPTIONS

If presumptions are conflicting, the presumption applies that is founded upon weightier considerations of policy and logic. If considerations of policy and logic are of equal weight, neither presumption applies. [1981 c.892 §19]

## RULE 311

**40.135**

PRESUMPTIONS

(1) The following are presumptions:

(a) A person intends the ordinary consequences of a voluntary act.

(b) A person takes ordinary care of the person's own concerns.

(c) Evidence willfully suppressed would be adverse to the party suppressing it.

(d) Money paid by one to another was due to the latter.

(e) A thing delivered by one to another belonged to the latter.

(f) An obligation delivered to the debtor has been paid.

(g) A person is the owner of property from exercising acts of ownership over it or from common reputation of the ownership of the person.

(h) A person in possession of an order on that person, for the payment of money or the delivery of a thing, has paid the money or delivered the thing accordingly.

(i) A person acting in a public office was regularly appointed to it.

(j) Official duty has been regularly performed.

(k) A court, or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of the jurisdiction of the court.

(l) Private transactions have been fair and regular.

(m) The ordinary course of business has been followed.

(n) A promissory note or bill of exchange was given or indorsed for a sufficient consideration.

(o) An indorsement of a negotiable promissory note, or bill of exchange, was made at the time and place of making the note or bill.

(p) A writing is truly dated.

(q) A letter duly directed and mailed was received in the regular course of the mail.

(r) A person is the same person if the name is identical.

(s) A person not heard from in seven years is dead.

(t) Persons acting as copartners have entered into a contract of copartnership.

(u) Two individuals deporting themselves as legally married to each other have entered into a lawful contract of marriage.

(v) A child born in lawful wedlock is legitimate.

(w) A thing once proved to exist continues as long as is usual with things of that nature.

(x) The law has been obeyed.

(y) An uninterrupted adverse possession of real property for 20 years or more has been held pursuant to a written conveyance.

(z) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed it to the person, when such presumption is necessary to perfect the title of the person or the person's successor in interest.

(2) A statute providing that a fact or a group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this section. [1981 c.892 §20; 2016 c.46 §2]

## RELEVANCY

### RULE 401

**40.150**

DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. [1981 c.892 §21]

### RULE 402

**40.155**

RELEVANT EVIDENCE GENERALLY ADMISSIBLE

All relevant evidence is admissible, except as otherwise provided by the Oregon Evidence Code, by the Constitutions of the United States and Oregon, or by Oregon statutory and decisional law. Evidence which is not relevant is not admissible. [1981 c.892 §22]

### RULE 403

**40.160**

EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION OR UNDUE DELAY

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence. [1981 c.892 §23]

### RULE 404

**40.170**

CHARACTER EVIDENCE; EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS

(1) Evidence of a person's character or trait of character is admissible when it is an essential element of a charge, claim or defense.

(2) Evidence of a person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same or evidence of a character trait of peacefulness of the victim offered by the prosecution to rebut evidence that the victim was the first aggressor;

(c) Evidence of the character of a witness, as provided in ORS 40.345 to 40.355; or

(d) Evidence of the character of a party for violent behavior offered in a civil assault and battery case when self-defense is pleaded and there is evidence to support such defense.

(3) Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(4) In criminal actions, evidence of other crimes, wrongs or acts by the defendant is admissible if relevant except as otherwise provided by:

(a) ORS 40.180, 40.185, 40.190, 40.195, 40.200, 40.205, 40.210 and, to the extent required by the United States Constitution or the Oregon Constitution, ORS 40.160;

(b) The rules of evidence relating to privilege and hearsay;

(c) The Oregon Constitution; and

(d) The United States Constitution. [1981 c.892 §24; 1997 c.313 §29]

## RULE 404-1

**40.172**

PATTERN, PRACTICE OR HISTORY OF ABUSE; EXPERT TESTIMONY

(1) In any proceeding, any party may introduce evidence establishing a pattern, practice or history of abuse of a person and may introduce expert testimony to assist the fact finder in understanding the significance of such evidence if the evidence:

(a) Is relevant to any material issue in the proceeding; and

(b) Is not inadmissible under any other provision of law including, but not limited to, rules regarding relevance, privilege, hearsay, competency and authentication.

(2) This section may not be construed to limit any evidence that would otherwise be admissible under the Oregon Evidence Code or any other provision of law.

(3) As used in this section, "abuse" has the meaning given that term in ORS 107.705. [1997 c.397 §2]

Note:

40.172 was added to and made a part of 40.010 to 40.585 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## RULE 405

**40.175**

METHODS OF PROVING CHARACTER

(1) In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(2)(a) In cases in which character or a trait of character of a person is admissible under ORS 40.170 (1), proof may also be made of specific instances of the conduct of the person.

(b) When evidence is admissible under ORS 40.170 (3) or (4), proof may be made of specific instances of the conduct of the person. [1981 c.892 §25; 1997 c.313 §34]

## RULE 406

**40.180**

HABIT; ROUTINE PRACTICE

(1) Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

(2) As used in this section, "habit" means a person's regular practice of meeting a particular kind of situation with a specific, distinctive type of conduct. [1981 c.892 §21]

## RULE 407

**40.185**

SUBSEQUENT REMEDIAL MEASURES

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment. [1981 c.892 §27]

## RULE 408

**40.190**

COMPROMISE AND OFFERS TO COMPROMISE

(1)(a) Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

(2)(a) Subsection (1) of this section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

(b) Subsection (1) of this section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. [1981 c.892 §28]

## RULE 409

**40.195**

PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury. Evidence of payment for damages arising from injury or destruction of property is not admissible to prove liability for the injury or destruction. [1981 c.892 §29]

## RULE 410

**40.200**

WITHDRAWN PLEA OR STATEMENT NOT ADMISSIBLE

(1) A plea of guilty or no contest which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceeding.

(2) No statement or admission made by a defendant or a defendant's attorney during any proceeding relating to a plea of guilty or no contest which is not accepted or has been withdrawn shall be received against the defendant in any criminal proceeding. [1981 c.892 §29a]

## RULE 411

**40.205**

LIABILITY INSURANCE

(1) Except where lack of liability insurance is an element of an offense, evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.

(2) Subsection (1) of this section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proving agency, ownership or control, or bias, prejudice or motive of a witness. [1981 c.892 §30]

## RULE 412

**40.210**

SEX OFFENSE CASES; RELEVANCE OF VICTIM'S PAST BEHAVIOR OR MANNER OF DRESS

(1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670 or 167.017, in a prosecution for an attempt to commit one of those crimes or in a proceeding conducted under ORS 163.760 to

163.777, the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or, in a proceeding under ORS 163.760 to 163.777, incited the sexual abuse, or indicated consent to the sexual acts that are alleged.

