

**NOTICE SEEKING PUBLIC COMMENT ON
PROPOSED UTCR CHANGES FOR 2008**

I. INTRODUCTION

This notice is made pursuant to UTCR 1.020(3) which requires official notice of proposed rule changes to be posted for public comment on the Oregon Judicial Department website (<http://www.ojd.state.or.us>) at least 49 days before final action is taken on the proposals. The proposed changes will also be published in the Oregon Appellate Courts Advance Sheets No. 1 on December 31, 2007.

The Uniform Trial Court Rules (UTCR) Committee makes UTCR recommendations to the Chief Justice of the Oregon Supreme Court. At its fall meeting on October 12, 2007, the committee made preliminary recommendations on several proposed changes. The committee will make final recommendations at its next meeting on April 4, 2008.

The committee encourages you to submit comments on these proposals, the recommendations (whether for approval or disapproval), and any other action taken by the committee. In order to be considered by the committee, public comment must be received by the UTCR Reporter before the start of the committee's spring meeting.

PLEASE SUBMIT YOUR WRITTEN COMMENTS TO:

If you are viewing this notice online, you can submit your written comments by clicking on the button next to the item of interest.

You may also submit written comments by email or traditional mail:

utcr@ojd.state.or.us

or

UTCR Reporter
Supreme Court Building
1163 State Street
Salem, Oregon 97301-2563

If you wish to appear at the spring meeting, you can deliver your comments in person. Please contact the UTCR Reporter at utcr@ojd.state.or.us or Bruce C. Miller at 503-986-5500 to schedule a time for your appearance.

Recommendations that are adopted by the Chief Justice will take effect August 1, 2008. They will be posted on the Oregon Judicial Department website (<http://www.ojd.state.or.us>) and published in the Oregon Appellate Courts Advance Sheets. Additional information on the UTCR process can be found at: <http://www.ojd.state.or.us/programs/utcr/index.htm>.

II. FUTURE MEETINGS

The committee plans to meet twice in 2008.

SPRING MEETING: April 4, 2008, 9:00 a.m., at the Office of the Oregon State Court Administrator, Salem. The committee will review public comment on the proposals and recommendations described in this notice and will make final recommendations to the Chief Justice on changes to the UTCR to take effect August 1, 2008. The committee may also reconsider any and all of these proposals, the corresponding recommendations, and the other committee actions.

FALL MEETING: October 10 and 11, 2008, 9:00 a.m., at the Office of the Oregon State Court Administrator, Salem. The committee will review existing and proposed Supplementary Local Rules (SLR) and may make recommendations to the Chief Justice on disapproval of SLR pursuant to UTCR 1.050. The committee will also consider proposals for changes to the UTCR to take effect August 1, 2009. This is the only meeting at which the committee intends to accept proposals for that cycle. Committee meeting dates for the following year will be scheduled at this meeting.

III. SYNOPSIS OF FALL 2007 ACTIONS

A. RECOMMENDATIONS OF APPROVAL

These are brief descriptions of UTCR changes the committee has preliminarily recommended for approval (see Section IV.A. for detailed explanations).

1. 1.050 Amend to clarify process for SLR changes.
2. 1.050(1)(b) Amend to clarify wording concerning prohibition of rules on internal operating procedures.
3. 1.050(1)(b) Amend to state that SLR may not conflict with Chief Justice Orders and Supreme Court Orders.
4. Ch. 5 Adopt a new rule on amended pleadings.
5. Ch. 5 Adopt a new rule on obtaining an Oregon commission for interstate deposition and related forms.
6. Ch. 5 Adopt a new rule on registering a foreign deposition commission and related forms.
7. Form 5.080 Amend to include award of costs and disbursements.
8. 5.080 Amend to add costs and disbursements.
9. Ch. 21 Adopt a new chapter on electronic filing.

B. RECOMMENDATIONS OF DISAPPROVAL

These are brief descriptions of the UTCR proposals the committee has preliminarily recommended for disapproval (see Section IV.B. for detailed explanations).

1. 2.010(7) Amend to delete or qualify email address requirement.
2. 3.140(1) Amend to delete or qualify email address requirement.
3. Ch. 4 Adopt a new rule on submission of proposed criminal judgments.
4. Ch. 5 Adopt a new rule on life expectancy and present value tables.

- 5. 9.030(1) Amend to delete or qualify email address requirement.
- 6. Appendix Amend certain forms regarding declaration under penalty of perjury.

C. OTHER ACTIONS

These are brief descriptions of other committee actions (see Section IV.C. for detailed explanations).

- 1. UTCR 2.100(3). Amend to extend segregation requirement to proceedings concerning paternity and support.
- 2. UTCR Chapter 5. Adopt a new rule on summary judgment motions.
- 3. Report on correction of typographical error in 8.050(5).
- 4. Report on Oregon State Bar House of Delegates recommendation concerning form pleadings.
- 5. Report from subcommittee on electronic filing issues.

