Gus J. Solomon Inn
American Inns of Court
2011-2012 Program
"Big Case – Small Firm" A Year Long Scenario

January 17, 2012 Group Presentation (Group 3)
"Discovery Planning"

Group Members:

Hon. Judge Judith Matarazzo
Peter Glazer
Phil Gilbert
Robert S Simon
Erin Catherman
Tate Justesen
Tyler Volm
Brett Engel
Brad Gerke

Scenario Summary – Child pornography was found on an Internet Service Provider's (ISP) web site by a mother who subscribed based upon the representations that the ISP was "child safe." The ISP, named "Familysafenetworks.com" is sued by the mother for injuries to her child who viewed the graphic material. Mother is represented by a two lawyer plaintiff's firm and the defendant ISP is represented by a sixteen (16) attorney firm. There are issues presented by the (1) possible class action, (2) the Terms of Service "click agreement", and (3) Choice of Law and Venue to name just a few (see., Inn web page for the entire fact situation www.gusjsolomoninnof court.org [CLE Credits – 2011-2012 Program link)).

The Discovery Plan – The task of the Group 3 presentation is to raise (but not dispose of) discovery issues presented by the facts and not to be driven by the prior presentations. In our situation the presentation assumes an Oregon court will have jurisdiction, and that the discovery will touch on the tools as well as the facts that both the Plaintiff and the Defendant would or should pursue. Most of the presentation focuses on the tools and how these can be used efficiently in light of the capacities of the sides.

- Plaintiff's Plan - The presentation follows the rules for production, depositions, admissions, interrogatories, and the Duty to Confer on discovery disputes. Samples of requests are included in the materials.
- Defendant's Plan – The presentation discusses the differences between state and federal courts. The focus is upon how the defense can find the measures of damage and liability from the plaintiff using the best tools offered by the state and federal systems. There is some discussion of discovering the computer used by the plaintiff, gathering evidence needed for a "Click Wrap" motion for summary judgment, and obtaining medical examinations.
- Multnomah County Circuit Court – The concluding presentation speaks to the draft Supplemental Local Rules which are scheduled to go into effect on February 1, 2012. The focus is on the changes in pre-trial procedures for civil cases and on the expedited trial opportunities.

☞ MEMORANDUM ☜

From : Peter Glazer

Date : 01/13/12

Re : Peter's Pupilage Sub-Group Presentation for January 17, 2012

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PLAINTIFF'S FIRM'S DISCOVERY DISCUSSION

1. Request for Production of Documents and Tangible Things. *(TATE LEADS DISCUSSION OF (a) -(c).) (Approx. 6-7 minutes of 20 minutes we have.)*

   A. Formulating our request list.

   (a) Documents identifying who at defendant's company physically posted the graphic image;

   (b) Documents identifying who at defendant's company had obligation to double-check what was being uploaded in order to prevent what occurred;

   (c) Internal policies, rules, safeguards and protections in writing, if any, designed to protect the public from what occurred;

   (d) 1. Impose duty on defendant immediately to preserve computer and other data/documents;

   2. What could be discovered from defendant's electronic files/computers. *(BRETT LEADS DISCUSSION OF (d).)*

   (e) ORCP 43 Entry upon land. *(BRETT LEADS.)*

2. Depositions. *(Approx. 4-5 minutes of our 20 minutes.)*

   (a) ORCP 39C(6) organization notice (requiring defendant to identify witnesses to testify on various topics we list); *(PETER LEADS.)*

(b) Other witnesses; *(PETER LEADS.)*

(c) Timing of depositions: Question of which is best: Take them early and learn information or wait until some information is learned (through document production, investigation, etc.)? Taking depositions could be better when more knowledgeable (less to learn information and more to confirm defendant's position on facts and perhaps catch defendant in conflict with known facts)? *(PETER LEADS.)*

(d) Where depos would take place. *(BRETT LEADS -- 1 minute.)*

3. Request for Disclosure of Insurance Information. *(PETER LEADS -- 1 minute.)*

4. Request for Admissions. *(CHARLES HENDERSON ASSIGNED TO LEAD.) (4-5 minutes of our 20 minutes.)*

(a) Limited number;

(b) Wait until we see defendant's Answer or do RFA as to denials that we think we can prove, in hope of an award of attorney fees for proving facts defendant should have admitted. (Does anyone ever get attorney fees for proving something that a defendant denied in RFA?)

5. Interrogatories. *(CHARLES HENDERSON LEADS.) (1-2 minutes of our 20 minutes.)*

6. Duty to confer. Duty to confer re: discovery motions is found in UTCR 5.010** and some local rules amplify on the requirement. SLR _____ (Multnomah County); Statement of Consensus of Civil Motion Panel (Multnomah County and Clackamas County. *(PETER LEADS.)*

7. <u>Investigation. Robert Simon suggests we discuss investigation as a sub-topic. Anyone want to take the lead on this?</u>

PG;dq

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

MARY MOTHER, Plaintiff, v. FAMILYSAFENETWORKS.COM, Defendant.	No. 1201-12345 **NOTICE OF DEPOSITION OF DESIGNEE(S)**

TO: Defendant FAMILYSAFENETWORKS.COM, by and through its attorneys, Myd, Size & Dunless, LLC:

YOU WILL PLEASE TAKE NOTICE of the following depositions: Pursuant to ORCP 39C(6), plaintiff requires that defendant FAMILYSAFENETWORKS.COM, designate and produce for depositions on Wednesday, February 15, 2012, starting at 9:30 a.m. at the office of Myd, Size & Dunless, LLC, 123 SW Fourth Avenue, Suite 123, Portland, Oregon, its employees, former employees, officers and persons under its control, as follows and to testify regarding the following topics:

1. The person or persons most familiar with how and why the explicit child pornography was visible to internet users on the business web site of familysafenetworks.com.

SUANNE WYNN & ASSOCIATES, P.C., Attorneys at Law
4567 Eighth Street, Suite 1000, Portland, Oregon 97204
Phone: 503-221-5678; Fax: 503-221-7856; E-mail:pkg@wynnlaw.com

2. The person or persons most familiar with whether any of the child pornography was posted (uploaded) by an employee of the company as opposed to a hacker or saboteur.

3. The person or persons most familiar with safeguards, if any, used by familysafenetworks.com as of the date of the incident to protect against saboteurs and hackers.

4. The person or persons most familiar with what period of time, measured in days, weeks, hours, minutes, or any measure of time, explicit child pornography was viewable by internet users on the web site of familysafenetworks.com including the date of the incident.

5. All employees and past employees of familysafenetworks.com who received any complaints communicated by phone, in writing or in person, by any and all members of the public regarding child pornography on familysafenetworks.com's web site from January 1, 2009, to present.

6. The employee most familiar with familysafenetworks.com's response to first learning of explicit child pornography on its web site and how and when the pornography was removed from the web site.

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7. Any and all employees with personal knowledge, if any, that plaintiff Mary Mother personally agreed to familysafenetworks.com's "Terms of Agreement" and, if so, when.

Said depositions will be reported by court reporter and/or recorded by audio/videotape. You are invited to attend and cross-examine. This notice shall be continued as to time and place upon stipulation of the parties.

DATED this 17 day of January, 2012.

SUANNE WYNN & ASSOCIATES, P.C.

Ralph Lowpay

Ralph Lowpay, OSB #067890
Attorneys for Plaintiff

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INN OF COURT
PUPILAGE GROUP PRESENTATION
January 17, 2012

I'm Peter Glazer. Our topic is discovery and investigation. We have broken down our Pupilage Group's presentation into three 20-minute segments. The first looks at investigation and discovery from the plaintiff's perspective. The second looks at discovery from the defense perspective. The third is Robert Simon's wrap-up and catch-all.

Plaintiff's counsel is a small firm, Suanne Wynn &Associates, and although the materials state that the only lawyers are Suanne and Ralph Lowpay, our subgroup is Brett Engel, Charles Henderson and Tate Justesen and we are gathered in our war room to discuss investigation and discovery options and strategies.

Tate, let's talk first about a Request for Production of Documents and Tangible Things pursuant to ORCP 43 or the comparable federal rule.

<u>TATE discusses</u> topics 1A(a), (b) and (c).

<u>BRETT leads</u> discussion of 1A(d) and (e).

Now let's talk about the second discovery tool, depositions.

PETER leads: Everyone know that in a case like this, the defendant gets to take the deposition of the plaintiff and the plaintiff can take the deposition of an identifiable defendant. In a case like this, however, a tool that not everyone fully appreciates is arranging for an organizational deposition or depositions based on the plaintiff identifying certain topics on which the plaintiff requests the defendant corporation to identify and produce witnesses to testify.

ORCP 39C(6) reads in part:

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C(5) **hings.** The notice [illegible] may be accompanied by a request made in compliance with Rule 43 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 43 shall apply to the request.

C(6) **Deposition of organization.** A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which such person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

C(7) **Deposition by telephone.** Parties may agree by stipulation or the court may order that testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone pursuant to court order, the order shall designate the conditions of taking testimony, the manner of recording the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than pursuant to court order or stipulation made a part of the record, then objections as to the taking of testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording the deposition are waived unless seasonable objection thereto is made at the taking of the deposition. The oath or affirmation may be administered to the deponent, either in the presence of the person administering the oath or over the telephone, at the election of the party taking the deposition.

D Examination; record; oath; objections.

D(1) **Examination; cross-examination; oath.** Ex-

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Rule 46 sl

In this case a notice of an ORCP 39C(6) deposition might set forth topics including the following:

1. **The person most familiar with how and why the explicit child pornography was visible to internet users on the business web site of familysafenetworks.com.**

2. **The person most familiar with whether any of the child pornography was posted (uploaded) by an employee of the company as opposed to a hacker or saboteur.**

3. **The person most familiar with safeguards, if any, used by familysafenetworks.com as of the date of the incident to protect against saboteurs and hackers.**

4. **The person most familiar with what period of time, measured in days, weeks, hours, minutes, or any measure of time, explicit child pornography was viewable by internet users on the web site of familysafenetworks.com including the date of the incident.**

5. **All employees and past employees of familysafenetworks.com who received any complaints communicated by phone, in writing**

or in person, by any and all members of the public regarding child pornography on familysafenetworks.com's web site from January 1, three years ago, to present.

6. The employee most familiar with familysafenetworks.com's response to first learning of explicit child pornography on its web site and how and when the pornography was removed from the web site.

7. Any and all employees with personal knowledge, if any, that plaintiff Mary Mother agreed to familysafenetworks.com's "Terms of Agreement" and when.

PETER leads discussion of deposing other witnesses (we really don't know anybody by name so I'm not sure that at this point we can identify anyone else we want to depose).

PETER re: timing of depositions. It is often worth thinking about how soon one wants to take depositions. In federal court where interrogatories can be used, it may make sense to pose interrogatories and read the responses before taking depositions, and then take depositions in part to confirm the admissions and impeachable versions of facts that the defense states. On

the other hand, without interrogatories, it may make sense to take the depositions early on in order to obtain information that would hardly be obtainable any other way. It's always a somewhat delicate question whether you want to take depositions until a point whether you have more knowledge and are trying to confirm the defense position on facts rather than to blindly ask questions without much knowledge of the facts.

BRETT: Where depositions would take place.

PETER: Request for Disclosure of Insurance Information -- ORCP 36 provides a right to obtain insurance information.

CHARLES leads discussion re: Request for Admissions.

(A) Limited number of Requests for Admissions in state court and in federal court: 30 in state court. No limit in federal court rules (but may be in agreed discovery order).

(B) When serve Requests for Admissions? Should we wait to see defendant's Answer and then write Requests for Admissions as to allegations in Complaint that we think defense is wrongfully denying? Should we serve some

Requests for Admissions at beginning? Hope would be to get award of attorney fees for proving facts defendant should have admitted but does anyone ever get attorney fees for proving something that a defendant denied in RFA?

(C) Use Requests for Admissions to make some of our important points such as to plant the seed that our client did not personally click on accepting defendant's Terms of Service"?

Interrogatories -- CHARLES leads.

<u>PETER leads</u>: <u>Duty to Confer re: Discovery Motions</u> -- Best practice, required under some SLRs and by some judges, is to actually talk or at least document that you tried to call and talk to other attorney. Some counties and judges would allow conferring by letter.

<u>Investigation</u> -- How much investigation should Suanne Wynn & Associates have done before filing case? (If time, PETER can lead.)

Defense Discovery Strategy: Overall Approach (Blitzkrieg)

{Disclaimer: My practice is exclusively *civil* litigation, and our hypothetical case revolves around *civil* claims, and so this discussion will not specifically address *criminal* litigation issues}

I. The Forum Makes a Significant Difference (Federal v. State Court)

A. *Federal* Court: virtually limitless pretrial discovery

1. Interrogatories (FRCP 33)
2. Expert discovery
3. FRCP 26

a. Affirmative and early-on production/disclosure obligation (even before receipt of one or more discovery requests). FRCP 26(a)(1).
b. Discovery Conferences and Plans (FRCP 26(f))
c. Expert discovery

I. Unless Pretrial Order provides otherwise, at least 90 days prior to trial (30 days if rebuttal expert)

A. Names
B. Reports
C. Substance of opinions

B. *State* Court: "Trial by Ambush"

a. No interrogatories;
b. (Almost) no pretrial expert discovery. Stevens v. Czerniak, 336 Or. 392, 400-04, 84 P.3d 140 (2004).

C. The Hat a Party Wears Strongly Impacts Preference

1. As a general proposition, the defense wants as much information about the plaintiff's case as it can obtain as early on as possible and therefore often prefers federal over state court

a. Aids trial preparation;
b. Enhances possibility of proceeding with pre-trial summary judgment motions (entire case or partial)
c. Makes the case *MUCH* more expensive for the plaintiff, potentially leading to dismissal of action or skinny settlement

I. Defense is often insured or a corporation with significant assets
II. Plaintiffs typically of modest means (or less) such that counsel not infrequently end-up advancing costs.

2. Even if plaintiff files in state court, if the circumstances of the case are such that they could have filed in federal court (i.e. party diversity and//or federal question) the defense can still move to "remove" the case; meaning seek an order causing the case to be re-filed in federal court. *See* 28 USCA 1441, *et seq.*

II. Conducting Pretrial Discovery in Our Hypothetical Case

A. The computer that plaintiff was using

1. Has it been altered since the event allegedly occurred?

a. *Upon initial retention* fax and mail plaintiff's counsel a letter demanding that the computer be maintained "as is" pending its inspection.
b. Request for Production (ORCP 43 speaks to documents "and things") for the computer itself.
c. Forensic investigation

I. Possible joint order or stipulation establishing inspection terms and/or allowing both sides' experts simultaneous access and/or requiring the filming of all inspection and testing, etc.

II. **(If technically plausible) have forensic expert attempt to determine whether plaintiff (and/or anyone else in the household) had previously viewed the allegedly offensive advertisement**

III. **(If technically plausible) have forensic expert attempt to determine whether plaintiff or other users of the PC visited any porn websites, downloaded any photos, etc.**

B. Documents

1. Request for Production (ORCP 43, FRCP 34)

a. Computer usage related records

b. Documents associated with alleged event {look for evidence of delay between alleged event and alleged resulting damage}

I. **Calls/visits to medical care providers**
II. **Calls to police and/or other authorities**
III. **Complaints/notifications to defendant**
IV. **E-mail and/or social networking messages to others about the alleged occurrence and/or claimed resulting trauma**

c. Medical records

I. **Emergent/urgent;**
II. **Care for alleged injuries;**
III. **Prior medical history**

A. **Possible on-going effects of *physical* injuries**
B. ***Psychological* and/or emotional issues/priors**
C. **Medications impacting (accentuating ?) response/trauma**

d. Contracts

I. "Clickwrap" issue and possible MSJ based on terms of the plaintiff's agreement

II. Any other agreements plaintiff had previously entered into (re possible ambiguity defense per case facts)

e. School/Professional Training

I. Has plaintiff attended any classes, seminars, etc. regarding "legal" subjects that might help defeat ambiguity in clickwrap terms argument?

2. Subpoenas (ORCP 55, FRCP 45)

a. To plaintiff's employer and with reference to:

I. Plaintiff's use of computer/work entailing use of the Internet

A. Has she been on the Net since the event (per the case summary, she claims not to have used the Net at all since the event)?

B. Does she visit other than "wholesome" websites?

II. Any complaint by plaintiff that alleged event interfering with/altering ability to work (or lack thereof)

A. Attendance issues?

III. Performance review reports (any decrease in performance that corresponds with the timing of the alleged event)

b. Any companies, colleges, etc. regarding plaintiff's education, training regarding "legal" subjects (anticipated ambiguity defense)

C. Depositions (ORCP 39; FRCP 30)

1. **Treating doctors, therapists**
2. **Family members**
3. **Friends**
4. **Supervisors/co-workers**
5. **Anyone else who used the same PC**

D. Independent Medical Examinations (ORCP 44; FRCP 35)

1. **Psyche**

E. Requests for Admissions (ORCP 45; FRCP 36)

1. **Often more useful after conduct of initial round of discovery**

F. Motions to Compel/Discovery Violations (ORCP 46; FRCP 37)

1. **Potential for awards of sanctions/fees**

    a. **Sanctions arguably mandatory ("shall" in ORCP 46A(4) and "must" in FRCP 37a(5)) except that rules include "substantially justified" outs for the trial judge.**

{If any time left, briefly discuss case law (Beard and Feldman) re clickwraps}

Local Rules Discussion

Expedited Civil Jury Trial

1. Process allows lawyers/clients to "saddle up and go." It is an attempt to change the culture of protracted motion practice. Distill the case to its core issues, get your discovery quickly regarding these core issues, and try the case to six jurors.

2. The process lends itself to smaller cases, but do not be scared away from the process because of the dollars at issue. Does the case lend itself to limited motion practice? Are there a limited number of witnesses? Are there limited subjects in dispute?

3. Be clear up front about what the stipulation covers (experts vs. trying the case on documents alone). The process requires the lawyers to communicate and cooperate, early and often.

4. Eliminates arbitration requirement, and avoids trial de novo trap. Date certain trial from the start, and the trial dates are given top priority. The case management conference is held within 10 days of designation.

5. Every judge in Multnomah County has allowed any non-default discovery plan, so long as the attorneys can get it done in the 4 month timeframe. It is only if the attorneys cannot agree on a non-default discovery plan that the default rules kick in. Both sides must agree to enter the program.

6. Experts can testify by report. Eliminates trial by ambush, but speeds up the process.

7. Judges (Kantor, Litzenberger, Matarazzo, Nelson, and Wilson in Mult. Co) are willing to make themselves more available to resolve disputes, in exchange for foregoing extended motion practice. Judges are interested in a quick resolution.

8. Increases verdicts, which allow for easier case valuation in settlement discussions.

9. No cases or loss prevention materials from PLF yet. What types of disclosures should you give your client to recommend the process? What should the client sign?

10. Would this process work for our fact pattern? Why or why not?

11. Check out Multnomah County Court's Civil Page for more information.

EXPEDITED CIVIL JURY TRIALS IN MULTNOMAH COUNTY

Designation of Expedited Cases

Any civil case eligible for jury trial may be designated as an expedited case.

A party seeking the expedited civil jury trial designation must obtain the agreement of all other parties and submit a joint motion and an order to the presiding judge.

The Presiding Judge decides whether to designate a case as expedited.

If the case is designated as expedited, it is exempt or removed from mandatory arbitration and from all court rules requiring mediation, arbitration and other forms of alternate alternative dispute resolution.

Trial Judge Assignment and Case Management Conference

The Presiding Judge's designation order will also assign the case to a trial judge. The trial judge will have a case management conference within 10 days of the designation. At the case management conference the trial date will be set. The trial date will be no later than 4 months from the date of the designation order.

Discovery

Whether the discovery plan is by agreement or under the default provisions, all discovery must be completed no later than 21 days before the trial date. ***A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the expedited case trial date.***

By Agreement

The parties in an expedited case may file a written discovery agreement with the court stating the following:

- The scope, nature, and timing of discovery;
- The date discovery will be complete, which must be not later than 21 days before trial.

Default Discovery

If the parties in an expedited case do not file a discovery agreement, then each party *must* do all of the following *after the designation*:

- Provide to all other parties within 4 weeks of the expedited case designation:
  - The names and, if known, addresses and telephone numbers of all persons, other than expert witnesses, likely to have knowledge that the party may use to support its claims or defenses, unless the use would be solely for impeachment.
  - A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party had in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
  - A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 B(2).
- Serve all discovery requests no later than 60 days before the trial date.

After the designation of the case as expedited, each party *may*:

- Take no more than 2 depositions.
- Serve no more than 1 set of requests for production.
- Serve all no more than 1 set of requests for admission.

Other Provisions

- After a case is designated as an expedited, a party shall not file a pretrial motion without prior leave of the court.
- All expedited civil jury trials will use 6 jurors, plus alternate(s) within the discretion of the court.
- The parties may enter stipulations about the conduct of the trial, including admission of exhibits and how expert testimony will be presented.

General Discovery Tips from the Bench

1. Discovery should take place much earlier in the lifespan of the case.

   Judges are mindful of the cost of discovery, but by delaying discovery in hopes that the case will settle, presiding court judge is then forced to set the case beyond the one-year timeline to allow additional time to complete discovery.

2. Confer early and often (face-to-face > phone > email). Remain professional at all times.

   Judges often hear discovery disputes only to learn that this is the first time the lawyers have been in the same room. It is not that judges dislike discovery disputes, but they often find that the lawyers have had only limited discussions regarding the dispute. If it is a legitimate dispute, the judge is likely interested in the matter. The criminal bar is smaller, so disputes are resolved more amicably. The civil bar needs more of this (getting to know each other over coffee or lunch early in the case).

3. If a lawyer is failing to comply with a discovery request, file a motion to compel (which requires conferral…see previous point). Don't wait too long and extend the case. Argue the issue while it is ripe.

4. Educate your expert early in the case about the timeline of the case.

   It is the lawyer's responsibility to ensure that the expert is available throughout the case (the best experts are often double-booked).

5. Ask yourself whether you really need all the paperwork you are demanding.

   Avoid the fear of failure to ask for every single document. Lower the cost to your client. Pitfall for young associates? If the partner wants you to ask for everything under the sun, ask the partner why s/he feels all of it is necessary (takes some finesse).

Draft Supplementary Local Rules

For

The Circuit Court of the State of Oregon for Multnomah County

The Fourth Judicial District

Effective

February 1, 2012

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CHAPTER 1

GENERAL PROVISIONS

1.015 DEFINITIONS

These definitions are intended to clarify terms used in these rules.

(1) **Abated Cases** are those cases placed under a two-year stay order by the Court on the basis of activity external to the case which would have an effect on the outcome or conduct of the case.

(2) **Call** refers to the trial and show-cause docketing system whereby a case is called and assigned to a judge on the judicial day immediately preceding the date of the actual hearing or trial.

(3) "**Judicial Days**" means calendar days excluding: Saturday and legal holidays, including Sunday, as defined in ORS 187.010 and 187.020, and any day on which a court is closed by order of the Presiding Judge or the Chief Justice.

(4) **Confirmation Cards** are standard-sized, stamped, and addressed US postcards which are to be attached to any filing if signing or filing information is requested. They shall be filled out by the submitting party to allow the Court to provide the information the submitting party desires.

(5) Definitions set out in UTCR 1.110 are incorporated by this reference and apply in these rules.