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence of an alleged victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime or, in a proceeding conducted under ORS 163.760 to 163.777, by the respondent, is also not admissible, unless the evidence is:

(a) Admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;

(C) Is necessary to establish the identity of the alleged victim; or

(D) Is otherwise constitutionally required to be admitted.

(4)(a) If the person accused of a crime or an attempt to commit a crime listed in subsection (1) of this section, or the respondent in a proceeding conducted under ORS 163.760 to 163.777, intends to offer evidence under subsection (2) or (3) of this section, the accused or the respondent shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and, in a criminal proceeding, on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused or the respondent seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the

same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused or the respondent seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with respect to which a witness may be examined or cross-examined.

(d) An order admitting evidence under this subsection in a criminal prosecution may be appealed by the state before trial.

(5) For purposes of this section:

(a) "Alleged victim" includes the petitioner in a proceeding conducted under ORS 163.760 to 163.777.

(b) "In camera" means out of the presence of the public and the jury.

(c) "Past sexual behavior" means sexual behavior other than:

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged; or

(B) In a proceeding conducted under ORS 163.760 to 163.777, the alleged sexual abuse.

(d) "Trial" includes a hearing conducted under ORS 163.760 to 163.777. [1981 c.892 §31; 1993 c.301 §1; 1993 c.776 §1; 1997 c.249 §20; 1999 c.949 §3; 2013 c.687 §21; 2013 c.720 §5]

## RULE 412-1

**40.211**

EVIDENCE NOT ADMISSIBLE IN CIVIL PROCEEDING INVOLVING SEXUAL MISCONDUCT

(1) Unless the alleged victim has placed the evidence in controversy and the court determines that the probative value of the evidence substantially outweighs the danger of harm to any victim and of unfair prejudice to any party, the following evidence is not admissible in a civil proceeding involving alleged sexual misconduct:

(a) Evidence offered to prove that an alleged victim engaged in other sexual behavior; or

(b) Evidence offered to prove an alleged victim's sexual predisposition.

(2) If a party intends to offer evidence under subsection (1) of this section, the party must:

(a) Make a written motion at least 15 days before the date on which the proceeding in which the evidence is to be offered is scheduled to begin unless the court, for good cause, sets a different time;

(b) In the motion, specifically describe the evidence and state the purpose for which it is to be offered;

(c) Serve the motion on all parties; and

(d) Notify the alleged victim or the alleged victim's representative.

(3) Before admitting evidence under this section, the court must conduct an in camera hearing and give the alleged victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials and the record of the hearing are confidential. A party making a motion under this section shall state in the caption that the motion is confidential.

(4) As used in this section, "in camera" means out of the presence of the public and the jury. [2017 c.321 §2]

## RULE 413

**40.215**

MEASURES AND ASSESSMENTS INTENDED TO MINIMIZE IMPACT OF OR PLAN FOR NATURAL DISASTER

Evidence of measures taken or vulnerability assessments conducted before a natural disaster occurs that were intended to minimize the impact of or plan for the natural disaster is not admissible to prove negligence or culpable conduct in connection with damage, harm, injury or death resulting from the natural disaster. [2015 c.541 §2]

## PRIVILEGES

## RULE 503

**40.225**

LAWYER-CLIENT PRIVILEGE

(1) As used in this section, unless the context requires otherwise:

(a) "Client" means a person, public officer, corporation, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(d) "Representative of the client" means:

(A) A principal, an officer or a director of the client; or

(B) A person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person's scope of employment for the client.

(e) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of professional legal services, but does not include a physician making a physical or mental examination under ORCP 44.

(2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(a) Between the client or the client's representative and the client's lawyer or a representative of the lawyer;

(b) Between the client's lawyer and the lawyer's representative;

(c) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(d) Between representatives of the client or between the client and a representative of the client; or

(e) Between lawyers representing the client.

(3) The privilege created by this section may be claimed by the client, a guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(4) There is no privilege under this section:

(a) If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(b) As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(c) As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(d) As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication made to the office of public defense services established under ORS 151.216 for the purpose of seeking preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.

(6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained under this section for a communication that is made to the office of public defense services established under ORS 151.216 for the purpose of making, or providing information regarding, a complaint against a lawyer providing public defense services.

(7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication ordered to be disclosed under ORS 192.311 to 192.478. [1981 c.892 §32; 1987 c.680 §1; 2005 c.356 §1; 2005 c.358 §1; 2007 c.513 §3; 2009 c.516 §1]

## RULE 504

**40.230**

PSYCHOTHERAPIST-PATIENT PRIVILEGE

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication not intended to be disclosed to third persons except:

(A) Persons present to further the interest of the patient in the consultation, examination or interview;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Persons who are participating in the diagnosis and treatment under the direction of the psychotherapist, including members of the patient's family.

(b) "Patient" means a person who consults or is examined or interviewed by a psychotherapist.

(c) "Psychotherapist" means a person who is:

(A) Licensed, registered, certified or otherwise authorized under the laws of any state to engage in the diagnosis or treatment of a mental or emotional condition; or

(B) Reasonably believed by the patient so to be, while so engaged.

(2) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of the patient's mental or emotional condition among the patient, the patient's psychotherapist or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

(3) The privilege created by this section may be claimed by:

(a) The patient.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The person who was the psychotherapist, but only on behalf of the

patient. The psychotherapist's authority so to do is presumed in the absence of evidence to the contrary.

(4) The following is a nonexclusive list of limits on the privilege granted by this section:

(a) If the judge orders an examination of the mental, physical or emotional condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(b) There is no privilege under this rule as to communications relevant to an issue of the mental or emotional condition of the patient:

(A) In any proceeding in which the patient relies upon the condition as an element of the patient's claim or defense; or

(B) After the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(c) Except as provided in ORCP 44, there is no privilege under this section for communications made in the course of mental examination performed under ORCP 44.

(d) There is no privilege under this section with regard to any confidential communication or record of such confidential communication that would otherwise be privileged under this section when the use of the communication or record is allowed specifically under ORS 426.070, 426.074, 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or record to the extent and for the purposes set forth in the described statute sections. [1981 c.892 §33; 1987 c.903 §1]

## RULE 504-1

**40.235**

PHYSICIAN-PATIENT PRIVILEGE

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication not intended to be disclosed to third persons except:

(A) Persons present to further the interest of the patient in the consultation, examination or interview;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family.

