CHAPTER 5—Proceedings in Civil Cases

NOTE: Rules specifically relating to contempt proceedings are located in UTCR Chapter 19.

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*.

5.020 POINTS AND AUTHORITIES TO ACCOMPANY MOTION AND OTHER REQUIREMENTS

(1) Every motion must be accompanied by or include a memorandum of law or a statement of points and authorities, 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.

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.

5.040 MOTIONS TO BE DETERMINED BY THE PRESIDING JUDGE OR DESIGNEE

The presiding judge or designee shall hear and determine all motions.

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.

5.060 STIPULATED AND *EX PARTE* MATTERS

(1) Any stipulated or *ex parte* matter 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 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.

(2) A motion for an *ex parte* order must contain the term "*ex parte*" in the caption and must be accompanied by a proposed order.

(3) *Ex parte* matters shall be presented anytime during court hours, except as modified by SLR promulgated pursuant to UTCR 1.050 and except as provided in UTCR 21.080. Until such local rules are adopted, stipulated and *ex parte* matters may be personally presented anytime during court hours.

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.

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.

5.090 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:

(1) Be filed as a separate document.

(2) Include the caption of the case and the case number.

(3) Include a statement that the case involves water rights.

(4) Be signed by the attorney or party.

5.100 SUBMISSION OF PROPOSED ORDERS OR JUDGMENTS

(1) Any proposed judgment or proposed order submitted in response to a ruling of the court must be:

(a) served on opposing counsel not less than 3 days prior to submission to the court, or

(b) accompanied by a stipulation by opposing counsel that no objection exists as to the form of the judgment or order, or

(c) mailed to a self-represented party at the party's last known address not less than 7 days prior to submission to the court, or

(d) presented in open court with the parties present.

(2) A certificate describing the manner of compliance with subsection (1)(a) or (1)(c) of this rule must be attached to a proposed judgment or order submitted to the court.

(3) The requirements of subsection (1) of this rule do not apply to:

(a) proposed judgments subject to UTCR 10.090, and

(b) uncontested probate and protective proceedings.

(4) 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.

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.

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.

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.

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.

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.

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.