



NINTH JUDICIAL DISTRICT
CIRCUIT COURTS

This will certify pursuant to UTCR 1.040 that appended hereto is a true
and correct copy of 2025 Supplemental Local Rules of the Circuit
Courts for the Ninth Judicial District, Malheur County.

Lung S. Hung
Presiding Judge



State of Oregon
County of Malheur

I certify that this is a true and correct copy of a document in the possession of
the court administrator for Malheur County Circuit Court

Dated: 11/26/24
Court administrator for Malheur County Circuit Court
s/s Marilee Aldred

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CHAPTER 1 General Provisions

1.002 ADDRESSES AND TELEPHONE NUMBERS

- (1) Defendants in criminal and violation cases.

During the pendency of any case charging an offense, during any period of probation, or while any monetary or other obligation imposed by the court in such case remains unsatisfied, defendant must keep the court advised in writing of defendant's current name, mailing address and telephone or message telephone number.

- (2) Unrepresented parties in civil and small claims cases.

During the pendency of any civil or small claims case, any party who is not represented by an attorney of record must keep the court advised in writing of the party's current name, mailing address, and any telephone or message telephone number.

1.155 REQUEST FOR COURT RECORDS

- (1) A request for court records, including a copy of a digital recording of a court proceeding, must be made in writing. A request form can be found on the court's website at <https://www.courts.oregon.gov/courts/malheur/records/Pages/default.aspx>. Allow 14 days for the request to be processed.
- (2) The request must include all the following information:
 - (a) The case number;
 - (b) The case name;
 - (c) The date of the record or proceeding;
 - (d) The name of the judge who heard the matter;
 - (e) The name, address, and telephone number of the person making the request;
 - (f) Instructions on whether, once the record becomes available, to call the requestor or mail the recording if the postage fee is paid in advance.
- (3) The request must be delivered:
 - (a) Through an online request made through the Oregon Judicial Department; or
 - (b) By written request hand delivered to the court clerk's office, 251 B St W #3, Vale, OR 97918.
- (4) Payment must be made prior to staff duplicating records.

1.171 COURT WEBSITE AND LOCAL FORMS

The website for the Malheur County Circuit Court is located at:

<http://courts.oregon.gov/Malheur/>

Forms required by these rules are available on the court website at:

<https://www.courts.oregon.gov/courts/Malheur/help/Pages/Forms.aspx>

CHAPTER 2

Standards for Pleadings and Documents

2.081 NO CASE SPECIFIC EMAIL COMMUNICATIONS WITH JUDGE

No person or entity, including parties, non-parties, or attorneys, shall communicate with a judge regarding a specific case by electronic mail or email. Such prohibition does not apply to communications that are not case specific, communications to court staff, application for search warrants by electronic transmission pursuant to ORS 133.545 and application for probable cause affidavits.

CHAPTER 3

Decorum in Proceedings

3.011 PROPER APPAREL FOR MALHEUR COUNTY CIRCUIT COURT FOR NON-LAWYERS

- (1) Proper attire is required by everyone entering the Malheur County Circuit Court and will be strictly enforced. Anyone not properly dressed upon arriving in the courtroom may be sent away until properly dressed.
- (2) The following items are unacceptable attire:
 - (a) Tube tops, tank tops, halter tops, bare midriff tops, see-through tops;
 - (b) Shorts;
 - (c) Dresses shorter than the fingertips of extended arms;
 - (d) Skirts or pants with waists that allow undergarments to be seen;
 - (e) Clothing with large holes;
 - (f) Hats;
 - (g) Clothing which displays controlled substances (tobacco, alcohol, drugs), double meanings, hate motivated behavior, illegal activities, obscene gestures or language, profanity, sexual references, or violence;
 - (h) Bare feet;
 - (i) Chains which could be used as weapons;
 - (j) Garments meant to be worn as undergarments worn as outer garments and sagging, bagging or dragging pants.

- (3) Attorneys are responsible for making their clients and witnesses aware of the decorum requirements.

3.181 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS

- (1) A request for media or public access coverage must be submitted in writing.}
- (2) Media or Public Access Coverage is prohibited in the hallways outside of any courtroom or court office. Upon request, on a case-by-case basis, the court will consider designating an area outside of the courtrooms and prohibited court areas for media and public access coverage.

3.182 PERSONAL COMMUNICATION DEVICES

- (1) For the purposes of this rule, personal communication devices include, but are not limited to, cellular telephone, smart phones, pagers, laptop computers, and tablets.
- (2) Personal communication devices must be turned off upon entering the courtroom and shall remain off until after the person has departed from the courtroom. Attorneys shall be permitted to leave their personal communication devices on provided said devices are placed in silent mode or in a mode where the personal communication device cannot produce an audio sound. The court may make exceptions to this prohibition upon request.
- (3) Jurors shall not be allowed to have personal communication devices, whether on or off, once empaneled until the conclusion of trial except during lunch and overnight recesses.
- (4) Violations of this rule may result in a finding of contempt, an order that the violation personal communication device be turned over to the court to seize and hold such device pending the completion of the hearing, an order that any recording made be deleted from the personal communication device or any other sanctions the court deems appropriate.

CHAPTER 4

Proceedings in Criminal Cases

4.001 SCHEDULING CRIMINAL MATTERS

Unless ordered otherwise, in-custody arraignments (new criminal charges and probation violations) will be conducted daily at 1:00 p.m. Initial appearances for protective orders will be held at the same time daily. Out-of-custody arraignments will be conducted every Tuesday at 1:00 p.m.

4.011 DUTY TO CONFER

The court may deny any motion unless the moving party, before filing the motion, makes a good faith effort to confer with the other party concerning the issues in dispute. The moving party must indicate if the non-moving party stipulates or opposes the motion or set out facts showing good cause for not conferring. Upon certification that a motion is unopposed, it may be submitted ex-parte. The duty to confer shall not apply to motions to suppress.