(b) "Patient" means a person who consults or is examined or interviewed by a physician.

(c)(A) "Physician" means a person authorized and licensed or certified to practice medicine, podiatry or dentistry in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a physical condition.

(B) "Physician" includes licensed or certified naturopathic and chiropractic physicians and dentists.

(2) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications in a civil action, suit or proceeding, made for the purposes of diagnosis or treatment of the patient's physical condition, among the patient, the patient's physician or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(3) The privilege created by this section may be claimed by:

(a) The patient;

(b) A guardian or conservator of the patient;

(c) The personal representative of a deceased patient; or

(d) The person who was the physician, but only on behalf of the patient. Such person's

authority so to do is presumed in the absence of evidence to the contrary.

(4) The following is a nonexclusive list of limits on the privilege granted by this section:

(a) If the judge orders an examination of the physical condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(b) Except as provided in ORCP 44, there is no privilege under this section for communications made in the course of a physical examination performed under ORCP 44.

(c) There is no privilege under this section with regard to any confidential communication or record of such confidential communication that would otherwise be privileged under this section when the use of the communication or record is specifically allowed under ORS 426.070, 426.074, 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or record to the extent and for the purposes set forth in the described statute sections. [1981 c.892 §33a; 1987 c.903 §2; 2005 c.353 §1; 2013 c.129 §3]

## RULE 504-2

**40.240**

NURSE-PATIENT PRIVILEGE

A licensed professional nurse shall not, without the consent of a patient who was cared for by such nurse, be examined in a civil action or proceeding, as to any information acquired in caring for the patient, which was necessary to enable the nurse to care for the patient. [1981 c.892 §33b]

## RULE 504-3

**40.245**

SCHOOL EMPLOYEE-STUDENT PRIVILEGE

(1) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of the student, and which if disclosed would tend to damage or incriminate the student or family. Any violation of the privilege provided by this subsection may result in the suspension of certification of the professional staff member as provided in ORS 342.175, 342.177 and 342.180.

(2) A certificated school counselor regularly employed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor. Any violation of the privilege provided by this subsection may result in the suspension of certification of the professional school counselor as provided in ORS 342.175, 342.177 and 342.180. However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such other emergency measures as the situation demands. [1981 c.892 §33c]

## RULE 504-4

**40.250**

REGULATED SOCIAL WORKER-CLIENT PRIVILEGE

A regulated social worker under ORS 675.510 to 675.600 may not be examined in a civil or criminal court proceeding as to any communication given the regulated social worker by a client in the course of

noninvestigatory professional activity when the communication was given to enable the regulated social worker to aid the client, except when:

(1) The client or a person legally responsible for the client's affairs gives consent to the disclosure;

(2) The client initiates legal action or makes a complaint against the regulated social worker to the State Board of Licensed Social Workers;

(3) The communication reveals a clear intent to commit a crime that reasonably is expected to result in physical injury to a person;

(4) The communication reveals that a minor was the victim of a crime, abuse or neglect; or

(5) The regulated social worker is a public employee and the public employer has determined that examination in a civil or criminal court proceeding is necessary in the performance of the duty of the regulated social worker as a public employee. [1981 c.892 §33d; 1989 c.721 §46; 2009 c.442 §28]

## RULE 504-5

**40.252**

COMMUNICATIONS REVEALING INTENT TO COMMIT CERTAIN CRIMES

(1) In addition to any other limitations on privilege that may be imposed by law, there is no privilege under ORS 40.225, 40.230, 40.250 or 40.264 for communications if:

(a) In the professional judgment of the person receiving the communications, the communications reveal that the declarant has a clear and serious intent at the time the communications are made to subsequently commit a crime involving physical injury, a threat to the physical safety of any person, sexual abuse or death or involving an act described in ORS 167.322;

(b) In the professional judgment of the person receiving the communications, the declarant poses a danger of committing the crime; and

(c) The person receiving the communications makes a report to another person based on the communications.

(2) The provisions of this section do not create a duty to report any communication to any person.

(3) A person who discloses a communication described in subsection (1) of this section, or fails to disclose a communication described in subsection (1) of this section, is not liable to any other person in a civil action for any damage or injury arising out of the disclosure or failure to disclose. [2001 c.640 §2; 2007 c.731 §4; 2015 c.265 §3]

Note:

40.252 was added to and made a part of 40.225 to 40.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## RULE 505

**40.255**

SPOUSAL PRIVILEGE

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication by a spouse to the other spouse and not intended to be disclosed to any other person.

(b) "Marriage" means a marital relationship between two individuals, legally recognized under the laws of this state.

(c) "Spouse" means an individual in a marriage with another individual.

(2) In any civil or criminal action, a spouse has a privilege to refuse to disclose and to prevent the other spouse from disclosing any confidential communication made by one spouse to the other during the marriage. The privilege created by this subsection may be claimed by either spouse. The authority of the spouse to claim the privilege and the claiming of the privilege is presumed in the absence of evidence to the contrary.

(3) In any criminal proceeding, neither spouse, during the marriage, shall be examined adversely against the other as to any other matter occurring during the marriage unless the spouse called as a witness consents to testify.

(4) There is no privilege under this section:

(a) In all criminal actions in which one spouse is charged with bigamy or with an offense or attempted offense against the person or property of the other spouse or of a child of either, or with an offense against the person or property of a third person committed in the course of committing or attempting to commit an offense against the other spouse;

(b) As to matters occurring prior to the marriage; or

(c) In any civil action where the spouses are adverse parties. [1981 c.892 §34; 1983 c.433 §1; 2016 c.46 §1]

## RULE 506

**40.260**

MEMBER OF CLERGY-PENITENT PRIVILEGE

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) "Member of the clergy" means a minister of any church, religious denomination or organization or accredited Christian Science practitioner who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(2) A member of the clergy may not be examined as to any confidential communication made to the member of the clergy in the member's professional character unless consent to the disclosure of the confidential communication is given by the person who made the communication.