IV. DESCRIPTION OF FALL 2007 ACTIONS

Proposed deletions are in *[brackets and italics]*. Proposed additions are **underlined and in bold**. In some cases, no draft wording was submitted to the committee and so none is set out in the explanation.

A. RECOMMENDATIONS OF APPROVAL

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- 1. 1.050 Amend to clarify process for SLR changes.

ACTION TAKEN

Motion 34, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by the UTCR Reporter. The amendment clarifies the process judicial districts must follow for submission of their Supplementary Local Rules (SLR).

PROPOSED AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) * * *

* * * * *

[(e) *Before the delivery of a certified copy of a local rule to the State Court Administrator, the presiding judge must give written notice of the rule to the president(s) of the bar association(s) in the affected district and give the bar*

association(s) at least 49 days to provide the court with comments on the rule.]

(2) Review of SLR

- (a) **The presiding judge must give written notice of any new rules and changes to existing rules to the president(s) of the bar association(s) in the affected district and allow the bar association(s) at least 49 days before the date of submission of the rules to the Office of the State Court Administrator (OSCA) to provide the presiding judge with public comment. Subsequent changes made to those SLR in response to recommendations from the UTCR Committee do not need to be submitted to the president(s) of the bar association(s) in the affected district.**
- ([a]b) Proposed local rules will be considered by the Chief Justice or designee not more often than once each year. To be considered, the proposed rules and a written explanation of each proposed new rule and change to an existing rule must be received by [the Office of the State Court Administrator] **OSCA** on or before September 1. [If the proposed rules are not disapproved by the Chief Justice or designee on or before December 15 of the same year, the proposed rules shall be deemed filed by the State Court Administrator on January 1 of the next year and shall become effective on February 1 of the next year.]
- (c) **The Chief Justice or designee shall issue any disapprovals on or before December 15 of the same year.**
- (d) **Judicial districts shall file with OSCA a final certified copy and a final electronic copy in PDF which must be received by OSCA no later than January 1 of the next year. Those SLR shall become effective on February 1 of the next year.**
- ([b]e) Proposed local rules submitted to the Chief Justice for review under subsection (2)([a]b) of this rule must show the proposed changes to the local rule as follows: proposed new language in the SLR and proposed new SLR will be in bold and underlined, language proposed to be deleted and SLR proposed to be repealed will be in italics and have brackets placed before and after the deleted language ([...]). When final SLR are submitted to the State Court Administrator after review under subsection (2)([a]b) of this rule, changes [will] **shall** not be indicated as required by this subsection.
- ([c]f) The Chief Justice may waive the **time** limits [of paragraphs (1)(e) and (2)(a) above on] **in this section upon a showing of** good cause [shown].
- ([d]g) If a local rule is disapproved, notice of that action shall be given to the presiding judge of the court submitting the rule.

(3) * * *

* * * * *

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2. 1.050(1)(b)
Amend to clarify wording concerning prohibition of rules on internal operating procedures.

ACTION TAKEN

Motion 35, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by Kinsley W. Click, State Court Administrator, on March 21, 2007. The amendment corrects confusing wording in the rule.

PROPOSED AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) * * *

(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement ("local practice") with which the court expects or requires parties and attorneys to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that [*neither*] **do not also** create requirements [*for nor*] **or** have potential consequences for parties or attorneys.

(c) * * *

* * * * *

(2) * * *

* * * * *

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3. 1.050(1)(b)
Amend to state that SLR may not conflict with Chief Justice Orders and Supreme Court Orders.

ACTION TAKEN

Motion 36, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by Nori Cross, Special Counsel in the Office of the State Court Administrator, on March 21, 2007. The amendment adds Chief Justice

Orders and Supreme Court Orders to the list of things with which SLR may not conflict.

PROPOSED AMENDMENT

1.050 PROMULGATION OF SLR; REVIEW OF SLR; ENFORCEABILITY OF LOCAL PRACTICES

(1) Promulgation of SLR

(a) * * *

(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement ("local practice") with which the court expects or requires parties and attorneys to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, **Chief Justice Orders, Supreme Court Orders**, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that neither create requirements for nor have potential consequences for parties or attorneys.

(c) * * *

* * * * *

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4. Chapter 5
Adopt a new rule on amended pleadings.

ACTION TAKEN

Motion 6, to preliminarily recommend approval, passed by consensus.

EXPLANATION

While conducting the annual review of SLR, the committee saw this requirement in Clackamas SLR 5.025 and Multnomah SLR 5.023. They felt this would make an appropriate statewide rule as the requirement would help all judges evaluate motions to amend and amended pleadings.

PROPOSED AMENDMENT

5.070 MOTION FOR LEAVE TO AMENDED PLEADING

(1) Except as provided in section (2) of this rule, whenever a motion for leave to amend a pleading is submitted to the court, it must include, as an exhibit attached to the affidavit, the entire text of the proposed amended pleading. The text of the pleading must be formatted as required by this rule. Any material to be added to the pleading by the requested amendment must be inserted and set out in bold and underlined, and any material to be deleted must be bracketed and italicized.

