



## SUPPLEMENTAL LOCAL RULES

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# Circuit Court of the State of Oregon Third Judicial District Marion County

February 1, 2011

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. NOTE: These rules must be read together with the applicable provisions of statute, ORCP and UTCR.

RULES OF THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION  
THIRD JUDICIAL DISTRICT

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## **Chapter 1 Hours of Operation**

### **1.151 HOURS OF OPERATION**

Normal hours of operation for the Clerk's offices shall be 7:30 a.m. to 5:00 p.m. at the Courthouse (100 High Street NE), and from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m. at both the Courts Annex (4000 Aumsville Highway SE) and the Juvenile Court (3030 Center Street NE). These hours are subject to occasional modification, with notice to be posted on the affected offices at least 24 hours in advance, whenever possible.

### **1.161 FILING OF DOCUMENTS IN COURT**

1. Filings are accepted at the Marion County Circuit Court Accounting Office located in the Marion County Courthouse, 100 High Street NE, Salem, Oregon. Documents delivered by mail shall be addressed to: Marion County Circuit Court, P.O. Box 12869, Salem, Oregon, 97309-0869. If a fee is required to be paid prior to filing of a document, then filing may occur only if the fee is satisfied.
2. Documents filed in a case assigned to a judge may be filed with the assigned judge's staff unless the filing requires a filing fee. For purposes of ORS 10.010 and ORCP 9, judicial staff are conferred the powers of the clerk of the court.

### **1.171 WEBSITE**

The website for the Circuit Court for the Third Judicial District is located at <http://courts.oregon.gov/Marion>

## **Chapter 2 Standards for Pleadings and Documents**

### **2.015 CASE NUMBERS**

In all cases which are assigned to an individual department within the Circuit Court's Individual Assignment System, all pleadings, motions and other documents filed must contain the name or initials of the Judge to whom the case has been assigned immediately below the case number in the caption of the document. In presenting documents in cases which have not been assigned in the Court's Individual Assignment System, no such addition is required or appropriate.

## **Chapter 5 Motions in Civil Cases**

### **5.045 REFEREES (SPECIAL MASTERS)**

In any case involving matters requiring specialized technical expertise, such as business valuation for dissolution of business partnership, parties shall consider the use of referees under ORCP 65 for determination of those matters involving specialized expertise. If the use of such referees is not appropriate, the parties shall so advise the Court along with the basis for such position.

**5.061****PRESENTMENT OF EX-PARTE MATTERS**

Ex parte matters in a case assigned to an individual calendar judge shall be presented to the assigned judge. If the case has not been assigned, ex parte matters should be presented to the Referee's office.

**5.065****SHOW CAUSE ORDERS, OTHER THAN FOR CONTEMPT**

1. Motions for Show Cause Orders (other than for contempt of Court) must separately state each item of relief requested by the moving party. Such motions may not state the requested relief by reference to a supporting affidavit.
2. Unless otherwise specifically required by statute or ORCP or specifically directed by the Court, Show Cause Orders (other than for contempt of Court) shall not require the personal appearance of the opposing party and shall not set a time certain for response by the opposing party. Instead, when dealing with temporary relief and when served within the State of Oregon, such orders shall require the opposing party to file an Answer in writing to the Order within 10 days from the date of personal service of the Order upon the opposing party, or, if served by mail, within 13 days from the date of the mailing of the Order (which mailing date shall be stated in or endorsed upon the Order). When the Show Cause Order deals with permanent relief or when it is served outside of the State of Oregon or by publication, the order shall require the opposing party to file an answer in writing within 30 days from the date of service or the date of first publication, whichever the case may be.
3. Show Cause Orders which do not require the personal appearance of the opposing party shall contain or have attached a NOTICE which is in substantial conformity with the specimen NOTICE set forth in Appendix A to these Rules. Service of such Orders shall be accomplished by serving upon the opposing party a true copy of the Order (with the NOTICE incorporated therein or attached thereto) together with a true copy of the motion and order and true copy of the affidavit submitted in support of the motion.
4. If a Show Cause Order does not require the personal appearance of the opposing party and the opposing party fails to file a written Answer to the Show Cause Order within the time allowed by the Order, the moving party may present ex parte, an Order granting relief sought by the moving party, providing the return of service of the Show Cause Order has been filed of record or is presented with the proposed ex-parte Order. The Court, in its discretion, may allow or deny the requested relief in whole or part, ex parte, or the Court may direct that a hearing be scheduled for the presentation of additional evidence in support of the relief sought by the moving party.
5. Show Cause Orders (other than for contempt of Court) which, under ORCP or by direction of the Court, require the personal appearance of the opposing party, shall specifically state that the opposing party must appear in person before the Court at the time stated in the Order and shall further specifically state either that such appearance is for the purpose of setting a hearing on the merits of the relief sought by the moving party, or that such appearance is for the purpose of a hearing on the merits of the relief sought by the moving party, as the case may be.

## **Chapter 6 Trials**

### **6.025 DEMAND FOR REPORTING**

All cases, other than criminal cases, shall be scheduled for trial or hearing without reporting unless 48 hours before trial or hearing, written demand for reporting is filed with the Court, together with service upon opposing party, and the appropriate fee is paid. Failure to file such written demand for reporting and pay the fee will be deemed a waiver of reporting.

## **Chapter 7 Case Management and Calendaring**

### **7.025 INDIVIDUAL ASSIGNMENT SYSTEM**

The Court maintains an Individual Assignment System wherein the Judges are directly assigned full responsibility for management of designated cases from assignment to ultimate conclusion, including post-judgment matters. All issues relating to assigned cases, including scheduling and procedural questions, are to be directed to the assigned Judge.

## **Chapter 8 Domestic Relations Pleadings**

See Chapter 12 regarding mandatory mediation in domestic relations cases.

### **8.005 PLEADINGS**

1. A party shall place the notation "YOUNG CHILD INVOLVED" in the title of the first pleading in the case (including a petition and a response) if the parties have a joint child that is three years of age or younger, including an unborn child.
2. The requirement in paragraph (1) shall apply to the following proceedings:
  - a. Annulment or dissolution of marriage,
  - b. Legal separation,
  - c. Petition to establish custody or parenting plans (including paternity),
  - d. Family Abuse Prevention Act proceedings, and
  - e. Post-judgment litigation involving custody or parenting plans.
3. A party shall place the notation "THERE IS OTHER LITIGATION INVOLVING CHILD CUSTODY" in the title of the first pleading and all subsequent pleadings involving child custody including the case number of the other litigation. "Other litigation involving child custody" includes proceedings involving a Family Abuse Prevention Act Order (restraining order), dependency or delinquency cases in juvenile court, child support, filiation, parenting time, visitation, guardianship or domestic relations. The case number for any other litigation involving child custody must also be included in the caption of the pleading.

**PARENT EDUCATION PROGRAM**

## 1. Mandatory Parent Education Program

- a. A parent education program of the type authorized by ORS 3.425 is established. The program shall provide information on the impact of family restructuring on children to each person named as a party in the following types of proceedings, when such proceedings involve minor children:
  - i. Annulment or dissolution of marriage,
  - ii. Legal separation,
  - iii. Petition to establish custody or parenting plans (including paternity), and
  - iv. Post-judgment litigation involving custody or parenting plans.
- b. Each party who files an appearance in a proceeding of the types described above shall complete the program unless exempted by the Court. A final judgment shall not be entered in the proceeding until each party not otherwise exempted by the Court who has filed an appearance has completed the program.
- c. The party initiating the proceeding shall register for the program within 15 days after filing the initiating pleading with the Court. A copy of this local rule and instructions on how to register for the program shall be served by the initiating party on all parties against whom relief is sought. Service shall be completed in the manner provided in ORCP 7 at the time the initiating documents are served. All other parties shall have 30 days after service of the notice upon them to register for the program.
- d. The Court shall provide a copy of this rule to the initiating party for service upon all parties against whom relief is sought, together with a statement describing the program including contact telephone numbers, addresses and statement of costs.
- e. The program provider shall issue a certificate of completion when the participant has completed the program. The certificate must be filed with the Court.
- f. The Court may exempt one or both parties from the program if, after reviewing the requesting party's motion and supporting affidavit, the Court determines that participation is unnecessary or inappropriate.