(3) Even though the person who made the communication has given consent to the disclosure, a member of the clergy may not be examined as to any confidential communication made to the member in the member's professional character if, under the discipline or tenets of the member's church, denomination or organization, the member has an absolute duty to keep the communication confidential. [1981 c.892 §35; 1999 c.7 §1]

## RULE 507

**40.262**

COUNSELOR-CLIENT PRIVILEGE

A professional counselor or a marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715 shall not be examined in a civil or criminal court proceeding as to any communication given the counselor or therapist by a client in the course of a noninvestigatory professional activity when such communication

was given to enable the counselor or the therapist to aid the client, except:

(1) When the client or those persons legally responsible for the affairs of the client give consent to the disclosure. If both parties to a marriage have obtained marital and family therapy by a licensed marital and family therapist or a licensed counselor, the therapist or counselor shall not be competent to testify in a domestic relations action other than child custody action concerning information acquired in the course of the therapeutic relationship unless both parties consent;

(2) When the client initiates legal action or makes a complaint against the licensed professional counselor or licensed marriage and family therapist to the board;

(3) When the communication reveals the intent to commit a crime or harmful act; or

(4) When the communication reveals that a minor is or is suspected to be the victim of crime, abuse or neglect. [1989 c.721 §20]

Note:

40.262 was added to and made a part of 40.010 to 40.585 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## RULE 507-1

**40.264**

CERTIFIED ADVOCATE-VICTIM PRIVILEGE

(1) As used in this section:

(a) "Certified advocate" means a person who:

(A) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault or stalking, approved by the Attorney General by rule; and

(B) Is an employee or a volunteer of a qualified victim services program.

(b) "Confidential communication" means a written or oral communication that is not intended for further disclosure, except to:

(A) Persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support or advocacy services;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Other persons, in the context of group counseling.

(c) "Qualified victim services program" means:

(A) A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice, or a program administered by a tribal government, that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or

(B) A sexual assault center, victim advocacy office, women's center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two- or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

(d) "Victim" means a person seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a qualified victim services program.

(2) Except as provided in subsection (3) of this section, a victim has a privilege to refuse to disclose and to prevent any other person from disclosing:

(a) Confidential communications made by the victim to a certified advocate in the course of safety planning, counseling, support or advocacy services.

(b) Records that are created or maintained in the course of providing services regarding the victim.

(3) The privilege established by this section does not apply to the disclosure of confidential communications, only to the extent disclosure is necessary for defense, in any civil, criminal or administrative action that is brought against the certified advocate, or against the qualified victim services program, by or on behalf of the victim.

(4) The privilege established in this section is not waived by disclosure of the communications by the certified advocate to another person if the disclosure is reasonably necessary to accomplish the purpose for which the certified advocate is consulted.

(5) This section does not prohibit the disclosure of aggregate, nonpersonally identifying data.

(6) This section applies to civil, criminal and administrative proceedings and to institutional disciplinary proceedings at a two-year or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant. [2015 c.265 §2; 2017 c.256 §1]

Note:

40.264 was added to and made a part of 40.225 to 40.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## RULE 508a

**40.265**

STENOGRAPHER-EMPLOYER PRIVILEGE

A stenographer shall not, without the consent of the stenographer's employer, be examined as to any communication or dictation made by the employer to the stenographer in the course of professional employment. [1981 c.892 §36]

## RULE 509

**40.270**

PUBLIC OFFICER PRIVILEGE

A public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.338, 192.345 and 192.355. [1981 c.892 §37]

## RULE 509-1

**40.272**

SIGN LANGUAGE INTERPRETER PRIVILEGE

(1) As used in this section:

(a) "Person with a disability" means a person who cannot readily understand or communicate the spoken English language, or cannot understand proceedings in which the person is involved, because of deafness or because of a physical hearing impairment or cannot communicate in the proceedings because of a physical speaking impairment.

(b) "Sign language interpreter" or "interpreter" means a person who translates conversations or other communications for a person with a disability or translates the statements of a person with a disability.

(2) A person with a disability has a privilege to refuse to disclose and to prevent a sign language interpreter from disclosing any communications to which the person with a disability was a party that were made while the interpreter was providing interpretation services for the person with a disability. The privilege created by this section extends only to those communications

between a person with a disability and another, and translated by the interpreter, that would otherwise be privileged under ORS 40.225 to 40.295. [1993 c.179 §2; 2007 c.70 §11]

Note:

40.272 was added to and made a part of 40.225 to 40.295 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## RULE 509-2

**40.273**

NON-ENGLISH-SPEAKING PERSON-INTERPRETER PRIVILEGE

(1) As used in this section:

(a) "Interpreter" means a person who translates conversations or other communications for a non-English-speaking person or translates the statements of a non-English-speaking person.

(b) "Non-English-speaking person" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate in the proceedings.

(2) A non-English-speaking person has a privilege to refuse to disclose and to prevent an interpreter from disclosing any communications to which the non-English-speaking person was a party that were made while the interpreter was providing interpretation services for the non-English-speaking person. The privilege created by this section extends only to those communications between a non-English-speaking person and another, and translated by the interpreter, that would otherwise be privileged under ORS 40.225 to 40.295. [1993 c.179 §3]

Note:

40.273 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 40 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## RULE 510

**40.275**

IDENTITY OF INFORMER

(1) As used in this section, "unit of government" means:

(a) The federal government or any state or political subdivision thereof;

(b) A university that has commissioned police officers under ORS 352.121 or 353.125; or

(c) A tribal government as defined in ORS 181A.680, if the information referred to in this section relates to or assists in an investigation conducted by an authorized tribal police officer as defined in ORS 181A.680.

(2) A unit of government has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(3) The privilege created by this section may be claimed by an appropriate representative of the unit of government if the information was furnished to an officer thereof.

(4) No privilege exists under this section:

(a) If the identity of the informer or the informer's interest in the subject matter of the communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the unit of government.

(b) If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the unit of government is a party, and the unit of government invokes the privilege, and the judge gives the unit of government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the unit of government elects not to disclose identity of the informer, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make any order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government. All counsel and parties shall be permitted to be present at every stage of proceedings under this paragraph except a showing in camera, at which no counsel or party shall be permitted to be present.

