

**SUPPLEMENTARY LOCAL RULES  
OF THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE TWENTY-FIFTH JUDICIAL DISTRICT**

Yamhill County



Effective February 1, 2016



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These supplementary local rules are to be read and applied in conjunction with applicable statutes and the Uniform Trial Court Rules.

# **SUPPLEMENTARY LOCAL RULES FOR THE 25TH JUDICIAL DISTRICT**

## **Yamhill County**

*Effective February 1, 2016*

### **CHAPTER 1- HOURS OF COURT OPERATION**

#### **1.151 COURT LOCATION AND HOURS.**

- (1) The court is located in the Yamhill County Courthouse, 535 NE 5<sup>th</sup> Street, McMinnville.
- (2) Unless otherwise ordered due to emergency conditions, information regarding business hours for the Twenty Fifth Judicial District can be found at: <http://courts.oregon.gov/Yamhill/>.
- (3) During the hours when customer service windows are closed, a secure drop box is available until 5:00 PM for filings and payments. The drop box is located on the first floor of the courthouse, 535 NE 5<sup>th</sup> Street, McMinnville, Oregon.

#### **1.161. EXPARTE MOTIONS AND ORDERS**

Persons seeking approval of an ex parte matter should present the papers to the designated general duty judge at 1 pm daily. Papers will be received at other times in emergency circumstances. Counsel or parties presenting an ex parte motion where opposition is expected to appear and contest the motion must make advance arrangements with the court to allow sufficient time.

#### **1.171 WEBSITE**

The official website for this court is located at: <http://courts.oregon.gov/Yamhill/>

### **CHAPTER 2 - STANDARDS FOR PLEADINGS AND DOCUMENTS**

#### **2.001 WAIVER OR DEFERRAL OF COURT COSTS AND FEES**

Applications for waiver or deferral of fees on grounds of indigence or applications for deferment of payment of fees on grounds of indigence shall be accompanied by an affidavit executed by the party seeking such waiver or deferral. Such affidavit shall state the name, age, address and relationship of each dependent of the applicant; the marital status of the applicant; the name, age and relationship of each person in the household of the applicant, the current income and source of income of the applicant, of each person in the applicant's household, the name of any interested relative with assets to pay such fee; the assets of the applicant including bank accounts, equity in real estate, motor vehicles and all other assets; and the recurring liabilities of the applicant. A declaration may be used as an alternative to an affidavit (ORCP 1E and UTRC 2.120).

Applications for deferral may be reviewed by trial court staff applying standards set by the court. A denial of deferral may be appealed to a judge. All applications for waiver will be reviewed by a judge.

## **CHAPTER 3 - DECORUM IN PROCEEDINGS**

### **3.181 PUBLIC ACCESS COVERAGE IN AREAS OUTSIDE OF COURTROOMS**

In facilities occupied by the court, public access coverage in areas outside of courtrooms, other than the Jury Assembly Room when jurors are in attendance, is permitted only with the prior approval of the Presiding Judge. Requests to conduct public access coverage in such areas may be made to the Office of the Presiding Judge at any time during the business day. Public access coverage is not permitted in the court's Jury Assembly Room when jurors are in attendance.

## **CHAPTER 4 - PROCEEDINGS IN CRIMINAL CASES**

### **4.005 SETTLEMENT CONFERENCES.**

(1) *Purpose.* The purposes of a settlement conference in a criminal case shall be to provide a forum to resolve cases before trial through the active participation of counsel, the parties and the court, to insure that both sides are fully prepared and have resolved discovery, plea offer and trial preparation issues and have explored all options for resolution without trial.

(a) Where the settlement conference does not result in a resolution of the case, the settlement judge will not preside at the trial unless all parties agree that the judge may do so.

(b) No information will be revealed to the trial judge or placed in the file by the settlement judge or by any of the parties to the settlement.

(2) *Scheduling / Participants.* A settlement conference will be held in all criminal cases where one party requests it, unless the opposing party shows good cause why the settlement conference should not be held. A settlement conference may also be held if ordered on the court's own motion. The court is likely to set settlement conferences for cases that are pending or appear unlikely to be resolved by plea or trial within the Oregon Standards of Timely Disposition. Settlement conferences are also likely to be set by the court where there have been two or more pretrial or "resolution" hearings and judicial involvement in resolution would appear to be helpful to timely resolution. Settlement conferences are encouraged.

(a) Defendant and defense counsel and the DA or DDA with authority to resolve the case must be present. The court may, for good cause shown, allow appearance by telephone.

(b) The parties are expected to have accomplished the following before the settlement conference:

(i) Completion of all discovery and plea negotiation.

(ii) Meaningful contact and discussion between defense counsel and client as outlined by the Oregon State Bar standards for criminal defense services.

(iii) An opportunity for input and full discussion between the DA or DDA and the victim including, but not limited to plea negotiations, evidentiary and strength of case issues, availability for trial, sentencing options and, in the case of measure 11 charges, the victim's position regarding any plea that takes the case out of measure 11.

(iv) Review of the availability and testimony of necessary witnesses for trial.

(v) Identification of legal or other issues in which judicial input could help resolve the case.

(c) Settlement conferences will be scheduled for 30 minutes duration on felonies and 20 minutes duration on misdemeanors, unless the parties notify docketing that less or more time is needed.

#### 4.081 APPEARANCE BY SIMULTANEOUS ELECTRONIC TRANSMISSION

An in-custody defendant may appear by simultaneous electronic transmission pursuant to UTCR 4.080 at the following hearings:

- (1) Arraignment.
- (2) Release.
- (3) Probation violation.
- (4) Plea.
- (5) Sentencing.

#### 4.145 COURT APPOINTED COUNSEL

Unless the Court otherwise directs, if there is a Court appointed counsel in a criminal case, except for counsel's obligation to provide information and cooperate with any counsel representing the defendant on appeal, counsel will be considered discharged of his or her duties upon sentencing. Counsel shall provide the court with current billings for attorney time and other indigent defense services at the time of sentencing or other final hearing.

#### 4.155 GUILTY OR NO CONTEST PLEAS

Unless the Court otherwise directs, no plea of guilty or no contest in a criminal case shall be heard by the Court without the defendant having first executed and filed a petition requesting the plea being received and defense counsel's filing a form of motion in support of the petition and a certificate of counsel. All forms will be supplied by the Court.

#### 4.175 APPROVAL OF JUDGMENT

In all criminal proceedings, unless the Court otherwise directs, any proposed form of Judgment or Order must be served on each of the parties at the time the proposed Judgment or Order is submitted to the Court.

### **CHAPTER 5 - PROCEEDINGS IN CIVIL CASES**

There are no rules in this chapter.

### **CHAPTER 6 - TRIALS**

#### 6.012 SETTLEMENT CONFERENCES.

(1) *Purpose.* The purpose of a settlement conference in civil or domestic relations cases shall be to provide a forum to resolve disputes before trial through the active participation of counsel, the parties and the court.

(a) The settlement conference judge will not preside at the trial unless all parties agree that the judge may preside.

(b) No information will be revealed to the trial judge or placed in the file by the settlement judge or by any of the parties to the settlement.