## 2. Sanctions

- a. Failure or refusal to complete the program in a timely manner shall be considered by the Court in making its ruling on issues which are in dispute.

- b. A party who has completed the program shall have the right to:
  - i. Request that the pleadings of a party who has appeared be stricken if that party has not completed the program in a timely manner without good reason.
  - ii. Request entry of an order from the Court to compel the non-complying party's completion of the program should the non-complying party not have completed the program in a timely manner without good reason. The Court may enter an award of attorney fees in favor of the complying party who utilizes this option to force the non-complying party's compliance with this rule.

### 3. Fees

- a. Each party shall pay a fee of \$50 to the program provider upon registering for the program.
- b. The program registration fee may be waived or deferred by the Court. The procedure for requesting a fee waiver or deferral shall be the same as used to request a waiver or deferral of the fee when filing a petition for dissolution.
- c. Application for fee waiver or deferral, if any, must be made prior to registering for the program. When registering, either the fee must be paid or the order waiving or deferring the fee must be provided to the program provider.

## 8.013

### ALTERNATIVE PARENT EDUCATION PROGRAMS

- 1. For purposes of this rule, “alternative parent education program” means a parent education program available in the community and approved by the Presiding Judge, other than the parent education program mandated under Marion County Circuit Court SLR 8.011. The Court shall maintain a list of alternative parent education programs approved by the Presiding Judge.
- 2. Parties subject to participation in a parent education program pursuant to SLR 8.011(1)(a)(iv)(post-judgment litigation involving custody or parenting plans) may be ordered to participate in an alternative parent education program.
- 3. Parties ordered to participate in a custody evaluation pursuant to the provisions of ORS 107.425 and requesting the advancement of conciliation funds to pay or partially pay for the services up front, may be ordered to participate in an alternative parent education program in addition to the requirements of SLR 8.011.
- 4. The requirement to participate in the program pursuant to SLR 8.011(1)(a)(iv) shall be deemed satisfied if the Court orders participation in an alternative program under subsection (2) and a certificate of completion or other satisfactory evidence of completion is filed with the Court.
- 5. The fee for participation in a parent education program shall be the responsibility of each parent unless otherwise ordered by the Court.

**8.015****STATEMENT OF ASSETS**

1. In lieu of the filing of separate statements of assets and liabilities, values and proposed distribution, as provided by UTCR, counsel for the parties may file a single joint statement containing a single list of those assets and liabilities (described individually or by groupings, as counsel may agree) which either or both parties claim to be subject to distribution by the Court. Such single joint statements shall set forth, opposite description of each listed asset and liability (or assets and liabilities by grouping), a separate listing of each party's valuation and proposal for distribution of such asset or liability or a statement that such asset or liability is not subject to distribution by the Court, or that, for the reasons stated, the value of the asset or liability should not be taken into account by the Court in the division and distribution of the parties' assets and liabilities.
2. In the event counsel for the parties file separate statements pursuant to UTCR, such statements must include all assets and liabilities which either or both parties claim to be subject to distribution by the Court; must contain identical description of such assets and liabilities (either individually or by grouping); must list the assets and liabilities in the same order; and must include the filing party's position that the asset or liability is not subject to distribution by the Court, or, that for the reasons stated, the value of the asset or liability should not be taken into account by the Court in the division and distribution of the parties' assets and liabilities.
3. Statements of assets and liabilities, whether filed jointly or separately, shall, to the extent possible, also reflect the following:
  - a. disputed property should be grouped, separate from undisputed property;
  - b. sub-totals should be reflected for each category and grouping;
  - c. wholesale and retail bluebook values should be listed for all vehicles listed; and
  - d. assets and liabilities should be divided into short- and long-term categories.

**8.017****REFEREES (SPECIAL MASTERS)**

Where the use of referees under ORCP 65 is appropriate in domestic relations matters, SLR 5.045 shall apply.

**8.019****PARENTING TIME COORDINATORS**

1. A Parenting Time Coordinator may be appointed pursuant to ORS 107.425(3).

2. A Parenting Time Coordinator shall have at least one of the following qualifications: a mental health professional, attorney, mediator or court staff personnel with specialized training as a Parenting Time Coordinator or experience as a Parenting Time Coordinator.
  - a. A “mental health professional” for purposes of this rule is a person with one of the following qualifications:
    - i. Masters, Psy.D or Ph.D degree in psychology, counseling or social work, or equivalent training, experience and education, or
    - ii. M.D. with psychiatric specialization.
  - b. An “attorney” for purposes of this rule is a person with a degree in jurisprudence.
  - c. A “mediator” for purposes of this rule is a person meeting the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.2.
  - d. “Specialized training as a Parenting Time Coordinator” shall include:
    - i. training required for domestic relations mediators as specified in the Oregon Judicial Department Court- Connected Mediator Qualifications Rules, Section 3.6(1)(b), seminar or graduate level course work in domestic violence, and any other training required by the Court; and
    - ii. while actively practicing as a Parenting Time Coordinator, completion of a two hour course on domestic violence per year from a local or nationally recognized organization. During the first year and for every third year thereafter, the training shall be through a local organization. Training through service providers recommended by the Marion County Domestic Violence Council shall be presumed to satisfy this requirement. However, the Court retains final authority to determine what satisfies this requirement; and

3 Any Parenting Time Coordinator appointed to a case involving parents of a different culture than his or her own shall have an affirmative duty to educate himself or herself about the norms and values of that culture prior to conducting any substantive work on the case.

4 A person who does not meet the requirements of subsection (2) may act as a Parenting Time Coordinator if he or she has other qualifications deemed by the Court to be sufficient to act as a Parenting Time Coordinator in a given case. For example, an M.D. with pediatric specialization may be qualified depending on his or her background and experience.

**8.021 MOTION FOR ORDER OF DEFAULT; TIME FOR SERVICE AND APPEARANCE**

Any party who has appeared in a domestic relations action in response to a contempt proceeding or to motions for temporary relief in such action, but who has not filed a response to the petition in such action, shall be entitled to be served with a copy of any motion for the entry of an order adjudicating his or her default in such action and with a copy of any motion for the entry of a default judgment against him or her, at least 10 days (plus 3 additional days if service is accomplished by mail) before the entry of such order or such judgment. Further, the motion for the default or for the default judgment shall request that such relief be granted only if the opposing party does not appear in response to the petition within 10 days from the date of the motion.

**8.061 SHOW CAUSE ORDERS, OTHER THAN FOR CONTEMPT**

The provisions of SLR 5.065 shall apply in domestic relations actions.

**8.075 PARENTING PLANS**

The Court may utilize a sample parenting plan, which is incorporated within these rules as Appendix B, if the parents are unable to jointly agree on a customized plan.

**Chapter 9 Probate**

See Chapter 12 regarding mediation in probate cases.