1.025 APPLICATION TO CIRCUIT COURT AND DEPARTMENTS

These rules apply to matters within the jurisdiction of the Circuit Court for Multnomah County and all departments of the Circuit Court.

1.035 CREDIT CARDS

Credit cards may be used and fees assessed as provided by ORS 1.005, except that a credit card may not be used under ORS 135.265 for paying a security amount or posting a security deposit for a criminal action.

1.151 HOURS FOR THE CONDUCT OF BUSINESS, WHEN DOCUMENTS MAY BE RECEIVED TO BE FILED

(1) The court is open for the conduct of business each judicial day from 8:00 am to 5:00 pm, and, in addition, judicial proceedings may be held at other times and on other days when required by the court for the conduct of its business and upon notice to the parties required to appear.

(2) Documents which do not require the payment of a fee prior to filing may be received for filing from 8:00 am to 5:00 pm each judicial day in the appropriate division of the Office of the Trial Court Administrator. Documents which require the payment of a fee prior to filing may be presented to a cashier or left in a drop box, together with payment or an order authorizing the deferral or waiver of the fee, from 8:30 am to 5:00 pm each judicial day in the appropriate division of the Office of the Trial Court Administrator. Upon satisfaction of the fee, the document will be received for filing. No document will be received for filing or filed except as provided in this rule.

1.161 DIVISIONS OF THE OFFICE OF THE TRIAL COURT ADMINISTRATOR WHERE DOCUMENTS ARE RECEIVED FOR FILING

(1) The Office of the Trial Court Administrator receives documents for filing in the following divisions. In the Multnomah County Courthouse: the divisions are Civil, including Small Claims and FED, Domestic Relations, Probate, Traffic, Parking and Criminal. In the Juvenile Justice Complex: all Juvenile matters. In the Gresham [*Court facility*] {**East County Courthouse**}: Criminal, Traffic and Small Claims matters filed in that court location. Documents should be delivered to the appropriate division for filing.

(2) Documents delivered by mail to the court, or left in the court's mail room for delivery, will be received for filing when delivered in the normal course of distribution of documents from the mail room to the appropriate division of the Office of the Trial Court Administrator. If a fee is required to be paid prior to filing of a document, then filing may occur only if the fee is satisfied. In all other cases, filing will be accomplished on the date the documents are distributed to the appropriate division.

(3) Documents transmitted directly to the clerk's office by facsimile transmission (FAX) will not be received for filing.

(4) The street address for the downtown courthouse is:

Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, OR 97204-1123

Addresses for other court locations are as follows:

Justice Center
Third Floor
1120 SW Third Avenue
Portland, Oregon

Juvenile Justice Center
1401 NE 68th Avenue
Portland, OR 97213

Gresham [*Justice Center*] {**East County Courthouse until opening of the East County Courthouse new facility set for March, 2012**}
150 W Powell
Gresham, OR 97030

{**after February 2012 the new facility address will be)**
18430 SE Stark Street
Gresham, OR 97233}

1.165 NOTICE TO TRIAL COURT ADMINISTRATOR REQUIRED FOR ORDERS TO SEAL A FILE, TRANSFER MONEY TO OR FROM AN INTEREST BEARING ACCOUNT, A JUDICIAL EXTENSION OF A RECORD RETENTION PERIOD, OR DOCUMENTS SUBMITTED UNDER SEAL

(1) If at any time in a civil, domestic relations or probate case, a party requests an order which requires the trial court administrator to seal a file, transfer money into or remove money from an interest bearing account, or for the judicial extension of a record retention period, the party must give notice to the trial court administrator of the motion. Notice must be in writing, signed by the attorney or party, and a copy of the submitted form of order must be attached to the notice.

(2) When the court permits documents to be submitted for filing under seal of the court, the documents should be filed in 9 X 12 inch sealed envelope and be labeled on the face (address) side of the envelope with the case caption, case number, and the title of the documents (i.e. Response to Motion to Compel Discovery and Affidavit). The envelope should be marked clearly on both sides "Documents Under Seal of the Court." Larger envelopes may be used for bulky documents.

1.171 WEB ADDRESS

http://courts.oregon.gov/Multnomah

CHAPTER 2

STANDARDS FOR PLEADING AND DOCUMENTS

{2.011 CIVIL CASE MANAGEMENT COVER SHEET

In civil actions , except small claims, FED, family law, juvenile, protective proceedings or probate cases, any complaint or petition initiating an action shall be accompanied by a Civil Case Management Cover Sheet.

(1) The cover sheet shall identify:
- **(a) All parties plaintiff/petitioner and defendant/respondent;**
- **(b) Any related cases pending in the Fourth Judicial District (Multnomah County Circuit Court) and their case numbers;**
- **(c) Contact information for plaintiff/petitioner's attorney, including;**
  - **(i) Name, mailing address, phone number and OSB number;**
  - **(ii) Email address for all court-generated electronic notices; and,**
- **(f) The type of case, selected from a list provided by the court on the Cover Sheet form.**

(2) The cover sheet, if so indicated, will serve as notice of a change of address pursuant to UTCR 2.010(14);

(3) A form of Civil Case Management Cover Sheet is available from Presiding Court and in Room 210 of the courthouse. It is available on-line at http://courts.oregon.gov/Multnomah/. (See Form 05-95, Page 107, Appendix of Forms)}

2.015 RETURN OF A DOCUMENT TO PARTY

(1) In addition to the authority to decline to receive or file a document under ORCP 9 E and UTCR 2.010(12)(c), in certain limited situations, a document may be returned to the party who submitted it, without being filed by the court. Those situations include:

(a) A document with an existing case number and case caption from another jurisdiction, unless filed pursuant to an order signed by a judge allowing a change of venue or authorizing the filing on some other basis;

(b) A document which requires a fee but the fee or an order to waive or defer such fee is not provided and the fee requirement has not been satisfied;

(c) A document without sufficient identifying information to determine in which case it should be filed or entered;

(d) A document which requires court action, but the court action cannot be taken without the filing of statutorily-required preceding documents;

(e) A document with a case caption from a jurisdiction not recognized by the Oregon Constitution or established by the Oregon Legislature, or a judgment purportedly issued by a nonexistent court;

(f) A petition submitted for filing under ORS 813.210 more than 30 days after the first appearance on the summons where there is no finding of good cause by the court to permit the late filing;

(g) A document submitted for filing by facsimile transmission (FAX); and,

(h) As provided in SLR 13.225, a written notice of appeal and request for trial de novo of an arbitration award submitted for filing beyond the time permitted by law.

(2) In small claims and summary dissolution cases, documents which do not comply with ORS, ORCP, UTCR, or SLR may, at the discretion of the Presiding Judge, be returned to the filing party.

(3) A pleading document which begins an action, and which is filed in this court and given a Multnomah County Circuit Court case number, will not be returned to a filing party even though the document may have a caption for another circuit court and was filed in error by the filing party.

2.025 FEE DEFERRALS OR WAIVERS IN CIVIL ACTIONS

Fee deferral or waiver applications in civil actions shall be submitted to the Presiding Judge or designee.

2.035 DESIGNATION OF KNOWN PARTIES BY FICTITIOUS NAME

In civil actions, the designation of a known party by a name other than the party's true name shall be allowed only upon an order of the court. If ordered, the designation of such party shall be by use of such party's initials or a fictitious name other than "Jane Doe" or "John Doe". The name "Jane Doe" or "John Doe" is reserved to be used for a party whose identity is unknown and the party is being designated as provided in ORCP 20 H.

2.045 REQUIREMENTS OF PETITION FOR WAY OF NECESSITY ACTION

The petition for establishing a way of necessity must contain either in the caption under the name of each respondent or in the first paragraph of the Petition, the mailing address of each person named as respondent therein.

2.055 SECURITY DEPOSIT TO BE PAID ON FILING OF PETITION FOR WAY OF NECESSITY ACTION

At the time of filing a petition for a way of necessity action, the petitioner shall post a bond or security deposit with the court of $500 for the purposes of ORS 376.200 (4) and (5).

2.065 APPOINTMENT OF INVESTIGATOR; FILING AND SERVICE OF REPORT

(1) Upon the filing of a Petition for determination of a way of necessity pursuant to ORS 376.150 et seq., petitioner shall appear before the Presiding Judge at ex parte and present a motion for an Order Appointing Investigator under ORS 376.200(5).

(2) The affidavit in support of the motion shall reflect the amount of the bond or security deposit posted by the petitioner for payment of the investigator, and that the petitioner is prepared to pay the amount of any deficiency as required by ORS 376.200 (5). The court may set a higher amount to be posted by the petitioner. A motion will not be allowed until the full bond or security deposit set by the court is posted.

(3) The submitted form of Order Appointing Investigator shall reflect the name, address and telephone number of the investigator requested to be appointed by the court, specify the date, within 90 days, on which the investigator must file the report with the court, and state that the investigator shall file the original report with the court, and send a copy to the Petitioner.
(4) A copy of the motion, affidavit and submitted form of Order Appointing Investigator shall be served, along with the Petition, upon the respondents.

CHAPTER 3

DECORUM IN PROCEEDINGS

3.171 LOCAL ATTORNEY AS ATTORNEY OF RECORD

The local attorney under UTCR 3.170 (1) (c) will be designated as the attorney of record for the represented party, unless otherwise specifically ordered by the court.

3.181 PUBLIC ACCESS COVERAGE IN AREAS OUTSIDE OF COURTROOMS

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

3.182 USE OF CELL PHONES AND OTHER PERSONAL DATA AND COMMUNICATION DEVICES WHICH HAVE AUDIO RECORDING, PHOTOGRAPHIC OR ANY OTHER VISUAL OR IMAGE RECORDING OR REPRODUCTION CAPABILITY

(1) Cell phones and other personal data or communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability:

(a) constitute public access coverage equipment as defined in UTCR 3.180;

(b) such devices may be used in a facility occupied by the court only as provided by UTCR 3.180, SLR 3.181, and this rule;

(c) must be turned off when entering any courtroom in any facility occupied by the court as provided by SLR 6.027, and must not be turned on for any use in a courtroom without complying with SLR 6.027, UTCR 3.180 and this rule.

(2) Cell phones or other telecommunication devices may be used in areas outside of a courtroom, as defined in UTCR 3.180 and SLR 3.181, in a facility occupied by the court without violating this rule or SLR 3.181, provided that such use is restricted to the transmission of the user's oral communication only and does not involve any operation or use of the device's audio recording, photographic or any other visual or image recording or reproduction capability.

(3) In addition to any other consequence permitted under law or court rules, violators of this rule

are subject to being ordered by the court to delete from the device any audio recording, photographic or any other visual or image recording or reproduction made in a court facility.

CHAPTER 4

PROCEEDINGS IN CRIMINAL CASES

4.005 CRIMINAL PROCEDURE COURT ESTABLISHED

There is established a Criminal Procedure Court for the handling of misdemeanor and certain felony matters under the direction of the Chief Criminal Court Judge and the Presiding Judge. The responsibilities and procedures in such court are indicated herein.

{4.007 WRITTEN PETITION REQUIRED TO BE FILED BY VICTIM OR PERSONAL APPEARANCE OF VICTIM FOR HEARING TO REMOVE NO CONTACT ORDER IMPOSED UNDER ORS 135.250 OR CHAPTER 232 OREGON LAWS 2011

(1) "Petition" as used in ORS 135.250 (2)(b)(A) and in subsection (4), section 1, chapter 232 Oregon Laws 2011 means a written petition signed and filed or presented at the hearing for filing in the criminal action by the victim or by a district attorney who has agreed to assert this right for the victim. In the alternative, an appearance by the victim at the hearing to modify or remove the no-contact conditions and stating on the record orally the petition to waive the required condition of release or custody that the defendant not have contact with the victim of the domestic violence or of the sex crime satisfies this requirement.

(2) Absent a written petition or appearance by the victim at the hearing as set out in section (1) of this rule, the court will continue the no contact order imposed under ORS 135.250 (2)(a) or chapter 232 Oregon Laws 2011 pending a petition by the victim.

(3) A written petition under section 1 of this rule may be filed on the court's form (see Form 03-58, Page 97, Appendix of Forms), or in a document that is in the same format and contains the same heading, caption and content.}

4.012 SCHEDULING MOTIONS IN FELONY AND MISDEMEANOR CRIMINAL ACTIONS

Except for motions filed under SLR 4.025 and 4.065, or as otherwise provided in this rule, any filed motion must be scheduled for hearing by the moving party.

(1) Scheduling Motions Filed Prior to Trial or the Court's Acceptance of a Plea of Guilty on a Charge:

Except for cases specially assigned to a specific judge for all purposes, or for motions

to be heard on the day of trial by the judge assigned for trial from a Call or Criminal Procedure Court calendar, to schedule a pretrial motion for hearing, in addition to any other requirements set by law or rule, the moving party must contact the Criminal Calendaring Section (Room 106 of the main courthouse or call 503.988.3235), and request a date, time and location for the hearing. Motions in cases assigned to a specific judge may be scheduled by contacting that judge.

(2) For Motions Filed During or After Trial or After the Court has Accepted a Plea of Guilty on a Charge:

(a) Any motion filed at trial, post trial or post plea of guilty must be set for hearing by contacting the office of the judge who presided over the trial or plea. If motion is filed after sentence, and the sentence was to a period of probation and a probation judge was assigned who was not the sentencing judge, the motion must be set by contacting the probation judge.

(b) If a judge is no longer in office, then the motion must be set by contacting the successor in office in that circuit court position number. Information regarding which judge should be contacted to set a motion for hearing under this subsection may be obtained by calling Criminal Calendaring.

(c) If the motion arises from a trial or plea presided over by a Senior Judge or a Judge Pro Tempore, and that judge is no longer appointed to sit in this judicial district, then information regarding which judge should be contacted to set a motion for hearing under this subsection may be obtained by calling Criminal Calendaring.

(d) If a judge is requested to set a motion for hearing, and the judge determines that the court lacks jurisdiction over the matter, then the motion will not be set for hearing. The parties will be notified in writing by the court that it does not have jurisdiction and the legal basis upon which it bases its conclusion.

4.015 DISCOVERY

Before any Motion to Compel Discovery is filed, a demand must have been made for the materials. The motion shall include a statement that such a demand was made, but not complied with in whole or in part.

4.016 *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:

(a) Parties seeking an *in camera* review of documents in a criminal action shall file a motion supported by an affidavit which includes a description of the records to be reviewed,

the information the party seeks to discover or protect contained in the records, and the legal authority for the protection or disclosure of the information contained in the records.

(b) For cases to be heard in the downtown courthouse, motions for in camera review of records in misdemeanor cases will be calendared on the Criminal Procedure Court (CPC) docket. Motions for in camera review of records in felony cases will be calendared on the Presiding Judge's Short Matters call docket for assignment. Motions on cases proceeding in the Gresham [*Branch*] {**East County Courthouse**}will be set on [*the*] {**a**} Gresham judge's calendar for hearing.

(c) If the motion for the *in camera* review is granted documents shall be directed to Room 131 of the Courthouse for cases that will be heard in any courtroom in that facility. Cases that are to be heard in the Gresham Branch shall be directed to 150 W. Powell, Gresham, Oregon 97030**{, until March 2012, and thereafter directed to 18430 SE Stark Street, Gresham Oregon 97233.**}

4.017 WAIVER BACK TO JUVENILE COURT FOR CRIMINAL ACTION WAIVED TO CRIMINAL COURT UNDER ORS 419C.370 (1)

(1) To waive back to the juvenile court a youth waived from juvenile court under ORS 419C.370, a written motion, supported by an affidavit setting out the basis for the request, must be filed by in the criminal action within 60 days of arraignment in the action. The motion must be served on the Office of the District Attorney, and a courtesy copy delivered to the Chief Family Court Judge. The Chief Family Court Judge will set the motion for hearing. The hearing may be at the Courthouse or the Juvenile Justice Center, and may be assigned to be heard by other judges of the Family Court.

(2) Only a judge of the juvenile court may make a determination regarding the requested waiver of a youth from criminal court.

4.024 DEFENSE NOTICE OF SCHEDULING OR RE-SCHEDULING OF A CRITICAL-STAGE HEARING IN CASES SUBJECT TO ORS 147.500 to 147.550

(1) Whenever a defendant in a criminal action subject to ORS 147.500 to 147.550 determines that it is necessary to schedule or to change a date or time for any scheduled hearing which is defined as a critical-stage of the proceeding under ORS 147.500(5), the defendant must provide notice of this intent and of the proposed date and time for the setting or re-setting of the event to the prosecuting attorney. Except for good cause shown, such notice should be provided at least 4 judicial days in advance of the request being made to the court to schedule or re-schedule the event. Notice for purposes of this rule may be provided by writing delivered to the office of the district attorney or by conferring with the prosecuting attorney or the prosecuting attorney's designee within the district attorney's office and providing the information.

(2) The duty to provide notice under this rule does not apply in any case where, for every person determined to be a victim by the prosecuting attorney, the prosecuting attorney has filed a "notice of compliance with victims' rights" as required by ORS 147.510 that reflects the victim waived their right to be informed in advance of any critical stage of the proceeding.

4.025 CRIMINAL CASE POSTPONEMENTS BY PRESIDING JUDGE; CRIMINAL EX PARTE

(1) Postponements of felony cases may be presented to the Presiding Judge at Call or to the Chief Criminal Judge prior to Call by setting a scheduling conference with Chief Criminal Court, at which both the defense attorney and assigned deputy district attorney are present. Requests for postponement will not be allowed by the Chief Criminal Judge if received less than three judicial days before the next Call appearance in Presiding Court. Such requests must be presented at the Call proceeding as required by SLR 7.035.

(2) Motions to Rescind Bench Warrants ordered at a Call proceeding shall be presented only to the Presiding Judge or designee at the morning ex parte session specified under SLR 5.025. All other felony ex parte matters shall be presented at the morning or afternoon ex parte sessions specified in SLR 5.025.

(3) The first or second request for postponement of a misdemeanor or other case assigned to the Criminal Procedure Court may be presented at the Friday pre-trial conference, if the requested postponement is for a period of less than five weeks. A written motion is not required for first set-over requests, except in cases involving domestic violence; a written request is required for every domestic violence set-over request and for a second set-over request to set-over any other misdemeanor case.

(4) Third or subsequent requests for postponement of a misdemeanor assigned to the Criminal Procedure Court or requests for a postponement longer than five weeks will be referred to the Criminal Procedure Court Judge. Written requests for postponement are required in those circumstances. The motion shall set forth the specific reason for the request and contain a statement that opposing counsel was contacted and indicate counsel's position. Opposing counsel must also be identified by name in the motion.

4.035 ISSUANCE OF SEARCH WARRANTS

(1) A request for a search warrant may be made to any Circuit Court Judge, subject to any procedures established by the Presiding Judge.

(2) Prior to presenting a request for a search warrant, the applicant shall:

(a) Obtain prior approval from a District Attorney who has personally reviewed the facts underlying the application;

(b) Provide the name of the reviewing District Attorney; and

(c) Verify that the search warrant application has not been presented to any other judge.

(3) For search warrant requests outside of the normal business hours of the court, the request for a search warrant must be made to the judge assigned to be the "duty judge" for after hour search warrant requests. If the duty judge cannot be contacted, the request may then be made to any other circuit court judge.

4.045 VIEWING EXHIBITS IN CRIMINAL PROCEEDINGS

In recognition of the need to insure the security of criminal exhibits, viewing shall be limited to the attorney of record unless otherwise ordered by the Court.

4.055 CIVIL COMPROMISE

The defendant must appear personally for a civil compromise hearing.

4.065 MOTIONS TO REMIT SECURITY FORFEITURE JUDGMENTS

(1) A defendant or surety may apply to the Court for a remission of a forfeiture of the security amount by:

(a) Filing with the Court, and serving upon the District Attorney, a written Motion for Remission of the Judgment or Order of Forfeiture, accompanied by an affidavit stating good cause for the remission;

(b) If necessary, appearing at a hearing to further inform the Court why the Judgment or Order of Forfeiture should be rescinded.

(2) If a hearing is necessary on the Motion for Remission, the Court will notify the applicant of the date and time of the hearing. In any case, the Court may decide to grant or deny the motion without any appearance by the applicant, and to notify the applicant by mail of its decision.

4.066 PAYMENT OF SECURITY DEPOSITS; PAYMENTS OF OTHER COURT ORDERED OBLIGATIONS

(1) For cases within the scope of this chapter, the form of payment accepted and the location and method for depositing security are as follows:

(a) If a defendant is in the custody of the Multnomah County Sheriff's Office or any

other agency on a warrant issued by the Multnomah County Court, security amounts for the release of the defendant are collected by the Sheriff's Office and processed pursuant to the cooperative agreement between that agency and the court.

(b) A defendant who is in custody, or a surety for an in-custody defendant, must post cash, money order, cashiers' check, or an Inmate Trust Account check to deposit security pursuant to ORS 135.265(2). Personal checks or credit cards are not accepted as security for release from custody.

(c) If the full amount of security is posted in the form of real or personal property, stocks or bonds, as prescribed in ORS 135.265 (3), the security release must be processed by the Criminal Division of the Trial Court Administrator's Office, and a Judge must review the supporting affidavits prior to the defendant's release from custody.

(d) If a defendant is out of custody and a warrant has been issued, a court appearance is required prior to clearing an outstanding warrant, unless otherwise ordered by the court. If a court orders that the court appearance to withdraw the warrant is waived and the warrant is to be recalled from the Sheriff upon payment of the security deposit set, then the defendant or the defendant's surety may pay the security to the cashiers in Room 106 of the courthouse or at the Gresham {**East County Courthouse**} court facility if the warrant arises in a criminal action filed in that court location. Payment must be in the medium allowed by this rule.

(2) In any case within the scope of this chapter, a defendant's attorney may write a check from the attorney's Lawyer Trust Account to deposit security for the defendant.

(3) Personal checks may be accepted by the Criminal Division of the Office of the Trial Court Administrator for payment of court-ordered obligations other than security.

4.067 REFUND PROCEDURES

All refunds are made by mail.

4.075 DUII DIVERSION

The following procedures shall apply to all driving under the influence of intoxicants (DUII) cases:

(1) On each charge of DUII, the district attorney shall review the incident and the defendant's history to determine if the defendant is eligible for DUII Diversion or if the state will object to the defendant's participation in the diversion program. This review shall be completed prior to the date set for the first appearance of the defendant on the charge. The determination of whether the defendant is eligible for participation in DUII Diversion shall be announced at the first appearance proceeding.

(2) If the defendant appears at the time set for first appearance, is unrepresented by counsel and requests time to obtain counsel, the defendant's arraignment will be set over for two weeks only, unless a longer period is permitted by the court.

(3) In all other cases, counsel will be appointed if it is appropriate to do so, the defendant will proceed with retained counsel, or the defendant will be allowed to proceed without counsel.

(4) The court will arraign the defendant at first appearance. If the district attorney has determined that the defendant is eligible to enter DUII Diversion, then the case will be continue for the defendant to file the diversion petition and to appear to enter a plea of guilty. (See Forms 08-27, 08-20, 08-09, 08-27B and 08-07 Pages 110-118, Appendix of Forms.) If the state is not able to determine if the incident or the defendant are diversion eligible at the time of arraignment or determines that the defendant is not eligible to enter diversion and files objections, then the case will be set for jury trial in the normal course with leave to the defendant to file a petition, if timely, and to set a hearing for the court to make a final determination on this issue.