4.031 MOTIONS TO TRANSPORT ADULT IN CUSTODY WITNESSES

- (1) A motion to transport adult in custody witnesses for court proceedings pursuant to UTCR 4.030 must be accompanied by a supporting affidavit certifying:
 - (a) The attorney, the attorney's representative or a self-represented litigant has actually spoken to the witness;
 - (b) The witness is willing to testify, will testify if compelled by the court to do so or it is necessary to place the witness's refusal to testify on the record;
 - (c) The attorney or self-represented litigant seeking the order has a good faith belief that the testimony is admissible, relevant and material to the issues expected to be raised at trial; and
 - (d) The testimony of the witness is necessary to the presentation of the case of the party seeking the order. [Appendix A]
- (2) Such motion shall be filed with the court a minimum of 14 days prior to the court proceeding. [Appendix A]
- (3) When a Motion and Order to transport a person held in custody pursuant to UTCR 4.030 and an adult in custody witness pursuant to SLR 4.031 has been entered, it is the responsibility of the attorney's office requesting the transport to file a motion and order with the court cancelling the particular transport order when it is no longer needed.

4.081 APPEARANCE AT CRIMINAL PROCEEDING BY SIMULTANEOUS ELECTRONIC TRANSMISSION

- (1) Unless otherwise ordered by the court, prohibited by the constitution or for trial, defendants incarcerated at an Oregon Department of Corrections Institution shall appear by simultaneous electronic transmission as defined in UTCR 4.080.
- (2) Unless otherwise ordered by the court, prohibited by the constitution or for trial, defendants incarcerated in the Malheur County Jail shall be held by simultaneous electronic transmission as defined in UTCR 4.080. A defendant shall appear in-person if a written request by defense counsel is received at least 24 hours prior to the court appearance.

- (3) Upon the motion of either party and the approval of the court, defendants may appear in other criminal proceedings by simultaneous electronic transmission as defined in UTCR 4.080 and subject to the provisions of UTCR 4.080.
- (4) Attorneys may appear at all arraignments in-person or remotely without notice to the court. Attorneys and parties may appear at all status hearings and trial calls in-person or remotely without notice to the court. Attorneys may appear at all other proceedings remotely, except if specially required to appear in person by rule, upon filing of a Notice of Remote Appearance. [Appendix D]

CHAPTER 5

Proceedings in Civil Cases

5.001 REMOTE APPEARANCE

Attorneys and parties may appear at all status hearings and trial readiness hearings in-person or remotely without notice to the court. Attorneys may appear at all other hearings remotely, except if specially required to appear in person by rule, upon filing of a Notice of Remote Appearance. [Appendix D]

5.002 APPEARANCE

All parties shall appear in person, remotely with permission of the court or through counsel for all hearings set by the court. Failure to appear at a hearing subject the offending party to sanctions pursuant to UTCR 1.090.

5.017 SERVICE OF MOTION AT OR BEFORE DELIVERY OF COPY TO JUDGE

In any civil action, the service of a motion, response, proposed order, request for postponement, or reply, on opposing parties must, except where otherwise authorized by statute, occur before or simultaneously with the delivery of a copy of the document to the judge assigned to hear the matter and must comply with UTCR 5.100.

5.095 WAY OF NECESSITY

In way of necessity cases filed under ORS Chapter 367, the following procedure shall be followed:

- (1) In addition to the service of the petition as required by law, petitioner shall cause a copy of the petition to be served on the county engineer by certified mail, return receipt requested.
- (2) Upon receipt of the petition, the county engineer, any licensed civil engineer or designated registered surveyor shall, within 30 days, prepare and file with the clerk of the court the report required by ORS 376.160.

- (3) Upon receipt of the engineer's report, the clerk shall cause copies thereof to be mailed forthwith to petitioner and any persons upon whom the original petition was served. If the engineer's report includes any alternative route over land owned by person, other than those served by the original petition, petitioner shall forthwith cause a copy of the petition, a summons, and the engineer's report to be served upon such owner in the manner provided for the service of the original petition.
- (4) Petitioner shall, at the time of filing the original petition, deposit with the County such sum as required by the County as a deposit on expenses to be incurred by the county or other persons as the result of the petition and action thereon.

5.101 ORDER BY PREVAILING PARTY; PRESENTING JUDGMENT AND ORDER FOR JUDICIAL SIGNATURE

- (1) After a ruling or stipulation placed on the record requiring an order or judgment, it is the responsibility of the prevailing party to draft an order incorporating the ruling and to submit it to the Trial Court Administrator's office accompanied by proof of compliance with UTCR 5.100 within 30 days, unless otherwise ordered.
- (2) If a proposed order or judgment is submitted stating it is ready for judicial signature because requirement "3.b." or "3.c." under UTCR 5.100(2)(b) have been met, opposing party shall submit their written objections to the court within 7 days of the filing of the proposed order or judgment. If no written objection is received, the court may sign the original proposed order or judgment, may amend and sign the proposed order or judgment, or set a hearing.

CHAPTER 6

Trials

6.011 HABEAS CORPUS PROCEEDINGS BEFORE THE COURT BY VIDEO OR TELEPHONIC CONFERENCING

- (1) Unless otherwise ordered by the court, all hearings and trials, in which adults in custody in the custody of the Oregon Department of Corrections are seeking habeas corpus relief pursuant to ORS 34.310-34.730, shall be held by video conferencing. If video conferencing is not available, by telephonic conferencing.
- (2) The adult in custody shall remain at and appear from the Snake River Correctional Institution or other institution in which they are being held.
- (3) The adult in custody's attorney, the attorney for the Oregon Attorney General's office or an attorney representing any other party to the proceeding may appear by video or telephone conferencing or may appear in person before the court.

- (4) Regardless of the physical location of the judge hearing the matter, any proceeding shall be recorded by the Ninth Judicial District.
- (5) Public access and viewing of the proceeding shall be provided at the Malheur County Courthouse in Vale, Oregon, and the proceeding shall be deemed to be taking place at said courthouse and city.
- (6) All motions to continue trial/hearings, whether written or verbal, shall be submitted to the Presiding Judge of the Ninth Judicial District, or to another judge of the Ninth Judicial District if the Presiding Judge is not available.
- (7) Motions to continue shall not be made to the Plan B or Pro-Tem trial judge except in cases of emergency when the Presiding Judge or other judge of the Ninth Judicial District is not available.