(c) If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible. The judge may require the identity of the informer to be disclosed. The judge shall, on request of the unit of government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this paragraph except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the unit of government. [1981 c.892 §38; 2011 c.506 §2; 2011 c.644 §§10,37; 2013 c.180 §§2,3; 2015 c.174 §2]

## RULE 511

**40.280**

WAIVER OF PRIVILEGE BY VOLUNTARY DISCLOSURE

A person upon whom ORS 40.225 to 40.295 confer a privilege against disclosure of the confidential matter or communication waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication. Voluntary disclosure does not occur with the mere commencement of litigation or, in the case of a deposition taken for the purpose of perpetuating testimony, until the offering of the deposition as evidence. Voluntary disclosure does not occur when representatives of the news media are allowed to attend executive sessions of the governing body of a public body as provided in ORS 192.660 (4), or when representatives of the news media disclose information after the governing body has prohibited disclosure of the information under ORS 192.660 (4). Voluntary disclosure does not occur when a public body, as defined in ORS 192.311, discloses information or records in response to a written request for public records made under ORS 192.311 to 192.478. Voluntary disclosure does occur, as to psychotherapists in the case of a mental or

emotional condition and physicians in the case of a physical condition upon the holder's offering of any person as a witness who testifies as to the condition. [1981 c.892 §39; 2003 c.259 §1; 2017 c.456 §9]

## RULE 512

**40.285**

PRIVILEGED MATTER DISCLOSED UNDER COMPULSION OR WITHOUT OPPORTUNITY TO CLAIM PRIVILEGE

Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was:

(1) Compelled erroneously; or

(2) Made without opportunity to claim the privilege. [1981 c.892 §40]

## RULE 513

**40.290**

COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE

(1) The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from a claim of privilege.

(2) In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom. [1981 c.892 §41]

## RULE 514

**40.295**

EFFECT ON EXISTING PRIVILEGES

Unless expressly repealed by section 98, chapter 892, Oregon Laws 1981, all existing privileges either created under the Constitution or statutes of the State of Oregon or developed by the courts of Oregon are recognized and shall continue to exist until changed or repealed according to law. [1981 c.892 §42]

# WITNESSES

## RULE 601

**40.310**

GENERAL RULE OF COMPETENCY

Except as provided in ORS 40.310 to 40.335, any person who, having organs of sense can perceive, and perceiving can make known the perception to others, may be a witness. [1981 c.892 §43]

## RULE 602

**40.315**

LACK OF PERSONAL KNOWLEDGE

Subject to the provisions of ORS 40.415, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. [1981 c.892 §44]

## RULE 603

**40.320**

OATH OR AFFIRMATION

(1) Before testifying, every witness shall be required to declare that the witness will testify

truthfully, by oath or affirmation administered in a form calculated to awaken the conscience of the witness and impress the mind of the witness with the duty to do so.

(2) An oath may be administered as follows: The person who swears holds up one hand while the person administering the oath asks: "Under penalty of perjury, do you solemnly swear that the evidence you shall give in the issue (or matter) now pending between _____ and _____ shall be the truth, the whole truth and nothing but the truth, so help you God?" If the oath is administered to any other than a witness, the same form and manner may be used. The person swearing must answer in an affirmative manner.

(3) An affirmation may be administered as follows: The person who affirms holds up one hand while the person administering the affirmation asks: "Under penalty of perjury, do you promise that the evidence you shall give in the issue (or matter) now pending between _____ and _____ shall be the truth, the whole truth and nothing but the truth?" If the affirmation is administered to any other than a witness, the same form and manner may be used. The person affirming must answer in an affirmative manner. [1981 c.892 §45]

## RULE 604

**40.325**

INTERPRETERS

Except as provided in ORS 45.275 (7), an interpreter is subject to the provisions of the Oregon Evidence Code relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession. [1981 c.892 §47; 1981 s.s. c.3 §138; 1989 c.224 §7; 1991 c.750 §7; 2001 c.242 §4; 2005 c.385 §3; 2015 c.155 §5]

## RULE 605

**40.330**

COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point. [1981 c.892 §48]

## RULE 606

**40.335**

COMPETENCY OF JUROR AS WITNESS

A member of the jury may not testify as a witness before that jury in the trial of the case in which the member has been sworn to sit as a juror. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury. [1981 c.892 §49]

**40.340**

[1981 c.892 §50; repealed by 1987 c.352 §1]

## RULE 607

**40.345**

WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling the witness. [1981 c.892 §51]

## RULE 608

**40.350**

EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(1) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but:

(a) The evidence may refer only to character for truthfulness or untruthfulness; and

(b) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(2) Specific instances of the conduct of a witness, for the purpose of attacking or supporting the credibility of the witness, other than conviction of crime as provided in ORS 40.355, may not be proved by extrinsic evidence. Further, such specific instances of conduct may not, even if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness. [1981 c.892 §52]

## RULE 609

**40.355**

IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME; EXCEPTIONS

(1) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, but only if the crime:

(a) Was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted; or

(b) Involved false statement or dishonesty.

(2)(a) If a defendant is charged with one or more of the crimes listed in paragraph (b) of this subsection, and the defendant is a witness, evidence that the defendant has been convicted of committing one or more of the following crimes against a family or household member, as defined in ORS 135.230, may be elicited from the defendant, or established by public record, and admitted into evidence for the purpose of attacking the credibility of the defendant:

(A) Assault in the fourth degree under ORS 163.160.

(B) Menacing under ORS 163.190.

(C) Harassment under ORS 166.065.

(D) Attempted assault in the fourth degree under ORS 163.160 (1).

(E) Attempted assault in the fourth degree under ORS 163.160 (3).

(F) Strangulation under ORS 163.187.

(G) The statutory counterpart in another jurisdiction to a crime listed in this paragraph.

(b) Evidence may be admitted into evidence for the purpose of attacking the credibility of a defendant under the provisions of this subsection only if the defendant is charged with committing one or more of the following crimes against a family or household member, as defined in ORS 135.230:

(A) Aggravated murder under ORS 163.095.

(B) Murder under ORS 163.115.

(C) Manslaughter in the first degree under ORS 163.118.

(D) Manslaughter in the second degree under ORS 163.125.

(E) Assault in the first degree under ORS 163.185.

(F) Assault in the second degree under ORS 163.175.

(G) Assault in the third degree under ORS 163.165.

(H) Assault in the fourth degree under ORS 163.160.

(I) Rape in the first degree under ORS 163.375 (1)(a).

(J) Sodomy in the first degree under ORS 163.405 (1)(a).

(K) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).

(L) Sexual abuse in the first degree under ORS 163.427 (1)(a)(B).

(M) Kidnapping in the first degree under ORS 163.235.

(N) Kidnapping in the second degree under ORS 163.225.

(O) Burglary in the first degree under ORS 164.225.

(P) Coercion under ORS 163.275.

(Q) Stalking under ORS 163.732.

(R) Violating a court's stalking protective order under ORS 163.750.

(S) Menacing under ORS 163.190.

(T) Harassment under ORS 166.065.

(U) Strangulation under ORS 163.187.

(V) Attempting to commit a crime listed in this paragraph.

(3) Evidence of a conviction under this section is not admissible if:

(a) A period of more than 15 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date; or

(b) The conviction has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.