(5) If more than 30 days has elapsed from the date of first appearance set on the uniform citation summons and complaint or set in a release agreement on a release from custody on a law enforcement officer's probable cause arrest and booking of the defendant for DUII, the defendant must first appear for a determination by the court that there is good cause for the late filing of the petition before the defendant may be accepted into the diversion program.

(6) Objections to Diversion

(a) The District Attorney's objections to diversion shall be in writing.

(b) The defendant or the defendant's attorney will be given notice by the Court that an objection has been filed.

(c) If the defendant elects to contest the objection, the defendant may set the objection for a formal hearing.

(d) Contested objection hearings may not be utilized to seek post-conviction relief on a prior conviction. Such relief shall be filed with the Circuit Court.

(e) If an objection is contested and the Court sustains the objection to diversion, or if the defendant elects not to contest the objection, the case shall be set for trial or plea.

(7) No refunds of diversion fees will be made to any individual who for any reason fails to complete the program after diversion has been granted.

(8) If companion violation offenses are filed at the time the diversion charge is filed, such companion citations will remain with that charge until the petition is allowed by the Court. If the petition is allowed, the judge in the diversion court will take a plea of guilty or set the companion charges for trial.

(9) If a misdemeanor is filed with a diversion charge, the cases shall be consolidated, and shall remain consolidated, until the Diversion hearing. If Diversion is granted, the cases shall be severed and the companion case will be set for trial.

(10) If a diversion offense is filed in a single charging instrument with one or more felony charges, unless severed, the diversion petition must be filed timely in the case containing the felony charges.

(11) Diversion cases filed in the Gresham [*Department*] {**East County Courthouse**}shall be processed and screened as indicated in this Rule. The judge will rule on the timeliness of the Diversion request and will determine whether Diversion will be allowed.

(12) Except for SLR 4.075(11), decisions on diversion eligibility or disqualification will be made by the judge assigned to the diversion court. Decisions on whether to grant or deny an extension of the 12 month diversion period under ORS 813.225 will also be made by the judge assigned to the diversion court. No attorney or defendant shall request that judge's decision to be reconsidered or reviewed by any other judge in the Circuit Court.

4.081 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

The court may conduct appearances in any criminal proceedings by simultaneous electronic transmission as provided in UTCR 4.080 (1) and under law, if the technology in the courtroom meets the requirements of the rule.

4.091 ELECTRONIC FILING OF VIOLATION, MISDEMEANOR AND FELONY CITATIONS, WITH OR WITHOUT COMPLAINTS

(1) Pursuant to ORS 153.770 and ORS 133.073, and UTCR 4.090, violation complaints and criminal citations (herein after collectively referred to as citations for purposes of this rule) may be filed electronically by law enforcement agencies and parking enforcement agencies. Citations filed electronically must meet the following criteria:

(a) the data transmitted to the circuit court by the filing agency contains all information required by ORS 153.770 (2) (a) and ORS 133.073, to be included in an electronically filed citation;

(b) the electronically filed citation contains a unique identification number of the law enforcement or parking enforcement officer issuing the citation, the officer's name, and the identity of the agency employing the officer;

(c) if the citation is a criminal citation with a form of complaint, then no complaint may be filed in the circuit court until the review required by ORS 133.069 (2) has been conducted

by the district attorney;

(d) an image of the citation issued by the law enforcement officer or the parking enforcement officer must be transmitted to the circuit court by the issuing agency to be available to the public under ORS 153.770 (2) (c) and ORS 133.073;

(e) each citation submitted for filing must be numbered by the issuing agency using a number series approved by the Trial Court Administrator, and the number assigned to the citation by the agency must be unique and not duplicate any number previously submitted to be filed; and,

(f) the transmission of data and images as provided in this rule has been tested and meets completely the system requirements for electronically uploading data and images into the Oregon Judicial Department's automated information systems. Testing of data for electronic filing shall be administered by Oregon Judicial Department staff. No citations may be filed electronically until written approval for electronic filing is provided to the agency by the Trial Court Administrator. This standard for testing and approval applies only to agencies requesting to implement electronic filing on or after the effective date of this rule.

(2) Subject to the limits regarding the type of offenses which may be included in a criminal citation, set out ORS 133.066, a citation filed electronically, as provided by this rule, may contain up to10 offenses on a single citation.

(3) Citations submitted by a law enforcement agency or parking enforcement agency which do not comply with this rule may not be filed electronically.

(4) Members of the public may obtain from the circuit court a printed image of a citation filed electronically by a law enforcement agency or parking enforcement agency in the same manner as for paper records of the circuit court by requesting a copy of the image in Room 131 of the Courthouse, or by mailing to the Records Supervisor, Multnomah County Courthouse, such a request. The mailing address for the courthouse is set out in SLR 1.161. Fees applicable to court records apply to requests for images of electronically filed citations.

CHAPTER 5

PROCEEDINGS IN CIVIL CASES

5.015 CIVIL ACTION MOTION DOCKET; MOTION PRAECIPE RULE; AUTOMATIC CONSENT TO HEARING BY NON-APPEARING PARTY

Method of Setting Motions

(1) In circuit court civil actions, contested pretrial motions (excluding ex parte) shall be placed on the civil motion docket only by motion praecipe, by an Order to Show Cause, [*or*] by order of the Presiding Judge or the Presiding Judge's designee **{, or as directed at the initial case management conference for civil actions subject to SLR 7.011**}.

(2) If the Presiding Judge places a motion on the civil motion docket, the Court may provide notice by telephone.

(3) Requests for an expedited setting of a civil motion must be made at the ex parte appearance specifically for requests to expedite the setting of a motion in a civil action. This proceeding is held once each business day and rotates among the judges. The time and location is available by calling the Presiding Judge's Office or Civil Calendaring.

Motion Praecipe Rule: General Requirements and Applicability; Exceptions; and Delivery

General Requirements and Applicability

(4) Unless specifically excepted from this requirement by provision of this rule, a motion praecipe form shall be attached by the moving party to the front of all copies of motions, including motions granted an expedited hearing, sent to the judge hearing the motion and to the parties. It is not required to attach a motion praecipe to the original file copy of the motion to be heard. A motion praecipe shall be attached or delivered when required under this rule, even when the moving party waives appearance. Except for motions set on the motion calendar by the granting of an expedited hearing, every motion to be set by praecipe must begin the setting process by calling the Civil Calendaring Motion Clerk at (503) 988-3168. The Civil Calendaring Motion Clerk sets motion hearings far enough into the future to provide time for a response and reply; a hearing should not be set if the motion will not be filed within seven days. Seven days permits sufficient time for responding document filing and service.

Exceptions

(5) Motion praecipe are not required on small claims, FED, family law, juvenile or probate cases, nor on civil cases which have either been assigned to arbitration, specially assigned to a judge for all pretrial proceedings, [*or*] are placed on a motion docket by an order to show cause or an order of the Presiding Judge {, **or are subject to SLR 2.011, 7.011 and 7.015**}.

Delivery Requirements and Sanctions

(6) The original motion praecipe shall be attached to the assigned judge's copy of the motion, including motions assigned to pro tem judges, and delivered to the assigned judge at the time the motion is filed. A copy of the motion praecipe shall be attached to the service copy of the motion and delivered to all parties. Failure to deliver a praecipe and copy of the motion when required by this rule may result in sanctions as provided by UTCR 1.090, including striking the underlying motion.

Content of the Praecipe

(7) The motion praecipe shall include: the caption of the case, the case number, the name of the moving attorney and the party represented, the type of the motion, the name of the judge hearing the motion, the date of the hearing, the time of the hearing, the room number where the hearing will be heard, the length of the hearing and whether the party is waiving appearance, whether the hearing date is the first or subsequent date for this motion, whether the services of a court reporter/recorder are requested and whether the motion is to be heard by telecommunication. A form of praecipe is available from Presiding Court and in Room 210 of the courthouse. (See Form 05-06, Page 98, Appendix of Forms)

Re-delivery Requirement If Motion Set Over

(8) If a motion has been filed and praeciped previously but is set over, a new motion praecipe attached to a copy of the motion must be delivered to the assigned judge and a copy of the new motion praecipe must be delivered to all parties.

If Filing and Service Required by Statute Prior to Assignment of Hearing Date

(9) If a statute mandates the filing and serving of a motion prior to the availability of a hearing date or show cause date, the moving party shall attach a certificate citing the statute or rule requiring the filing of the motion and stating that a hearing date will be secured as soon as such date is available and, if required under this rule, a motion praecipe will be delivered to the judge and parties as required by this rule.

Service Period on Court and Opposing Parties, Copy of Motion, Response and Reply to Assigned Judge

(10) Except as provided in section (5) of this rule, the party responsible to deliver the praecipe as provided by this rule shall deliver the praecipe together with the courtesy copy of the motion to the assigned judge and serve the parties on the date the motion is filed with the court; the motion must be filed within a reasonable time but not more than seven days following the date on which a judge, date, and time is assigned for the hearing. Any party opposing a motion in which a praecipe is required to be delivered under this rule shall submit a courtesy copy of the responding documents to the assigned judge at the same time the response is filed with the court, but in no event less than one judicial day prior to the date of the hearing unless the praecipe delivery time has been shortened by

the rule or the Presiding Judge or designee at civil ex parte. Any party filing a reply to a response to a motion, must deliver a copy of the reply document to the assigned judge on the date the reply is filed with the court, but in no event less than one judicial day prior to the date of the hearing.

Failure to File Motion within Seven Days

(11) If the moving party fails to file the motion within seven days after the motion is assigned to a judge for a date and time certain under paragraph (10) of this rule, the court may impose sanctions as provided by UTCR 1.090.

Absence at Motion Hearing

(12) A matter set on the civil motion docket may be decided even though some or all of the parties or attorneys are not present. Such a hearing shall be deemed consented to by the parties not appearing.

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

In any civil action, the service of a contested motion, response, or reply on opposing parties must occur before or simultaneously with the delivery of a copy of the document to the judge assigned to hear the matter.

[*5.019 PROCEDURE TO OBTAIN ACCESS TO THE AUDIO RECORD WHEN A HEARING FEE IS REQUIRED BY ORS 21.275 AND IT IS NOT PAID OR OTHERWISE SATISFIED*

(1) ORS 21.275 provides for a hearing fee to be paid for any hearing to be "reported." Payment must be made prior to the commencement of hearing. The payment requirement may be satisfied by a fee waiver or deferral, or when the reporting of the hearing is at the request of a party exempt from the fee requirement under ORS 20.140 or other provision of law identified by the requesting party. The ORS 21.275 fee requirement applies even if the oral record of the hearing is being made under ORS 8.340 (7).

(2) Proof of satisfaction of the hearing fee requirement must be provided to the judge's courtroom clerk prior to the commencement of the hearing for the hearing to be reported.

(3) If the hearing fee is not paid for a hearing to be reported, a hearing may be recorded using the court's audio recording equipment for the use of the court. Such a recording of the proceeding for the court's own use does not establish a reported hearing. The audio recording made for the courts use may not be accessed later by any party to an action unless the following steps have been taken by one of the parties:

(a) The party must appear at ex parte before the presiding judge (held each business day

at 9:30 AM and 1:30 PM in Courtroom 208) and present a written motion, affidavit, form of order and a duplicate order. The motion must list the hearing dates for which the party is requesting to pay or other wise satisfy the hearing fee requirement and request that the audio record be classified as a reported hearing.

(b) If the motion is granted and the hearing fee requirement is to be satisfied by payment, the party must then pay the fee for each hearing requested in the motion.

(c) The presiding judge's clerk will retain the original motion, affidavit and signed order for filing and will return the conformed copy of the order to the party. The order and proof of satisfaction of payment must be presented to the staff in the circuit court file room in order to request an audio record. The order and proof of satisfaction of payment must be presented to the transcript coordinator if the hearing(s) are designated as a part of the record on appeal.

(4) Nothing in this rule prevents any person from requesting any audio record of a hearing under the provisions of ORS 192.410 to 192.505. Such requests will be determined by the presiding judge if the requested audio record was for a hearing which required a fee to be satisfied under ORS 21.275 to be reported and the fee requirement was not satisfied.

(5) When a fee is required to be paid for a hearing to be reported under ORS 21.275, and no fee is paid or otherwise satisfied, a party will not be able to obtain a copy of the audio recording of the hearing made for the court's use for purposes of ORS 19.250 and 19.365 without complying with this rule.]

5.025 CIVIL EX PARTE MATTERS

(1) Ex parte matters shall be heard each judicial day before the Presiding Judge or designee at 9:30 am, at 1:30 pm, and at other times designated by the Presiding Judge for the consideration of whether a petition for the expedited hearing of a civil motion shall be allowed. (See Form 05-27, Page 99, Appendix of Forms.)

(2) Contested matters, unless otherwise allowed by these rules, shall not be presented at ex parte. Such matters shall be subject to the requirements of SLR 5.015. Only the following contested matters may be presented at ex parte:

(a) Motion to postpone trial;

(b) Request for expedited hearing. (See Form 05-28A, Page 100, Appendix of Forms)

(c) Application for a temporary restraining order under ORCP 79 (B)(1), when the adverse party appears and is permitted by the court to address the merits of the request.

(3) Except as otherwise allowed by statute or waived or consented to by the opposing party, any

party seeking ex parte relief must provide one judicial days' notice to the opposing party of the date, time and court where the ex parte relief will be sought. A party appearing will be required to advise the court if they have had contact with the opposing party prior to the ex parte appearance, and the opposing party's position on the matter presented to the court.

5.035 ORDERS BY PREVAILING PARTY; PRESENTING JUDGMENTS AND ORDERS FOR JUDICIAL SIGNATURE

(1) After a motion ruling, unless otherwise ordered, it is the responsibility of the prevailing party to draft an order incorporating the ruling and to submit it to the proper judge, accompanied by proof of service on opposing counsel in compliance with UTCR 5.100.

(2) Any judgment or order requiring the signature of a pro tem judge, reference judge, or senior judge shall be directed to the private business office of that judge unless that judge directs otherwise. That judicial officer will forward the order to Presiding Court for filing.

(3) All judgments, orders, and other documents requiring the signature of a specific judge shall be sent directly to that judge.

5.036 *IN CAMERA* REVIEW OF RECORDS

Unless otherwise ordered by the court, a motion in a civil action requesting a hearing for the *in camera* review of records by the court be presented to the court as follows:

(1) A party seeking an *in camera* review of documents shall present at the presiding judge's civil ex parte session a motion supported by an affidavit and with a form of order for the inspection. The motion and affidavit must include a description of the records to be reviewed, the information the party seeks to discover or protect contained in the records, and the legal authority for the protection or disclosure of the information contained in the records. If the motion is allowed, the *in camera* review will be given a date on the Presiding Judge's Short Matters Call docket for assignment to a judge for the review proceeding.

(2) If the motion is allowed, documents to be reviewed by a judge *in camera* shall be directed to Room 131 of the Courthouse.

5.045 NO MOTIONS FOR RECONSIDERATION; EXCEPTIONS

(1) No Motion for Reconsideration on any pre-trial, trial, or post-trial civil or criminal matter shall be heard, reviewed, or considered by any judge sitting in the Fourth Judicial District; nor shall any such judge review a ruling rendered by any other judge except under (2).

(2) This rule shall not apply to any statutory motion to modify, set aside, vacate, suppress, or

rescind; nor shall it obstruct the authority of the assigned trial judge to review any previously-filed motions.

5.055 STAMPED, SELF-ADDRESSED CONFIRMATION CARDS REQUIRED

(1) Any party desiring information on any document submitted to the court for filing, (e.g., date of filing, date of signature, costs and attorney fees awarded, or name of judge), shall attach a stamped, self-addressed confirmation card. On orders or judgments submitted for signing, confirmation cards shall be attached for all parties. Unless required by law or rule, conformed copies of the order or judgment will not be provided by the Trial Court Administrator's Office as further proof of signing. Signed copies of orders and judgments may be obtained from the circuit court's File Room.

(2) An ex parte motion for trial set-over submitted by mail shall have confirmation cards addressed to each party attached by the moving party to provide notice of the court's decision and order to all parties.

5.071 REMOVING A PARTY FROM A FILED ACTION OR THIRD PARTY ACTION IF AMENDED COMPLAINT OMITS THE PARTY

After commencing an action under ORCP 3 or after commencing a third party action under ORCP 22, a party named will only be removed from the case as a party by entry of a court generated order pursuant to UTCR 7.020 or by an appropriate form of judgment (Limited or General) presented to the court. Merely omitting a party previously named from an amended pleading does not remove that party from the case.

5.105 PRIOR TO SUBMITTING FORM OF JUDGMENT FOR SETTLEMENT OF PERSONAL INJURY OR WRONGFUL DEATH CIVIL ACTIONS: REQUIREMENTS WHEN MINOR CHILD OR INCAPACITATED PERSON APPEARS BY GUARDIAN AD LITEM

See SLR 9.055 for condition precedent to submission of the form of judgment for a judge's signature on settlement of civil actions when minor child or incapacitated person appears by Guardian Ad Litem.

5.161 JUDGMENT DEBTOR ORDERS

Authorized Without Predetermined Hearing Date

(1) Except in the Gresham [*Court*] {**East County Courthouse**}and small claims actions adjudicated in the Multnomah County Courthouse, appearance dates for judgment debtor/garnishee hearings shall be set at the discretion of the creditor for any judicial day at 11:00 am in Courtroom

208. The creditor must give the debtor/garnishee at least seven days notice of the date of the examination, unless a longer period is required by statute. The Presiding Judge will set an appearance date only if specifically requested to do so by the creditor. Small claims judgment debtor/garnishee hearings in the Gresham [*Court*] {**East County Courthouse**}are scheduled for one Friday each month. The judgment creditor may select a time and date by calling the Gresham [*Court*] {**East County Courthouse**}. Judgment debtor/garnishee hearings arising from small claims actions adjudicated in the Multnomah County Courthouse are scheduled for 8:15 am on Wednesday through Friday each week in Courtroom 120 of the Courthouse. The hearing date shall be set at the discretion of the creditor, but must provide at least seven days notice to the debtor. Forms are available in Room 210 of the Multnomah County Courthouse.

Valid for Six Months

(2) Appearance orders signed by the Presiding Judge without an appearance date shall remain valid for six months from the date of signature.

Location of Appearance Limited to Multnomah County Courthouse and Gresham [*Court*] {East County Courthouse}

(3) The debtor/garnishee shall not be compelled to appear at a location other than the Multnomah County Courthouse or Gresham [*Court*] {**East County Courthouse**} without the written consent of the debtor/garnishee.

5.181 CHALLENGE TO GARNISHMENT NOT TO CONTEST JUDGMENT

Challenge to Writs of Garnishment which contest the underlying judgment will be denied by the Court.

CHAPTER 6

TRIALS

6.012 PRE-TRIAL SETTLEMENT CONFERENCE PROCEDURES

The following procedures shall apply to pre-trial conferences in all pending civil and domestic relations cases, when ordered by the Court pursuant to UTCR 6.010, 6.200, or requested by a party or the party's attorney:

(1) If one party requests a pre-trial settlement conference, the settlement conference shall be held and shall be conducted according to the procedures set forth in this rule. Except in the case where the Court orders a conference, the pre-trial settlement conference will not be required if the opposing party demonstrates good cause why the settlement conference should not be held. The judge conducting the settlement conference may require the party requesting a conference to certify that reasonable efforts to achieve settlement have been attempted by the parties, and that they have been unable to resolve the controversy without the court's assistance.

(2) The Presiding Judge shall designate a judge or judges who shall conduct pre-trial settlement conferences. In the event a party requests a specific judge to conduct a conference, that request shall be honored as fully as practical under the circumstances.

(3) Each trial attorney and party or representative of a corporation or insurance company who has full authority to settle and compromise the litigation shall personally appear at the pre-trial settlement conference. However, the assigned judge may permit telephone appearances in lieu of personal appearance for good cause.

(4) Each pre-trial settlement conference shall be scheduled to allow adequate time for meaningful settlement discussions. Additional settlement conferences may be scheduled by the assigned judge or by agreement of all attorneys and parties.

(5) The pre-trial settlement conference shall not delay the trial scheduling, but the Presiding Judge may delegate to the assigned judge limited or unlimited authority to continue the trial date by the mutual agreement of the parties and their attorneys.

(6) No judge conducting a pre-trial settlement conference under this rule shall be permitted to act as trial judge if the case does not settle, unless the parties stipulate to such procedure.

(7) Each attorney or party shall submit to the assigned judge, at least one business day prior to the scheduled pre-trial settlement conference, information regarding the case. In domestic relations cases, counsel shall also provide a copy of the proposed distribution of assets and liabilities, and, if support is involved, the proposal for and computation of support, to opposing counsel at least one business day prior to the scheduled pre-trial settlement conference. Except for the information described in the preceding sentence, any documents or information submitted to the judge shall be

presumed confidential, unless a copy is provided to the opposing side(s). The assigned judge shall make available forms for the submission of such information, but an attorney or party may submit such other or further information to the judge to inform the court of the issues in the case.

(8) No submissions under SLR 6.012(7) shall be included in the court file, nor shall any notes prepared by the judge be filed or otherwise disclosed, except by permission of the attorneys and/or parties or by court order.

(9) The assigned pre-trial settlement conference judge shall inform the calendar clerk of the occurrence of the conference, the possibilities of settlement, and the estimated length of trial time, in the event the case does not settle at the conference. No other information regarding the case or the conference shall be communicated to the trial judge or the jury.

(10) The presiding judge may require a trial-setting conference prior to, or following, the pre-trial settlement conference, pursuant to UTCR 6.010.

6.014 PRE-TRIAL CASE MANAGEMENT CONFERENCES IN CIVIL ACTIONS

(1) In any civil action {**except actions subject to SLR 2.011, 7.011 and 7.015**}, when it appears to the court that an action will be pending for longer than 270 days measured from the date of filing of the first pleading in the action, the court may schedule a case management conference and, upon notice, require the parties to appear. The purpose of the case management conference is to address the readiness of the action for trial. The court will ask the parties to identify remaining tasks to be resolved including discovery issues, expected remaining pretrial motions, and any known scheduling problems for parties and witnesses. In addition, related issues listed in UTCR 6.010 will be covered. Parties are expected to be prepared to discuss these matters at the case management conference.

(2) Parties appearing in the action without attorney representation must appear at the case management conference in person. Parties appearing in the action with representation by an attorney are required to appear through their trial counsel, and need not attend in person.

6.015 SUBMISSION AND COPIES OF MOTIONS, BRIEFS, MEMORANDA, AND POINTS AND AUTHORITIES; COPIES TO BE DESIGNATED TRIAL COURT COPY

(1) A copy of a motion, brief, or memoranda shall be submitted directly to the judge scheduled to hear the matter.

(2) The copy of the motion and all supporting documentation for the use of the judge shall be designated “TRIAL COURT COPY.”

(3) Copies shall identify the name of the judge hearing the motion, the time of the hearing, the date of the hearing or the show cause assignment date, and the room number of the hearing.

(4) Jury Instructions, Verdict Forms, Trial Memorandums, Motions to Suppress, Motions in Limine, and similar materials, shall be submitted to the assigned trial department by noon of the day of trial assignment at daily call by the Presiding Judge. This rule does not apply to trial assignments made after daily call is concluded.

6.025 PAYMENT OF TRIAL FEES AND HEARING FEES

(1) A fee receipt, fee waiver, or fee deferral must be presented to the courtroom clerk prior to commencement of a trial or hearing where a fee is required to be paid under ORS [*21.114*,] 21.270, [*21.275, 21.310 or*] 105.130 {**or chapter 595 Oregon Laws 2011**}.