6.012 SETTLEMENT CONFERENCES - CIVIL

- (1) The court, on its own motion or upon the request of any party, may set a mandatory settlement conference. Scheduling of a settlement conference is subject to judicial availability and a settlement conference shall not be scheduled to delay trial of the case. The pretrial judicial settlement conference will not be required if either party demonstrates good cause why the judicial settlement conference should not be held.
- (2) The purpose of the judicial settlement conference is to provide a forum to resolve disputes before trial through the active participation of counsel and the court. The attendance of all parties and their trial attorneys is required. When a party is insured, a representative of the insurance company, with authority to settle the case, shall be in attendance or readily available by telephone. Upon a showing of good cause, the judge, conducting the judicial settlement conference, may excuse a party from personally appearing, but the party may be required to participate by telecommunication.
- (3) Any mandatory mediation must be completed prior to the date set for the judicial settlement conference.
- (4) Pretrial judicial settlement conferences shall be conducted by a judge, other than the assigned trial judge, unless all parties stipulate in writing that the trial judge may also conduct the judicial settlement conference.
- (5) For a meaningful judicial settlement conference to occur, all attorneys and parties must participate in good faith. The failure of any person to comply with these rules, appear at, or participate in a judicial settlement conference, unless good cause is shown for any such failure, may result in the court imposing appropriate

sanctions as described in UTCR 1.090. Cases for a judicial settlement conference shall retain their place on the trial docket.

- (6) If settlement negotiations are not successful, counsel should be prepared to proceed to trial on the date scheduled. The court will make every effort to ensure the case proceeds to trial on the date scheduled.
- (7) If a settlement is reached, the parties shall place notice of the settlement on the record before the scheduled trial date, in accordance with UTCR 6.020.
- (8) Upon a settlement being reached, the court will enter a Judgment of Dismissal on settlement giving the parties 30 days in which to submit the final judgment. A longer period may be allowed if requested by the parties.
- (9) Settlement conference memos and materials meant to be ex-parte should not be filed. Such documents may be mailed or emailed to court staff to be forwarded to the settlement judge. Statements and other documents submitted to the judge by the parties and materials, or notes prepared by the judicial settlement conference judge are confidential and will be destroyed by the judicial settlement conference judge.

6.013 SETTLEMENT CONFERENCES - CRIMINAL

- (1) Judicial Settlement Conferences will be available as a settlement tool under the following circumstances:
 - (a) The parties have failed to reach settlement through the normal pre-trial process.
 - (b) The parties agree and request that a judge become involved.
 - (c) There is a good faith belief by the parties that a negotiated settlement can be achieved.
 - (d) The defendant has pled not guilty, and a trial date has been set.
 - (e) At least one charge is presumptive prison.
- (2) The following rules will apply:
 - (a) Unless otherwise agreed by the parties, the length of time allotted will be 90 minutes.
 - (b) The conference will be scheduled with the judge not assigned to try the case.
 - (c) When settlement is achieved, it will be reduced to writing and a plea shall be entered immediately. Judicial settlement agreements will be binding on the court.
- (3) The court may deny a settlement conference for any reason including docket management requirements.

6.025 PAYMENT OF TRIAL FEES

The trial judge may elect to delay or vacate a trial if fees, as established under ORS 21.225, are not paid when a trial is set.

6.151 REGARDING THE POSSESSION OF FIREARMS AND OTHER WEAPONS IN COURT FACILITIES IN MALHEUR COUNTY ORS. 166.360 - 166.370

- (1) A sheriff, police officer, parole and probation officer, other duly appointed peace officer, a district attorney, deputy district attorney (if approved by the district attorney), or a corrections officer, while acting within the scope of employment, may possess a firearm or other weapon in the Malheur County Court facilities, except if such person is serving as a juror.
- (2) A firearm or weapon that is evidence or an exhibit in a court proceeding may be possessed by attorneys, court staff, evidence technicians, forensic lab personnel and others while in the performance of their duty and to the extent that is necessary for any grand jury or court proceedings.

CHAPTER 7

Case Management and Calendaring

7.001 SCHEDULING OF TRIALS AND RELATED MATTERS

(1) Civil Trial Settings:

Trial settings for a civil case(s) will normally be accomplished as per one of the following:

- (a) For post-conviction trials that cannot be set in allotted Plan B or Senior Judge timeslots, habeas corpus trials requesting a trial length over ½ day and all other civil trials requesting a trial length over 1 day, a status hearing will be set where a judge will set the trial date and time.
- (b) All other civil trials will be set by the court docketing clerk, unless otherwise ordered by the court.

(2) Criminal Trial Settings:

Criminal trial dates will be set in open court with the attorneys and defendant present.

(3) Notification:

Upon any trial or other hearing being scheduled, unless the matter is scheduled in open court with the attorneys and/or parties present, in which case notices will not be sent, the Trial Court Administrator or designee will be responsible for

disseminating written notice of such setting to the attorney(s) involved, or, in the event that a party is not represented, then to such party.

(4) Trial Times:

Trials will normally be conducted from 8:15 a.m. through 12:00 noon and from 1:00 p.m. through 5:00 p.m. or until a case is concluded.

(5) Resetting Due to Holiday:

In the event that a holiday or the unavailability of both judges occur with regard to any assigned day, the normal judicial assignments for such day shall simply be considered canceled.

7.002 MOTIONS TO CONTINUE

A motion to continue any hearing set by the court, including trials, must include the positions of all other parties to the case or the efforts attempted to obtain a party's position. This requirement is in addition to, not in lieu of, any other pleading requirements or limitations for motions for postponement or other similar motions.

7.003 ABSENCE OF JUDGE

The Trial Court Administrator or designee, subject to the supervision of the Presiding Judge, shall be responsible for scheduling around planned absences and rescheduling during an absence due to illness or other emergency involving the judges.

7.004 IN CAMERA REVIEW OF RECORDS

Unless otherwise ordered by the court, a motion for the in-camera review of records by the court shall be presented to the court as follows:

- (1) Parties seeking an in-camera review of documents shall file a motion supported by an affidavit which includes the following: a factual and legal summary of the case to enable the reviewing judge to understand the factual and legal issues in the case as related to the records request; a description of the information sought with as much specificity as possible; and the legal basis for the request.
- (2) Disclosure of records released will be limited to the attorneys, attorney staff and expert witnesses employed by the attorney. There will be a protective order, as set forth in these rules, issued in each case, prohibiting disclosure of the records or copying of the records, including copies to clients and all other persons without further order of the court. Self-represented litigants will be required to sign the protective order prior to receiving any copies of the documents disclosed by the court.