**9.005 PROBATE COMMISSIONER**

1. A Probate Commissioner appointed by the Court shall assist the Court in the administration of decedent's estates, guardianships, conservatorships, trust estates, name change proceedings and adoptions.
2. The Probate Commissioner shall have authority to take the following actions in uncontested decedent's estates, guardianships, conservatorships, trust estates, name change proceedings and adoptions:
  - a. To make and enter orders on behalf of the Court, admitting wills to probate, appointing special administrators, personal representatives, guardians and conservators;
  - b. To approve and set the amount of bond for special administrators, personal representatives, guardians and conservators;
  - c. To screen all filings, including accountings, to determine compliance with procedural requirements imposed by law, by UTCRs and by SLRs.

**9.015 SUBMISSION OF EX-PARTE ORDERS IN UNCONTESTED DECEDENT'S ESTATES, GUARDIANSHIPS, CONSERVATORSHIPS, TRUST ESTATES, NAME CHANGE PROCEEDINGS AND ADOPTIONS**

All ex parte orders and all other matters in uncontested decedent's estates, guardianships, conservatorships, trust estates, name change proceedings and adoptions shall be submitted to the Probate Commissioner either directly or through the Trial Court Administrator. Such orders and matters may be presented at any time without the necessity of the appearance of the attorney for the fiduciary.

**9.025 GUARDIANS**

Within 30 days of each anniversary of appointment, every guardian (whether the ward is a minor or is an adult incapacitated person) shall submit to the Probate Commissioner for filing an annual report, in letter form or otherwise, signed by the guardian or his attorney of record, stating whether or not the need for the guardianship continues to exist, and if so, the basis for the need for continuation.

**9.081 ORAL OBJECTIONS**

Oral objections, where permitted in probate matters under ORS 125.075, shall be presented in the probate office.

**9.111 SHOW CAUSE ORDERS**

The provision of SLR 5.065 shall apply in adoption matters.

**9.161 ACCOUNTING PROBATE MATTERS**

Parties must file accountings in substantially the form specified by UTCR Form 9.160.

**9.200 VISITORS**

Pursuant to ORS 125.165 and 125.170, the Presiding Judge of Marion County establishes by order:

1. Qualifications for persons serving as visitors for the court;
2. Standards and procedures to be used by visitors in the performance of their duties; and
3. Fees for visitors conducting interviews and preparing reports.

**Chapter 12 Mediations**

**12.005 MEDIATION PROGRAMS**

1. Marion County SLR 12.015 through 12.095 shall apply to mediation of custody and parenting time issues in domestic relations cases under ORS 107.765.
2. Marion County SLR 12.101 through 12.105 shall apply to mediation of financial issues in domestic relations cases under ORS 107.755(4).

3. Marion County SLR 12.115 through 12.165 shall apply to mediation of civil cases as an alternative to court-annexed arbitration.
4. Marion County SLR 12.175 through 12.255 shall apply to mediation of probate cases.
5. Marion County SLR 12.305 shall apply to mediation of small claims and FED cases.

**12.015 APPLICATION OF RULES**

1. These rules do not apply to mediation by private agreement.
2. These rules shall not be applied to restrict the process, but rather to grant considerable discretion to the mediator and mediating parties.

**12.025 DOMESTIC RELATIONS MEDIATION**

1. Mandatory Mediation

All cases eligible for mandatory mediation under ORS 107.765 shall be referred to mediation, as provided in these rules.

2. Exclusion from Mediation

A matter may be excused from mandatory mediation upon application by a party to the Court with service upon the opposing party and after being given the opportunity to be heard in objection and upon a showing of good cause.

**12.035 RELATIONSHIP TO COURT JURISDICTION**

1. A case filed in the Circuit Court remains under the jurisdiction of that Court in all phases of the proceedings, including mediation.
2. Any agreement 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.
3. At any point during the mediation, the Court may approve a temporary custody and parenting time order reflecting the parties' agreement as to those issues.

**12.045 MEDIATORS**

1. To qualify as a Court-approved mediator, a person must:
  - a. Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.2;
  - b. Sign and file an application with the Court; and
  - c. Receive approval by the Presiding Judge, upon recommendation of the Domestic Relations Mediation Screening Committee.

2. Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 1.3.
3. The Presiding Judge may remove a mediator from the court-approved list at any time at the Presiding Judge's discretion.

**12.055 ASSIGNMENT TO MEDIATOR**

1. The parties may select a mediator of their own choosing; however, if the mediator is not on the list of mediators approved by the Court, the expense of the mediator shall be the responsibility of the parties.
2. In the absence of a mediator selected by the parties, the Court will appoint a mediator from the list of court-approved mediators.

**12.065 AUTHORITY OF MEDIATORS**

1. A mediator has authority and control over the mediation process; but a mediator has no control or authority over the parties or over their decisions in the case.
2. A mediator shall encourage disputing parties to obtain individual legal advice and individual legal review of any mediated agreement before signing any agreement.
3. A mediator shall not act as a lawyer for either party.

**12.075 SCHEDULING OF MEDIATION SESSIONS**

1. Upon receipt of a mediation assignment, a mediator shall immediately notify the parties of a reasonable date and time for the initial mediation session which shall occur in the mediator's office, unless otherwise agreed upon between the mediator and the parties. The initial mediation session shall occur within fourteen (14) days of the mediator's receipt of first notice of assignment, assuming both parties have completed Cope.
2. Mediation shall be completed in a prompt manner so as to not unduly delay the Court and in no event later than any deadline date ordered by the Court. The Court expects most cases to be completed within 49 days of the date of referral.

**12.085 MEDIATOR'S REPORT**

1. Report to the Court

In all cases which have been referred to a court-appointed mediator, the mediator shall make a final report to the Court describing the conclusion of the mediation, whether successful or unsuccessful.

2. Successful Mediation

The mediator shall prepare a written memorandum of any agreement which the parties have reached as a result of mediation. The unsigned, proposed form of memorandum of agreement shall be distributed to the parties and to their counsel by the mediator. If the parties choose to sign a memorandum of agreement after having had an opportunity to review it with a lawyer, the document may then be incorporated into a Court Order or Judgment.

3. Unsuccessful Mediation

The mediator may notify the Court at any time following the initial mediation session involving the parties and the mediator that mediation has been unsuccessful, in which case the proceeding will be scheduled for hearing in the same course and with the same priority as if there had been no mediation. The mediator may determine that the mediation has been unsuccessful if the parties are unable to resolve the custody or parenting plan controversy; or, if one or both parties are unwilling to participate in mediation; or, if the mediator determines that either party is using the mediation process in bad faith for the delay of resolution of other issues.

**12.095**

**COMPENSATION OF MEDIATORS (Custody and Parenting Issues)**

1. In issues subject to mandatory mediation under these rules (custody and parenting plan), Marion County shall compensate the mediator at hourly rate set by order of the Presiding Judge, up to a maximum of eight (8) hours per case, including time allocated to no shows. A maximum of one (1) hour of this time may be allocated to administrative time setting appointments and corresponding with parties and attorneys, and one (1) hour may be charged for time spent drafting the parties' agreement. The court expects that eighty (80) percent of cases will be concluded in a maximum of six (6) hours. The funding source shall be fees collected pursuant to ORS 107.615 and 21.112.
2. Marion County shall not pay for any mediation expenses beyond the eight (8) hours authorized under subsection (1) without a signed court order in the court file authorizing the additional time. After the mediator has filed a report with the court indicating whether the case has settled, further mediation expenses shall be paid by the parties in the absence of a court order authorizing additional payment. If the parties wish to use any remaining balance of the initial eight (8) hours within a year of the judgment, the mediator shall notify the mediation coordinator in advance of conducting further mediation.
3. In the event both parties do not appear at a scheduled mediation session without at least 24 hours advance notice to the mediator, the mediator may request a cancellation fee, set by order of the Presiding Judge. Alternatively, the mediator may mediate with one party if shuttle mediation would be helpful in resolving the case, and charge the regular hourly rate. The party canceling must provide advance notice on a regular business day to avoid imposition of the cancellation fee.