(2) Fees payable at the conclusion of the trial shall be paid by 5:00 pm. on the day trial concludes unless the fee is waived or deferred. If the trial concludes after the close of business, the fees shall be paid the morning of the first court day thereafter. For purposes of this rule, a jury trial shall be deemed concluded when the jury returns a verdict.

(3) The trial judge may elect to delay commencement of the case until the fees are paid, but failure to pay the fees as stated in SLR 6.025(1) shall not be grounds for a postponement.

6.027 PERSONAL COMMUNICATION DEVICES IN JURY ROOMS DURING DELIBERATIONS AND IN COURTROOMS DURING PROCEEDINGS

(1) Unless otherwise permitted by the judge presiding over the trial, personal communication devices (any electronic or other equipment capable of communicating with others outside a jury room, including, but not limited to cell phones and pagers) are not allowed in a jury room during jury deliberations.

(2) After a jury has been instructed and charged to commence deliberations the courtroom clerk will collect all such devices and retain them in a secure place during deliberations.

(3) Unless otherwise permitted by the judge presiding over the proceeding, personal communication devices (any electronic or other equipment capable of communicating with others outside a courtroom by transmission of sound or images, including, but not limited to cell phones and pagers) taken into a courtroom by any person shall be turned off upon entering the courtroom and shall remain off until after the person has departed from the courtroom.

(4) See SLR 3.182 regarding the operation of cell phones and other personal data and communication devices which have audio recording, photographic or any other visual or image recording or reproduction capability.

6.045 MOTIONS TO CORRECT TRANSCRIPTS

(1) If a motion under ORAP 3.40 is filed, a copy shall be delivered to each of the following:

(a) Trial court reporter or audio transcriber;

(b) Trial court judge (or the judge who presided at the matter under appeal).

(2) A form of order to correct, or add to, the transcript shall be submitted to the trial court judge.

(3) The moving party shall deliver a copy of the signed order to the trial court reporter or audio transcriber.

(4) If the signed order permits correction or addition to the transcript, then the trial court reporter or audio transcriber shall give notice and, upon any payment due, serve copies of the corrected or added material in the same manner as provided by ORS 19.370 for the initial uncorrected or un-augmented transcript.

6.055 BUILDING SECURITY

The Multnomah County Courthouse, the Multnomah County Justice Center, Gresham [*Court*] {**East County Courthouse**}, the Juvenile Justice Complex or any other facility or location where the court conducts its proceedings are Court facilities for the use of members of the public to exercise their rights to view proceedings and handle their affairs through the Court. This right of access may, however, be overcome by conduct detrimental to the safety of the Court's Judicial Officers, other Officers of the Court, its employees, and members of the public. This type of conduct may result in the ejection of a person or party from these facilities and possibly their restraint from entering these buildings for a specified period of time. Such detrimental conduct may include, but is not limited to:

(1) Direct physical assault upon any person;

(2) Destruction or theft of Court records or posted public notices;

(3) Vandalism, defacing, burning, or other physical destruction of any device or room within these facilities;

(4) Intimidation, extortion, coercion, or other forcible conduct aimed at interrupting the Court's Judicial Officers, other Officers of the Court, and its employees in the course of their work or at interfering with members of the Bar or of the public in their dealings with the Court;

(5) Any conduct which interferes with or interrupts a Court proceeding;

(6) Any entrance into an area of these buildings designated off-limits or for employees only;

(7) Any introduction of noxious odors designed to deny members of the public the use of any public part of these buildings;

(8) Any attempt, either by fraud or threat, to gain access to confidential Court records or material;

(9) Any attempt, either by fraud or threat, to gain access to the private office of a Judicial Officer, the Court Administrator, or other Court Officer;

(10) Any attempt by a member of the public to deny any other member of the public the use of these buildings.

6.145 HAZARDOUS SUBSTANCES

In addition to the definition found in UTCR 6.140 (2), a hazardous substance is defined as any substance listed in, or hereinafter added to, the Federal Aviation Authority Regulations on Hazardous Substances, any provisions of the United States Code defining hazardous substances, or the Federal Controlled Substances Act; or is any potentially dangerous or contaminated substance capable of inflicting death or serious physical injury either immediately or over the course of time. A hazardous substance shall include any device or implement which carries, contains, or exhibits such characteristics.

CHAPTER 7

CASE MANAGEMENT AND CALENDARING

[*7.011 SCHEDULING ORDERS*

In any civil action, the Presiding Judge may enter a pretrial scheduling order setting dates by which events in the action must be completed.]

{7.011 INITIAL CIVIL CASE MANAGEMENT CONFERENCE

(1) This rule applies only to civil actions filed on or after February 1, 2012, except small claims, FED, family law, juvenile, protective proceedings or probate cases.

(2) The parties in all civil cases subject to this rule must participate in an initial case management conference unless the case has been dismissed, transferred to arbitration, to the Expedited Civil Jury Trial Program or to a special assignment, unless the Presiding Judge or his/her designee otherwise directs. The purpose of this conference is to facilitate case management.

(3) The court will send notice of the initial case management conference to all counsel or self-represented litigants who have appeared in the case. The notice will announce the date for the conference and list the information to be provided by the parties. Counsel for a party that has not yet filed an appearance is expected to participate in the conference but does so without waiving any rights of the party, including the right to challenge personal jurisdiction. Plaintiff/Petitioner is required to forward a copy of the notice to all non-appearing parties who have been served. The parties will appear by phone unless the court otherwise indicates.

(4) At the conference, the court and counsel will select an appropriate track for the case and an SLR 7.015 Trial Readiness Case Management Conference date will be set, if appropriate.

(5) A form of the Initial Day Case Management Order is available from Presiding Court and in Room 210 of the courthouse. It is available on-line at http://courts.oregon.gov/Multnomah/. (See Form 05-96, Page 108, Appendix of Forms.)}

{7. 015 TRIAL READINESS CIVIL CASE MANAGEMENT CONFERENCE

(1) This rule applies only to civil actions subject to SLR 7.011.

(2) The parties in all civil cases must participate in a trial readiness case management conference unless the case has been dismissed, transferred to arbitration, to the Expedited

Civil Jury Trial Program or to a special assignment, unless the Presiding Judge or his/her designee otherwise directs. The court will not generate a trial date in these cases without conferring with the parties and there will be no "regular course" trial date postponements. The purpose of this conference is to facilitate the selection of a firm trial date and to assess readiness for trial.

(3) Thirty five days prior to the conference the Court will send notice to all counsel or self-represented litigants who have appeared in the case. The notice will announce the date for the conference and instruct the parties to come prepared with three agreed upon trial dates within the "time to trial" guidelines as set by the court. The court will then set the trial date. Any request for a postponement of the trial date selected at the trial readiness conference must be presented as provided in SLR 7.035 (2) (f) and will not be granted without a showing of good cause.

(4) The parties will appear by phone unless the court otherwise indicates. }

7.021 UTCR 7.020 CONTINUANCES; STAY OF DEFAULTED PARTIES PENDING TRIAL; STIPULATED TRIAL DATES UNDER UTCR 7.020

(1) Continuances pursuant to UTCR 7.020 shall be on a form prescribed by the Court. (See Form 05-41, Page 105, Appendix of Forms)

(2) In multiple party cases, when a default order has been taken against a specific party and the other defendants will proceed to trial, an attorney may move the Court to stay the requirement to apply for a judgment by default and avoid dismissal under UTCR 7.020 for the defaulted party, pending the outcome of trial.

(3) The parties may mail to the Presiding Judge an agreed date as a stipulated date under UTCR 7.020. Stipulated dates which are within 10 months of the date of the filing of the complaint will be approved by the Presiding Judge and the initial trial assignment date will be set to the stipulated date. A stipulated date which places the trial beyond 10 months from the date of filing will not be approved if submitted by mail. Such a stipulated setting must be presented at ex parte and may require a postponement conference with the Presiding Judge. The Court will exercise its discretion in granting or denying such a request based on all circumstances made known to the Court.

7.025 POSTPONEMENT CONFERENCES

A conference with the Presiding Judge may be required to postpone a civil case currently 12 months of age or which will exceed 12 months of age if a set over is granted.

7.035 CALL NOTICES; MINIMUM NOTICE FOR POSTPONEMENTS

(1) Attorneys of record in each case taken from the list of cases ready to set for trial will be notified at least 28 days before the date of Call, unless this period is waived or shortened by the Presiding Judge.

(2) Counsel seeking postponements of assigned trial dates shall give opposing counsel(s) not less than one judicial day's notice of the date and time when an application for postponement is to be presented to the Court at ex parte as required by these Rules and SLR 5.025.

(a) Motions for postponement shall be on a form prescribed by the Court and shall be submitted in duplicate (See Form 05-82, Page 106, Appendix of Forms);

(b) Thirty or more days before the Call date, an unopposed motion for postponement may be presented by mail or at ex parte, but such a motion cannot be presented by mail in a criminal case;

(c) Four judicial days to 29 days before the Call date, any motion for postponement must be presented at ex parte;

(d) Three judicial days or less before the Call date, a motion for postponement will not be considered. Appearance at Call is mandatory.

(e) Any opposed motion for postponement shall be presented at ex parte.

{**(f) If a trial date has been set in a SLR 7.015 trial readiness conference, subsection (b) of this section does not apply, and counsel must appear in person and present good cause for the postponement of the trial date in every instance under subsection (c) or, if applicable, (d)**.}

(3) In criminal cases assigned to the Criminal Procedure Court:

(a) A motion for postponement on the day of trial must be presented to the Criminal Procedure Court Judge. If granted, a new trial date will be set. The procedure for requesting a postponement at the pre-trial conference is set forth in SLR 4.025.

(b) Other than cases involving a motion for postponement, multiple trials sent out to a trial judge will be handled as follows: the trial judge will retain the misdemeanor cases which can commence during the assigned trial date, including cases that can be set to follow in the afternoon of the assigned trial date. All cases which the trial judge cannot schedule to begin on the assigned trial date will be sent back to the Criminal Procedure Court Judge for reassignment to another judge, or for new pre-trial and trial dates if no other judge becomes available. The prosecuting attorney and defense counsel must not release witnesses prior to a determination by the Criminal Procedure Court Judge regarding whether the case will be reassigned to another judge on the same date or postponed. The presumed order of priority

in which cases should be tried is: custody cases, date certain cases, and finally, the oldest case based on the issue date.

7.045 MOTION FOR CHANGE OF JUDGE

(1) If a judge is assigned at Call or at a case scheduling conference before the presiding judge, and a party intends to file a motion for a change of the judge assigned, the intention to file the motion must be announced at the time of assignment. An original and two copies of a motion, order, and supporting affidavit must be delivered to the Presiding Judge. Failure to submit all three documents timely, with the copies, will result in sanctions as provided by UTCR 1.090. The requesting party is responsible for serving a copy of the motion, affidavit and order on the judge being disqualified and each other party to the action who is not in default.

(2) For Judges assigned through the Motion Calendaring Department pursuant to SLR 5.015, the following procedures shall apply:

(a) If a party setting a motion intends to disqualify the assigned judge, the party must announce the intent to the motion clerk at the time of assignment and appear at ex parte by the close of the next judicial day to present duplicate copies of a motion, order, and affidavit to the Presiding Judge. The requesting party is responsible for serving a copy of the motion, affidavit and order on the judge being disqualified and each other party to the action who is not in default.

(b) If the non-setting party intends to disqualify the assigned judge, that party must, by the close of the next judicial day after receiving actual notice the motion is assigned to that judge, notify the motion clerk and appear at ex parte to present duplicate copies of a motion, order, and affidavit. The requesting party is responsible for serving a copy of the motion, affidavit and order on the judge being disqualified and each other party to the action who is not in default.

(c) If a motion for change of judge under this provision is allowed, the moving party on the underlying motion shall contact the calendaring office to reschedule the underlying motion and shall comply with the requirements of SLR 5.015 as to the new assignment.

(3) If a judge is assigned in any other manner, a motion to disqualify that judge, with an order and supporting affidavit, must be presented to the Presiding Judge at ex parte by the close of the judicial day following notice of the assignment. A copy of the motion, affidavit and order must be served on the judge being disqualified by the moving party and each party to the action who is not in default.

(4) In small claims, FEDs, violations and misdemeanor offenses, the Presiding Judge may assign a motion for change of judge to another judge for decision.

(5) For purposes of ORS 14.250 et seq. and this Rule, a judge who handles any arraignment, pre-

trial release request at the time of arraignment, pre-trial conference or daily Call pursuant to SLR 7.055, shall not be considered to have ruled on a particular matter within the meaning of ORS 14.260(3). A party shall not waive any right pursuant to ORS 14.250 et seq. as to such judge by failing to move for change of judge at the time of appearance before such judge at any arraignment, pre-trial conference, or daily Call.

7.055 CALL

Call for Civil and Criminal cases; Family Law, Probate, and Juvenile, Small Claims and FED Dockets Kept Separate

(1) Unless otherwise designated or posted, the Presiding Judge shall announce the cases listed on the Daily Trial Call Calendar each judicial day.

(a) Call for Family Law, Probate, Juvenile, Small Claims and FED matters will be conducted separately, as provided in these Rules.

(b) When a jury trial is requested in an FED action, the case will be placed on the civil Call calendar.

Assignment Times

(2) Unless altered by the Presiding Judge or designee, Call shall be at 9:00 am for all felony offenses and civil matters{**, and at 8:45 am for misdemeanor offenses**}.

Presiding Judge to assign judge, day and time

(3) Except for cases set to follow, and cases assigned in multiple assignment groups, the Presiding Judge will announce the day and hour that the trial will begin.

Cases set to follow

(4) When a case is assigned to a trial judge to follow another case, the attorney on the case set to follow shall be prepared to commence trial promptly upon the completion of the preceding case.

Standby Cases

(5) A case on the Call calendar may be designated as a standby case at Call proceeding. These cases are assigned later in the day, if judicial time becomes available.

(a) A standby case may be assigned out for the following day prior to 4:00 pm on the day of Call.

(b) If an attorney on a standby case announces to the clerk an inability to go to trial when

assignment is made, the case will either be placed on Call the following judicial day or postponed, at the discretion of the Presiding Judge.

Carried Cases

(6) For good cause shown, a case may be carried to the Call docket for the following judicial day.

Abated and Stayed Cases

(7) For good cause shown, the Presiding Judge may abate any case upon motion of counsel or upon motion of the Court. (See Forms 05-32 and 05-38, Pages 102 and 104, Appendix of Forms.)

(a) Unless prohibited by law, an abated case may be dismissed, without prejudice, for want of prosecution following notice by the Court of intent to dismiss pursuant to ORCP 54B(3) two years from the date of the removal order if the case has not been removed from abated status or dismissed at an earlier time. A case may be removed from abated status upon motion of counsel or on the Court's own motion.

(b) No abated case shall be placed on the trial docket, or be subject to court arbitration or mediation, or have any motion practice conducted during the period of abatement. Parties may by mutual consent proceed with discovery during the period of abatement or inactive status.

(c) A case will be stayed, rather than abated as provided in this section, by a notice of bankruptcy.

(d) Once a case is reinstated to the active trial docket, the case will be assigned a trial date within 30 days. (See Form 05-33, Page 103, Appendix of Forms)

Duty of Attorney at Call

(8) The attorney of record on a case shall be present at Call, except that:

(a) The attorney may appear via a substitute counsel; or

(b) The attorney may report unconditionally ready in a civil case by telephone to the Call clerk by 4:45 pm on the judicial day immediately preceding the date of Call. A telephoned report as allowed under this section shall constitute a waiver of the right to file a motion for change of judge as to any judge assigned to hear the matter and of the right to object to another party's request made at the time of Call that the matter be postponed.

(c) If an attorney is not present at Call, does not otherwise report to the Court ready on the case, or the Presiding Judge deems the report inadequate or misleading, the Presiding Judge may direct:

(i) The entry of a Judgment of Dismissal, following notice by the Court of intent to dismiss pursuant to ORCP 54B(3), without prejudice, for want of prosecution, an Order of Default, or such other order as may be appropriate under the circumstances including the imposition of sanctions under UTCR 1.090 and jury expenses under UTCR 6.020; or

(ii) That the attorney appear before the Court in person to explain the cause for the non-appearance. The proceeding shall be made a matter of record, and if the Presiding Judge determines that such conduct is willfully inexcusable, such conduct may be considered an act of contempt.

Multiple Case Assignment

(9) Cases on the Call calendar may be assigned in multiple case groups.

Felony Defendants to Appear at Call

(10) All out-of-custody felony defendants shall appear on all Call dates, unless the Presiding Judge directs otherwise.

Cases Specially Set

(11) The Presiding Judge may specially assign any case.

Advising Presiding Judge

(12) An attorney may advise the Presiding Judge in open court at the time a case is to be assigned that a particular judge has previously ruled upon some aspect of the case, or has tried a companion case, and therefore is familiar with the issues of the case.

Improper Influencing of Case Assignment

(13) Except as provided in 7.055(12), no attorney, party, or other person may directly or indirectly attempt to influence the Presiding Judge or court staff to assign a case to any particular judge, or to avoid assignment of a case to any particular judge.

7.056 DISPOSITION OF CASE AFTER ASSIGNMENT TO TRIAL JUDGE, MOTION TO POSTPONE CASE ASSIGNED AT CALL MUST BE PRESENTED TO PRESIDING JUDGE

Once a case is assigned for trial, including as a case set to follow, all matters affecting the trial, except any request to delay the assignment date for trial, are to be presented to the trial judge. The immediate unavailability of the trial judge is not grounds, absent an emergency, to present a matter to the Presiding Judge or any other judge. Requests for a delay of the trial date assigned by the

Presiding Judge at Call must be presented to the Presiding Judge only, and shall not be made to the judge assigned for the trial of the action.

7.061 NOTICE TO THE COURT FOR SPECIAL ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

(1) For purposes of complying with UTCR 7.060, if a special accommodation is needed under UTCR 7.060, prior to each proceeding in the action in which an special accommodation is needed, the party needing the accommodation for the individual must contact the Trial Court Administrator's Office. The Trial Court Administrator's Office makes arrangements for special accommodations under the ADA upon notification required by UTCR 7.060.

(2) The Trial Court Administrator's Office Multnomah County may be contacted by calling (503) 988-3957 or TDD (503) 988-3907. The Trial Court Administrator's Office is open to take calls under this rule each business day from 8:00 am to 5:00 pm.

7.071 SCHEDULING FOREIGN LANGUAGE INTERPRETERS UNDER UTCR 7.070

(1) For purposes of complying with UTCR 7.070, if a foreign language interpreter is needed, the party in need of an interpreter, prior to each proceeding in the action in which an interpreter is needed, must contact the Court Interpreter Services Office in Multnomah County as provided in UTCR 7.070. Court Interpreter Services schedules interpreters upon receiving the notification required by UTCR 7.070.

(2) The party in need of the interpreter must update the Court Interpreter Services office promptly upon learning of a cancellation or any shortened or lengthened time frame for the interpreter in the scheduled proceeding.

(3) The Court Interpreter Services Office in Multnomah County may be contacted by e-mail at MUL.Interpreter.Services@ojd.state.or.us or by calling (503) 988-3515. The Interpreter Services Office is open to take both e-mail and calls each business day from 8:00 am to Noon and from 1:00 pm to 5:00 pm.

7.075 PARTICIPATION IN APPROPRIATE DISPUTE RESOLUTION

(1) Every civil and family law case shall be subject to subsection (2) of this rule **{except for civil cases which are subject to SLR 7.011}**.

(2) All parties and their attorneys, if any, are required to participate in some form of appropriate dispute resolution, beyond negotiation directly or indirectly to reach a joint settlement, including, but not limited to, arbitration, mediation or judicial settlement conference. The parties must sign and

file, within 270 days from the filing of the first complaint or petition in the action, a certificate (See Form 05-31, Page 101, Appendix of Forms) indicating that the parties have participated in such ADR mechanisms. If the action is fully disposed of in the circuit court within 270 days from the filing of the first complaint or petition in the action, no certificate need be filed under this rule.

(3) The requirements of this rule shall not require mediation or arbitration of a case otherwise exempt from arbitration or mediation requirements by statute, but the parties and attorneys, if any, of any case so exempted shall be required to participate in a judicial settlement conference.

(4) The court may impose sanctions pursuant to UTCR 1.090 against any party who fails to comply with subsection (2) of this rule, or who

(a) fails to attend a scheduled mediation session, arbitration hearing or judicial settlement conference;

(b) fails to act in good faith during the mediation, arbitration or judicial settlement conference;

(c) fails to submit on a timely basis paperwork required as a part of the mediation, arbitration or judicial settlement conference; or

(d) fails to have a principal necessary to approve the resolution of the case present or readily available, by telephone or other means, at the time of the mediation, arbitration or judicial settlement conference, unless, in advance, the court grants the party or attorney leave from compliance with this subsection of the rule.

(5) Nothing in this rule restricts or removes the constitutional right of the parties to a trial.

CHAPTER 8

DOMESTIC RELATIONS, CIVIL COMMITMENT, AND NAME CHANGES

8.011 SUBJECT MATTER JURISDICTION

The following cases shall be subject to the rules of this chapter: dissolution and annulment of marriages, separation, child and spousal support, filiations, dissolution of domestic partnerships, family abuse prevention, adoption, name changes, and habeas corpus proceedings involving children, civil commitments and such other cases as shall be assigned to the Chief Family Law Judge for case management purposes by the Presiding Judge.

8.012 DOCKETING

(1) Assignment of trials and motions shall be handled by the Chief Family Law Judge or designee.

(2) All contested matters not set before the Judge of the Case as described in SLR 8.015(4) or specially set under 8.015(5) shall be scheduled either on the Trial Assignment Docket or the Rotation Docket of the Family Court.

(a) The Trial Assignment Docket consists of all matters scheduled for judicial hearing that have not been retained for hearing by the Judge of the Case, specially assigned to an individual judge by the Chief Family Law Judge, or set on the Family Law Rotation Docket. The Family Law Clerks (currently in Room 211) place cases on this docket when the pleadings indicate the case is at issue. Parties requesting judicial time for contested matters may contact the Family Law Clerks to obtain available dates. Procedures for the Trial Assignment Docket are set out in SLR 8.015.

(b) The Family Law Rotation Docket consists of multiple matters set for the same start time and expected to last only 30 minutes or less. On Monday and Thursdays, these matters are abuse prevention restraining order hearings; on Tuesdays, the matters are State-initiated child support cases. Early Thursday morning, name change requests are also heard on this docket. The Family Law Rotation does not handle short matters other than these proceedings.

(i) When an individual matter set on the Rotation Docket is expected to last more than 30 minutes, a party shall contact the Family Law Clerk to request that the case be transferred to the Trial Assignment Docket, after notice to the other party. This transfer will be granted but the case will be placed on the Trial Assignment Docket for hearing the same day as the matter would have been heard on the Rotation Docket, unless the parties agree otherwise. The party requesting the transfer must provide written notice of Trial Assignment Docket procedures to the other party and certify this action in writing.

(ii) The request to transfer must be made at least three (3) working days before the date of the scheduled hearing on the Rotation Docket. If the request is made less than three days before the scheduled hearing, the parties must either (a) appear before a Judge assigned ex parte responsibility and request court approval of a late transfer or (b) direct the request to the Rotation Judge at the time of the scheduled hearing.