- (3) The party seeking disclosure of the records must provide notice to the person to whom the records pertain to allow the effected person to appear and object to disclosure. Proof of applicable notice must be provided to the court prior to the order being allowed.
- (4) The request for in camera review must be raised by motion with opportunity for opposing party to be heard if requested. The requesting party should not simply issue a subpoena for records to be delivered to the court. If this occurs, the court will not review the records.
- (5) The request for in camera review should be made as soon as practical, but not later than three weeks prior to trial, contested adjudication, or other hearing where the documents may be used, without leave of the court.
- (6) The court requests that whenever possible the records be submitted to court in electronic format, i.e., CD; the released records will be submitted to the attorneys in electronic format through a secure means. At the end of the case, all copies of records shall be returned to the court for destruction. If the court provided the records in a secure format, then an affidavit of destruction indicating that the electronic version of the records has been destroyed shall be filed with the court.

7.005 APPEARANCE BY TELEPHONE

In any matter in which counsel, a party, or a witness is permitted by the court to appear by telephone, it is that party's responsibility to ensure that the call is made from an appropriate phone system:

- (1) The cost of such telephone call shall be borne by the party requesting the telephonic appearance.
- (2) If counsel, a party or a witness fails to appear by telephone because that person fails to telephone the court, or the court is unable to reach the party at the number provided or in counsel's office, that person may be deemed not to have appeared and the matter may be decided upon the evidence before the court or the matter may be dismissed.

7.011 CRIMINAL TRIALS

- (1) A trial call will be set for all criminal trials involving a jury. The trial call will typically be set the Friday of the week before trial, but may be scheduled at other dates at the discretion of the court. At call, the parties should expect detailed questioning regarding the status of negotiations and trial readiness by the court. The court can also handle any other matters at call not requiring a written motion, such as a change of plea or jury waivers.

- (2) Unless otherwise ordered by the court, all trials will be set for two consecutive days. Parties shall be prepared to begin trial either on the first or second date of trial. More than one trial may be scheduled on a trial date. The cases will not be prioritized or considered alternates. If more than one trial is set and the matters are not resolved by the trial call, the court will decide at the trial call which case will proceed to trial and reset any others at that time for the next available trial day, directing parties to appear for the new setting on the record. A new trial call will be set.
- (3) Continuances will be only granted upon a showing of compelling circumstances and due diligence prior to trial upon written motion. An oral motion to continue at call will not be considered.
- (4) The parties may continue to negotiate and are not limited in this regard by the court in any way, in any case, up to the trial call. Absent a showing of good cause, the only pleas accepted after trial call session is completed will be guilty as charged. The parties may choose to continue or cut off plea negotiations as they see fit.

7.021 ATTORNEY'S UNAVAILABLE DATES IN CIVIL CASES

- (1) In all civil cases, when an answer or other pleading is filed placing the case "at issue," the attorney's unavailable dates for the next year shall accompany said filing.
- (2) Any motion to continue shall include the attorney's unavailable dates for the next year.

7.022 MOTION TO POSTPONE CIVIL TRIAL

- (1) No motion for postponement filed less than seven days prior to the first day of trial shall be considered unless the court is satisfied that the cause for postponement came to the knowledge of the party and counsel too late to be timely presented.
- (2) The first sentence of the motion must state the current trial date.

7.041 SETTLEMENT OF CIVIL CASES

If a case is scheduled to be tried and has been settled, it will be necessary for the parties settling the case to either appear and put the settlement on the record or submit the appropriate dismissal or settlement papers to the court. A conference call to put the settlement on the record will be sufficient compliance with this rule. It will be the responsibility of the parties involved to arrange and pay for such call.

7.071 REQUEST FOR SERVICES OF AN INTERPRETER

Requests for services of an interpreter must be in writing. If after notification to the court the services of the interpreter are no longer needed, the court must be notified immediately.

CHAPTER 8 **Domestic Relations Proceedings**

8.001 REMOTE APPEARANCE

Attorneys and parties may appear at all status hearings and trial readiness hearings in-person or remotely without notice to the court. Attorneys may appear at all other hearings remotely, except if specially required to appear in person by rule, upon filing of a Notice of Remote Appearance. [Appendix D]

8.013 MANDATORY PARENT EDUCATION PLAN

In all cases as specified in ORS 3.425(1) in which minor children are involved, both parents shall attend a court-approved parenting class as provided in ORS 3.425, and the certificate of completion of the parenting class shall be filed with the court prior to the issuance of the final Judgment of Dissolution, or Order on Judgment, unless such provision is waived by the court.

8.015 PARENTING TIME ENFORCEMENT FORMS

Forms can be found on the Oregon Judicial Department website located at <http://courts.oregon.gov/forms/pages/default.aspx>.

8.016 FILING OF AN ANSWER OR RESPONSE

When a response is filed in a domestic relations matter placing the case at issue, the response must set out what issues are being contested. A confidential information form or CIF, as delineated in UTCR 2.130, must be submitted with any answer or response.

8.045 PREJUDGMENT TEMPORARY ORDERS

- (1) A prejudgment order to show cause will be allowed only upon the motion of a party supported by affidavit. The order to show cause will not contain a date for hearing. It shall provide that the adverse party must file a written response in opposition within 30 days from the date of service of the order and affidavit, or within such additional time as allowed by the court upon a showing of good cause. The order must further advise the adverse party that if such written response in opposition is not so filed and served within the 30 days, the order

requested by the motion and show cause order will be granted and entered by the court.

- (2) If the opposing party fails to file the written response in opposition within the time allowed, the moving party shall forthwith submit an order allowing the relief requested in the order to show cause. The court reserves the right to require the taking of testimony of the moving party in such default matters.
- (3) Except for cases in which mandatory mediation applies, upon the opposing party filing a written response in opposition, the court will cause a hearing date to be set to determine the issues raised by the order to show cause and affidavit.