In order to charge the cancellation fee, the mediator must send a written notification identifying the responsible parent and the amount charged to the assigned judge and both parties, through their attorneys if they are represented. The mediator shall refer the case back to the court after two no shows. Marion County shall not pay for more than two no shows on any one case. The assigned judge will allocate the cost of any no shows to the responsible party, in the absence of good cause shown.

4. In issues not involved in mandatory mediation, the parties may agree to mediate with the court-appointed mediator; but the compensation arrangement shall be between the parties and the mediator, as they may agree in writing, and the compensation rate shall be negotiated by and between the parties and the mediator, unless the Court has entered an order allowing payment pursuant to SLR 12.105(2).

If the parties select a mediator who is not on the court-approved list, the compensation shall be fixed by agreement between the parties and the mediator, and shall be the responsibility of the parties.

#### **12.101 DOMESTIC RELATIONS FINANCIAL ISSUES MEDIATION**

The parties may agree to mediate financial issues, including, but not limited to, property and debt division, and support. The Court may also refer matters to mediation on the motion of one party, or on the Court's own motion.

#### **12.103 MEDIATION PANEL**

1. To qualify as a Court-approved mediator, a person must:
  - a. Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.3;
  - b. Sign and file an application with the Court; and
  - c. Receive approval by the Presiding Judge, upon recommendation of the Domestic Relations Mediation Screening Committee.
2. Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 1.3.
3. The Presiding Judge may remove a mediator from the Court-approved list at any time at the discretion of the Presiding Judge.

#### **12.105 COMPENSATION OF MEDIATOR (Financial Issues)**

1. The parties are responsible for paying the mediator for his or her time. Appropriate fee arrangements should be made with the mediator prior to the first session.

2. The Court may pay for up to \$480 of the mediator's fee if one or both of the parties are indigent.

**12.115 CIVIL MEDIATION**

1. Parties to civil cases which are subject to mandatory arbitration under ORS 36.400 through 36.425, UTCR Chapter 13 and SLR Chapter 13 may satisfy this requirement by electing and participating in court-annexed mediation pursuant to ORS 36.180 through 36.210 and these rules.
2. Pursuant to ORS 36.185, the following cases are excluded from elective mediation under these rules:
  - a. proceedings in small claims court; and
  - b. proceedings in forcible entry and detainer cases.

**12.125 MEDIATION PANEL (Civil)**

1. To qualify as a Court-approved mediator, a person must:
  - a. Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.1;
  - b. Sign and file an application with the Court; and
  - c. Receive approval by the Presiding Judge, upon recommendation of the Marion County Commission on Dispute Resolution.
2. Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 1.3.
3. The Presiding Judge may remove a mediator from the court-approved list at any time at the Presiding Judge's discretion.

**12.135 MOTIONS**

At the discretion of the Court, a potentially dispositive motion may be determined by the Court prior to mediation. Any other motions shall be stayed pending disposition of mediation.

**12.145 REFERRAL TO MEDIATION**

1. The case shall be assigned to arbitration unless an election for mediation is jointly made by all parties not in default or their respective counsel.
2. The parties shall have the option to select a mediator from a list provided by the Court. The parties may choose, at their option, mediation services other than those suggested by the Court. So long as these guidelines are followed, such mediation will qualify as an election not requiring mandatory arbitration.

3. The mediator will assign the date, time and meeting place of the mediation session. Additional sessions may be set at the discretion of the mediator with the cooperation of the parties.
4. If the parties do not agree upon a mediator, the Court shall exercise its authority under ORS 36.200(2) to assign the case to a mediator.

**12.155            COMPENSATION OF MEDIATOR (Civil)**

Compensation of the mediator shall be the same as for arbitration, as to rate, maximum, payment timelines and allocation of cost, unless agreed to otherwise between all parties and the mediator.

**12.165            COMPLETION OF MEDIATION**

1. Unless otherwise ordered by the Court, mediation shall be completed within 90 days of assignment.
2. The case shall be reported as "settled" or "not settled." If the parties are not able to settle, but nonetheless are able to limit issues or partially settle the case, the agreement regarding the partial settlement shall be reported to the Court for the purposes of further proceedings. In such an instance, the parties and mediator shall sign the form.
3. In all cases assigned to mediation in which a settlement is reached, the parties shall report such settlement to the Court as follows:
  - a. If the settlement is prior to the mediation hearing, the parties shall report the settlement to the Court and the mediator.
  - b. If the settlement is after the commencement of the mediation hearing, the parties shall cooperate with the mediator, and the mediator shall file a notice of the settlement with the Court.
4. If a case is reported as "settled," an outline of the terms of the agreement (which is not required to be typed), signed by both parties, shall be filed by the mediator with the Court within 14 judicial days. It is the responsibility of the parties and their counsel to file a stipulated judgment dismissing the case or stipulated judgment within 21 days of the filing of the mediator's outline of the agreement. Unless further services are engaged by the parties, the mediator's services are terminated with the filing of the outline of agreement. It is the parties' responsibility to draft any specific language regarding the particulars of the settlement and judgment.
5. If the parties are not able to settle a mediated case, the result shall be reported as "not settled."
6. Unless there is an election by the parties to arbitrate, the case shall proceed to be tried in the normal course. Each party shall deposit the sum otherwise provided by ORS 36.425(2) (c).

**12.175 PROBATE MEDIATION**

When all parties to a probate case request that the case be sent to mediation, the Court shall refer the case to mediation. The Court may also refer matters to mediation on the motion of one party, or on the Court's own motion.

**12.195 MEDIATION PANELS**

There shall be at least two mediation panels, one to mediate guardianships and adoptions, and the second to mediate trust matters, will disputes and conservatorships.

**12.195 APPOINTMENT OF MEDIATORS**

1. To qualify as a Court-approved mediator, a person must:
  - a. Meet the requirements of the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 2.1;
  - b. Sign and file an application with the Court;
  - c. Receive approval by the Presiding Judge, upon recommendation of the Commission on Dispute Resolution; and
  - d. Complete legal education seminars as required by the Court.
2. Upon a showing of good cause, the Presiding Judge may allow appropriate substitutions, or allow a waiver, of the minimum requirements consistent with the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Section 1.3.
3. The Presiding Judge may remove a mediator from the panel at the Presiding Judge's discretion.

**12.205 REFERRAL TO MEDIATION**

1. Upon appearance of all parties not in default, or the filing of an objection, the case will be set for a status conference. If the matter cannot be resolved at the status conference, and the Court believes the case is appropriate for mediation, the Court will explain that mediation is available, and encourage the parties to mediate.
2. The parties shall have 14 days from the date of the status conference to notify the Court of their intention to mediate. Reasonable requests submitted to the Court beyond this deadline will be accommodated.

**12.215 ASSIGNMENT OF MEDIATOR AND SCHEDULING**

1. The parties shall have the option to select a mediator from a list provided by the Court. The parties may choose, at their option, mediation services other than those suggested by the Court.

2. The mediator will assign the date, time and meeting place of the mediation session. Additional sessions may be set at the discretion of the mediator with the cooperation of the parties.
3. If the parties do not agree upon a mediator, the Court shall exercise its authority under ORS 36.200(2) to select the mediator.

**12.225            COMPENSATION OF MEDIATORS (Probate)**

1. The compensation for mediation shall be \$100 per hour and shall be split equally by the parties, unless otherwise agreed.
2. A \$500 deposit shall be submitted to the mediator within 14 calendar days of assignment of a mediator. Each party shall pay his or her share of the deposit to the mediator directly. Any amount of the deposit not used for the mediation shall be refunded to the parties upon the completion of the mediation.
3. If any party fails to pay the deposit within 14 days of assignment, the mediator may suspend the mediation date until payment is made.