(2) If the motion to amend is for a pleading which was composed using preprinted forms which 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 inserting brackets around the material to be deleted and by interlineating and underlining the material to be inserted in the proposed amended pleading.

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5. Chapter 5
Adopt a new rule on obtaining an Oregon commission for interstate deposition and related forms.

ACTION TAKEN

Motion 29, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by Lawrence W. Erwin, a Bend attorney, on March 7, 2007. Mr. Erwin described his difficulty in trying to register a commission in central Oregon. Only Klamath and Multnomah have SLR on this process, and the ORCP offers little guidance. He noted that this is a procedural matter that is not usually challenged. The committee agreed that a statewide rule with forms, based on Multnomah SLR 5.095, would be helpful to parties.

PROPOSED AMENDMENT

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.**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

_____)	
Plaintiff,)	No. _____
)	
v.)	AFFIDAVIT, MOTION, AND ORDER
)	FOR COMMISSION TO TAKE
_____)	OUT-OF-STATE DEPOSITION
Defendant.)	

I, _____, attorney for _____, state it is necessary in the above-entitled case to take the depositions of the following people in the state or country of _____:

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

Date _____ Signature _____
OSB# (if applicable) _____ Type or print name _____

Pursuant to ORCP 38 and based on the above affidavit, _____ moves this court for an order issuing a commission for depositions to be taken in the state or country of _____, and that the commission be effective for _____ day(s) from the date of signing by the clerk.

Signature

Name of Attorney Typed or Printed OSB No.

IT IS ORDERED that the requested commission be issued and that the commission shall be effective for _____ day(s) from the date of signing by the clerk.

Signed this _____ day of _____, _____.

Signature

Judge's Name Typed or Printed

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

_____)	
Plaintiff,)	No. _____
)	
v.)	COMMISSION TO TAKE FOREIGN
)	DEPOSITION
_____)	
Defendant.)	

TO ANY PERSON AUTHORIZED TO ADMINISTER OATHS IN _____:

Pursuant to ORCP, by order of the above-titled court made on application of _____ in the above-captioned case, you are hereby appointed, commissioned, and authorized to take the depositions of the following named people in the state or country of _____.

You are authorized to administer an oath to the above witnesses and to take their depositions on oral examination. You are further authorized and directed to cause the examinations of these witnesses to be recorded and to certify that the witnesses were duly sworn and that the deposition transcripts are a true record of the witnesses' testimony. This commission expires _____ day(s) from the date of signing.

Signed this _____ day of _____, _____.

TRIAL COURT ADMINISTRATOR

by _____

6. Chapter 5
Adopt a new rule on registering a foreign commission in Oregon and related forms.

ACTION TAKEN

Motion 29, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by Lawrence W. Erwin, a Bend attorney, on March 7, 2007. Mr. Erwin described his difficulty in trying to register a commission in central Oregon. Only Klamath and Multnomah have SLR on this process and the ORCP offers little guidance. He noted that this is a procedural matter that is not usually challenged. The committee agreed that a statewide rule with forms, based on Multnomah SLR 5.095, would be helpful to parties.

PROPOSED AMENDMENT

5.140 INTERSTATE DEPOSITION INSTRUMENTS—REGISTERING A FOREIGN COMMISSION IN OREGON

- (1) **To obtain discovery in the State of Oregon for an action pending in another jurisdiction, a party shall register 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 action or an active member in good standing of the Oregon State Bar shall 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 5.140.1 in the UTCR Appendix of Forms). If approved by the court, upon payment of the appropriate filing fee the matter will be assigned a circuit court case number and appropriate process may be issued by the Oregon attorney.**
- (2) **In the event that a foreign jurisdiction has no procedure to issue a writ, mandate, commission, letter rogatory, or order to authorize a deposition to be taken in Oregon pursuant to ORCP 38C, at ex parte the party shall present a petition to compel the witnesses to appear and testify. The petition shall be supported by an affidavit that contains all of the following:**
- (a) **The name of the foreign jurisdiction in which the litigation is pending.**
 - (b) **The name of the court in which the litigation is pending.**
 - (c) **The caption or other relevant title of the litigation.**
 - (d) **The case number assigned by the foreign jurisdiction to the litigation.**
 - (e) **The date of filing of the litigation 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 as provided by ORCP 38C(1).
- (h) The identity of witnesses in this state to be compelled upon notice or agreement to appear and testify.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR _____ COUNTY

_____)	
Plaintiff,)	No. _____
)	
v.)	PETITION AND ORDER TO REGISTER
)	FOREIGN DEPOSITION INSTRUMENT
_____)	AND ISSUE SUBPOENAS
Defendant.)	

Petitioner certifies that:

The attached mandate, writ, commission, or letter rogatory was issued by _____ Court of the State of Oregon or Country of _____ on the ____ day of _____, _____, in case no. _____, requiring testimony of a witness within the State of Oregon and the authority granted by the document is in full effect.

Therefore, petitioner requests that:

The mandate, writ, commission, or letter rogatory be approved by the court for filing so witnesses may be compelled by subpoena to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

Signed this _____ day of _____, _____.