(2) *Scheduling / Participants.* A settlement conference will be held in all civil or domestic relations cases where one party requests it in writing, unless the opposing party shows good cause why the settlement conference should not be held. A settlement conference may also be held if ordered on the court's own motion. Settlement conferences are encouraged and are to be set approximately 3 weeks in advance of trial.

(a) Small claims cases and cases pending in arbitration will not be eligible for a settlement conference.

(b) All attorneys and their clients must attend the settlement conference. In the case of corporate clients, a person with settlement authority must be in attendance. The court may, for good cause shown, allow appearance by telephone.

(c) Settlement conferences will be scheduled for 90 minutes duration in civil cases and 60 minutes duration in domestic relations cases, unless the parties notify the court that less or more time is needed.

(3) *Pretrial Statement.* To facilitate settlement, the parties must provide the settlement judge with the pretrial statement at least 5 days in advance of the settlement conference. Unless indicated otherwise in the statement or to the court, the court shall keep the pre-trial statement confidential and it need not be served on opposing counsel or party. The pretrial statement shall contain the following:

(a) A brief summary and analysis of the facts and key issues involved in the litigation; and

(b) The status of any settlement negotiations.

(c) In domestic relations cases, each party shall also submit the following information, if the issue is in dispute:

(1) *Child Support:* A proposed support calculation worksheet with pay stubs or similar documents for income calculations.

(2) *Spousal Support:* A uniform support declaration and a brief statement of the type, amount and duration of support sought and why the case is appropriate for spousal support under the statute and/or case law.

(3) *Property Division:* A proposed schedule of value and division of assets (See UTCR 8.010(4)). Where value is in dispute, documentation of value or appraisal, if available, must be provided.

(4) *Reporting of Settlement.* Any settlement reached in a settlement conference shall, at the conclusion thereof, be placed on the record with parties present and participating, unless a different method of reporting the settlement is approved by the settlement judge.

## 6.015 TRIAL BRIEFS AND MEMORANDA

The trial judge will endeavor to read trial briefs and memoranda prior to trial or other hearing. All briefs and memoranda are to be submitted to the court at least 24 hours prior to the time set for the trial or hearing.

## 6.017 GENERAL TRIAL PROCEDURES

(1) *Jury Selection and Other Trial Procedures.* The judges maintain similar jury selection and other procedures. Counsel should, however, obtain a copy of and be familiar with the specific judge's procedures. This may include jury selection procedures, marking and offering of exhibits, making objections, juror questions, etc.

(2) *Witnesses.* Counsel is encouraged to allow witnesses to be seated in the courtroom. If witnesses are excluded, they are automatically excused upon leaving the witness stand, unless counsel requests otherwise. Counsel should also schedule witnesses with as much courtesy to their time as possible, while still maintaining an orderly progression of testimony.

(3) *Proposed Jury Instructions.* Proposed instructions should be presented the day before the trial, but, in no case, later than the morning of trial.

## CHAPTER 7 - CASE MANAGEMENT AND CALENDARING

### 7.015 CRIMINAL PLEAS, TRIALS AND RELATED APPEARANCES

(1) *Guilty or No Contest Pleas.* Felony pleas of guilty or no contest are ordinarily scheduled through docketing for the block of time designated for such pleas and sentencings. Sentencings that may take extended court time may be set over. The Court will not accept a guilty or no contest plea unless the defendant has first read and completed a Petition to Enter a Plea of Guilty or No Contest.

(2) *Time of Appearance on Citation.* Persons who are issued a citation to appear on a crime are to be cited to appear on 1:30 p.m. on Wednesday or Friday that is not otherwise a holiday.

(3) *Trials.* Trial will be set after entry of a not guilty plea at a "resolution conference" or pretrial conference. That conference will ordinarily be set approximately 3 weeks after arraignment if the defendant is in custody and 4 weeks if out of custody. Notices are given directly to counsel (or defendant pro se) at the time of entry of not guilty plea. All trials are to commence at 9:00, unless otherwise noted, and counsel are expected to report to the court 20 minutes early to discuss any remaining trial or process issues. Counsel must report promptly after breaks and lunch recess. Proceedings ordinarily re-start at 1:15 after lunch.

(4) *Continuances.* Absent exceptional good cause, continuance requests or motions brought to the court after 4 pm the day before the trial or other appearance will be denied.

## 7.025 MOTION FOR CHANGE OF JUDGE

An affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.260.

## **CHAPTER 8 - DOMESTIC RELATIONS PROCEEDINGS**

NOTE: Rules specifically regarding Mediation are found in SLR Chapter 12.

### 8.045 TEMPORARY CUSTODY ORDERS

(1) Prejudgment custody and visitation orders are controlled by ORS 107.097. Hearings under ORS 107.097(4) shall be scheduled between 14 and 21 days from receipt of the request for hearing.

(2) Temporary protective orders of restraint in proceedings to modify a judgment that awards custody of a child shall be controlled by and pursuant to ORS 107.097(2). Hearings pursuant to ORS 107.097(2) shall be scheduled in the same manner as hearings under ORS 107.097(4).

### 8.071 PERSONAL APPEARANCE REQUIRED FOR SHOW CAUSE ORDER OF CONTEMPT; MOVING PARTY'S FAILURE TO APPEAR FOR HEARING; TIME FOR HEARING; CONTENT OF ORDER.

(1) A show cause order for contempt of court shall be contained in a separate document from any show cause order or orders for other relief. Such orders shall require the responding party to personally appear in Court at the time established by the Court which shall be at least 14 days after the date of service of the order on the responding party. The moving party must also appear and be prepared to proceed at the time and date stated in the Order, unless previous arrangements have been made with the court by the parties or their attorneys to have the matter specially set for hearing.

(2) In the absence of such arrangements, the failure of the moving party to appear at the stated date and time, or to be prepared to proceed at such time, will result in dismissal of the contempt proceeding unless the Court finds extenuating circumstances and orders the continuation of the proceedings.

(3) The hearing will be held at the date and time stated in the order unless the Court orders the matter to be specifically set for hearing at a later date in order for counsel for the responding party to be retained by the responding party or appointed by the Court, or because the hearing will be protracted.

(4) Every show cause order for contempt of court shall contain the following notice:

#### **NOTICE**

You must personally appear in the above entitled Court and case at the date and time specified in this Order. If you fail to appear in court at such date and time, you may be arrested and held in custody for the purpose of being brought before the Court to answer the contempt charges which have been made against you.

8.072 PARENTING TIME ENFORCEMENT PROCEDURE. (Reserved for rule to be developed)

#### 8.075 SHOW CAUSE ORDERS

(1) All motions for show cause orders, other than for contempt of court, must separately state each item of relief requested by the moving party. Such orders may not state the requested relief by reference to a supporting affidavit.

(2) All show cause orders, other than contempt of court, and except as provided in subsection (4) herein, shall specify as a response date any date certain selected by the moving party, other than a Saturday, Sunday or other judicial holiday, which is at least fourteen (14) days after the date the order **is served**. Such orders shall require the opposing party to respond by filing an answer in writing to the order on or before the response date specified in the order, or within fourteen (14) days from the date of the service of the order upon the opposing party, whichever is later. The motion for the show cause order must be served upon the opposing party along with the order, and the order must contain or have attached to it a notice which is in substantial conformity with the specimen notice set forth in Appendix 1 to these rules.