**12.235            PLACE OF MEDIATION**

The mediation shall be conducted in Marion County unless this requirement is waived by the parties in writing prior to the first mediation session. A mediator's failure to comply with this rule may result in removal from the panel.

**12.245            COMPLETING MEDIATION**

1. Unless otherwise ordered by the Court, the mediation shall be completed within 90 days from the date the mediator was assigned.
2. If the mediation cannot be completed within 90 days, the mediator shall request an extension of time from the Court.

**12.255            SETTLEMENT OF MEDIATION**

In all cases assigned to mediation in which a settlement is reached, the parties shall report such settlement to the Court as follows:

1. If the settlement is prior to the mediation, the parties shall report the settlement to the Court and the mediator.
2. If the settlement is after the commencement of the mediation;
  - a. If either party is represented by an attorney, it shall be the responsibility of the attorney(s) to submit a stipulated judgment with the Court.
  - b. If both parties are unrepresented by attorneys, the mediator shall notify both parties in writing, recommending the proposed agreement be reviewed by an attorney and, if either party does seek review of the agreement, it shall be the attorney's responsibility to submit a stipulated judgment with the Court.

- c. The mediator shall further notify the parties that if neither party tells the mediator they are represented by an attorney within 14 days of the notice, the mediator will submit an outline of the terms with the Court, and the Court will prepare a stipulated judgment.
- d. If any party is represented by an attorney, the mediation shall send the attorney(s) an outline of the terms of the proposed agreement. The outline shall be mailed within 14 days of the date the parties reach agreement.
- e. If an attorney is required to submit a stipulated judgment under these rules, the attorney shall do so within 21 days from the date the mediator mails to the attorney the outline of terms.
- f. If any of the deadlines for notification or preparation of the judgment cannot be met, the person who cannot meet the deadline shall request an extension from the Court.

**12.305 SMALL CLAIMS AND FED MEDIATION**

- 1. All contested small claims and FED cases shall be referred to mediation pursuant to ORS 36.185, except as otherwise ordered by the Court. Cases involving an incarcerated party shall not be referred unless all parties to the case agree to participate in mediation.
- 2. Such mediation services shall be provided by the Court without cost to the litigants, through the use of volunteer mediators.

**Chapter 13 Arbitration**

**13.045 ARBITRATORS**

- 1. To qualify as a court-approved arbitrator, a person must:
  - a. meet the requirements contained in UTCR 13.090,
  - b. participate in at least ten trials or arbitrations either as a lawyer or an arbitrator in the area of law the applicant proposes to arbitrate,
  - c. submit three letters of recommendation to the Court, and
  - d. receive approval by the Presiding Judge, upon recommendation of the Marion County Commission on Dispute Resolution.
- 2. The parties may stipulate to an arbitrator not approved by the Court and proceed through court annexed arbitration, regardless of whether that arbitrator meets the minimum requirements outlined in subsection (1).
- 3. The Presiding Judge may remove an arbitrator from the panel at the Presiding Judge's discretion.

**13.055 SPECIFICATION OF ARBITRATORS HOURLY RATE**

Arbitrators shall specify the agreed-to hourly rate, if it is any different from the norm, when they bill for services unpaid by clients.

**13.075 TRIAL DE NOVO**

In a civil action where a party asserts a claim in an amount which is subject to the arbitration limit under ORS 36.400(3), that party shall not be precluded from asserting a larger claim in a trial de novo under ORS 36.425, subject to ORCP 23.

**13.085 EXEMPTION FROM ARBITRATION**

The Marion County Courts have instituted a mediation program as described in ORS 36.405(3). The parties shall not be required to participate in arbitration if they participate in mediation under SLR 12.115 through 12.165.

**13.095 ARBITRATION PROCEEDING**

1. All cases referred to arbitration under these rules must be heard by the arbitrator in Marion County, unless this requirement is waived by all parties in writing prior to the arbitration hearing. Failure to comply with this rule may result in removal from the arbitration panel pursuant to SLR13.045 (3).
2. Except for good cause shown, the hearing must be scheduled to take place not sooner than 14 days, or later than 77 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 77 day period. Any continuances or postponements beyond such period require the moving party to obtain approval of the Presiding Judge or his or her designee. The arbitrator must give notice of any continuance to the arbitration coordinator.
3. Upon failure to timely comply with UTCR 13.160 or any SLR adopted pursuant thereto, the Presiding Judge, or his or her designee, may, exercise the court's authority under UTCR 1.090(2).

**Chapter 15 Small Claims**

**15.015 DISMISSAL FOR FAILURE TO PURSUE CLAIM**

A judgment of dismissal shall be filed and entered on the Court's own motion 90 days after the date the claim is filed, unless the claim is set for a hearing or a default judgment is entered.

**Chapter 16 Violations**

**16.005 VIOLATIONS BUREAU**

1. A Violations Bureau is established pursuant to ORS 153.800.

2. The Trial Court Administrator is appointed as Violations Clerk, and duly appointed deputies of the Administrator are further appointed as Deputy Violations Clerks.
3. The Violations Bureau may exercise authority over the following traffic and non-traffic violations as defined in ORS 153.008:
  - a. offenses designated as violations in the statute defining the offense;
  - b. offenses created by Oregon statute, or ordinance of a county, city district or other political subdivision of Oregon, that provide violation of the law is punishable by a fine but not a term of imprisonment; and
  - c. misdemeanors treated as violations by a prosecuting attorney pursuant to ORS 161.568.
4. An appearance shall be allowed in the Violations Bureau for any defendant who has not been convicted of three or more offenses in Marion County within the preceding 12 month period if the current violation falls into one of the following categories: traffic, overload, boating, fish and wildlife, park and recreation, bicycle, pedestrian and parking violations. On all other violations, a defendant may appear in front of the Violations Bureau once unless he or she has been convicted of an violation in Marion County within the preceding 12 month period.

**16.015 TRIALS BY AFFIDAVIT**

If a signed waiver is filed by the alleged violator, testimony in any violation trial is allowable by affidavit pursuant to ORS 153.080 as set forth in Appendix C to these Rules.

## **APPENDIX A**

### **Supplementary Local Rule 5.065**

#### **NOTICE**

You must file an Answer in writing to this Order within the time stated in the Order. If you do not file a written Answer within such time, the other side may automatically be given the relief against you which the other side is requesting in the attached motion.

In order to file an Answer in writing, you must do the following things:

1. Your written Answer must contain the title and number of this case.
2. Your written Answer must specify the item or items of relief requested by the other side which you oppose. (You do not need to state the reasons why you oppose the relief.)
3. Your written Answer must be signed by you and must contain your current mailing address. All future notices and documents in this case will be sent to you at the address listed on your written Answer unless and until you file in this case a written notice of a change of address, and the Court will proceed on the assumption that you have received all communications and documents mailed to you at your most current address on file in this case.
4. Your written answer must be mailed or presented to the Court so as to actually reach the Court within the time stated above.
5. Your written Answer must be accompanied by payment of any filing fee required by law for the filing of the Answer, or you must obtain a Court Order waiving or deferring such filing fee. (You should contact the Court if you have any questions concerning a filing fee.)
6. At or before the time you file your written Answer with the Court, you must mail a copy of the Answer to the attorney for the other side, or to the other side personally if the other side is not represented by an attorney, and you must attached to the Answer which you file with the Court, a certificate showing that you mailed a copy of the Answer to the Attorney for the other side or to the other side personally. If you file a written Answer in the matter within the time stated above, the Court will schedule a hearing to decide whether or not to grant relief requested by the other side, and you will be notified by mail of the date and time of such hearing. However, you will not be entitled to seek any relief for yourself against the other side. If you wish to seek affirmative relief for yourself against the other side, you must file an appropriate motion or motions for such relief, and you must mail a copy of such motion or motions to the attorney for the other side or to the other side personally if the other side is not represented by an attorney.