8.055 MOTION FOR MODIFICATION

- (1) Motions for modification shall provide that the adverse party must file and serve a written response in opposition to the motion within 30 days from the date of the service of the order and affidavit. The order must further advise the adverse party that if such written response in opposition is not so filed and served within 30 days, the order requested by the motion and show cause order will be granted and entered by the court.
- (2) If the opposing party fails to file the written response in opposition within the time allowed, the moving party shall forthwith submit an order allowing the relief requested in the order to show cause. The court reserves the right to require the taking of testimony of the moving party in such default matters.
- (3) Except for cases in which mandatory mediation applies, upon the opposing party filing a written response in opposition, the court will cause a hearing date to be set to determine the issues raised by the order to show cause and affidavit.
- (4) A confidential information form or CIF, as delineated in UTCR 2.130, must be submitted with any motion for modification and any response to a motion for modification.

CHAPTER 9

Protective Proceedings

9.081 ORAL OBJECTIONS TO PROTECTIVE PROCEEDINGS

- (1) Probate jurisdiction is in the county court in Malheur County. This SLR only applies to cases that have been transferred to Circuit Court from the county courts.
- (2) Any interested person, as described in ORS 125.075(1), who has an oral objection to a Petition in a protective proceeding shall present the objection to either the Trial Court Administrator at the Malheur County Circuit Court, 251 B St W, Vale,

Oregon or to the court appointed Visitor. If an oral objection is made to the court appointed Visitor, the Visitor shall include the objection, in bold and underlined, in the Visitor Report.

- (3) An Objection form is available from the court clerk for written objections. [Appendix C]

CHAPTER 11

Juvenile Court Proceedings

11.005 PERSONAL APPEARANCE REQUIRED

- (1) In all termination and dependency cases, parent(s) and any guardian(s) shall be served 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. If a party wishes to appear by phone or other electronic means, the party's attorney or the party, if they do not have an attorney, shall obtain permission from the court in advance.
- (2) Upon any trial or other hearing being scheduled, unless the matter is scheduled in open court with the attorneys and/or parties present, in which case notices will not be sent, the court will be responsible for disseminating written notice of such setting to the attorney(s) involved, or, in the event that a party is not represented, then to such party.

11.052 REMOTE APPEARANCE

All parties and attorneys may appear either in-person or remotely for trial calls and status hearings without notice to the court. Attorneys and DHS caseworkers may appear at all other proceedings remotely, except if specifically required to appear in person by rule, upon filing of a Notice of Remote Appearance. [Appendix D]

11.054 DEPENDENCY MATTERS

- (1) All parties and appointed counsel shall be in court at the time set by the court for the shelter care hearings. The petitioner must assure a copy of the petition and the report required by ORS 419B.185(4) are provided to counsel as early as possible, but no later than 30 minutes before the time set for the shelter care hearing. The court will go on the record 30 minutes after the hearing time, unless all parties indicate they are ready to proceed earlier. The 30-minute delay will allow attorneys an opportunity to advise their clients and discuss the matter with other parties. If a party arrives late to the shelter care hearing, the 30-minute delay will not be extended.

- (2) Admissions to allegations in a dependency petition shall only be accepted if in writing. Model forms created by the Juvenile Court Improvement Project can be found at courts.oregon.gov.
- (3) After disposition of a dependency petition, the Department of Human Services shall provide a paper review to the court and all parties. A paper review shall include, at minimum, a written update of a youth's placement, progress in the case plan by parents or guardians and efforts made by the Department of Human Services toward the current and concurrent plan. A paper review shall be due when there has been an absence of court hearings and paper review for a period of 90 days, unless a court hearing or Citizen's Review Board hearing has already been scheduled within 30 days of the due date of the paper review.
- (4) The court shall show cause the Department of Human Services to court if a paper review deadline is not met. Personal appearance by the Department of Human Services will be required for the show cause hearing. The show cause will be vacated if a paper review is submitted to the court and all parties within five days of the show cause notice.
- (5) A party may request a hearing for court review at any time. Unless requested in open court, the request shall be submitted in writing with service to all parties. The written request shall include the caption of the case, the party requesting the review and the issue the party seeks to have reviewed. Unless the court determines there is a more appropriate method to resolve the issue brought forth in the request, the court shall set a review hearing.
- (6) For permanency hearings, the parties shall confer on all exhibits prior to the hearing. All exhibits whose admission is not contested shall be entered prior to the first witness. There shall be no opening statements, unless requested. Parties are permitted to make closing arguments. Parties will be granted leeway on cross-examination to examine a witness beyond the scope of direct to allow a party to ask all relevant questions of a witness. Re-direct, if any, will be strictly limited to matters within the scope of cross-examination that were not already covered on direct.

11.111 JUVENILE EXHIBITS

Juvenile exhibits may be filed conventionally or electronically. Exhibits filed conventionally or electronically must be marked. Exhibits filed electronically must be filed as separate documents in the same electronic "envelope."

CHAPTER 12 Mediation

12.015 MEDIATION IN DOMESTIC RELATIONS CASES

- (1) Mandatory Mediation
 - (a) Any action filed in Circuit Court involving a controversy over custody, visitation or parenting time with minor children shall be subject to mediation. The court may decline to hear a custody, visitation, or parenting time dispute until and unless the parties have participated in mediation which has not resolved the issues between them. The court may order mediation even in the absence of a party's request.
 - (b) Except as outlined in SLR 12.015(3), all cases are subject to this rule when the case is at issue. "At issue" means that the case is ready to be set for trial, or, if a party seeks to modify the parenting time or custody provisions of a dissolution of marriage judgment or a judgment establishing paternity, when the case is ready to be set for hearing.
 - (c) If a party willfully fails to complete mediation within 60 days of the date that the case is at issue, that party's pleadings may be struck pursuant to UTCR 1.090(2). A party's unexcused failure to appear at two or more scheduled mediations will be sufficient to establish a willful failure to complete mediation.
 - (d) A party may seek waiver of mandatory mediation on the grounds that such requirement will seriously jeopardize the rights of a party, a child or the children involved. Such waivers will be allowed only after a showing of extraordinary circumstances.
 - (e) The parties must complete mediation orientation, parent education and one mediation session prior to the court signing a judgment of dissolution unless the court waives attendance for good cause shown by motion and affidavit. Sanctions as provided in UTCR 1.090 may be imposed by the court if a party fails to comply.
 - (f) 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 the custody and/or parenting time, upon the request of the parents, the mediator may assist in resolving the support issue as well.
 - (g) Mediation shall not be used by any parent in bad faith for the purposes of delay.