(4) When the credibility of a witness is attacked by evidence that the witness has been convicted of a crime, the witness shall be allowed to explain briefly the circumstances of the crime or former conviction; once the witness explains the circumstances, the opposing side shall have the opportunity to rebut the explanation.

(5) The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(6) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction of a crime.

(7) A conviction of any of the statutory counterparts of offenses designated as violations as described in ORS 153.008 may not be used to impeach the character of a witness in any criminal or civil action or proceeding. [1981 c.892 §53; 1987 c.2 §9; subsection (6) of 1993 Edition enacted as 1993 c.379 §4; 1999 c.1051 §121; 2001 c.714 §1; 2003 c.577 §3; 2009 c.56 §1]

Note:

40.355 (7) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 40 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## RULE 609-1

**40.360**

IMPEACHMENT FOR BIAS OR INTEREST

(1) The credibility of a witness may be attacked by evidence that the witness engaged in conduct or made statements showing bias or interest. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the statement shall be shown or disclosed to the opposing party.

(2) If a witness fully admits the facts claimed to show the bias or interest of the witness, additional evidence of that bias or interest shall not be admitted. If the witness denies or does not fully admit the facts claimed to show bias or interest, the party attacking the credibility of the witness may then offer evidence to prove those facts.

(3) Evidence to support or rehabilitate a witness whose credibility has been attacked by evidence of bias or interest shall be limited to evidence showing a lack of bias or interest. [1981 c.892 §54; 1999 c.100 §1]

## RULE 610

**40.365**

RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the credibility of the witness is impaired or enhanced. [1981 c.892 §54a]

## RULE 611

**40.370**

MODE AND ORDER OF INTERROGATION AND PRESENTATION

(1) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time and protect witnesses from harassment or undue embarrassment.

(2) Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(3) Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. [1981 c.892 §54b]

## RULE 612

**40.375**

WRITING USED TO REFRESH MEMORY

If a witness uses a writing to refresh memory for the purpose of testifying, either while testifying or before testifying if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce into evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this section, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial. [1981 c.892 §55]

## RULE 613

**40.380**

PRIOR STATEMENTS OF WITNESSES

(1) In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(2) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in

ORS 40.450. [1981 c.892 §55a; 1983 c.433 §2; 1983 c.740 §5]

## RULE 615

**40.385**

EXCLUSION OF WITNESSES

At the request of a party the court may order witnesses excluded until the time of final argument, and it may make the order of its own motion. This rule does not authorize exclusion of:

(1) A party who is a natural person;

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney;

(3) A person whose presence is shown by a party to be essential to the presentation of the party's cause; or

(4) The victim in a criminal case. [1981 c.892 §56; 1987 c.2 §5; 2003 c.14 §20]

# OPINIONS AND EXPERT TESTIMONY

## RULE 701

**40.405**

OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to those opinions or inferences which are:

(1) Rationally based on the perception of the witness; and

(2) Helpful to a clear understanding of testimony of the witness or the determination of a fact in issue. [1981 c.892 §57]

## RULE 702

**40.410**

TESTIMONY BY EXPERTS

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise. [1981 c.892 §58]

## RULE 703

**40.415**

BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. [1981 c.892 §59]

## RULE 704

**40.420**

OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. [1981 c.892 §60]

## RULE 705

**40.425**

DISCLOSURE OF FACT OR DATA UNDERLYING EXPERT OPINION

An expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert

may in any event be required to disclose the underlying facts or data on cross-examination. [1981 c.892 §61]

### RULE 706

**40.430**

IMPEACHMENT OF EXPERT WITNESS BY LEARNED TREATISE

Upon cross-examination, an expert witness may be questioned concerning statements contained in a published treatise, periodical or pamphlet on a subject of history, medicine or other science or art if the treatise, periodical or pamphlet is established as a reliable authority. A treatise, periodical or pamphlet may be established as a reliable authority by the testimony or admission of the witness, by other expert testimony or by judicial notice. Statements contained in a treatise, periodical or pamphlet established as a reliable authority may be used for purposes of impeachment but may not be introduced as substantive evidence. [1999 c.85 §2]

## HEARSAY

### RULE 801

**40.450**

DEFINITIONS FOR ORS 40.450 TO 40.475

As used in ORS 40.450 to 40.475, unless the context requires otherwise:

(1) A "statement" is:

(a) An oral or written assertion; or

(b) Nonverbal conduct of a person, if intended as an assertion.

(2) A "declarant" is a person who makes a statement.

(3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) Inconsistent with the testimony of the witness and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

(B) Consistent with the testimony of the witness and is offered to rebut an inconsistent statement or an express or implied charge against the witness of recent fabrication or improper influence or motive; or

(C) One of identification of a person made after perceiving the person.

(b) The statement is offered against a party and is:

(A) That party's own statement, in either an individual or a representative capacity;

(B) A statement of which the party has manifested the party's adoption or belief in its truth;

(C) A statement by a person authorized by the party to make a statement concerning the subject;

(D) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39 I. [1981 c.892 §62; 1987 c.275 §3]

### RULE 802

**40.455**

HEARSAY RULE

Hearsay is not admissible except as provided in ORS 40.450 to 40.475 or as otherwise provided by law. [1981 c.892 §63]

## RULE 803

**40.460**

HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

The following are not excluded by ORS 40.455, even though the declarant is available as a witness:

(1) (Reserved.)

(2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the memory of the witness and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, and in any form, kept in accordance with the provisions of subsection (6) of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Records, reports, statements or data compilations, in any form, of public offices or agencies, including federally recognized American Indian tribal governments, setting forth:

(a) The activities of the office or agency;

(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, in criminal cases, matters observed by police officers and other law enforcement personnel;

(c) In civil actions and proceedings and against the government in criminal cases, factual findings, resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness; or

(d) In civil actions and criminal proceedings, a sheriff's return of service.

(9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office, including a federally recognized American Indian tribal government, pursuant to requirements of law.

(10) To prove the absence of a record, report, statement or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public office or agency, including a federally recognized American Indian tribal government, evidence in the form of a certification in accordance with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) A statement of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, a public official, an official of a federally recognized American Indian tribal government or any other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Statements of facts concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) The record of a document purporting to establish or affect an interest in property, as proof of content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office, including a federally recognized American Indian tribal government, and an applicable statute authorizes the recording of documents of that kind in that office.

(15) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in a document in existence 20 years or more the authenticity of which is established.

(17) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) (Reserved.)