If you have any questions, you should see an attorney immediately.

## **APPENDIX B**

### **Supplementary Local Rule 8.075 Version 4**

#### **UNIFORM PARENTING PLAN**

##### **1. Introduction:**

Oregon law encourages parents to remain involved with their children because both parents are important to a child's growth and development. Parents are required to adopt a parenting plan which assures a child's continuing contact with both parents. The plan should take into account evidence of drug and alcohol abuse, domestic violence, and any other unique circumstances of the family.

The Court feels strongly that the best parenting plan is one created by the parents who will follow it. We expect and encourage parents to create their own parenting plan, taking into consideration the schedules and needs of each family member. This plan is a last resort, and should only be used when the parents or the court cannot create a more appropriate plan for the family.

During this process, it is important for parents to attempt to minimize the amount of conflict the children are exposed to, because research has shown that children that are exposed to conflict are at increased risk for behavior problems, anxiety and depression. Parents involved in high levels of conflict should consider including provisions in the parenting plan that reduce conflict. For example, parents can be specific about what times the child will be with each parent, methods of exchanging the child, and any other areas that might be subject to dispute later. The parents may choose to exchange the child at a neutral location, such as a fast food restaurant or a supervised visitation center. In addition, parents should not communicate through the child, and should consider whether there are easier ways to communicate, such as through e-mail. For more suggestions, please request "Checklist for Creating Parenting Plans that Reduce Conflict" from Dissolution Resource Services on the first floor of the Courthouse, or from the mediator or judge assigned to your case.

This rule uses the terms "custodial parent" and "non-custodial parent" as a way to identify two separate parents. It does not mean that one parent is prevented from playing an active role in the child's life. Parents are encouraged to be flexible and to consider what is best for their child when arranging parenting time. Marion County may be able to provide free mediation services to help resolve custody and parenting time conflicts.

Marion County's Local Court Rule 8.075 has been changed many times over the years. This version does not automatically replace existing orders written when earlier versions of the rule were in effect. This version of Rule 8.075 is effective for court orders which are put in place after the adoption date noted below.

## 2. **Definitions:**

"Child" includes all minor children referred to in the Judgment or Order.

"Custodial parent" refers to the parent awarded sole custody by the court's judgment or order. That parent is the child's primary residential parent if joint custody is awarded.

"Non-custodial parent" refers to the parent who is not the custodial parent as defined above.

"Parenting time" replaces the word "visitation". Each parent actually parents the child while the child is with that parent. Parenting time describes the schedule by which the child spends time with each parent.

"Number of overnights" For purposes of calculating child support, refers to a Sunday return following weekend parenting time results in 92 overnights per year for the non-residential parent and a Monday return results in 107.5 overnights per year for the non-residential parent.

## 3. **Parenting Time Provisions:**

3.1 **Weekends:** The child shall be with the non-custodial parent every other weekend, beginning on Friday night at 7:00 p.m. and ending the following Monday morning.

3.1.1 The non-custodial parent shall feed the child breakfast on Monday morning and deliver the child no later than 9:00 a.m. to the child's home or day care. The non-custodial parent shall feed a school age child breakfast and deliver the child to school in time for the child's first class.

3.1.2 Parents may agree to vary this weekend schedule provided the agreement is in writing. For example, parents may agree to end weekends on Sunday night at 7 p.m. rather than Monday morning or that the child is to be dropped off Monday morning at the custodial parent's home rather than at the child's school.

3.1.3 The child shall be with the non-custodial parent until Tuesday morning if that parent's weekend falls on a weekend during the school year on which the next Monday is a state or federally recognized holiday on which there is no school.

3.1.4 The alternate weekend parenting time schedule shall rotate each year as follows:

3.1.4.1 The non-custodial parent's first weekend in *even numbered years* shall begin at 7:00 p.m. on the Friday of Labor Day Weekend and end Monday night at 7:30 p.m.

3.1.4.2 The non-custodial parent's first weekend in *odd numbered years* shall begin on the first Friday *following* the Labor Day Weekend.

### 3.2 Mid-week Time with the Child

- 3.2.1 The child shall be with the non-custodial parent every other Wednesday. The time shall begin at 5:00 p.m. and end at 8:00 p.m. if the child is in school and begin at 10:00 a.m. and end at 7:30 p.m. if the child is not in school.
- 3.2.2 The first alternate Wednesday shall follow the non-custodial parent's first weekend with the child in September each year.

### 3.3 Winter Vacation

- 3.3.1 The child shall be with the non-custodial parent in *even numbered years* beginning at 7:00 p.m. on the day that school adjourns until 10:00 a.m. on December 25. The child shall be with the custodial parent for the remainder of the child's winter vacation.
- 3.3.2 The child shall be with the custodial parent in *odd numbered years* beginning at 7:00 p.m. on the day that school adjourns until 10:00 a.m. on December 25. The child shall be with the non-custodial parent for the remainder of the child's winter vacation until 7:00 p.m. on the day before school resumes.
- 3.3.3 The alternate weekend and alternate Wednesday parenting time schedule shall not operate during the winter vacation period.
- 3.3.4 The winter vacation schedule in the public school district in which the child lives shall be followed if the child is not attending school.

### 3.4 Summer Vacation

- 3.4.1 The child shall spend alternating two-week blocks of time with each parent during the school's recess for summer vacation. The summer vacation schedule in the public school district in which the child lives shall be followed if the child is not attending school.
  - 3.4.1.1 The child shall spend the first two-week block of time in *even numbered years* with the non-custodial parent beginning at 7:00 p.m. on the first Friday following the recess of school for the summer. The child shall spend the next two weeks with the custodial parent, then two weeks with the non-custodial parent, and so on throughout the remainder of the summer.
  - 3.4.1.2 The alternating two week schedule shall begin in *odd numbered years* with the non-custodial parent beginning at 7:00 p.m. on the third Friday following the recess of school for the summer. The custodial parent will have the first two weeks.
- 3.4.2 The summer schedule shall end at 7 p.m. on the Friday of Labor Day Weekend even if this cuts short a parent's two-week block of time. The provisions of paragraph 3.1.4 dictate which parent will have the child over the Labor Day weekend.
- 3.4.3 The alternate weekend and alternate Wednesday parenting time schedule shall not operate during the summer vacation period. However, children 30 months or younger shall spend four hours on Wednesday of each week with the other parent during the other parent's two week block of time.

#### 4. **Other Holidays, Events and Vacation Days:**

The residential schedule for the child for the holidays, events and vacation days listed below is as follows:

**Thanksgiving Vacation:** Custodial parent - odd years  
Non-custodial parent - even years

The **Thanksgiving Holiday** begins on Wednesday at 7:00 p.m. and ends on the following Sunday at 7:00 p.m.

**Halloween:** Custodial parent - even years  
Non-custodial parent - odd years

**Halloween** begins on October 31st at 5:30 p.m. and ends at 9:00 p.m.

**Spring Vacation:** Custodial parent - even years  
Non-custodial parent - odd years

**Spring Vacation** begins at 10:00 a.m. on the day after school adjourns and ends on the Monday morning school resumes whether or not the child is in school.