Signature

Name of Attorney Typed or Printed OSB No. _____

Petition granted. It is ordered that this petition and the attached mandate, writ, commission, or letter rogatory be filed, and upon filing, subpoena may be issued and served.

Signed this _____ day of _____, _____.

Judge's Signature

Judge's Name Typed or Printed

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7. Form 5.080
Amend to include award of costs and disbursements.

ACTION TAKEN

Motion 38, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by Karen L. Harris, legal assistant at the Portland law firm Greene & Markley, on March 7, 2005. It was carried over from the March 17, 2006, October 13, 2006, and March 9, 2007, meetings to allow the committee additional time to work on draft changes to the form. The committee felt the form should be amended to more clearly address costs and disbursements, as well as to add clarity for user convenience and conformity with case law.

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PROPOSED AMENDMENT

IN THE [_____] **CIRCUIT** COURT OF THE STATE OF OREGON
 FOR _____ [THE] COUNTY [OF _____]

_____)	
_____)	
Plaintiff,)	CIVIL CASE NO. _____
v.)	
_____)	STATEMENT FOR ATTORNEY
_____)	FEEES [AND COST BILL], COSTS,
Defendant.)	AND DISBURSEMENTS FOR
	(PLAINTIFF/DEFENDANT)
	[JUDGE _____]

[STATE OF OREGON)
) ss.
 County of _____)]

The undersigned attorney [represents to the Court, under penalties of perjury,] **offers** the following facts [offered] in support of an award of reasonable and necessary attorney fees, **costs, and disbursements** [are true]:

1. Plaintiff/Defendant is entitled to recover attorney fees, **costs, and disbursements** pursuant to the following facts, statute or rule:

2. **Legal Fees including** [7] the number of hours and services [rendered] **provided** in this matter [for] **by** each attorney, clerk, and legal assistant and the hourly rates for each are set forth in detail in Exhibit ["1" attached] **1. The total sum of these fees is \$** _____. Exhibit ["1"] **1** is summarized as follows:

<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Number of Hours</u>	<u>Fees</u>
-------------	-----------------	--------------------	------------------------	-------------

[3. Plaintiff/Respondent is entitled to the recovery of \$_____ for costs as authorized by _____ [cite ORCP 68A(2) and/or other authority]. As explained in Exhibit _____, such costs are billed directly to the client and are not overhead expenses already reflected in the hourly rate or fee.

4. Exhibit _____ sets forth the specific basis for the award and amount of fees as required by ORS 20.075.]

3. The specific factors supporting an award and the amount of legal fees pursuant to ORS 20.075 or other statute or rule are set forth in Exhibit 2.

4. Litigation expenses billable directly to the client that are not overhead expenses already reflected in the hourly rate for legal services are set forth in detail in Exhibit 3. The total sum of these costs and disbursements is \$_____.

5. Costs and disbursements supported by ORCP 68A(2) or other statute or rule, including the prevailing party fee, are set forth in detail in Exhibit 4. The total sum of these costs and disbursements is \$_____.

[5]6. In anticipation of efforts that will be spent in postjudgment [collection] proceedings, plaintiff/defendant seeks the additional sum of \$_____ as explained more fully in Exhibit [____ attached] 5.

[6]7. [Based on the above] **In summary**, plaintiff/defendant is entitled to an award of reasonable and necessary attorney fees in the sum of \$_____, **litigation expenses in the sum of \$_____**, **costs and disbursements in the sum of \$_____**, and **postjudgment work in the sum of \$_____**.

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

[DATED this _____ day of _____, 20____.

_____]

Date
OSB# (if applicable)

Signature
Type or print name

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8. 5.080
Amend to include award of costs and disbursements.

ACTION TAKEN

Motion 39, to preliminarily recommend approval, passed by consensus.

EXPLANATION

In light of the proposed changes to Form 5.080 (see Item IV.7. above), the committee felt the rule should be amended to specifically mention costs and disbursements.

PROPOSED AMENDMENT

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.

9. Chapter 21
Adopt a new chapter on electronic filing.

ACTION TAKEN

Motion 28, to preliminarily recommend approval, passed by consensus.

EXPLANATION

This proposal was submitted by the Policy, Law & Standards Committee of the Oregon Judicial Department Technology Committee, on September 14, 2007. Members of the Policy, Law & Standards Committee gave a presentation on the initiative to adopt e-filing in Oregon's circuit courts and answered questions pertaining to the proposed rules. The system and rules are modeled after those of the U.S. District Court, District of Oregon, and the U.S. Bankruptcy Court, District of Oregon. Initially, the program will be run as a pilot in a small number of counties and will be limited to certain civil case types to be identified at a later date. The Policy, Law & Standards Committee seeks to have this chapter adopted in anticipation of that pilot program.

PROPOSED AMENDMENT

CHAPTER 21 – Filing and Service by Electronic Means

21.010 DEFINITIONS

The following definitions apply to this chapter:

(1) “Conventional filing” means a process where a filer files a paper document with the court.