(18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, made by the witness after the commission of the alleged

misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

(b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is unavailable as a witness but was chronologically or mentally under 12 years of age when the statement was made or was 65 years of age or older when the statement was made. However, if a declarant is unavailable, the statement may be admitted in evidence only if the proponent establishes that the time, content and circumstances of the statement provide indicia of reliability, and in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of reliability as is constitutionally required to be admitted. No statement may be admitted under this paragraph unless the proponent of the statement makes known to the adverse party the proponent's intention to offer the statement and the particulars of the statement no later than 15 days before trial, except for good cause shown. For purposes of this paragraph, in addition to those situations described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a substantial lack of memory of the subject matter of the statement, is presently incompetent to testify, is unable to communicate about the abuse or sexual conduct because of fear or other similar reason or is substantially likely, as established by expert testimony, to suffer lasting severe emotional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the declarant in chambers and on the record or outside the presence of the jury and on the record. The examination shall be conducted immediately prior to the commencement of the trial in the presence of the attorney and the legal guardian or other suitable person as designated by the court. If the declarant is found to be unavailable, the court shall then determine the admissibility of the evidence. The determinations shall be appealable under ORS 138.045 (1)(d). The purpose of the examination shall be to aid the court in making its findings regarding the availability of the declarant as a witness and the reliability of the statement of the declarant. In determining whether a statement possesses indicia of reliability under this paragraph, the court may consider, but is not limited to, the following factors:

(A) The personal knowledge of the declarant of the event;

(B) The age and maturity of the declarant or extent of disability if the declarant is a person with a developmental disability;

(C) Certainty that the statement was made, including the credibility of the person testifying about the statement and any motive the person may have to falsify or distort the statement;

(D) Any apparent motive the declarant may have to falsify or distort the event, including bias, corruption or coercion;

(E) The timing of the statement of the declarant;

(F) Whether more than one person heard the statement;

(G) Whether the declarant was suffering pain or distress when making the statement;

(H) Whether the declarant's young age or disability makes it unlikely that the declarant fabricated a statement that represents a graphic, detailed account beyond the knowledge and experience of the declarant;

(I) Whether the statement has internal consistency or coherence and uses terminology appropriate to the declarant's age or to the

extent of the declarant's disability if the declarant is a person with a developmental disability;

(J) Whether the statement is spontaneous or directly responsive to questions; and

(K) Whether the statement was elicited by leading questions.

(c) This subsection applies to all civil, criminal and juvenile proceedings.

(d) This subsection applies to a child declarant, a declarant who is an elderly person as defined in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this subsection, "developmental disability" means any disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other disabling neurological condition that requires training or support similar to that required by persons with mental retardation, if either of the following apply:

(A) The disability originates before the person attains 22 years of age, or if the disability is attributable to mental retardation the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

(B) The disability results in a significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

(19) Reputation among members of a person's family by blood, adoption or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation of a person's character among associates of the person or in the community.

(22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding in which a child under 12 years of age at the time of trial, or a person with a developmental disability as described in subsection (18a)(d) of this section, may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the child or person with a developmental disability by another, the testimony of the child or person with a developmental disability taken by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child or person with a developmental disability will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a

party, the child, the person with a developmental disability or the court in a civil proceeding, or on motion of the district attorney, the child or the person with a developmental disability in a criminal or juvenile proceeding, may order that the testimony of the child or the person with a developmental disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child or person with a developmental disability may be present during the testimony of the child or person with a developmental disability.

(25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police, and the person retrieving the data attests that the information was retrieved directly from the system and that the document accurately reflects the data retrieved.

(b) Any document containing data prepared or recorded by the Oregon State Police that is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police and that is electronically transmitted through public or private computer networks under an electronic signature adopted by the Oregon State Police if the person receiving the data attests that the document accurately reflects the data received.

(c) Notwithstanding any statute or rule to the contrary, in any criminal case in which documents are introduced under the provisions of this subsection, the defendant may subpoena the analyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst or other person.

(26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after the incident occurred, if the statement:

(A) Was recorded, either electronically or in writing, or was made to a peace officer as defined in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency medical services provider or firefighter; and

(B) Has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a) of this subsection, the court shall consider all circumstances surrounding the statement. The court may consider, but is not limited to, the following factors in determining whether a statement has sufficient indicia of reliability:

(A) The personal knowledge of the declarant.

(B) Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection.

(C) The timing of the statement.

(D) Whether the statement was elicited by leading questions.

(E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient reason for denying admission of a statement under this subsection in the absence of other factors indicating unreliability.

(27) A report prepared by a forensic scientist that contains the results of a presumptive test conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that the report accurately reflects the results of the presumptive test.

(28)(a) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(A) The statement is relevant;

(B) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

(C) The general purposes of the Oregon Evidence Code and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this subsection unless the proponent of it makes known to the adverse party the intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that such statement is probative of the issues at hand, to provide the adverse party with a fair opportunity to prepare to meet it. [1981 c.892 §64; 1989 c.300 §1; 1989 c.881 §1; 1991 c.391 §1; 1995 c.200 §1; 1995 c.476 §1; 1995 c.804 §2; 1999 c.59 §13; 1999 c.674 §1; 1999 c.945 §1; 2001 c.104 §11; 2001 c.533 §1; 2001 c.870 §5; 2003 c.538 §2; 2005 c.118 §3; 2007 c.63 §2; 2007 c.70 §12; 2007 c.636 §3; 2009 c.610 §9; 2011 c.661 §14; 2011 c.703 §21; 2017 c.529 §21]

## RULE 804

**40.465**

HEARSAY EXCEPTIONS WHEN THE DECLARANT IS UNAVAILABLE

(1) "Unavailability as a witness" includes situations in which the declarant:

(a) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of a statement;

(b) Persists in refusing to testify concerning the subject matter of a statement despite an order of the court to do so;

(c) Testifies to a lack of memory of the subject matter of a statement;

(d) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(e) Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance (or in the case of an exception under subsection (3)(b), (c) or (d) of this section, the declarant's attendance or testimony) by process or other reasonable means.

(2) A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(3) The following are not excluded by ORS 40.455 if the declarant is unavailable as a witness:

(a) Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(b) A statement made by a declarant while believing that death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(c) A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by

the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(d)(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated; or

(B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(e) A statement made at or near the time of the transaction by a person in a position to know the facts stated therein, acting in the person's professional capacity and in the ordinary course of professional conduct.

(f) A statement offered against a party who intentionally or knowingly engaged in criminal conduct that directly caused the death of the declarant, or directly caused the declarant to become unavailable as a witness because of incapacity or incompetence.