**Mother's Day:** Always with mother beginning at 10:00 a.m. on Sunday and ending at 7:00 p.m. the same day.

**Father's Day:** Always with father beginning at 10:00 a.m. on Sunday and ending at 7:00p.m. the same day.

**Fourth of July:** With the parent whose summer schedule includes July 4th.

#### **Birthdays:**

**Child's Birthday:** Custodial parent - even years  
Non-custodial parent - odd years

**Mother's Birthday:** Always with mother, at mother's option

**Father's Birthday:** Always with father, at father's option

**Birthday's** which fall on a school day begin at 5:00 p.m. and end at 8:00 p.m. The Birthday will begin at 10:00 a.m. and end at 7:00 p.m. if it falls on a non-school day.

#### 5. **Long Distance and Out-of-State Parenting Time Suggestions:**

5.1 The parenting plan outlined in this rule is practical in terms of time and distance for parents who live within 75 miles of each other. The schedule may not work for parents who live more than 75 miles apart. It is not possible to write a standard parenting schedule for parents who live a long distance from each other because each situation is different. Parents are encouraged to include a "long distance" parenting schedule in their parenting plan if a move is anticipated. The following

are non-binding suggestions for parents and the court to consider in establishing a "long distance" schedule.

- 5.1.1 Which parent is moving, the non-custodial parent or the custodial parent and child?
  - 5.1.2 Why does the parent want to move?
  - 5.1.3 Why is the non-custodial parent resisting the move?
  - 5.1.4 Will the child's move improve the child's and moving parent's quality of life?
  - 5.1.5 Is it possible to fashion a new and reasonable parenting schedule which makes adjustments for the distance between the parents?
  - 5.1.6 Is the non-custodial parent who opposed the child's move seeking a change of custody and if so, whether any of the provisions of law concerning modification of custody are present?
  - 5.1.7 What practical effect will an order denying the request to move the child have including, but not limited to, the emotional harm to the child of having reduced contact with the parent effected by the move? The child's age, activities, location of extended family, friends and support group all having a bearing on this question.
  - 5.1.8 Did the moving parent provide enough advance notice to the other parent?
  - 5.1.9 How involved has each parent been in the child's life?
  - 5.1.10 What additional costs will there be for the child to spend time with each parent, which parent's move is causing that cost and which parent is prepared to pay the additional costs?
  - 5.1.11 What effort has the moving parent made to suggest a reasonable parenting schedule which addresses the non-moving parent's legitimate concerns?
  - 5.1.12 What efforts will each parent likely make, based on that parent's record to that point, to encourage the relationship between the child and parent who will be impacted by the child's move?
- 5.2 An existing court ordered visitation or parenting schedule is binding on both parents unless or until a court decides otherwise. This effectively places a burden on a parent who is moving a child's residence to change the existing parenting schedule if the non-moving parent objects to the move or no agreement can be reached on the terms of a long distance parenting schedule. Any agreed change to an existing parenting schedule should be reduced to writing, signed by both parents and submitted to the court with a place for the judge to sign to make the writing effective as a modification judgment.

## 6. Rules Relating to The Use of Parenting Time

- 6.1 **Personal Plans.** Personal plans of the custodial parent or child, (for example, school or church activities) do not justify a parent's failure to follow the parenting time schedule.

- 6.2 **Delivery and Pick-up.** All parenting time shall take place in a prompt manner. The following delivery and pick up rule shall apply to parents who live 75 or less miles apart (or within a distance that allows for exercising alternating weekend parenting time).
- 6.2.1 The non-custodial parent shall pick up the child to begin the parenting time.
- 6.2.2 The non-custodial parent shall be responsible for returning the child to end the parenting time if that return is taking place on a Monday morning as contemplated by this rule. The custodial parent shall pick up the child to end the parenting time if that time ends in the evening. This places an additional transportation burden on a parent who wishes to have the child stay the additional overnight (usually Sunday).
- 6.2.3 Unless otherwise agreed or ordered by the court, pick up and delivery shall occur no more than 15 minutes before or 15 minutes after the time set for parenting time to begin and end.
- 6.2.4 This rule's reference to a "parent" as the individual responsible for pickup and delivery should not be taken literally. Other individuals known to the child such as grandparents, step-parents, live in girl\boyfriends, etc. are authorized to transport the child.
- 6.3 **No Shows and Make-Ups.** Only medical reasons will be considered sufficient for postponement of parenting time. A makeup time shall occur on the following weekend if a child is ill and unable to visit. There will be no makeup parenting time if the non-custodial parent misses a scheduled time with the child. The illness of one child does not mean that the other children's time is also canceled.
- 6.3.1 Some non-custodial parents have a history of not using their scheduled weekends (for example: one "no show" per month for 3 months). The custodial parent may advise the non-custodial parent in writing that the next following regularly-scheduled parenting time will be canceled unless the non-custodial parent gives at least three days advance notice that he or she will use the scheduled weekend parenting time if this problem exists.
- 6.3.2 Canceling the next regularly-scheduled parenting time should not be done lightly and should not be done by the custodial parent unless there is a regular history of missed parenting time.
- 6.4 **Non-assigned time.** Unless otherwise agreed in writing, the custodial parent is responsible for the child during all times that the child is not scheduled to be with the non-custodial parent. This does *not* mean that either parent is restricted from attending public events where the child is in attendance such as school programs and athletic events.
- 6.5 **Meals & Clothes.** The custodial parent shall have the child fed, sufficient clothing packed, and on time for all exchanges. The non-custodial parent shall return *all* clothing and feed the child before returning the child from the parenting time period.

- 6.6 **Conflicting Dates.** The holiday schedule takes precedence over the alternating weekend schedule. The holiday schedule may create times when the child will be with the same parent for three weekends in a row. This happens when a vacation or holiday defined in this rule replaces the normal schedule for a given weekend or time period.
- 6.7 **Day Care.** The non-custodial parent shall be responsible for arranging day care for the child during his or her time with the child. No child under the age of 11 shall be left unsupervised.
- 6.8 **Support of Parenting time.** The custodial parent shall not discourage the child from spending time with the non-custodial parent. Contrary to common belief, Oregon does not allow a child to determine where he is going to live at any age.
- 6.9 **Flexibility.** Parents are encouraged to be flexible and to consider their child's best interests in the use of this rule. This rule is designed to provide a schedule to parents who have not been able to agree to a schedule on their own. It does not create an absolute maximum or minimum amount of time the non-custodial parent can be with the child, nor does it restrict a parent from seeing a child at school or events. Reasonable adjustments to the schedule should be considered so important family events and the child's activities take place with minimal disruption or hard feelings.
- 6.9.1 Each parent shall act reasonably in registering the child for activities keeping in mind that neither parent is entitled to commit the child to an activity which will take place during the other parent's time with the child. On the other hand, there are natural activities which occur (such as school, athletic, music and other programs) that, by their very nature, take place during the other parent's scheduled time with the child.
- 6.9.2 Although neither parent is required to take a child to any activity, each parent is encouraged to use his or her best effort to keep the child involved in athletic events, school functions, lessons, birthday parties of friends, etc. even though those activities may fall during a parenting time period. To do otherwise would deprive the child of valuable growing opportunities.
- 6.9.3 Each parent is encouraged to use a child's activity as an opportunity for that parent to participate with the child, meet the child's friends and other families and to have a quality experience with the child.
- 6.9.4 A child *is not* permitted to determine whether he or she visits the noncustodial parent. However, older teenagers are often involved in their own activities and are unable (or unwilling) to spend time with their parents on a regular schedule as they did when they were younger. Both parents must be considerate of older teenagers and recognize that they wish (and need) to spend more time with their peers rather than their parents. Parents will need to make adjustments to accommodate these life changes.
- 6.9.5 Parents should make plans directly with each other rather than through the child. It is unfair for the child to serve as the message carrier for two parents who find it difficult to communicate directly with each other. Children who find themselves in this position learn to manipulate and play one parent off against the other.