(3) Matters on the Trial Assignment Docket may be reset twice in the "regular course" by agreement of all parties through the Calendar Unit of the Family Law Clerks. "Regular course" is a one-month postponement. Other requests to reset a hearing on the Trial Assignment Docket must be made by motion to the Chief Family Law Judge or designee at ex parte, after notice to the other party. If the motion to reset is made at ex parte time, the party requesting the re-set must comply with SLR 8.041(3). Set-over requests of motions assigned to the Judge of the Case shall be heard by that Judge or the Judge's designee.

(4) Motions to postpone docketed hearings on abuse prevention restraining orders must be in writing and presented to a Family Law Judge. If the motion to reset is made at ex parte time, the party requesting the re-set must comply with SLR 8.041(3). Subsection (2) of this rule applies to requests to transfer an abuse prevention restraining order case from the Rotation Docket to the Trial Assignment Docket.

(5) Motions to modify judgments require written responses from opposing parties within 30 days from the date of service if the motion is contested. If a written response is filed, the Family Law Clerks will set the motion on the Trial Assignment Docket for assignment for hearing and will send notice to all parties of the date set for Trial Assignment for assignment of the motion. If the motion to modify a judgment is filed on a case that has been retained by a specific judge, then the Family Law Clerks will notify the judge. The judge's staff will set the motion to modify the judgment for hearing and will notify the parties of the date and time of the event; all scheduling issues must be submitted to the judge who retained the case.

(6) The Family Court Services Division may designate a matter as a priority case if custody is in dispute and the child or children will suffer exposure to substantial harm by the existing custodial arrangement. The Director of the Family Court Services Division shall notify the Chief Family Law Judge of the designation and also advise the parties and/or their attorneys. The Chief Family Law Judge will assign an expedited hearing date and shall give priority to such designated cases on the trial docket.

(7) In Domestic Relations cases consolidated with Juvenile cases, all matters will be docketed and heard at the Juvenile Justice Center located at 1401 NE 68th Avenue in Portland, unless the Judge of the Case orders otherwise.

8.013 IN CAMERA REVIEWS

(1) Parties in a domestic relations case seeking an in camera review of documents shall file a motion describing the records to be reviewed, the information the party seeks to obtain from the records, and the authority for the in camera review.

(2) The motion will be placed on the Trial Assignment Docket to be assigned for hearing. If the motion is stipulated, the parties will report to the Family Law Clerks that fact and the estimated amount of time needed for the review when the case is assigned. The Judge receiving the assignment from the Trial Assignment Docket will conduct the in camera review if the motion is granted or stipulated. If the case has an assigned Judge of the Case, the party requesting the review must contact that trial department to schedule a hearing on the motion. The Judge of the Case will make arrangements for another judicial officer to conduct the review, if the motion for review is granted.

(3) Parties seeking in camera reviews shall direct delivery of the documents to be examined to room 131.

8.015 CASE ASSIGNMENT

Case Assignment for Family Law from the Trial Assignment Docket

(1) An explanation and suggested language for the Family Court's Trial Assignment procedures are posted on the Multnomah County Circuit Court's public website at http://courts.oregon.gov/Multnomah.

(2) In all cases set on the Trial Assignment Docket, the parties must report in person at the designated courtroom at 9:00 a.m. on the court business day prior to the date of the hearing or trial. The parties shall report at that time the settlement or the time needed for hearing or trial of the case. A party may report information for another party only with the agreement of both parties. The courtroom designated for Trial Assignment is listed daily on the Domestic Relations bulletin board in Room 210. When assignment to a specific judicial officer is made at the time of Trial Assignment, a party desiring a change of judge must inform the judge presiding at Trial Assignment that a Motion to Change Judge will be filed.

(3) Once a case is assigned to a Family Law Judge and the matter is heard for one hour duration or more, that Judge becomes the Judge of the Case unless the judge expressly states to the contrary. All future hearings will be specially set with that Judge's staff. Once a Response is filed, the setting of trials in dissolution cases, etc. will be effected by the parties through the Judge of the Case's Judicial Assistant.

(4) Cases needing status as a "special set" (a case requiring one (1) or more days of judicial time, i.e., six (6) or more hours of court time) will be assigned in advance to an individual judge when a party makes this request to the Chief Family Law Judge or designee.

Advising the Chief Family Law Judge

(5) Any party appearing before the Chief Family Law Judge or designee for purposes of assignment must advise that Judge that a particular judge has previously ruled on some contested aspect of the case.

Improper Influencing of Case Assignment

(6) Except as provided in 8.015(4) above, no attorney, party, or other person may directly or indirectly attempt to influence the Chief Family Law Judge or designee or court staff to assign a case to any particular judge, or to avoid assignment of a case to any particular judge.

8.017 TRIAL SETTINGS FOR DISSOLUTION, ANNULMENT, AND SEPARATION PETITIONS; CASE AGE LIMITATIONS

(1) Immediately upon the filing of any Petition for Dissolution, Annulment, or Separation, the Court will assign a dismissal date 180 days from the date of filing.

(2) If no appearance is made or a default judgment has not been entered by the 180th day, the case will be dismissed for want of prosecution by the Chief Family Law Judge or designee. This dismissal shall be final unless the Chief Family Law Judge or designee, for good cause shown, orders otherwise.

(3) If, prior to the 180-day dismissal date, and upon application to the Chief Family Law Judge or designee by motion and in person at ex parte, good cause is shown, the Chief Family Law Judge or designee may extend the dismissal date.

(4) Cases at issue shall be set for trial. Postponements shall be requested pursuant to SLR 7.035, to the Chief Family Law Judge or designee, but to the Judge of the Case when one exists.

(5) Dissolution, annulment, and separation cases shall proceed to trial within eight months of the date of filing, except upon application at ex parte to the Chief Family Law Judge or designee and after notice to the other party as set out in SLR 8.041(3).

8.041 EX PARTE APPEARANCES AND OTHER MATTERS NOT DOCKETED FOR HEARING

(1) Matters Heard Ex Parte

No matter shall be heard ex parte (i.e., without notice to the other side) unless specifically authorized by Oregon statute or court rule. Any motion presented without notice to the other party shall comply with UTCR 5.060 (2) (contain the words "ex parte" in the caption) and shall also cite the specific statute or rule that allows the motion to be presented without notice.

(2) Matters Heard at Ex Parte Time

At least one Family Court Judge is available twice daily (at 8:30 a.m. and 1:30 p.m.) to hear permissible ex parte matters and potentially contested emergency and scheduling motions. The assignment of those judges is posted daily in Room 211. On retained cases, parties should contact the Judge of a Case regarding that Judge's availability.

(3) Notice Requirements on Ex Parte, Emergency, or Scheduling Motions

Except where a statute or rule explicitly allows an appearance without notice to the other party, a party seeking relief at scheduled or specially-arranged ex parte times must provide two (2) working days notice to the opposing party of the date, time, and court where the relief will be sought. The party seeking relief at ex parte time must provide written certification of the date, time, and manner in which the opposing party was provided notice of the planned appearance as well as the opposing party's position on the matter to be presented (for example, "Agrees," "Disagrees," or other short explanation).

(4) Motions Not Docketed for Hearing

(a) All motions or requests shall be handled under this rule unless they are stipulated, have been scheduled for hearing, are accompanied by a statutorily-required notice regarding the opposing party's right to request a hearing, or are appropriately heard under SLR 8.041(1-3).

(b) Any motion subject to this rule shall be filed with the court and shall be in a document separate from a proposed order. The motion and a proposed order must be served on all parties entitled to notice. The proposed order must be clearly labeled as a Proposed Order. The motion must contain in bold type in the body of the motion and following the caption the following Notice:

"NOTICE TO PARTY RECEIVING THESE PAPERS: If you disagree with any request in this Motion or Proposed Order, you must file with the Court a written Request for Hearing setting out in specific terms what request(s) you oppose. You must also serve (deliver) a copy of your Request for Hearing to the other party's lawyer (or to the other

party if the other party has no attorney). You must pay any filing fee required by law for filing your Request for Hearing or obtain a court order waiving (canceling) or deferring (postponing) payment of this fee. You must file this written Request for Hearing no later than fourteen (14) days after this motion and Proposed Order has been served on you. You must include your case number on this Request for Hearing. If you do not file a Request for Hearing within the time allowed, the Court may sign the Proposed Order without further notice to you."

(c) If no Request for Hearing is filed within the 14 day period, the moving party may present the proposed order on the 17th day after service. The moving party may seek the proposed order during scheduled ex parte time or by mail directed to the court. The proposed order submitted shall contain proof of service including the written certification of the moving party that the motion and proposed order were served in compliance with this rule and that no Request for Hearing was filed by the deadline. The moving party need not provide additional notice to the served party of the moving party's intent or appearance to seek approval of an order consistent with the motion.

(d) If the moving party is served with a copy of a Request for Hearing objecting to any part of the motion, that moving party shall contact the Family Law Clerks to schedule a hearing date. The parties shall take reasonable efforts to confer with the Family Law Clerks on the setting of the date.

8.044 MOTIONS TO SET ASIDE ORDERS AND JUDGMENTS OF DISMISSAL

Unless stipulated, Motions to vacate (1) Orders of Dismissals when the motion has not been scheduled for hearing and (2) Orders of Dismissal not yet reduced to Judgment are handled under SLR 8.041. Once a Judgment of Dismissal has been entered, parties must comply with ORCP 71 unless they stipulate otherwise.

8.045 See SLR 12.015 regarding mediation in family law cases.

8.046 MEDIATION COMPLIANCE REQUIRED TO PROCEED TO HEARING

(1) No temporary hearing regarding custody or parenting time will be set unless an Order for mediation has been obtained, an Order Waiving Mediation has been entered, or the parties have attended mediation since the filing of the Petition.

(2) When the parties call in to report readiness for a trial setting, if Mediation and Parenting Time Education have not been completed, in cases where child custody or parenting time are at issue, trial will not be set. On cases retained by a Family Court Judge, trial settings sought through that Judge's judicial assistant will not be set unless mediation has been completed or waived or an Order for Mediation has been entered. Parties confirming trial readiness with that judge's department will be expected to confirm completion of Mediation and of Parenting Time Education.

(3) For motions to modify child custody or parenting time, a Mediation Order will be a condition to the setting of a hearing date. If any cases come before the court without completion or waiver of mediation, the hearing will be reset and the parties sent to mediation.

8.047 CUSTODY AND PARENTING TIME EVALUATIONS BY FAMILY COURT SERVICES DIVISION

(1) Evaluations are conducted only by Order of the Court.

(2) All requests for evaluations require the filing of a Motion for Custody or Parenting Time Evaluation which shall be scheduled on any Friday morning at 8:30 am. The adverse party must be served with such Motion and Order which the moving party may obtain ex parte.

(3) Parenting time and custody evaluations are not permissible in the following cases:

(a) Contempt or parenting time enforcement cases;

(b) Cases in which the current matter has been pending for more than 6 months;

(c) Cases in which the children are all over 15;

(d) Cases in which there has been a professional evaluation within the past two years, except to obtain an update. Updates only will be ordered where there has been a substantial change of circumstances since the completion of the last evaluation;

(e) Pending Juvenile Dependency cases;

(f) Cases in which the only matter pending is a Family Abuse Prevention Act restraining order;

(g) Cases in Probate Guardianship; and

(h) Cases in which a parent is in prison.

(4) At the appearance on Friday morning, the parties shall present to the court a one-page list of reasons why an evaluation is needed.

8.057 WHEN FAMILY COURT SERVICES DIVISION WILL NOT BE REQUIRED OR AVAILABLE TO CONDUCT AN EVALUATION

Under the following circumstances Family Court Services Division will not conduct an evaluation.

(1) A custody or parenting time evaluation will not be performed without the order of a Family Court Judge if a case involving the parties has recently been filed in the Juvenile Court.

(2) In cases where there has been a substantial break in the parent-child relationship, a history of abuse or significant criminal history, supervised visits, if any, would be the first step, not an evaluation.

(3) Resources of the Family Court Services Division must not be further allocated to a family. This applies when the family has been the subject of prior evaluations by Family Court Services Division and a conclusion has been reached by Family Court Services Division or the Court that the state of the relationship between the parties is such that the issues require no further consideration by Family Court Services Division. Although not limited to the following circumstances, this applies when:

(a) Closure of the case is in the child's best interest;

(b) A non-custodial parent's actions reflect an unwillingness to accept prior determinations in the case, to the extent that a pattern of harassment has developed;

(c) Both parents have engaged in ongoing, destructive litigation rather than seeking solutions and Family Court Services Division resources have been utilized to the extent that no further benefit could be achieved by continuing Family Court Services Division involvement.

(4) If the Family Court Services Division (or one or more staff members) becomes the subject of a complaint to a professional licensing body, or in the event that an action is filed against Multnomah County based on activity of an employee of Family Court Services Division, there shall be no further involvement of Family Court Services Division with the parties.

8.061 CHILD SUPPORT WORKSHEETS

The child support computation worksheets appended to OAR 137-050-0320 to 137-050-0490 are required whenever a claim for child support has been raised by the pleadings. Even if the parties have agreed to an award of zero support at the time an order or judgment is signed or the court otherwise orders zero support , the worksheets are required to enable the court to make the legally required findings regarding the presumptive amount of support and the reason(s) to rebut that presumptive amount.

8.075 MULTNOMAH COUNTY PARENTING PLAN GUIDELINES

(1) The Fourth Judicial District does not adopt a standardized parenting plan, and the previous "Multnomah County Standard Parenting Time Guidelines" formerly contained in the Appendix to the Supplementary Local Rules are withdrawn.

(2) Oregon law requires that judgments addressing parenting time contain a parenting time plan. The Fourth Judicial District expects that parenting time plans will meet the individual needs and circumstances of children and their families by taking into consideration the following basic parenting principles:

(a) It is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent. It is assumed that each parent nurtures his or her child in important ways which are significant to the development and well being of the child;

(b) Each child and family is unique. In order to meet the individual needs of the child(ren) the parties shall consider the following:

i. the developmental stage(s) and any special needs of their child(ren),
ii. the child(ren)'s school and activity schedules, and
iii. practical factors such as the distance between households, the number of transitions for the child(ren), and any other relevant practical considerations.

(c) A safety focused parenting plan, which may restrict parenting time, shall be considered whenever the family has been experiencing domestic violence, child abuse, serious mental illness, or significant substance abuse issues;

(d) It is usually best for the parties to develop their own parenting time schedule through mediation or with the help of legal counsel. Unless waived by the Court, mediation is required when parents are in dispute about custody or parenting time; and

(e) Changes in the developmental needs of children may require a modification of the parenting plan.

(3) The court recommends the following resources to create an appropriate parenting plan:

(a) The "Basic Parenting Plan Guide for Parents," "Safety Focused Parenting Plan Guide for Parents," or "Long Distance Parenting Plan Form" which are available at http://courts.oregon.gov/, or at the Multnomah County Family Law Facilitator's Office, Room 211 of the County Courthouse, and

(b) Other materials, forms and resources available at the following sites:

i. Multnomah County Family Law Facilitator's Office, Room 211 of the County Courthouse – 503.988.4003
ii. Multnomah County Family Court Services, Room 350 of the County Courthouse – 503.988.3189
iii. The Multnomah County Circuit Court Website - http://courts.oregon.gov/Multnomah/.

8.077 SUPERVISED PARENTING TIME

For Domestic Relations and Family Abuse Prevention Act cases in which the court imposes the requirement of supervised parenting time, the parties to the case and the supervisor must comply with the following:

(1) The supervisor is required to explain the rules for supervised parenting time to the parent who is supervised, unless the supervisor knows that the parent was previously informed. This must include an explanation of supervised parenting time rules set forth in any court order or judgment in the case, and any other rules that are necessary due to unique conditions at the designated location or other circumstances that may reasonably impact a successful parenting time experience, as identified by the Judge, the supervisor, or the involved agency;

(2) The custodial parent is not allowed to be present or to impose additional rules or to make additional demands concerning supervised parenting time;

(3) Only if accompanied by the supervisor and with the supervisor's express consent, may the supervised parent and children leave the designated location for the supervised parenting time;

(4) The supervised parent shall not engage in conversation that exposes the child to "adult issues" in the case, especially if the case involves an allegation of verbal abuse or an allegation of attempts to alienate the other parent from the child. The supervisor is required to immediately address the problem with the supervised parent if this rule is violated. If the supervised parent makes additional statements in violation of this rule after the supervisor's admonition, or if the nature of the initial comment is a significant violation of this rule, parenting time on that particular date shall be terminated and the case shall be reviewed by the court to determine whether any further supervised parenting time will be allowed;

(5) Physical discipline of the child during supervised parenting time is prohibited;

(6) The supervisor is required to keep the supervised parent within view and within hearing range for the duration of the supervised parenting time;

(7) The purpose of supervised parenting time is to allow interaction with the child for the benefit of the child. Therefore, the supervised parent is prohibited from initiating or engaging in conversation during supervised parenting time which does not further this objective. The supervisor's role is to prevent the child's exposure to "adult issues" in the case and to discourage any inappropriate communication.

8.085 APPOINTMENT OF COUNSEL FOR CHILDREN

The Court may appoint counsel for children in cases arising under ORS Chapter 107 upon its own motion or upon motion of either party pursuant to ORS 107.425(3), and shall appoint counsel if requested to do so by one or more of the children. A reasonable fee may be imposed by the Court against either or both of the parties or as a cost in the proceedings.

The procedure for appointment of counsel for children in cases arising under ORS Chapters 107-109 shall be as follows:

(1) In its sole discretion, the Court may appoint counsel for the children on its own motion with or without prior notice to the parties.

(2) A person requesting appointment of counsel for a child or children must petition the Court for an order setting forth the reasons for such request. After reasonable notice to all parties, the person seeking such appointment shall appear and request an Order Appointing Counsel.

(3) The Court will appoint counsel where requested to do so by one or more children.

(4) Orders appointing counsel issued by the Court may contain provision for payment of attorney fees and terms for payment. No Order will be issued until counsel has agreed to accept such appointment upon the fee terms set forth.

(5) To the extent possible, appointed counsel will represent their clients' legal interests in obtaining a secure, stable home life and a balanced relationship with both parents and will be answerable only to their client and to the Court. The parents or persons having physical custody of the child shall cooperate in allowing counsel opportunity for private consultation with the child or children, including making or assisting with arrangements for the children's transportation to the attorneys' office or some other reasonable meeting place and reasonable phone communication if needed.

(6) Counsel to be appointed for children shall meet the Court's standards for qualification in family law matters and in the resolution of custody/parenting time issues.

8.125 PARENT EDUCATION PROGRAM

(1) The following cases are subject to this rule:

(a) annulment or dissolution of marriage actions;

(b) legal separation actions;

(c) petitions to establish paternity, custody or parenting time;

(d) post-judgment litigation involving changes in custody or parenting time in which the parties have not previously completed a program as required by this Rule.

(2) All parents of a child under the age of 18 years involved in a case described under subsection (1), above, shall complete successfully the education for divorcing parents program offered by the Division of Family Court Services or a pre-approved alternate education program.

(a) Parties shall register for the program or make application for approval of an alternate program within 15 days of receiving notice of this education requirement.

(b) All parties shall complete the program before the earlier of any hearing on a custody or parenting time issue or entry of a judgment. Excepted from this deadline are hearings regarding emergency orders under ORS 107.097(3) and 107.139 and pre-judgment protective orders of restraint under ORS 107.097(2). In these cases, the class must be completed prior to entry of judgment unless the court orders a earlier completion date. On post-judgment status quo orders under ORS 107.138, the movant must register for the class prior to the hearing, and complete it if possible prior to the hearing, if the movant did not attend the class prior to judgment.

(c) Parties who have completed successfully the parent education program once are not required to repeat this program at a later time in order to seek modification of the judgment.

(3) Notice and instructions to the moving party of this requirement will be provided by the trial court administrator at the time the initial pleadings are filed. The moving party shall serve a copy of such notice on respondent along with the summons and pleadings. The moving party's return of service on the responding party shall indicate service of the notice with the summons and pleadings.

(4) The fee for the court-offered program may be waived or deferred if the party has obtained a waiver or deferral of fees in the case in chief.

(5) Each party who successfully completes the Court's program or a pre-approved alternate program, shall submit a certificate of completion to the judge at trial or with documents resolving the matter.

(6) Upon a showing of good cause, a party may request a waiver of the requirements of this Rule. The request must be made by motion, supported by affidavit, and filed within 15 days of receipt of the Trial Court Administrator's notice.

(a) "Good Cause" includes that the party lives more than 100 miles from Portland or is in poor health.

(b) If good cause is found, the court may require the party excused to view video materials having the same or similar information.

(c) The fact that one party is relieved from the requirements of this Rule, does not form a basis

for excusing the other party.

(7) Court action in these cases shall not be delayed by a party's refusal, failure or delay in registering for or completing this program or the failure to comply with the requirements of this Rule, unless the noncomplying party is the moving party. Upon a party's failure to complete the education program successfully or failure to comply with the requirements of this Rule, the court may take appropriate action including but not limited to denial of the relief sought by that party, or proceedings for contempt.

8.135 FAMILY COURT SERVICES

The Multnomah County Board of Commissioners established a Family Court Services Division within the Department of Juvenile and Adult Community Justice. In addition to any other duties assigned by the Board of Commissioners or the Department, the Family Court Services Division attends upon the court to obey its lawful orders and directions. In carrying out its duties to the court, the Family Court Services Division provides the following services to parties within the court's jurisdiction:

(1) **Conciliation**: The Division provides conciliation services for parties in domestic relation matters as provided by ORS 107.510 to 107.610. All Division conciliation records and conciliation communications, oral or written, are confidential, and Division employees and the parties may not be examined about such records or communications and neither may be used in any civil or criminal action.

(2) **Mediation**: The Division will mediate all domestic relations actions that involve controversial custody, parenting time or visitation of children. This includes requests for joint custody and contempt matters involving parties who are non-parents. The mediation is subject to SLR 12.015. The mediator will report the outcome to the Court and the parties or their counsel in writing. Mediation proceedings are private.

All Division mediation records and all mediation communications, oral or written, are confidential. Division employees and the parties may not be examined about such records or communications, and the records may not be used in any civil or criminal action.

(3) **Evaluation**: When directed by court order or these rules, the Division may conduct an investigation and evaluation of the parties whenever mediation does not resolve all custody, parenting time and visitation issues or when mediation is inappropriate or waived. The sole purpose of the investigation and evaluation is to assist the Court. In accordance with ORS 107.425, the evaluations will include the character of the parties, family relations and past conduct in a report. The investigative findings shall be offered as and subject to all rules of evidence. Evaluation proceedings are private. Evaluation records, all evaluation communications, oral and written, may not be disclosed to parties outside of the proceedings without a court order.

(4) **Parent Education Programs**: The Division provided parent education programs as provided by ORS 3.425.

8.137 PARENTING COORDINATORS

(1) Qualifications: Parenting Coordinators in Multnomah County shall meet or exceed all the following qualifications and will continue to meet ongoing requirements as described.

(a) Education. A Parenting Coordinator must possess at least one of the following

(i) A master's or doctoral degree and professional license in counseling, psychiatry, psychology, social work, marriage and family therapy, mental health or conflict resolution from an accredited college or university; or

(ii) An authorization to practice as a domestic relations mediator in Multnomah County per the Court's list of approved domestic relations mediators.

(b) Training. A Parenting Coordinator must have experience and/or professional training in the following areas:

(i) Parenting coordination;
(ii) Conflict resolution;
(iii) Child development and psychology;
(iv) Mental health and substance abuse;
(v) Domestic violence and child abuse;
(vi) Domestic relations legal issues;
(vii) Ethical standards including confidentiality, dual roles and objectivity

(c) Continuing education. As an ongoing obligation, Parenting Coordinators must complete any continuing education requirements of their profession.