(3) In the event the opposing party fails to file a written appearance in response to a show cause order on or before the appearance date specified in the order, or within fourteen (14) days from the date of service of the order upon the opposing party, whichever is later, then at any time thereafter and while the opposing party remains in default for want of such written appearance, the moving party may present ex parte an order granting the relief sought by the moving party, provided the return of service of the show cause order has been filed of record or is presented with the proposed ex parte order. Upon presentation of the proposed ex parte order, the Court, in its discretion, may allow the requested relief ex parte or it may direct that a hearing be scheduled for the presentation of a prima facie case in support of the relief sought by the moving party.

(4) Notwithstanding (2) and (3) above, the party served with a show cause order seeking to modify an existing judgment shall be given 30 days to file a written response with the court.

#### 8.081 PARENT EDUCATION PROGRAM – “Kids First”

(1) *Policy.* The Twenty-fifth Judicial District has established a parent education program as authorized by ORS 3.425. The program provides information to parents on the impact of family restructuring on children to each person named as a party in the following types of proceedings:

- (a) Annulment or dissolution of marriage, where there is a child or children of the marriage;
- (b) Legal separation where there is a child or children of the marriage;
- (c) Petition to establish custody (including paternity) or non-custodial parenting time;
- and
- (d) Post-judgment litigation involving custody or non-custodial parenting time.

## *(2) Mandatory Participation*

(a) 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.

(b) The party initiating the proceeding shall contact the mediation/arbitration coordinator with the Trial Court Administrator's office and register for the program within 21 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.

(c) The clerk 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.

(d) The program provider shall issue a certificate of completion to the Court when the participant has completed the program.

(e) 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.

## *(3) Sanctions*

The court shall actively promote each party's completion of the program. Failure or refusal to complete the program in a timely manner may be considered by the court in making its ruling on issues of custody and/or parenting time. A party who has completed the programs shall have the right to:

(a) 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.

(b) 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.

(4) *Fees*

(a) Each party shall pay the appropriate fee to the program provider upon registering for the program. The fees are for a court-approved privately operated 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 a fee when filing a petition for dissolution. A form shall be available from the Court.

(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.

(d) The fees are ordinarily to be paid at the time of the class and the providers will accept only cash or money orders.

8.085 PARENTING PLANS AND NON-CUSTODIAL PARENTING TIME SCHEDULES

Unless otherwise directed by the Court, or the parties stipulate to a different schedule of parenting time which is approved by the Court, a parent shall have the right to have parenting time with the minor child(ren) of the parties according to the schedule and guidelines which are set forth in Appendix 2 of this local rule. Additional suggestions are contained in Appendix 3 of this local rule.

8.090 CUSTODY STUDIES

If the parties are unable, after a good faith effort, to resolve custody and/or visitation issues in mediation, the parties may agree to a custody study. The study must be performed by a duly qualified person, but must not be the mediator assigned to the case.

The parties must agree in advance that the report of the custody study will be admissible at trial or other proceedings without appearance of the person who performed the study. The person who performed the study may, however, be subpoenaed at the expense of the person calling the person as a witness.

When the study report had been received by the parties, the parties may, if both parties agree, resume mediation after the report is made available to the mediator.

The expense of the study shall be the responsibility of the parties in such proportion as the parties may agree or as ordered by the Court. Persons who seek a custody study under this rule may, prior to proceeding with a custody study, petition the Court for partial assistance in the cost of the study, to be paid from funds from the county mediation filing fees. The decision to provide funding shall be based on the abilities of the parties to afford the study. A petition for financial assistance for the custody study shall be accompanied by the name and qualifications

of the person to be selected, a recommendation from the mediator as to whether a custody study may be useful and an estimate of cost and affidavits setting forth the financial resources of the parties.

## **CHAPTER 9 - PROTECTIVE PROCEEDINGS/NOTICE OF FREE LEGAL SERVICES**

### **9.081 PLACE FOR MAKING ORAL OBJECTIONS**

Oral objections pursuant to ORS 125.075 may be made to a court clerk in Room 135 of the Yamhill County Courthouse during regular office hours.

### **9.082 ALLEGED INCAPACITATED PERSONS - NOTICE REGARDING FREE LEGAL AND OTHER RELEVANT SERVICES**

In a proceeding for the appointment of a guardian for an alleged incapacitated person, the notice required under ORS 125.060 shall include the following language or its equivalent.

You are hereby informed of free and low cost legal and other relevant services available in this area, pursuant to ORS 125.070, such as the following:

- (a) Free legal services for people at least 60 years of age who are subject to guardianship proceedings may be obtained by calling the Senior Law Program of Oregon Legal Services at 1-800-817-4605.
- (b) A low-cost, one-time legal consultation may be obtained by calling the Lawyer Referral Service of the Oregon State Bar at 1-800-452-7636.

## **CHAPTER 11 - JUVENILE COURT PROCEEDINGS**

### **11.051 PERSONAL APPEARANCE REQUIRED**

In all termination and dependency cases; parent(s) and any guardian(s) shall be served a Summons to personally appear at a time and place specified to answer the Petition. The parent(s) and any guardian(s) must personally appear in court at the time and date specified in the Summons. A written appearance shall not be permitted. A parent or guardian may make written application to the Court for their personal appearance by telephone in extraordinary circumstances; however, the written application must be filed with the Court prior to the date scheduled for the personal appearance.

### **11.052 COURT APPOINTED COUNSEL**

Court appointed counsel shall be available to parents as required by law and, in the discretion of the court, may be provided to children. Any appointment shall extend to representation in post-judicial hearings including, but not limited to court review, permanency and CRB review.

Court appointed counsel shall bring information regarding cost of defense services to jurisdictional, dispositional, review and permanency hearings. Parents may be required to reimburse the state pursuant to state statute, policies and guidelines.

## **CHAPTER 12 - MEDIATION**

NOTE: Rules specifically relating to Temporary Custody Orders during Mediation are found in SLR Chapter 8.

### **12.015 MEDIATION, GENERALLY**

#### **(1) MATTERS SUBJECT TO MEDIATION.**

(A) *Purpose of Mediation.* The purpose of the mediation shall be to assist the parties in reaching a workable settlement of those issues before the Court.

(B) *Mandatory Mediation.* Participation in mediation is mandatory in any dispute involving custody and/or non-custodial parent parenting time (visitation) arising from any of the following types of cases:

- (1) Any domestic relations suit, as defined in ORS 107.510 (3).
- (2) Any filiation proceeding pursuant to ORS 109.124 to 109.230.
- (3) Proceedings to determine the custody or support of a child under ORS 109.103.
- (4) Any proceeding to modify custody and /or visitation or parenting time previously determined in one of the above types of cases.
- (5) Any other matter involving a dispute over custody, visitation or parenting time upon referral of the court.

(C) *Other Matters* The mediator may consider issues of property division or spousal or child support in connection with the mediation of a dispute concerning child custody, visitation or parenting time with the written approval of both parties or their counsel.