- (h) In the event the mediator does not believe further mediation will result in a resolution, the mediator shall notify the court.
- (2) Mediation Where Power Imbalance Exists
- (a) Where there is a restraining order between the parties, a history of domestic violence or abuse, an extreme imbalance in the power relationship between the parties or other reason to believe that mediation may be inappropriate, a party may contact the assigned mediator to request that the parties meet with the mediator separately, with the presence of a support person during mediation, a telephonic mediation or another remedy. A mediator may exclude a support person from a session if the support person disrupts the process of mediation.
 - (b) The mediator may arrange separate sessions, require telephonic mediation or terminate mediation at any time if the mediator believes that issue of violence, abuse, threatening behavior, manipulation or power imbalance make further mediation inappropriate. In any telephonic mediation, both parties will participate by telephone.
- (3) Commission
- (a) A Mediation Commission shall be formulated.
 - (b) The Commission's function shall be to supervise the mediation program, to render advisory opinions at the request of the court, and to recommend rule changes to the judges.
 - (c) The composition of the Commission shall be: Malheur County Circuit Court Judge, two members of the Malheur County Bar Association appointed by the Presiding Judge, and the designated domestic relations court staff member.
 - (d) Three members of the Commission, including at least one of whom must be a judge, shall constitute a quorum.

12.025 ALTERNATE MEDIATION PROCEDURE IN CIVIL ACTIONS

- (1) Mediation, as used in this rule, is a facilitated negotiation process in which a neutral third-party assists the parties in attempting to reach a resolution of their controversy. The mediator has no authority to make a decision or to impose a solution.
- (2) Mediators whose names are maintained on the court-maintained list shall have the same qualifications of arbitrators as set by the Dispute Resolution Commission.

- (3) In the event any party fails to mediate in good faith after signing a stipulation for mediation, pursuant to this rule, the court may assess costs under UTCR 1.090.
- (4) On the parties' written stipulation filed with the court at any time prior to the commencement of the arbitration hearing, the parties may elect to mediate rather than arbitrate any civil or domestic relations matter, subject to mandatory arbitration. Such mediation shall be accomplished within the same time-period required for court-annexed arbitration under these rules. If the parties mediate in good faith, they shall be deemed to have met the requirements for mandatory arbitration, whether or not the mediation results in resolution of all claims and shall not thereafter be required to submit to arbitration. Nothing in this rule precludes the parties from entering arbitration in the event that mediation is unsuccessful in resolving the controversy. Any such request to arbitrate after mediation shall be governed by Malheur County Supplementary Local Rules 13.025 and 13.045.
- (5) If no mediator has been selected or assigned at the time of the stipulation to mediate, the parties may select a mediator by stipulation, or follow the procedures for assignment of an arbitrator pursuant to UTCR 13.080, except that the arbitrator shall be chosen from among those on the court-maintained list who have agreed to serve as mediators. The parties shall notify the arbitration clerk of their desire to select the mediator from such a list prior to the issuance of a list of potential arbitrators, if possible.
- (6) The mediator is to be compensated pursuant to UTCR 13.120, the Supplemental Court Rules, and the hourly rate established by the arbitration commission.
- (7) If requested by the mediator, the parties shall supply to the mediator a statement of the nature of the case, the status of settlement negotiations, and any other information requested by the mediator or deemed helpful by any party for resolution of the dispute. This shall be supplied to the mediator at least one day prior to the scheduled mediation.
- (8) If an arbitrator has already been assigned at the time of the stipulation to mediate, the parties may select a mediator by either of the following methods:
 - (a) Request the arbitrator to serve as a mediator. Execution of the oath of arbitrator shall not preclude the arbitrator from agreeing to act as mediator pursuant to this rule. If the arbitrator agrees to so serve, UTCR 13.130 shall be applicable.
 - (b) Stipulate to another mediator. If another mediator is selected, the arbitrator shall be informed immediately, and shall be compensated, pursuant to UTCR 13.120 and the Supplemental Local Rules, for any time already invested in the case.
- (9) The results of mediation shall be reported by the mediator to the court as either

“settled” or “not settled”. If settled, the terms of the settlement shall be stated on the report, unless the parties have agreed that the terms shall be kept confidential and not entered as a judgment. The report shall be filed, and the reported settlement entered as a judgment in the same manner as the filing of an award from arbitration that has not been appealed. If the parties have agreed to keep the statement confidential, a written statement of the terms of the settlement, signed by the parties and/or their attorneys shall be retained by the mediator and not made a part of the court file or entered as a judgment. Such a confidential statement held by the mediator or the report to the court including the terms of the settlement shall be admissible to prove the settlement but shall not otherwise be admissible.

- (10) The mediation proceedings described by this rule are compromise negotiations for purposes of ORE 408 (ORS 40.190) and are confidential under ORS 36.205.

CHAPTER 13

Arbitration

13.025 REQUEST FOR AND OBJECTIONS TO ARBITRATION

- (1) Any party may file and serve a request that the court transfer a case to arbitration.
- (2) A court decision on an exemption filed pursuant to UTCR 13.070 will be rendered within 5 days following the filing of a motion for exemption from arbitration. If the court does not act on the motion for an exemption within five days, it shall be deemed denied. If the motion is allowed, the case will be returned to the active trial docket for future disposition. If the motion is denied, the case will remain in arbitration in accordance with these rules and the UTCR.

13.035 COURT SHALL DETERMINE WHETHER CASE IS SUBJECT TO ARBITRATION

- (1) A case will be assigned to arbitration unless it is excluded as provided in UTCR 13.060(1). A case assigned to arbitration will not be removed, except as might occur under (2) of this Rule, without an affidavit, motion, and order.
- (2) Only in extraordinary circumstances will the court order a case returned from arbitration to the court docket after a case has been assigned to an arbitrator. The Presiding Judge of the Judicial District in which the case was filed retains the authority to remove a case from arbitration any time the Presiding Judge is of the opinion that such extraordinary circumstances exist.
- (3) In the event that amended pleadings are allowed by the arbitrator (e.g., amended complaint, third party complaint, etc.), in which a party or parties will be added to the case, or which causes the case not to be subject to mandatory arbitration, the party filing such an amended pleading must notify the Trial Court Administrator

and file the amended pleadings, together with the Arbitrator's order allowing such amended pleadings, with the court. Amendment of the pleadings in the forgoing manner does not, by itself, remove a case from arbitration.