(2) “Document” means a pleading, paper, motion, declaration, application, request, brief, memorandum of law, exhibit, or other instrument submitted by a filer, including any exhibit or attachment referenced in the instrument.

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Depending on the context, as used in this chapter, “document” may refer to a document either in paper or electronic form.

- (3) “Electronic filing” means the process where a filer registered with the electronic filing system electronically transmits to a court a document in an electronic form to commence an action or to be included in the files of the court for an action.
- (4) “Electronic filing system” means the system provided by the Oregon Judicial Department for the electronic filing and the electronic service of a document via the internet. The system may be accessed through the Oregon Judicial Department’s website (<http://www.ojd.state.or.us>).
- (5) “Electronic service” means the electronic transmission of a notice of filing, which contains a hyperlink to access a document that is filed electronically, by the electronic filing system to the electronic mail (email) address of a party registered as a filer with the electronic filing system for the purpose of effecting service.
- (6) “Filer” means a person registered with the electronic filing system who submits a document for filing with the court.
- (7) “Pro se litigant” means a person representing him or herself and not represented by an attorney.

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21.020 APPLICABILITY

This chapter, as authorized by ORS 1.002, applies to those circuit courts that have obtained written approval from the State Court Administrator to accept filings electronically for designated case types and filers. Information on the circuit courts that have received approval can be accessed through the Oregon Judicial Department’s website (<http://www.ojd.state.or.us>).

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21.030 FILERS

(1) Authorized Filers

- (a) The following are authorized to register as filers in the electronic filing system:

 - (i) Any member of the Oregon State Bar that is authorized to practice law;
 - (ii) Any attorney admitted to the practice of law *pro hac vice* during the period of the attorney’s temporary admission;
 - (iii) A pro se litigant in an action in which the person is a party; and
 - (iv) Any other person as approved by the State Court Administrator.

- (b) A filer must complete a registration form to request a login for access to the electronic filing system and sign a user agreement. The filer must provide information sufficient to establish his or her technical capacity to send and receive electronic filings and court notices. Upon receipt of the required information, notice will be sent to the filer of his or her registration status. If the filer is approved to access the electronic filing system, a filer shall be assigned a login.

(2) Conditions of Electronic Filing

In order to access the electronic filing system, each filer agrees to, and shall:

- (a) Register for access to the electronic filing system;
- (b) Comply with the registration conditions when using the electronic filing system; and
- (c) Furnish required information for case processing.

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21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

- (1) All documents submitted to the court must be in Portable Document Format (PDF).
- (2) Submitted documents must, when viewed in an electronic format and when printed, comply with the requirements of ORCP 9E and UTCR 2.010 except as to any requirement that a document bear a physical signature when filed.
- (3) Submitted documents which do not comply with these provisions may be rejected as provided in this chapter.

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21.050 PAYMENT OF FEES

(1) Payment Due Upon Filing

A filer shall pay the filing fees for filing a document electronically with the court by using the electronic filing system.

2) Fee Waivers and Deferrals

A filer may apply for a waiver or deferral of court fees and costs at the time of filing a document electronically, as provided in Or. Laws 2007, ch. 493, §§ 2, 3 (effective on January 1, 2008). A document, which constitutes an appearance or pleading for which a fee is required, may be submitted for filing with an accompanying application for a waiver or deferral of a required fee. The document will not be accepted for filing unless the fee waiver or deferral is granted.

21.060 FILES OF THE COURT

(1) Electronic Filing

- (a) The submission of a document electronically, with the electronic filing system's confirmation receipt confirming that the electronic filing system received the document, and acceptance of the document by the court, accomplishes the electronic filing.**
- (b) The electronic document, when accepted for filing, constitutes the court's record of the document.**

(2) Converting a Conventional Filing into an Electronic Format

The court may digitize, microfilm, record, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a document that is filed conventionally in accordance with the protocols established by the State Court Administrator under ORS 8.125(11) and Or. Laws 2007, ch. 129, § 2.

21.070 SPECIAL FILING REQUIREMENTS

(1) Courtesy Copies

The court may request that a filer submit, in the manner and time specified by the court, a copy of the document that was filed electronically and a copy of the confirmation receipt from the electronic filing system in one of the following formats:

- (a) Paper;**
- (b) PDF; or**
- (c) The file format in which the document was created.**

(2) Court Order Requiring Electronic Filing and Electronic Service

Except for service of summons or service of complaint or petition, the court may, on the motion of any party or on its own motion, order all parties to file and serve all documents electronically, after finding that such an order would not cause undue hardship or significant prejudice to any party.

(3) Attachments and Exhibits

- (a) A filer may submit as an exhibit or attachment only the excerpt of the referenced material that is directly germane to the matter under consideration by the court. A responding party may timely file an additional excerpt or the complete document that the party believes is**

directly germane. The court may require a party to file an additional excerpt or the complete document.

(b) A demonstrative or oversized exhibit must be filed conventionally.