#### **(2) AUTHORITY OF CIRCUIT COURT NOT AFFECTED BY MEDIATION**

The authority of the Circuit Court over a domestic relations case is not affected by referral to mediation. 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) MEDIATION PROCESS

(a) *Commencement of Mediation by Stipulated Request for Mediation.* If there is a disagreement between the parents concerning custody or parenting time at any stage of a domestic relations proceeding, both parents and their attorneys may sign and file with the Court a stipulated request for mediation. A mediator will be available to the parents in accordance with these rules or the parents may agree and stipulate to an independent mediator in their stipulated request for mediation. If the parties choose an independent mediator the costs for the mediator will be paid by the parties jointly.

(b) *Commencement of Mediation by Request for Mediation by One Parent.* If there is a disagreement between the parents concerning custody, visitation, or parenting time at any stage of a domestic relations proceeding, either parent seeking to resolve the matter may file with the Court and serve upon the other parent or his or her attorney a request for mediation.

(c) *Commencement of Mediation when Custody or Non-custodial Parent Parenting Time Appears at Issue.* Whenever a respondent generally appears in a domestic relations suit by filing an answer such as "Respondent Appears" or the like, the respondent shall in addition state whether there is any disagreement over child custody and/or parenting time for the non-custodial parent in the case or, alternatively, whether child custody or non-custodial parenting time is not an issue in the case. In the event no such statement is made, it will be assumed that custody and/or parenting time is in dispute, and the matter shall be referred to mediation.

(d) *Mediation Orientation.* Whenever mediation is requested as in paragraphs (a) and (b) above or whenever any pleadings indicate that child custody or non-custodial parent parenting time is at issue, the parties shall be ordered to appear at a mediation orientation. The parents will be given an opportunity to choose a mediator from those under contract within the 25th Judicial District at the orientation. If the parties are unable to agree upon a mediator by the end of the mediation orientation, the Court will appoint a mediator and notify the parties of the appointment.

(e) *Content of Mediation.* Mediation shall consist of an orientation session and a maximum of six (6) hours of sessions involving the parties and the mediator. Additional sessions may be provided at the parties' expense or upon approval of the Court on recommendation of the mediator.

(f) *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 parents are unable to resolve the custody or non-custodial parent parenting time controversy, if one or both parents are unwilling to participate in mediation or if the mediator determines that either parent is using the mediation process in bad faith for the delay of resolution of other issues.

(g) *Temporary Orders.* At any point during the mediation the court may approve a temporary custody and parenting time plan order reflecting the parents' agreement as to the issues.

(h) *Child Support.* If the parents cannot agree on the amount of support to be paid by one to the other and they are also in dispute as to custody and/or parenting time plan, the mediator may assist upon the written request of the parents and the consent of the mediator in resolving the support issue as well.

(i) *Mediation Completion.* It is the responsibility of the parties and their attorneys to see that mediation is completed within such time as to not delay the trial of the case. Failure to do so may result in dismissal of the case when called for trial or postponement under such conditions as the court may require.

#### (4) CUSTODY STUDIES

When the study report had been received by the parties, the parties are encouraged to return to mediation with the report as a tool for further mediation. The parties may, if both parties agree, resume mediation after the report is made available to the mediator.

### **CHAPTER 13 – ARBITRATION**

#### 13.015 REFERRAL TO ARBITRATION; MOTIONS

(1) *General civil or domestic relations cases:* When a civil case, other than a small claims case, or a domestic relations property division case is referred to arbitration, the arbitration clerk shall send to counsel, or parties pro se, a notice of referral to arbitration along with the names of five proposed arbitrators and a copy of the arbitration procedures adopted by the alternative dispute resolution commission and approved by the court pursuant to UTCR 13.080(2).

(2) All motions, except those set forth in (3) below, shall be decided by the arbitrator as provided in UTCR 13.040(3). The original of all motions shall be filed with the arbitrator and not to the court.

(3) *Motions to be decided by the court.* The following motions shall be decided by a judge:

- (a) Waiver or deferral of arbitrator's and/or filing fees.
- (b) Exemption or removal from arbitration.
- (c) Change of Venue.
- (d) Permission to be represented by counsel in small claims arbitration.
- (e) Resignation of counsel.
- (f) Bankruptcy stay.

(4) *Location of Hearing.* Unless approved by the presiding judge, all arbitration hearings shall be held at a location in Yamhill County.

### 13.025 COMPENSATION OF ARBITRATORS; WAIVER OR DEFERRAL

#### (1) *Compensation*

Arbitrators shall be paid directly by the parties within 14 days of the selection of the arbitrator. The total amount of fees and expenses shall be equally divided, unless otherwise stipulated by the parties.

Note: Arbitrators compensation is currently \$100.00 per hour with a maximum of five hours per case, except for good cause shown and approved by the presiding judge.

#### (2) *Waiver of fees*

The court may waive or defer advance payment of fees and/or expenses, in whole or in part, pursuant to ORS 36.420(3). A party seeking waiver or deferral shall complete and submit to the court the forms provided by the court clerk for waiver or deferral of court filing fees. Application for waiver or deferral must be made within 14 days of the date of the notification of transfer to arbitration. Fees deferred must be paid within 5 days of the arbitration hearing.

### 13.055 QUALIFICATIONS OF ARBITRATORS

(1) To qualify as a court-approved arbitrator, a person must:

- (a) Request, complete and submit, to the Presiding Judge, an application for the Arbitration Panel for the Twenty-Fifth Judicial District;
- (b) If not a retired or senior judge or stipulated non-lawyer, be an active member of the Oregon State Bar for at least 5 years.
- (c) Meet the requirements of UTCR 13.090.
- (d) Receive the approval of the Presiding Judge.
- (e) Be willing to travel to Yamhill County to conduct hearings.

(2) The parties may stipulate to an arbitrator not on the 25th Judicial District Arbitration Panel and proceed through court-annexed arbitration. The arbitrator not on the arbitration panel will receive an arbitration packet which will include instructions and forms for the Twenty-Fifth Judicial District, as well as an Arbitrator's Oath which must be executed and returned to the arbitration coordinator before arbitration proceeds.

## **CHAPTER 14 - REFERENCE JUDGES**

### **14.005 REFERENCE JUDGE PANEL**

- (1) Subject to the continued approval of the Chief Justice and the Presiding Judge of the district, a panel of reference judges, as authorized by ORS 3.300 et seq, is established as an alternative resolution method for civil cases.
- (2) The list of persons qualified and approved as reference judges pursuant to ORS 3.300(2) will be available through the Arbitration/Mediation Coordinator.

### **14.012 SCHEDULING OF PROCEEDINGS**

- (1) Hearings on motions, trials and other proceedings shall be set by the reference judge at a time and place agreeable to the parties.
- (2) The reference judge shall provide notice of hearings to the Arbitration/Mediation Coordinator.

### **14.015 RECORDS**

- (1) Papers, exhibits and other records of the proceeding, as set forth in ORS 3.315(3) (a) through (d) shall be maintained by the reference judge, subject to handling and disposition as set forth in the Uniform Trial Court Rules.
- (2) Said papers, exhibits and other records shall be filed with the clerk of the court within 10 days of the filing of notice of appeal.