(2) Conduct

(a) Parenting Coordinators, as an ongoing obligation, shall subscribe to the specific ethics identified by their profession

(b) No individual whose professional license has been revoked, or surrendered while disciplinary proceedings are pending before professional licensing entities shall be eligible for initial or continued appointment as a parenting coordinator;

(c) Individuals who have served as a counselor, attorney, mediator, or evaluator to a party/parties will not serve as a parenting coordinator to the same party/parties without the express written and informed consent of the party/parties, and careful consideration of potential conflicts of interest.

(3) Motions for appointments of Parenting Coordinators shall contain certification that the appointee meets the qualification of this rule.

8.138 CUSTODY OR PARENTING TIME ISSUES IN PATERNITY CASES

(1) Proceedings to establish or modify custody or parenting time where paternity has been established must be brought pursuant to ORS 109.103. If support has been established in a separate proceeding and is an issue, the moving party must file with his/her petition a motion and proposed order to consolidate the cases into the proceeding brought pursuant to ORS 109.103.

(2) Custody or visitation proceedings brought under ORS 109.175 as modifications of administrative orders establishing paternity or support will be dismissed upon application of the opposing party or by the Court on its own motion.

8.145 CIVIL COMMITMENT PROCEEDINGS

The following rules shall apply in all commitment hearings conducted pursuant to ORS Chapter 426.

(1) Counsel for the AMIP may make a brief opening statement for the purpose of informing the Court and the examiners as to the AMIP's position and desires as to the outcome. The District Attorney may make an opening statement only upon leave of the Court.

(2) Unless there is a specific objection, the Court will receive into evidence the following:

(a) The Investigator's Report which shall be identified as exhibit #1. Those portions of the Investigator's Report which are labeled hearsay shall be excluded and will not be considered by the Court, unless the Court specifically states otherwise.

(b) The certified copy of the Mental Health Division's hospitalization history which shall be identified as exhibit #2.

(3) Unless counsel for the AMIP or the District Attorney specifically request otherwise, the order of the trial shall be as follows:

(a) Opening statement by defense counsel;

(b) The examiners shall conduct a mental-status examination;

(c) The State shall present its witnesses and other evidence;

(d) The AMIP may present witnesses and other evidence;

(e) The State may present rebuttal;

(f) The examiners shall submit their reports to be followed by questions from counsel and the Court.

8.155 NAME CHANGES

(1) The petitioner or the petitioner's attorney must be personally present at the change of name hearing or the petition will be dismissed and the petitioner will be required to re-file the petition and pay the required filing fee.

(2) In name changes involving the change of name of a minor, the guardian ad litem, or the attorney for the guardian is required to file proof that the Petition for Change of Name was served on the parent(s) of the child.

CHAPTER 9

PROBATE PROCEEDINGS

9.015 SUBJECT MATTER JURISDICTION; TRUST CASES

(1) The Chief Family Law Judge (hereafter "Chief Judge") has jurisdiction over all Decedents' Estates, Conservatorship of Adults and Minors, and Guardianships of Adults and Minors.

(2) Matters arising from the administration of Trusts shall be filed in the Probate Section and heard by the Chief Judge or designee.

9.016 ALTERNATIVE DISPUTE RESOLUTION

Probate proceedings shall be subject to the alternative dispute resolution rules in Chapter 12, Mediation in Probate Proceedings (SLR 12.045).

9.025 HOW MATTERS FOR PROBATE ARE TO BE PRESENTED; CONFERENCE; HEARING; EMERGENCIES

(1) Probate matters requiring authorization, approval, or signature of the Chief Judge or designee shall first be presented to the Probate Section of the Civil Division for review. If the matter is assigned to a judge other than the Chief Judge, the party presenting it shall so advise the Probate Section's staff.

(2) If the matter cannot be approved without an appearance, the party will be so advised by notice within three judicial days and the matter will be set for conference, or hearing.

(3) Hearings or ex parte appearances may be scheduled by request to the Probate Section. Before requesting a hearing, requesting counsel should confer with other counsel and advise the Probate Section staff of the estimated time required. (Refer to SLR 8.012 and 8.015 for "call/assignment" process.) Requesting counsel is charged with responsibility of notifying all required parties.

(4) Probate ex parte matters are heard Monday through Friday at 8:45 am, and must be prearranged with the Probate section.

9.026 IN CAMERA REVIEWS

(1) Parties seeking an in camera review of documents in a probate case shall file a motion in room 224 of the downtown courthouse. Such motions shall describe the records to be reviewed, the

information the party seeks to obtain from the records, and the legal authority for the in camera review.

(2) Unless stipulated, the motion will be placed on the Probate Call docket for hearing as prescribed by SLR 9.025(3). If a judge is already assigned to the case, the attorneys must contact that trial department to schedule a hearing on the motion.

(3) If the motion is granted documents shall be directed to room 131 of the downtown courthouse.

9.035 DELINQUENT FILINGS

In the event of a delinquency or deficiency in filing any document required by statute or court order, the attorney and the fiduciary will be sent an Order to Show Cause for removal of the fiduciary or a finding of contempt. The personal representative, conservator, or guardian, together with counsel of record, must appear unless the matter has been corrected at least three judicial days prior to the Show Cause hearing. If the delinquency or defect has not been corrected by time of the hearing, sanctions may be imposed.

9.045 RESIGNATION OF COUNSEL; NOTIFICATION REQUIREMENTS

If a bond has been posted, the insurer must be notified of the resignation and substitution of counsel.

9.055 SETTLEMENT OF PERSONAL INJURY OR WRONGFUL DEATH CLAIMS: REQUIREMENTS WHEN MINOR CHILD OR INCAPACITATED PERSON APPEARS BY GUARDIAN AD LITEM

(1) Except as permitted by ORS 126.725 for a minor child, a petition for approval of a settlement of a personal injury or wrongful death claim on behalf of a minor child, incapacitated person or decedent shall be accompanied by an affidavit which sets forth the following:

(a) A description of the incident causing the injury or death;

(b) A description of the injuries;

(c) The amount of the prayer and settlement. (If a structured settlement is requested, the present value of the future payments should be indicated);

(d) The amount of the attorney fees and costs;

(e) The proposed disposition of the settlement proceeds;

(f) A concise statement explaining the reasons for the settlement and the efforts to maximize recovery;

(g) A statement explaining that the attorney has independently evaluated the interests of the injured party;

(h) A statement explaining that the attorney has examined every medical record; and

(i) A statement explaining why it is necessary and proper to settle the case at the present time.

(2) If a civil action has been filed in this circuit court on behalf of a minor child, incapacitated person or decedent for the loss, injury or death which is the basis of the proposed settlement, the original petition and affidavit must be filed in the civil action. A copy of the petition with a form of proposed order for approval of the settlement shall be delivered to the Probate Section to be forwarded to the probate judge for action.

(3) A conservatorship on behalf of the minor child or incapacitated person generally will be required for any case where personal injury or wrongful death settlement proceeds are at issue.

(a) Bond and standard annual accounting requirements may be waived if the funds are restricted until the minor attains the age of majority. In lieu of such accountings the court will require copies of the first and last bank statements for each standard accounting period to be filed with the court.

(b) Restricted accounts on behalf of a minor child or incapacitated person must be confirmed by a signed acknowledgment from the bank or brokerage firm which discloses the account number, type and account balance as required by UTCR 9.050 and 9.080. Exceptions for diminutive amounts may be requested.

(c) Approval of damage settlement amounts for the benefit of a minor child or incapacitated person appearing by a guardian ad litem in a lawsuit, except those cases assigned for trial to a trial department, are a basic responsibility of the Probate Court. The allocation of funds and the structuring of such funds is likewise the Court's responsibility. Minors and incapacitated persons should be provided with independent counsel for such issues and most commonly when a minor's funds are proposed to be withheld from them after age18.

(4) A fiduciary appointed by the Probate Court is required to comply with paragraph (1) of this rule and must file a motion for an order approving a settlement of a personal injury or wrongful death claim on behalf of a protected person. The motion must be supported by an affidavit setting out the required information.

9.065 BONDS IN ESTATES WHERE PERSONAL REPRESENTATIVE OF INTESTATE ESTATE IS SOLE HEIR OR DEVISEE

Notwithstanding ORS 113.105, the personal representative of an intestate estate shall be required to file a bond if the court is not satisfied that the creditors will be paid, even if the personal representative is the sole heir or devisee of the estate.

9.073 VOUCHERS

(1) All court-appointed fiduciaries shall maintain accounts from which the original canceled checks or copies as provided by the financial institution will be returned with each depository statement, excluding the exemptions allowed a bank or trust company per ORS 116.083(2)(d) and ORS 125.475(3).

(2) Vouchers shall be submitted in chronological order.

(3) Notwithstanding the provisions of UTCR 9.190, all vouchers and depository statements will be destroyed without notice 90 days after an estate or conservatorship is closed unless the personal representative, conservator, or attorney retrieves the vouchers and depository statements prior thereto, or submits a self-addressed, stamped envelope, with adequate postage for their return.

9.075 GUARDIANSHIPS

(1) A Petition for Guardianship shall designate, in the caption, that it is for guardianship of an adult, whether it is for a temporary or indefinite time (or both), and whether a conservatorship is also being requested.

(2) Copies of the petition, marked "VISITOR'S COPY" with supporting documentation and copies of proposed notices and the ORS 125.070 (4) respondent's objection (the blue form) attached, should be deposited with the probate clerk. After receipt of the copies, and the deposit for the visitor's investigation fee, the Probate Section staff will prepare an order appointing the Visitor.

(3) Petitions for Appointment of a Temporary Guardian should be accompanied by appropriate affidavits and medical reports. The Petition should be filed with the Probate Section of the Civil Division and presented to the Chief Judge at probate ex parte.

(4) Within 30 days after each anniversary of appointment, a Guardian for a minor shall file with the court a written report. Copies of the Guardian's Report must be given to those persons specified in ORS 125.060 (3). The report shall be in the form prescribed by the court. (See Guardianship Report Form, Pages 119-120, Appendix of Forms.)

9.081 PRESENTATION OF ORAL OBJECTIONS

Any person may present oral objections to a petition in a protective proceeding by appearing in Room 224, Multnomah County Courthouse, 1021 SW Fourth Avenue, Portland from 9:00 a.m. to 5:00 p.m. each judicial day.

9.085 PRO PER APPEARANCES IN PROBATE COURT; APPROVAL

(1) If a personal representative or conservator intends to appear without an attorney in any matter assigned to the Probate Court, that person must provide to the Court notice of such intent and proof of competency in such matters. If such proof provided is not sufficient to assure the Court that the estate or interest will be protected, the Court shall take appropriate action.

(2) A person other than a personal representative, conservator, or corporation may appear in person without counsel in any matter before the Probate Court as authorized or allowed by law. The person appearing and counsel for the personal representative shall notify the Probate Court if any party to a proceeding is appearing pro per. The Chief Judge or designee shall decide whether further hearings shall be required.

9.095 ATTORNEY FEES AND CORPORATE FIDUCIARY FEES APPROVAL

(1) Attorney fee expenses under ORS 116.183 and 125.095 must be approved by the court.

(a) Such requests must be accompanied by a statement for attorney fees, filed in the form required by UTCR 5.080, showing the number of hours expended, the hourly rate charged, and a designation of title for each person performing work.

(b) In addition to the information required by UTCR 5.080 for a civil action, under this rule the statement also must include a description of normal attorney tasks with hours expended. For extraordinary activities, the statement must also concisely address the following issues to be resolved and the process and time spent on each:

(i) For establishing and funding trusts, a brief narrative must identify complexities involved;
(ii) For tax planning, describe objectives and activities required;
(iii) For tax returns, indicate the number filed and the nature of the returns;
(iv) For tax audits and hearings, describe the issues addressed;
(v) For disclaimers, describe the circumstances and complexities;
(vi) For real estate management problems, include issues regarding compliance with local, state and federal authorities;
(vii) Discuss sales of real property;
(viii) Discuss operation or sale of business interests;
(ix) Discuss management of family-owned corporation or closely held stock;

(x) For contested matters, indicate whether they were of benefit to or in defense of the estate;
(xi) Discuss election of spouse/marital share;
(xii) Discuss disputed creditor's claims.

(c) If tasks performed appear to be the duties of a personal representative, the Court will question and possibly reduce attorney fee payments for such activities.

(2) Consent by the parties to the attorney fee requests shall not waive the requirements of this rule.

Corporate Fiduciary Fees

(3) Any request for approval of corporate fiduciary fees in addition to the basic percentage fee allowed pursuant to applicable statute, must be accompanied by an affidavit in compliance with 9.095(1)(A), above.

Private Fiduciary Fees

(4) All requests for fiduciary fees (except those from a Personal Representative) shall be supported by an affidavit which details the services provided, the purpose of the services rendered, the results (if applicable), the hourly rate charged by the fiduciary and the reasons that hourly rate is deemed fair and reasonable.

9.161 FORM OF ACCOUNTINGS

Accounting in estates and conservatorships must be submitted in the format specified in UTCR 9.160.

CHAPTER 10

RESERVED FOR EXPANSION

CHAPTER 11

JUVENILE COURT

11.015 JUVENILE COURT MATTERS

(1) Juvenile court hearings. The Chief Family Law Judge or designee shall have responsibility over juvenile matters. Hearings will be scheduled at the Juvenile Justice Complex, 1401 NE 68th Avenue, Portland, Oregon, unless otherwise ordered by the Court.

(2) Ex parte. Ex parte matters in the Juvenile Department will be heard each day after call/assignment at 8:30 am and at 1:30 pm, and at additional times as designated.

(3) Initial shelter hearings. Shelter hearings on delinquency cases will be heard each day at 1:30 pm. Shelter hearings on dependency cases will be heard each day at 2:30 pm.

(4) Rehearings. Requests for rehearing a referee's decision shall be filed with the Juvenile Court Clerk's Office and scheduled through the Call process. A judge may, within his or her discretion, grant an immediate rehearing.

11.017 PETITION NUMBER AND JJIS NUMBER REQUIRED

Documents submitted for filing and entry in the register in an action in the Juvenile Department must contain, in the caption of the document, the petition number and the circuit court case number assigned to the action in which the document is to be entered and the Juvenile Justice Information System (JJIS) number assigned to the child by the Juvenile Community Justice Division or its successor agency.

11.035 REFEREES

Juvenile Court Referees, appointed by the Court, may conduct hearings in any Juvenile Court cases, except that the following hearings shall be conducted only by a judge:

(1) A hearing to waive a youth to adult court;

(2) Any trial on a petition seeking the termination of parental rights.

(3) Unless otherwise stipulated by the parties, a contested hearing on a petition alleging an act, which if done by an adult would constitute a Class A or Class B felony, or any degree of homicide;

(4) Other matters upon good cause shown.

11.037 MOTION FOR A JUDGE, MOTION FOR CHANGE OF JUDGE

(1) Motion for a Judge

If a case is one that may be assigned to a referee for hearing, a motion, supported by an affidavit, may be filed to request that the case be assigned to a judge for hearing. The affidavit must allege with specificity the special circumstances supporting the request. The motion, with the supporting affidavit, must be submitted to the Chief Family Law Judge or designee prior to the assignment of the case to a referee for hearing.

(2) Motion for Change of Judge

A party intending to file a motion for a change of the judge assigned must announce this intent at the time of assignment or at the time the party receives notice of the assignment. An original of a motion, order and supporting affidavit must be received by the Juvenile Clerk's office by the close of business the following day. The Clerk's Office staff will send the filing to the Chief Family Law judge. Failure to comply with these requirements may result in sanctions as provided by UTCR 1.090. The requesting party is responsible for serving a copy of the motion, affidavit and order on the judge that is the subject of the motion, and each other party to the action.

11.045 GENERAL PROCEDURES FOR SCHEDULING HEARINGS FOR JUVENILE CASES

(1) Delinquency cases. When a petition is filed on a delinquency case, the Juvenile Court Clerk's Office shall schedule hearings required by statute, as well as plea, trial readiness and Call dates as follows:

(a) Plea. If the youth is in custody, a plea hearing will be set for Call seven (7) calendar days from the preliminary hearing.

(b) Trial readiness. Trial readiness is heard at Call. Attorneys shall report whether they are ready to proceed to trial. If attorneys are not ready to proceed to trial, a new trial readiness date will be set. If attorneys are ready to proceed to trial, a Call date will be set.

(i) *In custody youth*: trial readiness date is set 2 weeks from the preliminary hearing.
(ii) *Out of custody youth*: trial readiness date is set 5 weeks from the preliminary hearing.
(iii) *Community Detention youth*: trial readiness date is set 4 weeks from the preliminary hearing.

(c) Call. At the Call proceeding, the case will be assigned to a judicial officer for trial the next court day. If a party needs a setover, they shall request the setover three (3) days before the Call date. Only in emergency situations will a setover be granted at Call.

(2) Dependency cases. When a petition is filed in a dependency case, the Juvenile Court Clerk's Office schedules hearings required by statute, as well as other hearings and conferences. All reviews in a dependency case will be heard by the judge of the case.

(a) Second Shelter Hearing. A second shelter hearing may be set after the initial shelter hearing. The shelter hearing is set by the judicial officer during the initial shelter hearing, or at a later time within the judicial officer's discretion.

(b) Pre-trial conference/settlement conference. A pre-trial/settlement conference shall be set approximately 35 days from the initial shelter hearing. The conference date will be entered on the petition by the docket clerk. The pre-trial conference is set for 30 minutes before the settlement conference begins, but is not scheduled on a judicial officer's docket. If the case is not settled at the pre-trial/settlement conference, the case may be scheduled for call and trial, or for another pre-trial/settlement conference. Call, trial, and subsequent pre-trial/settlement conference dates are scheduled by the judicial officer in court.

(c) Call. At the Call proceeding, the case will be assigned to a judicial officer for trial on the following week.

(3) Termination of parental rights cases

(a) The initial hearing on a petition to terminate parental rights shall be pursuant to an Order to Show Cause. At the time of the Initial Appearance hearing, if the parents appear and contest the petition, the matter shall be set for a Best Interest/pre-trial conference, call and trial.

(b) The Best Interest/pre-trial conference shall be set before the judicial officer assigned to the case (not the trial judge), to seek possible means for resolving pre-trial issues.

(c) The parties and their attorneys are required to attend the Best Interest/pretrial conference, and call, unless they are excused, in writing, by the court.

(4) Petitions for judicial determination. Petitions must be filed with the Juvenile Court Clerk's Office. The Clerk's Office schedules an initial review and assigns a judicial officer as judge of the case. All subsequent hearings shall be set by the judge of the case either upon the Court's own motion, upon motion of the child(ren) or parent(s), or, if requested, by the Department of Human Services pursuant to ORS 418.312.

(5) Special sets. Any matter requiring a hearing not described in this rule shall be scheduled only by the judge of the case. The requesting party must coordinate with all other parties involved in the case in order to select a mutually agreeable date within the times provided by the judge of the case. The requesting party is responsible for submitting and filing the motion and the signed order.

11.065 MOTIONS FOR SUBSTITUTION OF COUNSEL

Motions for substitution of counsel due to conflicts in the attorney-client relationship must be heard by the judge of the case. All other requests for attorney substitution may be heard by any judicial officer. The motion must show the date of the next scheduled appearance, and must be accompanied by: the most recent name, address, and phone number of the client; a copy of the petition; any police reports; and all discovery material received.

11.066 IN CAMERA REVIEWS

(1) Parties seeking an in camera review of documents in a juvenile dependency or delinquency case shall file a motion with the court clerk in the Juvenile Justice Complex describing the records to be reviewed, the information the party seeks to obtain from the records, and the legal authority for the in camera review. Documents submitted for in camera review shall also be directed to that location.

(2) Motions for in camera review of documents in juvenile dependency or delinquency cases shall be set on the Call docket to be set for a hearing unless there is a judge of the case, in which case the motion will be scheduled on that judge's calendar. Motions for in camera review of documents in a juvenile dependency or delinquency case shall be directed by court staff to the judge of the case for scheduling of a hearing on the motion.

11.067 NOTICE OF SCHEDULING OR RE-SCHEDULING OF A CRITICAL-STAGE HEARING IN CASES SUBJECT TO UTCR 4.100 TO 4.120

Supplementary Local Rule 4.111 applies in juvenile delinquency proceedings for alleged youth offenders and youth offenders in any juvenile delinquency action subject to the provisions of UTCR 4.100 to 4.120.

CHAPTER 12

MEDIATION

12.015 FAMILY-LAW MANDATORY CUSTODY OR PARENTING TIME MEDIATION; VOLUNTARY MEDIATION; GOOD FAITH REQUIRED; WAIVER

Mandatory Mediation

(1) Any formal action filed in Circuit Court involving a controversy over custody of or parenting time for minor children, including contempt disputes involving parties who are non-parents, shall be subject to mediation. However, for parties to a Family Abuse Prevention Act order, mediation will occur only on the request of the petitioner to the FAPA proceeding.

(2) The Court may decline to hear a custody 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 on its own motion.

(3) The provisions of this Chapter shall not apply to those cases specifically exempt from mediation requirements by statute.

Waiver of Mandatory Mediation

(4) A party may seek waiver of mandatory mediation for good cause. Such waivers will be allowed only after a showing of danger or other compelling circumstances. In the absence of an order waiving mediation, all matters including contempt, cases with an out-of-state party or parties where Oregon has jurisdiction over the case, and cases involving allegations of sexual abuse and physical abuse where there is no active Juvenile Court or State Office of Services to Children and Families involvement will be referred to mediation and a custody/ parenting time study.

Request for mediation

(5) Mediation may be requested by stipulation of the parties or upon request of one party.

(a) Commencement of Mediation by Stipulated Request for Mediation. If there is a disagreement between the parents concerning custody or parenting time at any stage of a domestic relations proceeding, both parents or their attorneys, may sign and file with the Court a Stipulated Request for Mediation and a Custody Parenting Time Study in substantially the same form as provided by the Court. The parents will be referred to the Family Court Services Division for mediation, or the parents may agree and stipulate to an independent mediator in their Stipulated Request for Mediation.

(b) Commencement of Mediation by Request for Mediation by One Parent. If there is a

disagreement between the parents concerning custody or parenting time at any stage of a pending proceeding subject to mandatory mediation under this rule, either parent seeking to resolve the matter must file with the Court and serve upon the other parent, or his/her attorney, a Request for Mediation in substantially the form as that prescribed by the Court. The moving party shall obtain the date for appearance for mediation orientation from the Family Law Department or through Family Court Services.

Temporary Support

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

Temporary Custody and Parenting Time Orders

(7) At any point during mediation, the Court may approve a Temporary Custody and Parenting Time Order reflecting the parents' agreement as to the issues. If the agreement is reached through mediation by the Family Court Services Division and prepared by one of its counselors, the counselor shall hold the signed agreement for seven calendar days from the date of the last signature and mail notice of the agreement to the parties and their attorneys, if known to the Family Court Services Division. The counselor shall forward the signed agreement to the Court for approval unless, within that time period, the counselor receives written notice of a party's repudiation.

Duration of Mediated Orders

(8) If the parties agree in Mediation through the Department of Family Services (hereinafter Family Services), that agreement shall be reduced to writing and, after the waiting period provided in the SLRs, made an Order of the Court.