- (4) If a party seeks to exempt a case from arbitration, in accordance with subsection (3) of the rule, or on any other basis, or seeks an order exempting from arbitration a case that would otherwise be referred to arbitration, that party shall file a motion, supported by affidavit, declaration or certification with the court and serve the motion:
 - (a) on the other party or parties in the case;
 - (b) on the arbitrator, if an arbitrator has been assigned to the case; and
 - (c) on the Trial Court Administrator.
- (5) A party that moves for an order under subsection (4) of this rule shall promptly advise the arbitrator in the case, if one has been assigned, of the resolution of the motion.
- (6) Cases exempted from arbitration under this rule may, when again appropriate, be reinstated into arbitration.

13.042 REFERRAL TO ARBITRATION

If the first appearance of a defendant is not an answer, but is a motion directed to the complaint or a dispositive motion, the motion shall be decided before the case is referred to arbitration. No case shall be referred to arbitration unless all parties have appeared or have had an order of default entered against them. If a case has been referred to arbitration prior to the filing of a motion directed to the complaint or a dispositive motion, the motion shall be heard and decided by the arbitrator pursuant to UTCR 13.100.

13.048 INDIGENT PARTIES

- (1) Indigent parties must seek waiver of the arbitrator's fee within 14 days from the date the case is transferred to arbitration. The request must be submitted by motion and order, supported by an affidavit setting forth with specificity the party's income, assets, and expenses, and presented to the Presiding Judge for approval.
- (2) In the event funds are available under ORS 36.420 for the payment of fees that are waived, the arbitrator shall be reimbursed after completion of the arbitration, filing of the arbitration award, and submission of the form approved by the State Court Administrator for such purpose.

13.055 ARBITRATORS

- (1) There shall be a panel of arbitrators in such number as the Arbitration Commission may determine. Persons desiring to serve as an arbitrator shall submit in writing their desire to be placed on the arbitration panel, with the date they were admitted to the Bar, their name, address and phone number, and if they have any preference against certain types of cases. A list showing the names of arbitrators available to hear cases will be available for public inspection by the Trial Court Administrator.
- (2) The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the Trial Court Administrator if refusing to serve, or if any cause exists for the arbitrator's disqualification from the case upon any of the grounds of interest, relationship, bias, or prejudice governing the disqualification of judges. No arbitrator shall have pending at any given time more than three arbitration cases, subject to the discretion of the Presiding Judge.
- (3) If such disqualification or refusal occurs, the arbitrator must notify all parties and immediately return all appointment materials in the case to the Trial Court Administrator (or the Trial Court Administrator's designee).

13.061 DOMESTIC RELATIONS TO ARBITRATION

In all domestic relation suits as defined in ORS 107.510 in which the only contested issue is the division or other disposition of property, the parties shall be referred to mandatory arbitration, unless the matter is referred to mediation as provided in ORS 36.405(3), or unless waived by the court, as provided in ORS 36.405(2).

13.062 CIVIL CONTRACT CASES

In civil contract cases involving a self-represented defendant(s), the case may be set for a status conference in front of a judge to determine if the case should be referred to arbitration or exempt from arbitration pursuant to ORS 36.405(2)(a).

13.065 STIPULATIONS

No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings, the purport of which is disputed, will be regarded by the arbitrator unless the agreement or consent is made at the arbitration hearing or is in writing and signed by the lawyers and parties.

13.071 PREHEARING STATEMENT OF PROOF

If one or more parties in the case fail to submit the Prehearing Statement of Proof required by UTCR 13.170 or fails to submit the preliminary payment to the arbitrator

required by UTCR 13.120 within the time provided by those rules, the arbitrator may refer the matter back to the court for further proceedings. If the matter is referred back to the court, any party who timely complied with UTCR 13.170 and UTCR 13.120 may move the court for appropriate sanctions.

13.075 ALTERNATE MEDIATION PROCEDURE

On the parties' written stipulation, filed with the court at any time prior to the commencement of the arbitration hearing, the parties may elect to mediate under UTCR Chapter 12 rather than arbitrate any civil or domestic relations matter subject to mandatory arbitration.

13.085 NO AWARD FILED WITHOUT PROOF OF NOTICE

At the conclusion of arbitration, if the arbitrator attempts to file the award with the court without the proof of service of a copy of the decision and award upon each party as required by ORS 36.425(1), the award will not be filed and will be returned to the arbitrator.

13.125 ARBITRATOR'S COMPENSATION

- (1) The arbitrator shall be compensated at the rate of \$150.00 per hour for time spent for preparation for arbitration hearing, the hearing and necessary post-hearing duties. Parties are responsible for payment for any work performed by arbitrator even if the parties settle their case prior to or post the arbitration hearing. Each party shall pay a \$400.00 deposit directly to the arbitrator prior to the arbitrator beginning work on the case. The arbitrator shall be compensated at the rate of \$75.00 per hour for travel time.
- (2) If either fails to pay their share of the deposit within 14 days of assignment to the arbitrator, the court may, on its own motion or that of a party after opportunity for a hearing, impose any sanction listed in UTCR 1.090(2)
- (3) The parties shall pay the arbitrator's fee in full before the arbitrator files the award with the court. This requirement is waived for any portion of the fee payable under ORS 36.420.

CHAPTER 16

Violations

16.005 VIOLATIONS BUREAU

- (1) A Violations Bureau is established under ORS 153.800.
- (2) The Trial Court Administrator is appointed as Violations Clerk, and duly

appointed deputies of the Administrator are further appointed as Deputy Violations Clerks.

- (3) The Violations Bureau may exercise authority over all offenses authorized by ORS 153.800.
- (4) Appearances before the Violations Bureau shall be permitted on any authorized offenses to a maximum of two (2) occurrences within any 12 month period.

16.015 TRIAL BY DECLARATION

- (1) Testimony in violation cases may be allowed by declaration after a defendant has filed a waiver signed by defendant [Appendix B];
- (2) Defendant may also waive the right to an oral hearing by submitting a signed waiver [Appendix B].