### **14.022 COMPENSATION OF THE REFERENCE JUDGE**

- (1) The reference judge shall deliver the written statement specified in ORS 3.321(3) to the Presiding Judge within 49 days of the termination of the referral of the action.
- (2) Except for good cause, the amount of compensation shall not exceed that deposited with the court by the parties pursuant to ORS 3.321.

## **CHAPTER 24 – ELECTRONIC DOUMENTS AND FILING – eCOURT**

### **24.201 ELECTRONIC DOCUMENTS**

- (1) Depending on the context, as used in these rules, “document” refers to an instrument in either paper or electronic form.
- (2) Documents that are electronically filed or manually imaged, including those to which judicial signatures have been added, and documents generated in electronic format by the court are the official court record.

24.202 ELECTRONIC COURT SIGNATURES

The court may issue judicial decisions electronically and may affix a signature by electronic means.

- (1) The trial court administrator must maintain the security and control of the methods for affixing electronic signatures.
- (2) Only the judge and the trial court administrator, or the judge's or trial court administrator's designee, may access the methods for affixing electronic signatures.

24.203 COMBINED MOTION AND ORDER DOCUMENT NOT PERMITTED

Notwithstanding UTCR 2.010(12)(c) or any other Supplementary Local Rule, a motion and order may not be submitted as a single document. If a motion and corresponding proposed order are electronically filed, the order must be submitted as a separate document from the motion.

24.205 BINDING DOCUMENTS; USE OF STAPLES PROHIBITED

- (1) Pleadings and documents submitted to the court for filing that are not electronically filed must be bound by paperclip or binder clip and must not contain staples.
- (2) If a document to be filed includes one or more attachments, including but not limited to a documentary exhibit, an affidavit, or a declaration, then
  - (a) the document and each attachment must be separately bound by paperclip or binder clip, and
  - (b) the attachment or attachments must be bound in one packet to the document being filed by paperclip or binder clip.
- (3) Subsection (2)(a) does not apply to an attachment to a motion to strike filed under UTCR 5.020(2) or an attachment to a motion for leave to amend a pleading filed under UTCR 5.070. An attachment of either type must be bound in one packet to the document being filed by paperclip or binder clip.

24.501 STIPULATED OR *EX PARTE* MATTERS MAY BE ELECTRONICALLY FILED

- (1) Except as provided in subsection (2) of this rule, any stipulated or *ex parte* matter may be electronically filed for purposes of submitting to a judge for signature.
- (2) SLR 2.501 is reserved for judicial districts to adopt a local rule regarding specific stipulated or *ex parte* matters for which the documents must be presented conventionally and may not be electronically filed.

24.601 SUBMISSION OF REQUESTED JURY INSTRUCTIONS AND VERDICT FORMS

The original of the requested jury instructions and verdict forms must be submitted to the court. The court also may require that a party submit a copy of the jury instructions and verdict forms, in the manner and time that the court specifies.

24.801 ACTIONS FOR DISSOLUTION OF MARRIAGE, SEPARATE MAINTENANCE AND ANNULMENT, AND CHILD SUPPORT; DOCUMENTATION FOR DEPARTMENT OF JUSTICE, DIVISION OF CHILD SUPPORT

Notwithstanding UTCR 8.010(8), parties who have been requested to submit a proposed judgment need not submit a copy of the proposed judgment and the most current confidential information form(s) to the court.

24.901 DELIVERING PROBATE MATERIALS TO THE COURT, NO SELF-ADDRESSED, STAMPED ENVELOPE OR POSTCARD IF DOCUMENT ELECTRONICALLY FILED

UTCR 9.010 does not apply to an electronically filed document.

**REPEALED from 2014 SLR: RULES 24.206.**

## APPENDIX 1

SLR 8.075(2)

### **NOTICE**

You must file an answer in writing to this Order within 14 days of the day you are served with this order, or within 30 days if the Order seeks to modify an existing judgment (such as modification of child custody). If you do not file a written answer within such time, the other side may automatically be given 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; you need only to state that you do 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 such 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 clerk of the court so as to actually reach the clerk of 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 clerk of the court if you have any question concerning the filing fee).
- (6) At or before the time you file your written answer with the clerk of 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 attach to the answer which you file with the clerk a certificate showing that you have 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 manner and within the time stated above, the Court will schedule a hearing to decide whether or not to grant the 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 2

SLR 8.085 (3)

### PARENTING PLANS AND NON-CUSTODIAL PARENTING TIME SCHEDULES

#### (1) INTRODUCTION

The Twenty-Fifth Judicial District recognizes that both parents are an important part of their child's growth and development. Therefore, the terms "custodial parent" and "non-custodial parent", in reference to these Local Rules, are to be read with the idea and belief that each parent should be afforded the opportunity to play an active role in the child's life and that each child should be assured frequent and consistent contact with parents who have shown their ability to act in the child's best interest.

The purpose of these guidelines is to provide a schedule for parents who have not established another schedule. Parents are encouraged to be flexible and to consider their child's best interests in arranging additional parenting time. The Twenty-fifth Judicial District may be able to provide mediation services to assist parents in resolving conflicts regarding custody and parenting time upon the request of a party.

#### (2) DEFINITIONS

“Child” includes all minor children referred to in the pleadings.

“Custodial Parent” refers to the parent awarded sole custody, or if joint custody is awarded, it refers to the person designated as providing the primary physical residence in the Judgment.

“Non-custodial Parent” refers to the parent who is not the custodial parent as defined above.

“Joint Custody” is a form of legal custody providing that the parents have shared authority to make all major decisions concerning the child. Parents who agree on joint custody could, for example, decide that the child will live with one parent for more time than with the other parent. However, if they did so, both parents would still have to agree on significant decisions affecting the child. IF PARENTS CANNOT AGREE ON JOINT CUSTODY AND HOW JOINT CUSTODY ARRANGEMENTS WILL WORK, THE COURT WILL NOT ORDER JOINT CUSTODY.

#### (3) SPECIFIC PARENTING TIME PROVISIONS:

##### (a) WEEKEND VISITATION SCHEDULE:

(1) The non-custodial parent shall have the child every other weekend, beginning on Friday night at 7:00 p.m. and ending on Sunday night at 7:00 p.m. By written agreement, the non-custodial parent's parenting time may end at 7:00 p.m. on Sunday or such other time as the parties may agree.

(2) If the non-custodial parent has the child on his/her alternate weekend, and if the following Monday is a recognized holiday or non-school day which is not listed below, then the non-custodial parent's parenting time shall commence at 7:00 p.m. on Friday and end at 7:00 p.m. on Monday (the recognized holiday or non-school day).

(3) The alternate weekend parenting time schedule shall rotate each year as follows: In all even-numbered years, the non-custodial parent's first weekend visit shall begin at 7:00 p.m. on the first Friday after New Year's Day. In all odd-numbered years, the non-custodial parent's first weekend shall begin the second Friday following New Year's Day.