If such agreement is reached after a domestic Relations case has been filed but prior to the taking of a judgment, the duration of that Order shall be temporary and, if not reduced to final judgment, will be dismissed if the underlying proceeding is dismissed.

If an agreement is reached after the filing of a Motion to Modify, it will be reduced to an Order which is final and binding on the parties if there are no other issues before the court except those addressed in the Agreement. If there are other issues, the form of Order described above for a temporary duration Order shall be entered.

Good Faith Required

(9) Mediation shall not be used by any parent in bad faith for the purposes of delay or resolution of other issues. If the Court finds at any time that the mediation process is being misused, it may determine that mediation has been unsuccessful.

Unsuccessful Mediation

(10) In the event the parents are not successful in mediating the custody or parenting time controversy, the mediator shall notify the Court. The matter will be scheduled for hearing in the same course and with the same priority on the docket as though there had been no mediation.

Jurisdiction

(11) The Court on its own motion may order parties to mediate their disputes.

(a) The Court may order parties to mediation when the parties have a closed or open case in Multnomah County, as evidenced by a case number, if the parties are not the subject of a Family Abuse Prevention Act order, and:

(i) The custody or parenting time dispute has arisen prior to the entry of a Judgment of Dissolution, Separation, Annulment or Paternity; or
(ii) The Judgment of Dissolution, Separation, Annulment, or Paternity has been entered, and a parenting time dispute has arisen; or
(iii) The Judgment of Dissolution, Separation, Annulment, or Paternity has been entered, and a custody dispute has arisen and a Motion to Modify Custody has been filed with an Affidavit setting forth allegations sufficient to support a claim of change of circumstances; or
(iv) An action alleging a violation of a custody or parenting time order has been filed; or
(v) An action alleging a violation of a custody or parenting time by a parent or a party who is a non-parent has been filed.

(b) As a rule, the Family Court Services Division will decline to mediate or evaluate the parties when:

(i) There is a pending Juvenile Court petition regarding the child or children in question; or
(ii) Temporary or permanent custody or wardship of the child or children in question has been granted to the Department of Human Services; or
(iii) The Juvenile Court has assumed temporary or permanent jurisdiction over the child or children in question.

(c) A domestic relations case filed in the Circuit Court remains under the jurisdiction of that Court in all phases of the proceedings, including mediation. The Court which refers a case to mediation may set, in its referral order, the limits of the mediator's scope of authority in the case.

12.016 See SLR 8.125 for the mandatory Parent Education Program

12.021 MEDIATION COMMISSION

(1) There is established a mediation commission which includes judges and attorneys, some of whom have experience as a mediator, non-attorney mediators, and the presiding judge and the trial court administrator are ex officio members.

(2) All members shall be appointed by, and serve at the pleasure of, the presiding judge for two year terms.

(3) The functions of the mediation commission are to review the qualifications and training of applicants seeking to be identified as court-connected mediators under CJO 05-028, to make recommendations to the presiding judge or designee on the inclusion of such applicants on court-maintained lists, and to monitor the continuing qualifications of mediators included on such lists.

12.022 COURT-CONNECTED MEDIATOR LISTS ESTABLISHED

The court will maintain lists of mediators who have met the qualifications established in the Oregon Judicial Department Court-Connected Mediator Qualifications Rules, adopted by CJO 05-028. Separate lists shall be maintained for general civil mediators, domestic relations custody and parenting mediators, domestic financial mediators, probate mediators, and other subject areas as approved by the presiding judge. The lists of mediators will be published on the circuit court's web site at **http://courts.oregon.gov/Multnomah/General_Info/Civil/listofapprovedmediators.page?**.

12.023 APPOINTMENT TO COURT-CONNECTED MEDIATOR LIST

(1) A mediator seeking inclusion on one or more lists must sign and file an application provided by the court for inclusion on the list of court-connected mediators. The presiding judge or the presiding judge's designee may require substantiation of any information submitted on the application. The commission may contact any program or individual referenced in the application or any other resource necessary to make a recommendation to the commission.

(2) The mediation commission shall review each application and make a recommendation to the presiding judge or designee.

(3) Appointments to any list shall be at the discretion of the presiding judge or designee. Inclusion on the list shall in no way establish any requirements for compensation for mediators, except as provided in SLR 12.025, nor serve as an endorsement or warranty of the mediator by the court.

(4) The presiding judge or designee may remove a mediator from any court-connected mediator list if the mediator is no longer qualified under the Oregon Judicial Department Court-Connected Mediator Rules, upon the recommendation of the mediation commission, or upon the written request of the mediator or agent, if the mediator is unable to make such request.

(5) Qualified court-connected mediators will be identified as such to the public, together with contact information for such mediators. The initial applications of qualified court-connected mediators, as well as amended or supplemental applications, will be available for review by the public.

12.025 ALTERNATE MEDIATION PROCEDURE IN CIVIL AND DOMESTIC RELATIONS ACTIONS SUBJECT TO 36.400 TO 36.425

(1) Mediation, as used in these rules, 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 impose a solution.

(2) 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 (pursuant to ORS 36.185 to 36.238) rather than arbitrate any civil or domestic relations case subject to mandatory arbitration under 36.400 to 36.425. 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 36.400 to 36.425 and SLR 7.075 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, however, precludes the parties from entering into arbitration in the event that mediation is unsuccessful in resolving the controversy. Any such request to arbitration after mediation shall be governed by Chapter 13 of these Supplemental Local Rules.

(3) If no arbitrator has been selected or assigned at the time of the filing of the stipulation to mediate, the parties select a mediator by stipulation.

(4) If an arbitrator has already been assigned at the time of the stipulation to mediate, the arbitrator shall be informed immediately, and shall be compensated, pursuant to UTCR 13.120 and the Supplementary Local Rules, for any time already invested in the case.

(5) If the parties select a mediator who is not qualified under the Oregon Judicial Department's Court-Connected Mediator Qualification Rules, they shall be deemed to have waived any protections under those rules.

(6) Unless the parties agree to different compensation, the mediator is to be compensated pursuant to UTCR 13.120, the Supplementary Local 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 the resolution of the dispute. This must be supplied to the mediator at least one day prior to the scheduled mediation.

(8) Within five days of the conclusion of the mediation, the mediator shall file with the court a report, together with proof of service of the report upon each party, stating the status of the action

following mediation as either "settled" or "not settled." If settled, the terms of the settlement may be stated in the report, unless the parties have agreed that the terms shall be kept confidential. A written statement of the terms of the settlement signed by the parties and/or their attorneys shall be retained by the mediator. A written settlement agreement or memorandum of agreement shall be admissible to prove the settlement under to ORS 36.220 to 36.238. If the mediator's report is "settled" the parties must, within 30 days of the filing of the report being filed, submit to the Presiding Judge a stipulated judgment as the final order in the action. If the mediator's report is "not settled" the action will be assigned an initial trial date and will proceed on the court's civil calendar.

(9) 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 as costs any other party's costs necessarily incurred in the mediation, in any subsequent judgment.

(10) The mediation proceedings described by this rule are compromise negotiations for purposes of ORE 408 (ORS 40.190) and are confidential under ORS 36.220 to 36.238.

12.035 MEDIATION IN SMALL CLAIMS ACTIONS; FAILURE TO COMPLY WITH SETTLEMENT

(1) All small claims actions without witnesses shall go to mediation orientation before going to trial.

(2) Agreements reached while in mediation shall be signed by the parties and filed as stipulated orders.

(3) Failure of either party to abide by the stipulated order will be grounds for the opposing party to file an Affidavit of Non-Compliance and obtain a judgment on the original claim, without further hearing.

12.045 MEDIATION IN PROBATE PROCEEDINGS

(1) Scope and Objectives. Probate proceedings shall be subject to mediation in accordance with these rules.

(a) Unless excluded below, all matters in Chapters 111 to 116 and 125 to 130 of the Oregon Revised Statutes under the jurisdiction of the Circuit Court shall be subject to mediation. These include protective proceedings, gifts, trusts, health care directives, powers of attorney, probate estates and estate matters outside of probate.

(b) The following matters are excluded from mediation: temporary protective proceedings under Chapter 125.

(c) If there is a dispute about whether a specific matter is subject to mediation under these rules, a court shall make the determination and shall rely on the policy to encourage the use of mediators in alternative dispute resolution and to discourage litigation.

(d) Mediation shall occur with the objectives of allowing parties to air their grievances informally, craft personal and creative solutions, forestall future possible disputes, work in an atmosphere that is outside of the formal rules of the courtroom, and to save on the expense of the judicial process.

(2) Presentation for Mediation

(a) Matters may be assigned for mediation by order of the court on its own motion.

(b) Matters may be mediated by agreement of all of the parties or notice by any party [*as set forth herein*]. A party may notice mediation without court permission.

(3) [*Pre-Filing A matter may be mediated before the filing of a legal proceeding. The mediation shall occur in substantially the same manner as if a legal proceeding had been filed except that the court cannot be used to resolve disputes in the mediation unless a legal proceeding is filed*]{**Nothing in these rules shall prevent:**

(a) Matters from being mediated before the filing of a legal proceeding except that the court cannot be used to resolve disputes in the mediation unless a legal proceeding is filed; or,

(b) Parties from settling disputes without mediation or through settlement conferences.}

(4) Procedure – [*No Hearing Set*

Mediation before a hearing has been set shall proceed as follows:

(a) A party seeking to mediate shall serve a written Notice of Mediation on all other parties stating that the party has elected to mediate the matter pursuant to these rules. The Notice shall include a plain and concise statement of the facts that inform the parties and the court of the questions in dispute, that a party may object to the mediation within twenty-one (21) days from the service of the Notice, and that if there is no objection each party must provide all parties a list of acceptable mediators within twenty-one (21) days from the service of the Notice. The Notice may include the noticing party's list of acceptable mediators.

(b) A party objecting to mediation shall serve an Objection to Mediation on all other parties stating that the party objects to the mediation. The Objection shall include a plain and concise statement of the facts so as to inform the parties and the court of why the party is objecting. The Objection must be made within twenty-one (21) days of the service of the

Notice of Mediation. The Objection may be accompanied with pleadings necessary to set the substantive issues before the court.

(c) The court shall set a hearing on the Objection to Mediation for no later than fourteen (14) days from the filing of the Objection and shall notify all parties.

(d) A court hearing an Objection to Mediation shall order that mediation proceed except for good cause shown. If the court determines that the matter should not be subject to mediation, the court shall set the matter for a hearing on the substantive questions in dispute.]

{In cases subject to mediation under these rules:

(a) The parties shall initiate the mediation process upon the filing of an objection or other responsive pleading setting a matter at issue. A court may notify the parties with a court notice of the mediation requirements.

(b) A party may notice a mediation by serving a written notice of mediation on all other parties stating that the party has elected to mediate the matter pursuant to these rules. The Notice shall include a plain and concise statement of the facts that inform the parties and the court of the questions in dispute. The Notice may be substantially in the form set forth as Appendix (See Notice Form, Page 122, Appendix of Forms) to these rules.

(c) The parties or one of them, if by agreement, shall provide a status report to the court within thirty (30) days of the filing of the objection or other responsive pleading setting a matter at issue. The status report shall include the dispute resolution plan, any request for a settlement conference, whether there is a pending motion to waive mediation or a request for a hearing date.}

(5) [*Procedure – Hearing Already Set. Mediation after a hearing has been set and all parties notified of the hearing shall proceed as follows:*

(a) A party cannot request mediation fewer than twenty-one (21) days in advance of the day that has been set by the court for a hearing unless all parties are in agreement.

(b) A party seeking to mediate shall follow the requirements of Rule 12.045 (4)(A) except that the Notice shall give seven (7) days from the service of the Notice for a party to object, the date, time, place and length of the hearing to the extent available, and the reason why the party is seeking to mediate after a hearing has been set.

(c) A party objecting to mediation shall follow the requirements of Rule 12.045 (4)(B) except that the Objection shall be made within seven (7) days from the service of the Notice.

(d) The court shall set a hearing on the Objection to Mediation for no later than fourteen (14) days from the filing of the Objection and shall notify all parties.

(e) A court hearing on an Objection to Mediation shall order that mediation proceed except for good cause shown. The court may take into account relevant facts about why the party seeking mediation did not request mediation in advance of the setting of a hearing. If the court determines that the matter should not be subject to mediation, the court shall set the matter for a hearing on the substantive questions in dispute.]

{Waiver of Mediation. If a party determines that mediation is not appropriate in the matter at issue, the party may motion to waive mediation and serve the motion on all other parties. The motion shall include a plain and concise statement of the facts so as to inform the parties and the court of why the party is objecting to mediation. The Motion to Waive Mediation may be substantially in the form set forth as Appendix (See Motion Form, Page 121, Appendix of Forms) to these rules.

(a) A motion to waive mediation must be made within fourteen (14) days of the court notice or the pleading setting the matter at issue. The motion may be accompanied with pleadings necessary to set the substantive issues before the court.

(b) The court may set a hearing on the motion to waive the mediation for no later than fourteen (14) days from the filing of the motion and shall notify all parties.

(c) A court hearing on a motion to waive mediation shall order that mediation proceed except for good cause shown. If the court determines that the matter should not be subject to mediation, the court shall set the matter for a hearing on the substantive questions in dispute.}

(6) Other Procedure

(a) The court may modify the times for notice and objection if a party is unrepresented by legal counsel or for good cause shown. A modification can be retroactive.

(b) The calculation of the timelines under these rules shall be made in accordance with ORCP 7D(2)(d)(ii).

(c) Service of pleadings shall occur as set forth in Chapters 111 to 116 and 125 to 130 or shall be governed by the Oregon Rules of Civil Procedure. Proof of service of pleadings required by these rules shall be filed with the court with a copy of the pleading.

(d) In the event the times set forth in these mediation rules prejudice a party's statutory rights, the court shall provide relief for the party if the relief is consistent with the fair adjudication of disputes.

(e) If there is a dispute about whether or not an attorney or other advocate should be present at mediation under these rules, a court shall make the determination and shall rely on the policy to encourage the use of attorneys and advocates.

(7) Choice of Mediator

A mediator shall be chosen by the parties or the court as follows:

(a) By stipulation of the parties.

(b) If [*mediation is by order of the court or*] there is no [*O*]{**o**}bjection to [*M*]{**m**}ediation, each party shall provide all parties a list of acceptable mediators within [*twenty-one (21)*)] {**fourteen (14)**}days of the [*order or from service of the Notice of Mediation*] {**pleading setting the matter at issue**}.

(c) If there is an [*O*]{**o**}bjection to [*M*]{**m**}ediation and a court determination that mediation shall proceed, each party shall provide all parties a list of acceptable mediators within seven (7) days of the order on the [*O*]{**o**}bjection.

(d) The parties shall make a good faith effort to find a mutually agreeable mediator. Once a mediator is chosen by the parties the noticing party shall inform the court of the mediator's name and address.

(e) If the parties cannot agree to a mediator within seven (7) days from the date the list was required to be furnished, a party may file a *[M]*{**m**}otion to [*A*]{**a**}ppoint a [*M*]{**m**}ediator. That motion must be served on all parties and any party may file a [*R*]{**r**}esponse with a list of their choice of mediators and a plain and concise statement of facts about why one of the mediators on their list should be appointed. The court shall appoint a mediator qualified under paragraph (8) (b) of this rule that appears on the list of at least one party and is not required to hold a hearing.

(8) Qualification of Mediator

(a) A mediator qualified for probate mediation must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estates, trusts or protective proceedings, (ii) an individual with special skill or training in the administration of estates, trusts or protective proceedings, or (iii) an individual with special skill or training as a mediator.

(b) A mediator appointed by the court rather than by agreement of the parties shall also (i) comply with the Oregon Judicial Department Court-Connected Mediator Qualification Rules and (ii) have attended the Multnomah County Probate Department mediation training.

(c) The mediator shall not have an interest in any of the issues subject to dispute and shall not be related to a party.

(9) Date for Mediation

Upon the designation of a mediator by the parties or the court appointment of a mediator, the mediator and the parties shall establish a date for the mediation. If a date cannot be agreed upon within fourteen (14) days of the designation or appointment of the mediator, a party may motion the court to set a date for the mediation and the procedure shall be substantively similar to that for the appointment of a mediator in Rule 12.045(7)(E).

(10) Duration of Mediation

Parties to mediation shall mediate in good faith. In all cases the mediation must last at least three (3) hours unless the matter is conclusively resolved in less time or if the mediator concludes that no progress is likely to occur.

(11) Mediation Agreement. A resolution of the matter that is the subject of the mediation shall be memorialized in writing and signed by the mediating parties. Subject to the waiting period set forth below, the agreement shall be binding on all signors.

(a) Each party to the mediation shall have seven (7) days to repudiate the agreement. {**A repudiation shall be in writing. Parties may agree to eliminate or change the period of time during which repudiation may occur.**}

(b) After seven (7) days {**or such different time period as the parties may agree,**} the parties to the agreement shall reduce it to a court order or judgment for approval of the court.

(c) If a party repudiates the agreement, the party shall immediately inform the mediator and all parties and the mediator or any party shall inform the court. The matter shall be scheduled for hearing by the court in the same course and with the same priority on the docket as though there had been no mediation.

(12) Costs of Mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties unless the parties agree otherwise.

(a) The details of mediation costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter.

(b) Nothing in these rules is intended to affect a party's right to petition for payment or reimbursement of fees and costs pursuant to another rule or statute in the underlying matter.

(c) A party shall not be kept from mediation due to indigency and the court shall establish procedures for mediation when there is an indigent party.

(13) Compliance

If a party does not comply with these rules, any other party may motion the court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with the compliance proceeding unless the court at the hearing determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

CHAPTER 13

ARBITRATION

13.025 REQUEST FOR AND OBJECTIONS TO ARBITRATION

(1) Any party may file and serve notice of a request that the Court transfer a case to arbitration.

(2) A party opposing exemption from arbitration pursuant to UTCR 13.070 shall file such opposition, in writing, within three days of the filing of the motion for exemption. A Court decision on such exemption will be rendered within five days following the filing of a motion for exemption from arbitration, regardless of whether opposition was filed. 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.

13.032 SUBMISSION OF COPIES OF MOTIONS AND OTHER DOCUMENTS TO CHIEF ALTERNATIVE DISPUTE RESOLUTION JUDGE

For cases subject to arbitration, and except for motions requiring decision by the arbitrator, any motion, challenge, response or reply required or allowed by these rules, the Oregon Revised Statutes or the Uniform Trial Court Rules, must include a copy which shall be delivered to the Chief Alternative Dispute Resolution Judge contemporaneous with the filing of such motion, challenge, response or reply. The party preparing the document is responsible for delivery of the copy to the Chief ADR Judge.

13.035 COURT SHALL DETERMINE WHETHER CASE IS SUBJECT TO ARBITRATION; AMENDMENT OF PLEADINGS

(1) A case assigned to arbitration will not be exempted without an order, supported by a motion and affidavit, declaration, or certification under ORCP 17C.

(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.

(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 Arbitration Clerk in the Civil Division of the Office of 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 foregoing 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 this 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 Arbitration Clerk in the Civil Division of the Office of 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 ASSIGNMENT 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 assigned to arbitration. No case shall be assigned to arbitration until all parties have appeared or have had a judgment of default entered against them. If a case has been assigned 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) In the event that funds are available under ORS 36.420 for the payment of fees that are waived or deferred, the arbitrator shall be reimbursed after completion of the arbitration, filing of the arbitration award, and submission of a request for payment to the Trial Court Administrator. Such request shall be in the form of a certificate stating the identity of the case, the total hours of service the arbitrator provided, and the share of those hours chargeable to the indigent party. If funds are available, reimbursement will be provided for the hours authorized by the court under the UTCR 13.120 (1) compensation schedule for each indigent party. The certificate must be accompanied by a copy of the order deferring or waiving fees of the indigent party. Requests for payment should be submitted with the award or within 90 days of the submission of the arbitration award.

(2) In the event funds are not available under ORS 36.420 for the payment of fees that are waived or deferred by court order, a party may request that the clerk provide to the parties a list of arbitrators who have agreed to serve for no compensation, for compensation from one party only, or at a reduced rate.

(3) The clerk shall provide names of available arbitrators, but no arbitrator is required to serve unless he or she has agreed to such alternate fee arrangement.

13.055 ARBITRATORS

(1) To qualify as an arbitrator, a person must sign and file an application to be placed on the list of arbitrators, and, if not a retired or senior judge or stipulated non-lawyer arbitrator, be an active member of the Oregon State Bar at the time of each appointment. The Chief Alternative Dispute Resolution Judge may remove a person as an arbitrator if such person fails or refuses to comply with the rules governing the performance of arbitrators, as required by the Oregon Revised Statutes, UTCR or these rules. The Arbitration Commission may adopt additional requirements for inclusion or retention on the list of arbitrators, including experience, training and continuing education.

(2) There shall be a panel of arbitrators in such number as the Arbitration Commission may from time to time 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, street address, email address, fax, and phone numbers, and if they have any preference against certain types of cases (e.g., no family law). A list showing the names of arbitrators available to hear cases will be available for inspection in the Room 210 of the Multnomah County Courthouse. An arbitrator who is no longer willing or able to serve as an arbitrator shall immediately notify the arbitration clerk.

(3) The appointment of an arbitrator is subject to the right of that person to refuse to serve on an individual case. An arbitrator must notify the clerk immediately 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.

(4) If such disqualification or refusal occurs, the arbitrator must notify all parties and immediately return all appointment materials in the case to the clerk.

(5) The parties shall confer, pursuant to UTCR 5.010, to select an arbitrator. The plaintiff or petitioner shall initiate communications for such selection. However, if the plaintiff or petitioner is appearing pro se, an attorney for the defendant(s) shall initiate such communications. If all parties are appearing pro se, or if good faith conference is unsuccessful, each party shall strike 2 names from the list of arbitrators, and return such list to the Chief ADR Judge, with a copy to and proof of service on the other party or parties. The Chief ADR Judge shall then select the arbitrator from the remaining names. In the event no names remain, the Chief ADR Judge may approve the issuance of a second list.

13.065 STIPULATIONS

No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings, the purpose 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 or parties.

13.071 UNTIMELY FILED MOTIONS TO EXEMPT FROM ARBITRATION

If a party moves the court for an order of exemption from arbitration, pursuant to the provisions of ORS 36.405(2)(b) and UTCR 13.070, more than 14 days after the court's notice to the parties that the case has been assigned to arbitration, the court may allow such motion and enter an order under ORS 36.405 (2)(b), but only upon the condition that the parties have elected to comply with SLR 12.025 or are not in violation of SLR 7.075.

13.075 See 12.025 et seq. for mediation as an alternative to arbitration.

13.085 FILING AWARD

(1) The arbitrator shall not file an arbitration award with the court until the issues of attorney fees and costs have been determined. The arbitrator shall certify on the award that no issues of costs or attorney fees remain undecided upon filing of the award. Unless otherwise ordered by the court, no amended or supplemental arbitration award shall be filed, regardless of whether judgment has been entered on the original.

(2) 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.

13.165 TIME FOR ARBITRATION HEARING - 91 DAY TIME PERIOD PURSUANT TO UTCR 13.160 (2)

Pursuant to UTCR 13.160 (2), except for good cause shown, the hearing must be scheduled to take place not later than 91 days, measured from the date of assignment to arbitration. With the exception of applying this 91 day time period in place of the 49 day time period set in UTCR 13.160 (3), all other requirements of UTCR 13.160 (3) and (4) apply to the scheduling, postponement or continuance of an arbitration hearing.