(c) Trial exhibits may not be filed electronically or conventionally with the court and must be delivered or submitted as ordered by the assigned judge.

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21.080 ELECTRONIC FILING DEADLINES

(1) Electronic filing is permitted at all times, except when the electronic filing system is temporarily unavailable.

(2) The filing deadline for any document filed electronically is 11:59 p.m. in the time zone in which the court is located on the day the document is required to be filed.

(3) A document will be considered submitted for filing when the document is received by the electronic filing system. The electronic filing system will affix to each document the time of day, day of the month, month, and year that the document is received and will issue a confirmation receipt to the filer that includes the date and time of receipt.

(4) If the document is accepted for filing, the date and time of filing entered in the register will relate back to the date and time the document is received by the electronic filing system, and the electronic filing system will affix the date and time of acceptance on the document.

(5) In the event the court rejects a document submitted electronically for filing, the court will affix the date and time of rejection on the document and send notice of the basis for the rejection, with the document, to the filer, and the document shall not become part of the court's file in the action. The court may require a filer to resubmit the document to meet the filing requirements. Unless otherwise ordered by the court, a resubmitted document will be considered for filing when the document is received by the electronic filing system. The date and time of filing of the resubmitted document does not relate back to the date and time of the filing of the original document.

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21.090 ELECTRONIC SIGNATURES

(1) The use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required.

(2) In addition to information required by law or rule to be in the document, a document that is filed electronically must include a signature block that includes the typed name of the filer preceded by an "s/" in the space where the signature would otherwise appear.

Example:

s/ John Q. Attorney
JOHN Q. ATTORNEY
OSB #
Attorney for Plaintiff Smith Corporation, Inc.

- (3) When a document is filed electronically in which more than one party joins, that all such parties join in the document must be shown either by:**
- (a) Submitting a scanned document containing the signatures of all parties joining in the document;**
 - (b) A recitation in the document that all such parties consent or stipulate to the document; or**
 - (c) Identifying on the document the signatures that are required and submitting each such party's written confirmation no later than three (3) days after the filing.**

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21.100 ELECTRONIC SERVICE

- (1) Filers that are registered with the electronic filing system are deemed to consent to electronic service of all documents filed by other registered filers in an action, except for service of summons or service of complaint or petition.**
- (2) Upon the filing of a document submitted through the electronic filing system, a notice of filing, which contains a hyperlink to access a document that is filed electronically, is transmitted by the electronic filing system to the email address of each party to be served for the purpose of effecting service.**
- (3) Completion and Time of Electronic Service**
- (a) Except as provided in (b), electronic service is complete at the time the document submitted for filing electronically is accepted by the court.**
 - (b) Electronic service is not effective if the serving party has knowledge that the document was not sent to or received by the party to be served.**
- (4) Proof of Electronic Service**
- A filer who serves a document electronically upon another party, as provided in this chapter, shall make a proof of service that shall accompany the document when it is submitted for filing.**

(5) Conventional Service

The filing party is responsible for perfecting service conventionally in any manner permitted by the Oregon Rules of Civil Procedure and for filing a proof of service with the court for every:

- (a) Document required to be filed conventionally under this chapter; and**
- (b) Document that could not be served electronically upon a party who appeared in the action.**

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21.110 HYPERLINKS

- (1) A document that is filed electronically may contain hyperlinks to other portions of the same document, and/or hyperlinks to a location on the internet that contains a source document for a citation.**
- (2) A hyperlink to a cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in a document filed electronically.**
- (3) The Oregon Judicial Department neither endorses nor accepts responsibility for any product, organization, or content at any hyperlinked site, or to any site to which that site may be linked.**

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21.120 RETENTION OF DOCUMENTS BY FILERS

- (1) Unless otherwise ordered by the court, a filer, who files electronically a document that contains the original signature of a person other than the filer, shall retain the document in its original paper form for ten (10) years.**
- (2) Upon reasonable notice, the filer must provide a printed copy for inspection by another party, the clerk, or the court.**

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21.130 PROTECTED INFORMATION

The use of information contained in a document filed electronically or information accessed through the electronic filing system shall be consistent with state and federal law.

B. RECOMMENDATIONS OF DISAPPROVAL

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1. 2.010(7)
Amend to delete or qualify email address requirement.

ACTION TAKEN

No action taken, therefore preliminarily recommended for disapproval.

EXPLANATION

This proposal was submitted by Joanne Reisman, a Portland attorney, on February 15, 2007. Her concern was that the rule might suggest tacit permission for service by email. The committee noted that service is governed by the Oregon Rules of Civil Procedure (ORCP), while the rule in question was directed toward the convenience of parties, counsel, and the courts. In addition, effective January 1, 2008, ORCP 9G will prohibit service by email absent a written agreement with the attorney to be served so sufficient protection will exist for those concerned about unauthorized service by email.

PROPOSED AMENDMENT

No specific wording was submitted with the proposal.

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2. 3.140(1)
Amend to delete or qualify email address requirement.

ACTION TAKEN

No action taken, therefore preliminarily recommended for disapproval.