#### (b) WEEKDAY VISITATION SCHEDULE

(1) The non-custodial parent shall be able to have parenting time with his/her child every other Wednesday. If the child is in school, the non-custodial parent shall have time with the child on Wednesday from 5:00 p.m. until 8:00 p.m. If the child is not in school, the time shall begin at 10:00 a.m. and end at 7:30 p.m.

(2) The first alternate Wednesday parenting time period of the New Year shall follow the non-custodial parent's first weekend parenting time in a given new year.

#### (c) WINTER VACATION SCHEDULE

(1) In all even-numbered years, the non-custodial parent shall have the child beginning at 7:00 p.m. on the day that school adjourns until 10:00 a.m. on December 25 of each year; the custodial parent shall have the child for the remainder of the child's winter vacation.

(2) In all odd-numbered years, the custodial parent shall have the child beginning at 7:00 p.m. on the day that school adjourns until 10:00 a.m. on December 25 of each year; the non-custodial parent shall have the child for the remainder of the child's winter vacation until 7:00 p.m. the day before school resumes.

(3) The alternate weekend parenting time schedule and alternate Wednesday parenting time shall not apply during the winter vacation period.

#### (d) SUMMER PARENTING TIME

Unless otherwise agreed upon by the parties in writing, summer parenting time for the non-custodial parent shall be divided into three (3) blocks of time; each block shall consist of a two (2) weeks (i.e., 14 days subject to remaining vacation time), as outlined below. When the child reaches the age of 8 years, the summer parenting time shall be six consecutive weeks provided, however, that the court can continue the three two-week block of time if deemed appropriate. (In appendix 2 there are suggestions for special age

related provisions. If you feel any provision is appropriate you will need to have the court order address these concerns).

(1) Three (3) two (2) week visitation schedule in *even numbered* years (unless otherwise agreed upon by the parties):

(a) The non-custodial parent's first two week block of time shall begin at 7:00 p.m. on the *first Friday* following the day school adjourns and shall end at 7:00 p.m. two weeks later;

(b) The custodial parent's first two week block of time shall begin at 7:00 p.m. on the *third Friday* after school adjourns and end at 7:00 p.m. two weeks later;

(c) The non-custodial parent shall then have the child for the next two week period. Once those two weeks are up, the child will once again go back to the custodial parent's residence and so on.

(d) The alternate weekend parenting time schedule and alternate Wednesday parenting time shall not apply during this extended summer vacation period.

(e) The Summer visitation schedule will end at 7:00 p.m. on the sixth day before school resumes and regular weekend visitation will resume the second Friday after the children are returned.

(2) Three (3) two (2) week visitation schedule in *odd numbered* years (unless otherwise agreed upon by the parents):

(a) The custodial parent's first two week block of time shall begin at 7:00 p.m. on the *first Friday* after school adjourns and end at 7:00 p.m. two weeks later;

(b) The non-custodial parent's first two week block of time shall begin at 7:00 p.m. on the *third Friday* after school adjourns and end at 7:00 p.m. two weeks later;

(c) The custodial parent shall then have the child for the next two week period. Once those two weeks are up, the child will once again go back to the non-custodial parent's residence and so on.

(d) The alternate weekend parenting time schedule and alternate Wednesday parenting time shall not apply during the summer vacation period.

(e) The Summer visitation schedule will end at 7:00 p.m. on the sixth day before school resumes and regular weekend visitation will commence the second Friday after the children return.

(3) Six-week Summer Parenting Time. Before May 1 of each year, the non-custodial parent shall select and notify the custodial parent in writing of the inclusive dates of the summer parenting time period which the non-custodial chooses to have with the child. The custodial parent shall have the child for the rest of the summer subject to the non-custodial parent's "alternate weekends", provided, however, that the custodial parent shall have the right to keep the child for two uninterrupted weeks during the custodial parent's one-half of the summer which will result in the non-custodial parent losing one "alternate weekend". There shall be no alternate Wednesday visits during the summer. The custodial parent shall have "alternate weekend" visits with the child during the non-custodial parent's six week visit provided, however, that the non-custodial parent shall have the right to keep the child for two uninterrupted weeks during non-custodial parent's six-week period which will result in the custodial parent losing one "alternate weekend" period. Such interim parenting time by the custodial parent shall not lengthen the six-week summer parenting time period allowed to the non-custodial parent. The six week summer parenting time period shall not end later than 7:00 p.m. on the sixth day before school resumes. If the non-custodial parent fails to give written notice to the custodial parent before May 1 of the year of the summer parenting time, the non-custodial parent nevertheless shall have the right to such summer parenting time with the child after giving two weeks' written notice to the custodial parent, if and to the extent the time remains for such summer parenting time; provided, however, that the custodial parent shall have the right to choose the inclusive dates for such summer parenting time.

(D) LONG DISTANCE PARENTING TIME.

Where the non-custodial parent lives more than 200 miles from the child the following shall apply:

(1) Extended Summer Parenting Time:

(a) *Newborn to less than three years of age:* Three one-week blocks with a break of at least one week between parenting time periods at any time during the year, excluding holidays to which the custodial parent is entitled. The non-custodial parent shall notify 90 days advance written notice to the custodial parent of the dates of each of the one-week blocks selected.

(b) *At least three years of age and less than six years of age:* Four weeks starting not less than one week and not more than five weeks after school ends. The custodial parent has the option of a weekend (7:00 p.m. Friday until 7:00 p.m. Sunday) after the first two weeks, in the general area of the non-custodial parent's residence.

(c) *Six years and older*: The non-custodial parent shall have all but two weeks of the child's summer school vacation, provided, the non-custodial parent's summer parenting time shall end not more than six days before school resumes. The custodial parent shall have a two-week period with the child either at the beginning of the summer or after the first one-half of the non-custodial parent's summer parenting time with the non-custodial parent. If the custodial parent chooses to have the two-week period after the first one-half of the non-custodial parent's summer parenting time, the custodial parent shall pay for all transportation costs incurred in transporting the child from the non-custodial parent's home to the custodial parent's home and back to the non-custodial parent's home. The six days before school resumes shall not be considered a part of the custodial parent's two weeks. The custodial parent shall by May 1 of each year provide written notice to the non-custodial parent of the dates selected for the custodial parent's two-week period with the child.

(2) Extended School Year Parenting Time:

(a) In even-numbered years:

*Thanksgiving vacation*: From Wednesday at the time school adjourns until the following Sunday.

*Spring break*: From the day after school adjourns until 6:00 pm on the day before school resumes.

(b) In odd-numbered years:

*Christmas vacation*: From the day after school adjourns until two days before school resumes.

(3) Extended Weekend/Non-school day Parenting Time: The non-custodial parent shall have the right to weekend parenting time or non-school day parenting time of not more than two weekends per month, excluding holidays to which the custodial parent is entitled, if he/she gives 30 days written notice to the custodial parent.

(4) Transportation: Transportation by plane, train or bus: If the non-custodial parent wants the child to travel by plane, train or bus, then the custodial parent shall deliver and pick up the child at the local international airport, train station or bus station. A child younger than five years shall not travel long distances unless accompanied by a parent or mutually agreed upon adult known to the child. Approval of a non-parent companion shall not be unreasonably withheld.//

(E) 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:* Wednesday at 7:00 pm through the following Sunday at 7:00 pm.