6.10 **Writing and Telephoning.** Each parent shall have the right to correspond with the child during reasonable hours without monitoring by the other parent or anyone else. This correspondence may take the form of letters, fax transmissions, E-mail or telephone calls. Unless otherwise agreed, there shall be no more than three telephone calls per week. Long distance telephone calls made by the child shall be paid for by the parent receiving the call.

6.11 **Changes to the Parenting time Schedule.** Enforceable changes in the parenting time schedule can only be made by court order. Any agreed upon temporary change shall be in a writing which is signed and dated by both parents to assure that there is no misunderstanding at a later date on the terms of the change.

7. **Rules Relating To The Custodial Relationship And Each Parent's Responsibilities To The Child:**

7.1 **Addresses and telephone numbers.** Each parent shall provide their home (not just mailing) address and home telephone numbers to the other parent unless otherwise ordered by the court. The parent with the child shall notify the other parent of the location and telephone number of where the child will be sleeping if the parent is taking the child out of the town where that parent resides for more than three consecutive overnights. Each parent shall be reasonable with this rule. For example, it is possible to give a general location but no telephone number if a camping trip is contemplated.

7.2 **Mutual Respect Towards the Other Parent.** Neither parent shall make bad or unflattering comments about the other parent or in any way try to diminish the love, respect and affection that the child has for the other parent.

7.3 **Access to Records and Events.** The non-custodial parent has the right to visit with the child at school, attend the child's school activities (such as an open house or sports activities), and have full access to school teachers and administrators for complete information about the child in school. This includes parent-teacher conferences. Parents shall be primarily responsible for keeping themselves advised of the child's activities and events.

7.4 **Daily Care.** The parent with whom the child is staying shall be responsible for daily care and shall make necessary decisions regarding *emergency* medical or dental care. The non-custodial parent's rights to make daily care decisions does *not* include leaving a child unattended in violation of Oregon law, haircuts, permanents, or making any substantial change in the child's appearance (i.e., tattoos, ear piercing, etc.) unless authorized to do so by the custodial parent.

7.5 **Emergencies.** The parent with the child shall immediately tell the other parent of any emergency circumstances or substantial changes in the health or safety of the child.

7.6 **Decision Making.** The custodial parent is encouraged to consult with noncustodial parent about major decisions which will affect the child even though the custodial parent has the ultimate decision-making authority. It is important for parents to communicate with each other prior to making plans for lessons, athletic activities, camp, extended medical and dental treatment, out-of-town visits to relatives, etc. Each parent is encouraged to work cooperatively with the other to create the most positive and productive atmosphere possible for the child.

- 7.7 **Smoking or Drinking Alcohol in the Presence of the Child.** An issue frequently occurs when one parent smokes or drinks alcohol in front of the child and the other parent objects. Neither parent should smoke in the presence of the child (nor smoke in any manner so the child is breathing the smoke) if the parents cannot agree on this issue. Neither parent should drink alcohol to the point where they are affected by the alcohol.
- 7.8 **Moving.** Neither parent shall move to a residence which is more than 60 miles further distant from the other parent without giving the other parent reasonable notice of the change of residence and providing a copy of such notice to the court. ORS 107.159.
- 7.9 **Parenting time is Independent From Support.** A parent's right to spend time with a child is not dependent on that parent's payment of child support. One parent's failure to comply with the terms of the judgment does not mean that the other parent can now ignore its terms. It is not permissible to withhold the child from the other parent as a way to encourage the payment of support.
- 7.10 **Joint Custody.** True joint custody means that each parent has equal authority to make major decisions which effect the child. Joint custody has nothing to do with the amount of time that a child spends with either parent nor does it affect the level of child support. Under present state law, the court cannot order joint custody unless both parents agree to it. Questions about joint custody should be directed to an attorney.

## 8. **Age Suggestions:**

This rule recognizes that parenting time guidelines should be based upon the needs of a growing child. Parents may wish to ask the court to *consider* these age-related suggestions if they seem appropriate. *These suggestions are not automatically binding unless the court order specifically states they are to apply rather than the other provisions of this rule.*

- 8.1 **The infant, age 0-1.** Frequent two to four hour visits, two or three days per week from custodial parent's home; also one additional afternoon or evening per week.
- Single overnight per week parenting time, provided the non-custodial parent has been actively involved in the caretaking role.
- 8.2 **The toddler, age 1 to 3 ½.** Four weekend days per month, plus one-half (½) day per week (4 to 6 hours). Overnight parenting time, provided the non-custodial parent has been actively involved in the caretaking role and/or is accompanied by an older child. During any parenting time of 7 days or more, the other parent should have a four hour mid-week visit.
- 8.3 **The pre-schooler, age 3 ½ to 5.** Alternate weekends from 7:00 p.m. Friday to 7:00 p.m. Sunday, plus either one non-overnight weekday per week during the afternoon or evening. Summer visits should be as set out in the Rule. The other parent should have a four hour mid-week visit during any visits of 7 days or more.
- 8.4 **The early elementary, age 6 to 9.** Summer time-shares should be as set out in the Rule. The parenting time schedule should be flexible enough to insure the children's participation in ongoing or special activities.

- 8.5 **The later elementary, age 10 to 12.** The minimum is the same as the early elementary. Flexible parenting time is the best principle, with the children having some input to avoid scheduling conflicts. At this age, it seems the quality of time is more important than the quantity but consideration should be given to the child's organized athletics and outside activities.
- 8.6 **The adolescent, age 13 or over.** The minimum is the same as later elementary. The child and parent may want to change the schedule if it interferes with the child's other activities.

**APPENDIX C**

**IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE THIRD JUDICIAL DISTRICT**

PO Box 12869  
Salem, Oregon 97309-0869

State of Oregon	)	<b>DEFENDANT’S WAIVER OF ORAL</b>
Plaintiff	)	<b>TESTIMONY (Trial By Affidavit)</b>
v	)	
	)	Case # _____
_____	)	
Defendant	)	<b>DUE BY</b> _____

I have plead **NOT GUILTY** and I hereby waive my rights to have testimony presented in open Court and authorize testimony to be in the form of an affidavit. I realize by signing this waiver that the officer may file an affidavit and not appear in Court. I also realize that I need not appear in person, but may appear by affidavit.

I further state my intentions as follows:

- I waive my right to be present at a hearing and declare that I will submit to the Court my affidavit containing my testimony and affidavits of witnesses, if any, to the Court within thirty (30) days of today’s date, and if I fail to submit said affidavit within thirty (30) days, I authorize the Court to decide whether I am guilty or not guilty based upon the contents of my file. I understand the Court will also consider the officer’s affidavit in deciding whether I am guilty or not guilty.
  
- (Check here if the officer has asked to provide testimony by affidavit, you want to present your part of the case orally in Court and you are willing to waive your right to have the officer testify in person)*  
 I do not waive my right to be present at a hearing and request that I be notified of the date and time of the hearing. I waive my right to have the officer’s testimony presented orally in court.

**I CERTIFY THAT I HAVE READ THE ABOVE AND WAIVE MY RIGHT TO HAVE TESTIMONY PRESENTED IN OPEN COURT. I REQUEST THAT THIS MATTER BE DECIDED AS STATED ABOVE.**

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_ Print Name \_\_\_\_\_

\_\_\_\_\_  
Mailing Address \_\_\_\_\_ City, State, Zip Code \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/Deputy Court Administrator  
My Commission Expires: \_\_\_\_\_