CHAPTER 24 **Post-Conviction Relief**

24.111 POST-CONVICTION RELIEF – *CHURCH V. GLADDEN*

- (1) So long as petitioner is represented by counsel, all matters submitted to the court for filing shall be submitted only by counsel and, except for any exhibits, signed exclusively by counsel. The only exception to this requirement is for a *Church v. Gladden*, 244 OR. 308 (1966), notice filed by the petitioner if the petitioner believes that counsel has failed to raise all meritorious claims on his or her behalf.
- (2) No later than 60 days after receipt of the amended petition or notice of intent to proceed on the original petition, the petitioner shall file with the court any *Church* notice, together with supporting evidence as required by ORS 138.580. Each of the petitioner's *Church* claims shall include appropriate reference by citation to the evidence in support of that claim.

24.121 REMAND OF CRIMINAL CASE ON POST-CONVICTION JUDGMENT

The petitioner shall submit a letter or other documentation with any post-conviction judgment remanded back to the Malheur County Circuit Court pursuant to ORS 138.640(2), which delineates the Malheur County Circuit Court criminal case number from which post-conviction relief was granted.

APPENDIX A

(Supplemental Local Rule 4.031)

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

STATE OF OREGON,

Case No. _____

Plaintiff,

vs.

MOTION TO TRANSPORT
AND PROVIDE COURT SECURITY

Defendant.

COMES NOW, (adult in custody name) by and through his attorney, (name), and respectfully moves the court for an Order to transport (adult in custody name & SID #).

This matter came before the court on the __ day of _____, 20____, before The Honorable (name of judge) and said case was set for (type of proceeding that was set), and the appearance of (adult in custody name & SID #) is needed.

(State reason why the adult in custody testimony is needed for the proceeding.) My investigator, (investigator name) has interviewed (adult in custody name and SID#).

(adult in custody name) will testify he witnessed the defendant (set out based on the charges).

Said adult in custody is currently in the custody of the (name of Institution and address).

Therefore, we respectfully request an Order allowing the transport of (adult in custody name and SID # to the Malheur County Circuit Court, Vale, Oregon, on (date of proceeding

adult in custody is needed for).

Further, the Defendant respectfully requests an Order for the State of Oregon, Department of Corrections to provide adequate security while said adult in custody is at the Malheur County Circuit Court.

Dated this _____.

(Name of attorney)

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

STATE OF OREGON

Case No. _____

Plaintiff,

vs.

ORDER TO TRANSPORT
AND PROVIDE COURT SECURITY

Defendant.

This matter having come before the court on the ___ day of _____, 20____, before
The Honorable _____ and said case having been set for (type of proceeding) and the
appearance of (adult in custody name and SID #) is needed, and said adult in custody is
currently in the custody of the (Institution and address).

The court having reviewed the files and records herein;

NOW, THEREFORE, THIS COURT HEREBY ORDERS the temporary release of
(adult in custody name and SID #), from the (name of Institution), (or any other correctional
facility the adult in custody may be transferred to prior to said hearing), for the pending (type of
proceeding) against the above-named Defendant, with the State of Oregon, Department of
Corrections retaining
jurisdiction.

IT IS FURTHER ORDERED that the adult in custody shall be transported or made available to testify via simultaneous electronic transmission by the State of Oregon, Department of Corrections, to the Malheur County Circuit Court, Vale, Oregon, on (date of proceeding), and returned to the custody of the (name of Institution) immediately thereafter.

IT IS FURTHER ORDERED that the State of Oregon, Department of Corrections, shall provide adequate security at all times while said adult in custody is at the Malheur County Circuit Court.

APPENDIX B

(Supplemental Local Rule 16.015)

RETURN TO:
MALHEUR COUNTY CIRCUIT COURT
251 B Street, West #3
Vale, OR 97918

DUE: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MALHEUR COUNTY STATE OF OREGON,

Plaintiff,

vs.

Case No. _____
Waiver and Declaration
Under Penalty of Perjury

Defendant.

WAIVER

I, _____, have plead NOT GUILTY and requested a trial in the above-captioned case.

As authorized by ORS 153.080, I hereby waive my right to have my testimony and the testimony of the officer presented orally in court, and I agree that testimony may be presented by sworn affidavit or by declaration under penalty of perjury. I understand that, if I do choose to appear in person for trial after signing this declaration under penalty of perjury, a copy of the police officer's written testimony will be presented to me at that time. The police officer may not be present.

I am not represented by an attorney in this matter. If I retain counsel, I will advise the court immediately.

INSTRUCTIONS: If you waive your right to have testimony presented orally in court, please fill out the below Testimony by Declaration Under Penalty of Perjury and return all documents to the court at least two weeks prior to the trial date. The judge will give your declaration the same consideration as a personal appearance.

TESTIMONY BY DECLARATION UNDER PENALTY OF PERJURY

I, _____, state that I am the

Police Officer Defendant

in the above violation offense. Pursuant to ORS 153.080, this declaration represents my testimony concerning the above violation offense. (Continued on reverse side.)

(You may attach additional pages if necessary.)

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 of perjury.

Date

Signature

APPENDIX C

(Supplemental Local Rule 9.081)

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

Guardian/Conservatorship of

Case No. _____

OBJECTION TO PETITION
FOR APPOINTMENT OF
GUARDIAN/CONSERVATOR

(Protected Person)

I, _____,
(Objecting party's name and relationship to the Protected Person)

Hereby object to the Protective proceeding or the proposed guardian or conservator for the following reason *(state reason below and use additional sheet if necessary)*:

Signature of Objecting Party

Printed or Typed Name of Objecting Party

City State Zip

Telephone or Contact Telephone Number(s)

APPENDIX D

(Supplemental Local Rule 4.081, 5.001, 8.001, 11.052)

**NOTICE OF REMOTE APPEARANCE
PURSUANT TO SLR 4.081, 5.001, 8.001, 11.052**

Case Title:

Case Number:

Date of Hearing:

Time of Hearing:

Attorney Appearing by Telephone:

DHS Caseworker Appearing by Telephone:

Any person appearing by phone pursuant to this Notice shall, prior to the above hearing, file or deliver to the court any documentation or exhibits that may be necessary for the proceeding. The person appearing by phone shall pay all costs associated with the telephonic appearance. The person appearing by phone shall call the court with enough time prior to the hearing to assure they are ready to appear at the time set for the hearing. The person appearing by phone shall have the ability to mute their line and do so unless they are speaking on the record.