Custodial parent - odd years

Non-custodial parent - even years

*Halloween:* October 31st at 5:30 p.m. through 9:00 p.m.

Custodial parent - even years

Non-custodial parent - odd years

*Spring Vacation:* Whether or not the child is in school, during the period of school spring vacation (measured from the day after school adjourns through the day before school resumes), commencing at 10:00 a.m. and ending at 7:00 p.m.

Custodial parent - even years

Non-custodial parent - odd years

*Mother's Day:* 10:00 a.m. through 7:00 p.m.

Always with mother

*Father's Day:* 10:00 a.m. through at 7:00 p.m.

Always with father

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

*Child's Birthday:* Five p.m. through 8:00 p.m. on a school day; 10:00 a.m. through 7:00 p.m. on a non-school day.

Custodial parent - even years

Non-custodial parent - odd years

*Mother's Birthday:* 5:00 p.m. through 8:00 p.m. on a school day; 10:00 a.m. through 7:00 p.m. on a non-school day. Always with mother, at mother's option.

*Father's Birthday:* 5:00 p.m. through 8:00 p.m. on a school day; 10:00 a.m. through 7:00 p.m. on a non-school day. Always with father, at father's option.

(4) GENERAL PROVISIONS

(a) *Personal Plans.* Personal plans of the custodial parent or child, (for example, school or church activities) will not be reasons for failing to follow the visitation schedule set forth in the court's order.

(b) *Addresses and telephone numbers.* Unless otherwise ordered by the court, both parents will provide home addresses and home telephone numbers to the other party. In the event the non-custodial parent is taking the child overnight out of the town of the non-

custodial parent's residence, the non-custodial parent shall notify the custodial parent of the location and telephone number, if any, of where the child will be sleeping.

(c) *Non-assigned time.* Unless otherwise agreed, in writing, the custodial parent is responsible for the child during all times not awarded to non-custodial parent.

(d) *Delivery and Pick-up.* All visitations shall be exercised in a prompt manner. Unless otherwise agreed, or court ordered, pickup and delivery shall occur no more than 15 minutes before or 15 minutes after the time specified for visitation to begin and end. The non-custodial parent shall pick up the child at the beginning of the visit and the custodial parent shall pick up the child at the end of the visit. The custodial parent shall have the child fed and ready on time for the non-custodial parent's parenting time with sufficient clothing packed and ready for the visitation period. The non-custodial parent shall return all clothing and feed the child a meal before returning the child from the parenting time period.

(e) *No shows for scheduled Visitation and Make-ups.* Only medical reasons will be considered sufficient for postponement of parenting time with the non-custodial parent. If a child is ill and unable to be with the non-custodial parent during his/her parenting time, a makeup period shall occur on the following weekend. However, if the non-custodial parent fails to exercise his/her parenting time, there will be no makeup.

(f) *History of failure to exercise parenting time.* When there is a history where the non-custodial parent does not show up for a scheduled weekend parenting time (for example: one "no show" per month for 3 months), the custodial parent may take the following action: To write the non-custodial parent indicating that unless the non-custodial parent gives at least 3 days advance notice that he/she will exercise the scheduled weekend parenting time, the custodial parent will cancel the next following regularly scheduled parenting time.

Canceling the next regularly scheduled parenting time period should not be done lightly and should not be done by the custodial parent where, for example, there is no regular history of missed parenting time, or where the missed parenting time was due to an emergency situation such as health or emergency weather conditions.

(g) *Mutual Respect Toward the Other Parent.* Both parents shall not make bad, derogatory or otherwise unflattering comments about the other party or in any way attempt to diminish the love, respect and affection that the child has for the other parent.

(h) *Support of Non-Custodial Parent's Parenting Time.* The custodial parent shall encourage visitation with the child and the child shall not be permitted to determine whether the child wishes to visit the non-custodial parent unless agreed to, in writing, by both parents.

(i) *Access to Records and Events.* In addition to the parenting time schedule, unless otherwise specifically ordered by the court, the non-custodial parent shall have 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. ORS 107.154 also affirms additional rights in the non-custodial parent unless otherwise ordered by the court. Each parent shall be responsible for keeping themselves advised of the child's activities and events.

(j) *Conflicting Dates.* The holiday schedule takes precedence over the summer and alternating weekend schedule. Due to the holiday parenting time schedule set out in this Rule, there may be occasions when one or both of the parents will have the child in his or her home for three weekends in a row. This could happen because any holiday defined in this Rule shall replace the normal schedule for a given weekend or time period. In other words, some weekends in a year will be lost due to conflicting vacations and holidays.

(k) *Daily Care.* The parent with whom the child is staying will be responsible for daily care and will 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 any substantial changes in the child's appearance (e.g., tattoos, ear piercing, etc.) unless authorized by the custodial parent.

(l) *Day care.* The non-custodial parent shall be responsible for arranging and paying for day care for the child during his or her parenting time periods.

(m) *Emergencies.* Each parent will immediately notify the other party of any emergency circumstances or substantial changes in the health or safety of the child.

(n) *Writing and telephoning.* The non-custodial parent shall, in addition to the visitation in this order, have the right to correspond with the child, and to telephone the child during reasonable hours without monitoring by custodial parent or anyone else. Unless otherwise agreed to between the parties, telephone calls between non-custodial parent and the child shall be limited to no more than 3 per week. The custodial parent shall also have similar rights during periods of non-custodial parent's parenting time. A child over the age of 12 shall have the right to initiate calls to the other parent during reasonable hours. Long distance calls are to be made collect unless other arrangements are made.

(o) *Decision Making.* The custodial parent is encouraged to consult with non-custodial parent regarding major decisions affecting the child; however, the custodial parent shall have full decision-making authority. Each parent shall exert his/her best effort to work cooperatively for the best interests of the child.

(p) *Non-custodial Parenting Time is Independent from Support.* Non-custodial parenting time is not dependent on payment of child support or on whether or not the other parent does or does not do other things not directly related to non-custodial parenting time.

## (5) INVOLVEMENT AND FLEXIBILITY

The parenting time schedule should be construed and implemented in a manner which fosters the child's best interest by providing liberal, predictable, and wholesome time between the child and the non-custodial parent. While this schedule promotes stability for the child, each parent acknowledges that reasonable adjustments will be needed from time to time and that an element of flexibility will be required in administering this parenting time schedule. Each parent should be flexible in arranging dates and time with the child so important family events and the child's activities are maintained with minimal disruption or hard feelings. Each parent shall act reasonably in registering the child for activities keeping in mind that neither parent is entitled to require activities for the child 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 on the other parent's weekend or scheduled parenting time.

(a) 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.

(b) 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.

***For further important suggestions and footnotes, see appendix 3.***

## APPENDIX 3

SLR 8.085(3)

### SUGGESTIONS RELATING TO PARENTING TIME OF CHILDREN

The following suggestions are not binding unless adopted by court order.