EXPLANATION

This proposal was submitted by Joanne Reisman, a Portland attorney, on February 15, 2007. Her concern was that the rule might suggest tacit permission for service by email. The committee noted that service is governed by the Oregon Rules of Civil Procedure (ORCP), while the rule in question was directed toward the convenience of parties, counsel, and the courts. In addition, effective January 1, 2008, ORCP 9G will prohibit service by email absent a written agreement with the attorney to be served so sufficient protection will exist for those concerned about unauthorized service by email.

PROPOSED AMENDMENT

No specific wording was submitted with the proposal.

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3. Chapter 4
Adopt a new rule on submission of proposed criminal judgments.

ACTION TAKEN

Motion 14, to preliminarily recommend disapproval, passed 10-1 with 2 abstentions.

EXPLANATION

This proposal was submitted by Jesse Barton, a Salem attorney, on September 6, 2007. Mr. Barton suggested that a written criminal judgment can vary from what the judge stated orally. The first opportunity for a party to object is on appeal. This proposal would give parties a chance to review the written judgment before it is

entered. Some of the committee members stated that the vast majority of these judgments are generated and signed immediately and are for jail terms of 10 days or less. They felt that this proposal would have a significant, negative impact on court processes and efficiency, especially since other solutions currently exist. High-volume courts want these judgments issued immediately. In addition, those judgments involving penitentiary time are often subject to more scrutiny.

PROPOSED AMENDMENT

4.100 SUBMISSION OF PROPOSED JUDGMENTS

(1) Any proposed judgment of conviction and sentence or proposed judgment of probation violation, prepared by the court, must be presented to the parties not less than 5 judicial days prior to the court's action on the judgment.

(2) Any proposed judgment of conviction and sentence or proposed judgment of probation violation, prepared by a party, must be:

(a) served on opposing counsel not less than 5 judicial 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

(c) mailed to an unrepresented party at the party's last known address not less than 7 judicial days prior to submission to the court.

[Click Here to Comment on this Rule](#)

4. Chapter 5
Adopt a new rule on life expectancy and present value tables.

ACTION TAKEN

No action taken, therefore preliminarily recommended for disapproval.

EXPLANATION

This proposal was submitted by the Hon. Edwin J. Peterson, on May 14, 2007. The committee concluded that this rule was not needed.

PROPOSED AMENDMENT

No specific wording was submitted with the proposal.

[Click Here to Comment on this Rule](#)

5. 9.030(1)
Amend to delete or qualify email address requirement.

ACTION TAKEN

No action taken, therefore preliminarily recommended for disapproval.

EXPLANATION

This proposal was submitted by Joanne Reisman, a Portland attorney, on February 15, 2007. Her concern was that the rule might suggest tacit permission for service by email. The committee noted that service is governed by the Oregon Rules of Civil Procedure (ORCP), while the rule in question was directed toward the

convenience of parties, counsel, and the courts. In addition, effective January 1, 2008, ORCP 9G will prohibit service by email absent a written agreement with the attorney to be served so sufficient protection will exist for those concerned about unauthorized service by email.

PROPOSED AMENDMENT

No specific wording was submitted with the proposal.

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6. Appendix
Amend certain forms regarding declaration under penalty of perjury. Forms affected: 2.100.4a, 2.100.4c, 2.100.8, 2.110.4a, 5.080, 8.010.5, 9.160, 15.010.1a, 15.010.1b, and 15.010.1c.

ACTION TAKEN

No action taken, therefore preliminarily recommended for disapproval.

EXPLANATION

This proposal was submitted by Warren Deras, a Portland attorney, on July 21, 2007. Mr. Deras was concerned that the declarations did not comply with the requirements ORCP 1E and UTCR 2.120. The committee felt that the operative word in ORCP 1E and UTCR 2.120 is "prominent." They discussed the definition of "prominent" and concluded that the declarations contained in the forms are "prominent" and so comply with ORCP 1E and UTCR 2.120.

PROPOSED AMENDMENT

No specific wording was submitted with the proposal.

C. OTHER ACTIONS

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1. UTCR 2.100(3)
Amend to extend segregation requirement to proceedings concerning paternity and support.

ACTION TAKEN

Motion 44, to make no recommendation of approval or disapproval due to lack of sufficient information, but to send the proposal out for public comment, passed 11-1.

EXPLANATION

This proposal was submitted by Audrey Hirsch, Assistant Attorney General, Oregon Department of Justice (DOJ), on October 5, 2007. DOJ would like to add proceedings establishing paternity and proceedings concerning support to those domestic relations proceedings where parties must segregate social security numbers. Ms. Hirsch stated that DOJ has received requests from staff, parties, and attorneys for this mechanism. DOJ also wants to add the option for segregating other personal information required by ORS 25.020(8)(a). Ms. Hirsch cited ORS 25.020(8)(e) as statutory authority for such a rule. She mentioned that the problem often arises when a judgment is modified administratively. In such a case, information that was protected in the original judgment is no longer protected. Because this issue was raised only one week before this meeting, the Oregon Judicial Department (OJD) did not have time to review the proposal and offer

feedback on the issues raised and potential workload and budget implications. The committee concluded that it did not have sufficient information to make a recommendation of approval or disapproval. They agreed to send the proposal out for public comment without a recommendation. They also asked Ms. Hirsch to work with OJD toward an agreement on this proposal.