(g) A statement offered against a party who engaged in, directed or otherwise participated in wrongful conduct that was intended to cause the declarant to be unavailable as a witness, and did cause the declarant to be unavailable.

(h) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of the Oregon Evidence Code and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this paragraph unless the proponent of it makes known to the adverse party the intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that the statement is probative of the issues at hand, to provide the adverse party with a fair opportunity to prepare to meet it. [1981 c.892 §65; 2005 c.458 §1]

## RULE 805

**40.470**

HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under ORS 40.455 if each part of the combined statements conforms with an exception set forth in ORS 40.460 or 40.465. [1981 c.892 §66]

## RULE 806

**40.475**

ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in ORS 40.450 (4)(b)(C), (D) or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the hearsay statement of the declarant, is not subject to any requirement under ORS 40.380 relating to impeachment by evidence of inconsistent statements. If the party against whom a hearsay statement has been

admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. [1981 c.892 §67]

## AUTHENTICATION AND IDENTIFICATION

### RULE 901

**40.505**

REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(1) The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(2) By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of subsection (1) of this section:

(a) Testimony by a witness with knowledge that a matter is what it is claimed to be.

(b) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(c) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(d) Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.

(e) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(f) Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(A) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(g) Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(h) Evidence that a document or data compilation, in any form:

(A) Is in such condition as to create no suspicion concerning its authenticity;

(B) Was in a place where it, if authentic, would likely be; and

(C) Has been in existence 20 years or more at the time it is offered.

(i) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(j) Any method of authentication or identification otherwise provided by law or by other rules prescribed by the Supreme Court. [1981 c.892 §68]

### RULE 902

**40.510**

SELF-AUTHENTICATION

(1) Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or

agency thereof, and a signature purporting to be an attestation or execution.

(b) A document purporting to bear the signature, in an official capacity, of an officer or employee of any entity included in subsection (1)(a) of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) A document purporting to be:

(A) Executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation; and

(B) Accompanied by a final certification as provided in subsection (3) of this section as to the genuineness of the signature and official position of:

(i) The executing or attesting person; or

(ii) Any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

(d) A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (1)(a), (b) or (c) of this section or otherwise complying with any law or rule prescribed by the Supreme Court.

(e) Books, pamphlets or other publications purporting to be issued by public authority.

(f) Printed materials purporting to be newspapers or periodicals.

(g) Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

(h) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(i) Commercial paper, signatures thereon and documents relating thereto to the extent provided by the Uniform Commercial Code or ORS chapter 83.

(j) Any signature, documents or other matter declared by law to be presumptively or prima facie genuine or authentic.

(k)(A) A document bearing a seal purporting to be that of a federally recognized Indian tribal government or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(B) A document purporting to bear the signature, in an official capacity, of an officer or employee of any entity included in subparagraph (A) of this paragraph, having no seal, if a public officer having a seal and having official duties in the district or political subdivision or the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(L)(A) Any document containing data prepared or recorded by the Oregon State Police pursuant to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police, and the person retrieving the data attests that the information was retrieved directly from the system and that the document accurately reflects the data retrieved.

(B) Any document containing data prepared or recorded by the Oregon State Police that is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police and that is electronically transmitted through public or private computer networks under an electronic signature adopted

by the Oregon State Police if the person receiving the data attests that the document accurately reflects the data received.

(m) A report prepared by a forensic scientist that contains the results of a presumptive test conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that the report accurately reflects the results of the presumptive test.

(2) For the purposes of this section, "signature" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(3) A final certification for purposes of subsection (1)(c) of this section may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification. [1981 c.892 §69; 1995 c.200 §2; 1999 c.674 §2; 2001 c.104 §12; 2003 c.14 §21; 2003 c.538 §3; 2005 c.22 §31; 2005 c.118 §4; 2007 c.636 §4; 2009 c.610 §10]

## RULE 903

**40.515**

SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing. [1981 c.892 §70]

# CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

## RULE 1001

**40.550**

DEFINITIONS FOR ORS 40.550 TO 40.585

As used in ORS 40.550 to 40.585, unless the context requires otherwise:

(1) "Duplicate" means a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, by mechanical or electronic re-recording, by chemical reproduction, by optical imaging or by other equivalent techniques that accurately reproduce the original, including reproduction by facsimile machines if the reproduction is identified as a facsimile and printed on nonthermal paper.

(2) "Original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(3) "Photographs" includes still photographs, X-ray films, video tapes and motion pictures.

(4) "Writings" and "recordings" mean letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, optical imaging, mechanical or electronic recording or other form of data compilation. [1981 c.892 §71; 1991 c.857 §1; 1995 c.760 §1]

## RULE 1002

**40.555**

REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in ORS 40.550 to 40.585 or other law. [1981 c.892 §72]

## RULE 1003

**40.560**

ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original; or

(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original. [1981 c.892 §73]

## RULE 1003-1

**40.562**

ADMISSIBILITY OF REPRODUCTION

(1) If any business, institution or member of a profession or calling, in the regular course of business or activity, has kept or recorded any memorandum, writing, entry, print, representation or a combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, optical imaging or other process that accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity and the principal or true owner has not authorized destruction or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original.

(2) If any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business, and in accordance with ORS 192.040 to 192.060 and 192.105, has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, optical imaging or other process that accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity and the principal or true owner has not authorized destruction or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original. [1995 c.760 §3]

## RULE 1004

**40.565**

ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording or photograph is admissible when:

(1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(2) An original cannot be obtained by any available judicial process or procedure;

(3) At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or

(4) The writing, recording or photograph is not closely related to a controlling issue. [1981 c.892 §74]

## RULE 1005

**40.570**

PUBLIC RECORDS

The contents of an official record or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with ORS 40.510 or testified to be correct by a witness who has compared it with the original. If such a copy cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given. [1981 c.892 §75; 1983 c.433 §3]

## RULE 1006

**40.575**

SUMMARIES

The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court. [1981 c.892 §76]

## RULE 1007

**40.580**

TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings or photographs may be proved by the testimony or deposition of the party against whom offered or by the party's written admission, without accounting for the nonproduction of the original. [1981 c.892 §77]

## RULE 1008

**40.585**

FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings or photographs under ORS 40.550 to 40.585 depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with ORS 40.030. However, the issue is for the trier of fact to determine as in the case of other issues of fact when the issue raised is:

(1) Whether the asserted writing ever existed;

(2) Whether another writing, recording or photograph produced at the trial is the original; or

(3) Whether the other evidence of contents correctly reflects the contents. [1981 c.892 §78]