If you feel there are activities of the child or parent's, physical, emotional, religious, transportation or work-related concerns, or that there are special needs related to the age of a child and you are unable to mutually resolve those concerns, then you will need to seek the court's assistance to deviate from this rule to address those concerns. For example, the Twenty-Fifth Judicial District Local Rules recognizes that parenting time guidelines should be based upon the needs of a growing child. Parents may wish to ask the Court to consider the age of the child suggestions if they are appropriate:

Infant, age less than 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 visitations, provided non-custodial parent has been actively involved in the caretaking role.

Toddler, age 1 to 3 ½: Four weekend days per month, plus one-half (½) day per week (4 to 6 hours). Overnight non-custodial parenting time, provided non-custodial parent has been actively involved in the caretaking role and/or is accompanied by an older child. During any visits of 7 days or more, the other parent should have a four hour mid-week period of time with the child.

Pre-school, age 3 ½ to 6: 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 parenting time should be as per the Rule. During any non-custodial parenting time periods of 7 days or more the other parent should have a four hour mid-week period of time.

Early Elementary, age 6 to 9: Summer non-custodial parenting time should be as per the Rule. The parenting time schedule should be flexible enough to insure the children's participation in ongoing or special activities.

Later Elementary, age 10 and older: The minimum is the same as the early elementary. Flexible non-custodial parenting time is the basic principle, with the child(ren) 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.

Smoking or drinking alcohol in the presence of the child: The parents should seek to agree as to whether neither parent should smoke in the presence of the child (or smoke in

any manner so the child is breathing the smoke), especially if the child has asthma or other respiratory issues, and whether neither parent should drink alcohol to the point where they are affected by the alcohol in the presence of the child.

The following are footnote examples or clarifications of application of the Standard Parenting Time Rule 8.085:

1. The non-custodial parent shall pick the child up from the custodial parent's home at 7:00 p.m. on alternating Fridays, and return the child to the custodial parent's home the following Sunday evening in accordance with the rule. However, if the Monday is a recognized holiday, such as Memorial Day, and the non-custodial parent had the child that weekend, then he/she shall have visitation with the child until 7:00 p.m. on the Memorial Day.

2. In the year 2009, New Year's Day falls on a Thursday. The non-custodial parent's first weekend parenting time would begin on the second Friday in January, which would be Friday, January 9, 2009.

3. If the non-custodial parent's first alternate weekend parenting time began on Friday, January 9, 2009, the second alternate weekend parenting time of the new year would commence two weeks later, on Friday, January 23, and end the following Sunday, and so on.

1st weekend: 7 p.m. on Friday, January 9, 2009, through 7 p.m. the following Sunday;

2nd weekend: 7 p.m. on Friday, January 23, 2009, through 7 p.m. the following Sunday;

3rd weekend: 7 p.m. on Friday, February 6, 2009, through 7 p.m. the following Sunday.

4. Using our example above, for the year 2009, if the non-custodial parent's first alternate weekend began on Friday, January 9, 2009, then the first alternate Wednesday parent time would be on January 14, and so on.

1st Wednesday time: Wednesday, January 14, 2009;

2nd Wednesday time: Wednesday, January 28, 2009;

3rd Wednesday time: Wednesday, February 11, 2009.

5. If the child is not school age, winter vacation shall be considered to begin on the day school would normally let out for the school district in which the child resides. For example, if the child would go back to school on January 5, 2009, the non-custodial parent's visit shall end at 7 p.m. on January 4<sup>th</sup>.

## SAFETY CONCERNS

If you have safety concerns and feel that your situation requires additional protection for you or your child(ren), you may agree upon or ask the court to order any of the following additional or alternative provisions in your parenting plan.

Parenting classes, violence intervention or substance abuse evaluation/treatment. It is sometimes necessary to ask the court to require that parenting time be supervised until the other parent has completed a parenting course, undergone a substance abuse evaluation and treatment, or completed a violence intervention program (or come combination of these) before unsupervised parenting time can occur.

A. Completion of a parenting class prior to allowing unsupervised parenting time may be appropriate for either or both parents if a parent has abused or neglected the children or has disciplined them inappropriately, or if a parent is simply inexperienced in caring for children and as a result is unable to provide a safe, secure, nurturing environment for the child(ren).

*EXAMPLE:* “Father’s/Mother’s parenting time shall be supervised until he/she has completed the twelve week parenting course offered by \_\_\_\_\_ and has provided satisfactory documentation to the court of completion of the course.”

B. A substance abuse evaluation and treatment or a mental health evaluation should be requested whenever there is evidence that alcohol or illegal drug use by a parent, or untreated mental illness, threatens the safety of welfare of the child during parenting time.

*EXAMPLE:* “Father’s/Mother’s parenting time shall be supervised until he/she has undergone an alcohol/drug abuse evaluation and completed treatment is recommended, and submitted to the court satisfactory documentation from a qualified professional of the completion of the evaluation/treatment program”

**IF YOU ARE REQUESTING SUPERVISED PARENTING TIME** always specify **WHO** will supervise (it should not be the other parent) and **WHERE** the supervised visits will take place. There are few agencies who will provide supervision for a fee, if a family member or friend is not available to be the designated supervisor. To find out the names and locations of supervised visitation agencies, contact the local court-appointed domestic relations mediators or the court mediation coordinator.

### Protection During Pick-up and Drop-off of Child(ren):

Presence of a third party: A provision can be included in the parenting plan to assure the safety of a parent during the exchange of the child(ren) at the beginning and end of parenting time.

EXAMPLE: “Mother/Father may designate a third party to pick up/return the children by giving advance written notice to the other parent.” Or,

“Mother/Father may be accompanied by a third party when the child(ren) are picked up/dropped off, and both parents shall refrain from antagonistic or threatening remarks or conduct directed toward the other parent or the third party.

Neutral exchange site: A provision can also be included to provide for a neutral drop-off and pick-up site so the parents don’t need to go to each other’s homes if problems are likely to arise there, or if one parent has shown good cause to not disclose his/her address to the other parent (see SLR 8.085(4)(b). Fast-food restaurants with play areas for children are popular sites in such situations.

EXAMPLE: “Mother/Father shall deliver the child(ren) at the beginning of parenting time and Mother/Father shall return the child(ren) at the end of parenting time, to [name of restaurant or other location].”

Telephone calls: If telephone calls to the children from someone who has previously been abusive toward the other parent is a problem, it may be appropriate to include in the parenting plan a requirement that the calls be placed at a specific time so that the children can answer the phone (see SLR 8.085(4) (n).

EXAMPLE: “Telephone calls from the non-custodial parent and the child or children shall be placed at \_\_\_\_\_ a.m. / p.m. on \_\_\_\_\_ so that the child is available to answer the phone.”

**IF YOU HAVE A RESTRAINING ORDER TO PREVENT ABUSE.** If a restraining order, sometimes called a FAPA order, limits contact between the parents, the restraining order may need to be modified to accommodate the terms of a parenting plan in a dissolution of marriage or custody judgment. Remember, the parenting time order in a dissolution of marriage/custody judgment supersedes the parenting time provision in the restraining order insofar as they are contradictory regarding parenting time. If you have a restraining order, be sure the court is aware of that before a dissolution of marriage or custody judgment is entered.