PROPOSED AMENDMENT

2.100 PROTECTED PERSONAL INFORMATION, NOT CONTACT INFORMATION, REQUIREMENTS AND PROCEDURES TO SEGREGATE WHEN SUBMITTING

(1) * * * *

* * * * *

(3) Relationship to other law. The following all apply to this rule:

(a) Parties to proceedings under ORS 107.085 or 107.485 must segregate all social security numbers from all documents they submit related to the proceedings in the manner provided by this rule. These social security numbers are confidential in the custody of the court as ORS 107.840 provides. Other than as this paragraph or SLR 2.101 of a court provides, this rule is not the exclusive means for a court to protect personal information from public inspection.

(b) Parties to proceedings establishing paternity or including a provision concerning support must segregate all social security numbers from all documents they submit related to the proceedings in the manner provided by this rule. These social security numbers are confidential in the custody of the court as authorized by this rule and ORS 25.020(8)(e). In addition to the social security numbers, the information required under ORS 25.020(8)(a) that is also eligible for protection under this rule may be designated as confidential and may be submitted in the manner provided by this rule to ensure that the information is exempt from public disclosure under ORS 192.502.

([b]c) All judicial districts must allow requests to segregate protected personal information under this rule as a way to keep it separate from information subject to public inspection. However, courts may use SLR to establish other procedures related to identifying and protecting information courts are allowed or required to keep confidential. But, SLR 2.101 is preserved for purposes of a court to:

- (i) require use of forms or procedures under this rule as the exclusive way to identify specific protected personal information so a court can segregate the information and protect it from public inspection; and
- (ii) establish requirements supplemental to this rule as necessary to help administer this rule.

- ([c]d) Nothing in this rule precludes a court from protecting information by appropriate court order.
- ([d]e) Nothing in this rule affects or applies to procedures for identifying and protecting contact information:
 - (i) Of crime victims that is submitted to courts for processing restitution payments when restitution is sought and the information about a crime victim is kept confidential under ORS 18.048(2)(b).
 - (ii) That can be made confidential under ORS 25.020(8)(d), 109.767(5), 110.375, or 192.445.

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- 2. UTCR Chapter 5
Adopt a new rule on summary judgment motions.

ACTION TAKEN

This proposal was carried over to the spring 2008 meeting.

EXPLANATION

This proposal was submitted by the Hon. Edwin J. Peterson, on October 29, 2004, and Nov. 18, 2005. It was discussed at the March 17, 2006, October 13, 2006, and March 9, 2007, meetings. Judge Litzenberger requested more time to work on the concept.

PROPOSED AMENDMENT

No new wording was submitted.

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- 3. UTCR 8.050(5)
Report by the UTCR Reporter on correction of a typographical error.

REPORT

When UTCR 8.050(5) was posted for public comment in January 2007, it included a correct citation to "ORS 107.139." The final version of the rule, effective August 1, 2007, had an inadvertent typographical error that listed the citation as "ORS 107.137." The typographical error rendered this portion of the rule nonsensical and inconsistent with the purpose of the amendment. Pursuant to UTCR 1.020(6), the UTCR Reporter corrected the typographical error by changing the statutory citation in that section from "ORS 107.137" to "ORS 107.139."

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- 4. Form Pleadings
Report by the UTCR Reporter on the Oregon State Bar House of Delegates' recommendation concerning form pleadings.

REPORT

Oregon State Bar House of Delegates Resolution No. 3 (Encourage and Recommend Availability of Optional Form Pleadings) was adopted on October 13, 2006. The original resolution recommended that the CCP and UTCR Committee generate form pleadings, but the resolution was amended to delete the reference to those two entities. The concept had also been raised in Resolution 6 at the 2005 House of Delegates meeting. The UTCR Committee has discussed this issue in the

past and has concluded that a project of this scope would simply overwhelm the committee as well as this set of rules. They felt this project would divert them from their core mission and that the forms would come to dwarf the UTCR. The reporter gave the committee a copy of a letter, dated August 22, 2007, sent to representatives of the Oregon State Bar discussing this concept. That letter pointed out the magnitude of such a project, impediments to doing it through the UTCR, and the significant catalogue of forms that can currently be found on the Oregon Judicial Department's website.

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5. Subcommittees

Report from Debra Velure, for the subcommittee on electronic filing issues.

REPORT

Ms. Velure reported that, in light of the committee's recommendation of approval of Chapter 21 on e-filing, the subcommittee's work appeared to be done.

ACTION TAKEN

Motion 41, to disband the subcommittee on electronic filing issues, passed by consensus.

BCM:sh/Proposed UTCR Changes for 2008
11/29/07