13.255 RETURN OF WRITTEN NOTICE OF APPEAL AND REQUEST FOR TRIAL DE NOVO SUBMITTED FOR FILING BEYOND THE TIME PERMITTED

A written notice of appeal and request for a trial de novo received by the trial court administrator for filing beyond the time for filing such a notice under ORS 36.425 and, if applicable, ORCP 10 C, may be returned by the presiding judge, or a designee judge, to the party who submitted the

document, with an order, copied to all parties, stating the finding that the document was received beyond the time permitted by law. A copy of the returned notice of appeal and request for trial de novo will be attached to the filed original of the order as a record of the submitted document, but will not be filed separately in the action.

CHAPTER 14

REFERENCE JUDGES

14.015 STENOGRAPHIC REPORTER NOTES; MOTIONS TO CORRECT TRANSCRIPTS

(1) The stenographic reporter or person keeping the audio record of the proceedings shall file the transcript notes or electronic medium containing the audio record and the log of the recordings on the electronic medium of the proceeding with the Court.

(2) SLR 6.045 shall apply to Reference cases.

14.025 COMPENSATION OF THE REFERENCE JUDGE

(1) The reference judge shall deliver to the Presiding Judge the written statement specified in ORS 3.321(3) within 49 days of the termination of the referral of the action. The written statement or facsimile shall specify the amount to be released by the Court to the reference judge.

(2) The amount paid to the reference judge from the Court shall not exceed the amount deposited into court.

(3) If a discrepancy exists in the amount of claimed compensation, the Presiding Judge shall, upon notice from the reference judge, order the parties to deposit further funds with the Court.

14.035 RECORDS OF PROCEEDINGS

(1) The reference judge shall maintain written records for the Court of the following:

(a) Witnesses;

(b) Court reporters or persons keeping the audio record;

(c) Exhibits.

(2) The reference judge may designate a clerical officer to maintain such records. Such an officer shall be approved by the Trial Court Administrator or designee.

(3) The above records shall be kept on forms approved by the Trial Court Administrator or designee.

CHAPTER 15

SMALL CLAIMS DEPARTMENT

15.015 FILING PROCEDURES

(1) Plaintiffs must either file their claim at the Small Claims Department of the Civil Division at the Multnomah County Courthouse; or

(2) If the plaintiff or the defendant resides, or the claim arose, East of l22nd Avenue extending to the North and South boundaries of Multnomah County, the claim may be filed in the Gresham [*Court, 150 W. Powell, Gresham*] {**East County Courthouse, 18430 SE Stark Street, Gresham, after March 2012**}. [*Civil cases filed in Gresham Court are limited to small claims*.]

15.025 APPOINTMENT OF GUARDIAN AD LITEM

(1) Plaintiffs and Defendants who are "incapacitated," "financially incapable," or who are "respondents" as defined in ORS 125.005, must have a guardian ad litem appointed to pursue or defend the action. If such an individual is also a "protected person," as defined by ORS 125.005, the conservator or guardian shall be appointed, unless otherwise ordered by the court.

(2) Plaintiffs or Defendants who are unemancipated, unmarried, minors, living apart from their parent(s) or legal guardian(s), and who meet the definition of a "minor" under ORS 109.697, and who also meet the definition of "tenant" under ORS 90.100, may appear in a small claims action based on a contract for a residential dwelling unit or for utility services provided to that unit, without appointment of a guardian or guardian ad litem.

(3) Unemancipated minors to whom the statutory definitions listed in subsection (2) of this rule are applicable, but who wish to appear in small claims court on other grounds not listed in subsection (2), must have a guardian ad litem appointed to pursue or defend the action.

(4) All other unemancipated minors, to whom the statutory definitions listed in subsection (2) of this rule are not applicable, must have a guardian ad litem appointed to pursue or defend a small claims action.

15.035 HEARING NOTICE

The Court will give the parties not less than seven days' notice of the small claims hearing unless otherwise directed by the Presiding Judge or designee.

15.045 DISMISSAL FOR FAILURE TO PURSUE CLAIM

A judgment of dismissal, without prejudice, for want of prosecution, may be filed and entered on the Court's own motion, following notice by the Court of intent to dismiss pursuant to ORCP 54B(3), 90 days after the date a claim is filed, unless the claim is set for a hearing or a default judgment is entered.

15.055 REPRESENTATION BY ATTORNEY ONLY BY COURT ORDER

(1) All requests to employ counsel must be made in writing at least seven days prior to the date of the hearing.

(2) If consent to employ counsel is granted, the requesting party must give written notice to all other parties. Once such permission is granted, any party may retain counsel.

(3) If consent to employ counsel is granted by the Court, the Oregon counsel may associate a foreign counsel under UTCR 3.170.

15.065 TIME EXTENSION

On written request filed with the Small Claims Department at least seven days prior to the hearing date, the Court may extend the time within which to make appearances or file documents. The time extension will not exceed 30 days.

15.075 COMMUNICATION IN WRITING

Any written communication to the Court must be copied to all parties.

15.085 TRANSFER OF CLAIM FROM SMALL CLAIMS DEPARTMENT

SLR Chapter 15 shall cease to govern a claim after the transfer of the claim from the small claims department to a court of appropriate jurisdiction.

15.095 REQUESTS FOR POSTPONEMENT

Requests for postponement of a scheduled hearing must be made in writing at least seven days prior to the hearing.

15.105 See SLR 12.035 for mandatory mediation in small claims action.

15.115 AUTHORIZED AGENTS IN SMALL CLAIMS CASES

An agent shall be designated by any organization filing or defending a Small Claim. The designated agent may be ordered to appear before the Court.

15.125 See SLR 5.065 for Judgment Debtor Exams in Small Claims Actions

15.135 See SLR 5.085 for Claims of Exemption Not to Contest Judgment

15.145 See SLR 6.025 for Payment of Trial Fees and Hearing Fees

15.155 See SLR 7.045 for Motion for Change of Judge

CHAPTER 16

VIOLATION OFFENSES

16.025 PRE-ARRAIGNMENT AND ARRAIGNMENT APPEARANCE OPTIONS

(1) Prior to any arraignment date specified on the summons, the defendant may exercise one of the following options to dispose of the case:

(a) The defendant may file a written plea of guilty or no contest and pay the base fine amount on the summons, or, if available, the fine established by the Violation Bureau, by mailing the written plea and a check or money order for the fine to the Court. The plea and payment must reach the Court on or before the arraignment date.

(b) The defendant may enter a written plea of guilty or no-contest and submit a written explanation of the incident in mitigation of the penalty. A check or money order for the amount indicated on the summons must be included. The letter and plea must reach the Court prior to the arraignment date.

(c) Except for violations based on photo radar or photo red light enforcement (ORS 810.434 through ORS 810.439), the defendant may appear, enter a plea of not guilty, and sign a waiver of the defendant's right to have testimony presented orally, as provided in ORS 153.080. (See Form 06-45, Page 104, Appendix of Forms.) The waiver shall be on a form provided by the Criminal Division of the Trial Court Administrator's Office. The waiver shall include an agreement to pay, within 30 days after receiving notification from the court, any fines and fees imposed by the court following review of the case. The waiver of oral testimony will be filed in the case and the matter will be set for trial. At the trial, any witness, including the defendant, may have the witness' testimony presented to the Court by affidavit and need not appear personally.

(d) The defendant may enter a written plea of not guilty and request that the matter be set for court trial. Any defendant electing to proceed under this subsection must verify his or her residence address and current mailing address. Defendants may request a court trial either in writing, mailed to the Court, or in person. The request must be received on, or prior to, the arraignment date. As set forth in SLR 16.195, below, a default judgment which exceeds the base fine amount set on the citation may be imposed against a defendant who requests a court trial but fails to appear in court for such proceeding.

(2) At the date and time set for arraignment on the summons, the defendant may appear in person, or by counsel, and may enter a plea of guilty, no contest, or not guilty.

(a) If the defendant enters a plea of guilty or no contest, an explanation or statement may be given in mitigation of the offense charged.

(b) If the defendant enters a plea of not guilty, a court trial will be scheduled. The defendant may sign and file a waiver of oral testimony as provided in subsection (1)(C), above. For violations based on photo radar or photo red light enforcement (ORS 810.434 through ORS 810.439), the defendant must appear personally for trial (ORS 153.061(6)). The defendant or counsel must contact the court if a trial notice and court date is not received within four weeks of the arraignment.

16.065 VIOLATIONS BUREAU

(1) Pursuant to ORS 153.800, The Fourth Judicial District establishes a Violations Bureau.

(2) A person may appear in person to pay the Violations Bureau fine, costs and assessments, or make payment by mail.

(3) If the cited person appears personally, a form which records the person's appearance and contains a waiver of trial and plea of guilty, shall be signed and filed with the Court, pursuant to ORS 153.800(5)(a).

(4) The fine and applicable assessment(s) shall be paid immediately and in full at the Violations Bureau, unless the Court approves a deferred payment.

16.075 NOTICE OF REPRESENTATION BY ATTORNEY

(1) If the defendant is represented by counsel for purposes of a first appearance on the violation, the attorney may file with the court a notice of representation and enter a plea on behalf of the defendant. The notice and plea must be signed by the attorney and the signed original notice must be filed prior to the date of the first appearance set on the summons.

(2) If a defendant is to be represented by an attorney at trial on a violation, and a notice of representation has not been filed previously, notification in writing of such representation together with proof of service on the District Attorney must be filed. The signed original notice of representation must be filed prior to the date of the trial.

(3) Letters submitted for filing under this rule may not be submitted by facsimile transmission (FAX).

16.085 POSTPONEMENTS

(1) Arraignment

(a) Except for cases cited to appear in Community Court, requests for an order for postponement of an arraignment appearance must be made by personally appearing in court

or in written form signed by the party. If the request is made in written form, the request must be received by the Court at least two judicial days prior to the original arraignment date. Prior to the arraignment date specified in the summons, the defendant may select one of the options described in SLR 16.025(1) as an alternative to requesting a postponement.

(b) Arraignments for cases cited to appear in {**a**} Community Court may not be postponed.

(c) Personal appearances for the purpose of requesting a postponement of an arraignment must be made at the location specified in the citation.

(d) Requests made in written form for a postponement must be delivered for filing to the Circuit Court at:

(i) 1021 S.W. 4th Ave, Room 106 Portland Oregon, 97204 for cases cited to appear in the downtown court facility; or

(ii) 150 W. Powell Blvd, Gresham Oregon, 97030 {**through February 2012 and 18430 SE Stark Street, Gresham, OR thereafter**} for cases cited to appear in the Gresham [*Court facility*] {**East County Courthouse**}.

(2) Court Trials

(a) A party's first request for a postponement of a court trial must be made in written form signed by the party and received in the Criminal Calendaring Section at the downtown courthouse, or the Gresham [*Court facility*] {**East County Courthouse**}if the violation is proceeding in Gresham, more than 14 calendar days prior to the scheduled trial date.

(b) Subsequent requests for a postponement of a court trial must be made by personally appearing in court or in written form signed by the party. The motion must demonstrate good cause for the request in order to be granted.

(i) If the request is made in written form, the request, along with proof of notification of the request for postponement to the opposing party, must be received by the Court at the locations listed in paragraph (1)(d) of this rule more than 14 calendar days prior to the scheduled trial date.

(ii) Requests made in person shall be submitted ex parte in courtroom 112 of the downtown courthouse, or in Gresham if the case is cited to appear in that facility, at 8:30 am or 1:30 pm, Monday through Friday when court is in session.

(c) The party requesting a subsequent order for postponement must notify the opposing party in writing prior to submitting the request to the Court. The notice must specify whether the postponement request will be made in written form or by personal appearance. If the request is to be submitted by personal appearance, the party must provide notice to the opposing party of the date, time and location of the appearance, and indicate that the

opposing party may appear to contest the request. The opposing party may contest the request either in written form delivered for filing to the appropriate court location, as defined in (1)(d) above, more than eight days prior to the date of the ex parte appearance, or in person by appearing at the ex parte hearing to contest the opposing party's request for the postponement.

(3) Notice to Parties of Postponement

When the court grants a postponement, the court will notify all parties to the action. If the postponement is granted in open court, parties personally present are deemed notified. Any witnesses must be notified of the postponement by the party intending to call the witnesses.

(4) Requests for an order for postponement of an appearance may not be submitted for filing by facsimile transmission (FAX).

16.195 SETTING ASIDE DEFAULT JUDGMENTS

A defendant against whom a default judgment is entered may file a motion for relief from default judgment, within a reasonable time, not to exceed one year. The Court requires a written motion for relief, accompanied by an affidavit setting forth facts which demonstrate that the failure to appear or to exercise one of the options described in SLR 16.025, was due to mistake, inadvertence, surprise or excusable neglect. At the time the motion for relief is filed, the defendant must pay to the court the amount of the fine imposed in the judgment. The payment requirement may be waived by the Court for good cause. A motion for relief cannot be filed until the payment is made or waived. The court may rule on the motion without a hearing or may require the defendant to appear and present oral argument.

CHAPTER 17

PARKING VIOLATIONS

17.015 PARKING CITATIONS - DEFENDANT'S APPEARANCE

(1) A person receiving a parking citation has three options to appear:

(a) Plead guilty by paying in full the bail indicated on the citation, either by mailing or personally delivering the payment, together with the citation, to the Multnomah County Courthouse. All payments in full must be received within 30 days of the date of violation.

(b) Mail the full amount of the bail applicable at the time of the request, together with the citation and a letter of explanation to the Multnomah County Courthouse, requesting a judge to make a determination. The court may refund the bail or forfeit all or part of it.

(c) Request a court hearing either by letter or by personally appearing at the Parking Section of the Criminal Division located in the Multnomah County Courthouse. All such requests must be accompanied by a check or money order for the full amount of bail applicable at the time of the request. Bail is forfeited if the person fails to appear at the hearing.

(2) The bail amount set on a parking citation will double after 30 days from the date of issuance of the citation if the defendant has not appeared in a manner indicated by this rule. A partial payment of the bail does not constitute an appearance under this rule.

(3) An Order for impoundment of a vehicle may be issued in the manner set forth in SLR 17.035 if the defendant does not appear in a manner indicated in this Rule.

17.025 DISMISSAL OF A PARKING CITATION BEFORE TRIAL

(1) The Presiding Judge or the Chief Criminal Law Judge may dismiss parking citations without the appearance of the defendant in the following instances:

(a) The parking citation was issued prior to release of title interest and transfer of possession of the vehicle to the new owner, but the new owner is named as the defendant on the notice of delinquency { **, the new owner will be dismissed from the parking offense without a hearing** }. However, the new owner's failure to submit an application for title to the Department of Transportation within 30 days of the transferor's release of interest shall not be grounds for summary dismissal of the citation and an appearance shall be required;

(b) The parking citation was issued subsequent to the release of title interest and transfer of possession to the new owner but the named defendant on the notice of delinquency is the

prior {**registered**} owner. A prior owner who provides documentation described in SLR 17.025(3), below, [*shall not be subject to liability under this chapter, for the parking of the vehicle by another person*] {**will be dismissed from the parking offense**}.

(c) There was no vehicle license number or other registration number written on the citation;

(d) The vehicle license number written on the citation does not correspond to the vehicle registration information filed with the Motor Vehicles Division;

(e) The {**mechanical parking space**} meter at which an overtime parking citation was issued was defective, according to the City of Portland's Office of Transportation;

(f) No violation is indicated on the parking citation;

(g) The parking citation was issued to a vehicle that was reported to the police as stolen within 24 hours of the date and time listed on the citation or was issued on a date when the status of the vehicle remained listed as stolen, and a stolen report was on file with the Police Bureau;

(h) A parking citation was issued to a vehicle on government business of such urgency that the driver was prevented from complying with parking regulations. The driver must sign an affidavit describing the urgent circumstances, and the department owning the vehicle must verify that the vehicle was on urgent government business;

(i) The Court received a special written report from the issuing officer or Parking Patrol deputy explaining that there was no basis for the parking citation and requesting that it be dismissed; or

(j) The exemption or privilege in ORS 811.635 for the holder of a disabled person parking permit is applicable to the type of parking offense cited and the registered owner or other recipient of the ticket provides proof to the Clerk of the Court of a valid disabled person parking permit at the time of the violation. This includes:

(i) Overtime tickets, or tickets for parking in a metered space without paying, unless the zone allows parking for only 30 minutes or less; or
(ii) Parking in a disabled zone pursuant to ORS 811.615(1)(a); or
(iii) Disabled zone parking offenses cited under Portland City Code 16.20.250 if a disabled person was being transported; or

(k) A parking citation was issued for unlawful use or misuse of a disabled person parking permit for parking in a manner that would otherwise be a privilege for a permit holder and the registered owner or other recipient of the ticket provides proof to the Clerk of the Court of renewal of an expired disabled person parking permit.

(2) The Presiding Judge or the Chief Criminal Judge may dismiss the parking citations listed in SLR 17.025(1) by signing a list containing the license numbers of the vehicles and the reasons for the dismissals.

(3) When a parking citation is subject to dismissal under SLR 17.025(1)(A) or (B), above, the person receiving the notice of the citation must bring the parking citation(s) and relevant documents relating to the transfer of the vehicle, including title, bill of sale or contract and vehicle registration if available, to the Parking Section of the Criminal Division. Proof that the prior owner notified the Department of Transportation of the transfer of the vehicle as required by Oregon law, together with proof of delivery of possession of the vehicle and assignment of title to a transferee, shall exempt the prior owner from liability for the parking of the vehicle by another person, provided the date of issuance of the parking citation is subsequent to the date of transfer of the vehicle reported by the prior owner.

(4) In all cases, the Presiding Judge or the Chief Criminal Judge may order a hearing to prevent abuse of the summary dismissal proceedings.

17.035 TOWING AND IMPOUNDMENTS

(1) The Court may order a vehicle towed {**and impounded**}if the registered owner or any other person, has not paid the bail or fine accrued on the parking citation in full, including {**all**} amounts that have accrued after the first 30-day period, or posted bail in full and requested a hearing. The Court order for towing and impoundment of the vehicle may be issued 60 days after the date on which the notice of delinquent parking citation is mailed to the {**registered**}owner {**or 90 days following filing of the citation if a registered order cannot be determined}**. {**The towing and impoundment order attaches to the vehicle for which it is issued *in rem*, as the instrumentality of the parking offenses, and will not be removed until further order of the court**.}

(2) Requests for a court hearing on the validity of a parking citation after receipt of an impoundment notice, or after impoundment, must be made personally at the Multnomah County Courthouse. All requests must include the posting of the {**total**} amount of [*bail*] [**the financial obligations against the vehicle for parking citations that are unpaid in full or in part** } applicable at the time of the request, unless waived by a judge. [*The bail is the amount of bail or fines accrued on all the parking citations against the vehicle towed or impounded, including bail amounts that have doubled pursuant to SLR 17.015(2).]*

{**(3)**} **Subsequent Bona Fide Purchaser for Value Hearing on Impounded Vehicle**

{**(a) A subsequent bona fide purchaser for value of a vehicle that is towed and impounded under an order of the court for unpaid financial obligations which all relate to the prior owner of the vehicle, other than citations incident to the towing, may request an ex parte hearing to apply for an order for the release of the vehicle from the impoundment order without complying with the requirement of section (2) of this rule. The person requesting the hearing must provide to the court at the hearing the**

documents supporting the claim that the person is a bona fide purchaser for value relating to the transfer of the vehicle, including title, if available, bill of sale or contract stating the purchase price for the vehicle and proof that the purchaser has registered and titled the vehicle in the purchaser's name in the appropriate jurisdiction as required by statute and proof that a fair market price was paid for the vehicle. Proof of payment consists of a negotiated bank check payable to the seller (or a bank image of such a check), endorsed by the seller and drawn on the checking account of the purchaser or such other proof of payment as the court may find acceptable. In addition to documentation of the purchase and transfer, the person must provide evidence that the transfer of ownership on the sale was not a transaction between parties with a shared interest in avoiding the towing and impoundment of the vehicle and the financial liability due on the outstanding parking citations. Transfers of vehicles for no value or between family members or individuals who share or have shared a residential address will raise a rebuttable presumption that the transfer or purchase of the vehicle was to avoid the financial obligations due on the parking citations for which the vehicle was impounded and was not a bona fide purchase for value.

(b) An ex parte hearing requested under this rule will be conducted as soon as is possible and within two business days. Following the hearing, the court may release the vehicle to the subsequent bona fide purchaser for value without requiring payment of the outstanding financial obligations by the prior registered owner arising from unpaid parking citations owed on the vehicle. If the court denies relief under this section, then the person may only proceed under section (2) of this rule for a hearing.

(c) The release of the vehicle under this rule will not address any other financial obligations arising from the towing and impoundment of the vehicle owed to third parties or the rights of the subsequent bona fide purchaser for value against a prior owner of the vehicle.

(d) A release without payment of the financial obligations due on the vehicle under this section does not remove the duty of any prior registered owner or defendant to pay those unpaid financial obligations for parking citations incurred in the ownership or use of that vehicle. The release only dissolves the court's hold on the vehicle and removes it from further orders for towing or impoundment based on the citations issued prior to the sale of the vehicle to the person given relief under this process.

17.045 NOTICE OF REPRESENTATION BY AN ATTORNEY

An attorney representing a person in a parking citation case must notify the Court in writing of the representation at least seven days before the date of trial. The notification must certify that a copy has been delivered to the prosecuting attorney.

17.055 POSTPONEMENTS AND OTHER MOTIONS

(1) When requested at least 14 days prior to the scheduled trial date for a parking citation, a person may obtain a single postponement of the court hearing. Such requests may be made in writing or by appearing personally at the Parking Section of the Criminal Division. The person making the request must state a reason for the postponement.

(2) Additional postponement requests must be decided by the Court and will only be granted if good cause is shown. The request must be in writing and state the reasons relied on for the request. Such requests must be received by the Court at least 14 days prior to the scheduled hearing date. At its discretion, the Court may require an appearance, oral argument, and the presentation of evidence on a motion for postponement.

(3) At any time before the trial date, the person cited, whether or not represented by counsel, may withdraw a not guilty plea or remove the case from the court docket by following the procedure for mail pleas set out in SLR 17.015. The Court will notify the police officers, the parking enforcement deputies and volunteers and the District Attorney, when appropriate.

(4) A person whose car has been ordered impounded by the Court may appear personally at the Parking Section of the Criminal Division and request that the matter be placed on the Traffic Court Calendar. Bail is required unless waived by a judge.

17.065 HEARING PROCEDURE IN PARKING CITATION CASES

(1) In trial, the judge may take an active role in questioning the witnesses to insure substantial justice will be done.

(2) Jury trials are not permitted in parking citation cases.

(3) Parking citations issued against a particular defendant's vehicle may be consolidated for trial only at the discretion of the Court.

17.067 FAILURE TO APPEAR

(1) The registered owner of a vehicle for which a parking citation is issued, is required to appear, as described in SLR 17.015, above, on the cited offense. If the registered owner of a vehicle for which a parking citation has been issued, or any other person, fails to appear to answer the citation within 30 days, the court may, after notice to the named defendant, enter a default judgment against the defendant 60 days from the date of the citation. The notice of citation mailed to the named defendant will indicate the length of time before which the court will make a finding on the citation based on available evidence, without a hearing, and enter judgment thereon. If the determination is one of conviction, the court may impose a sentence of a fine up to the maximum amount allowed by law and may order a warrant for the impoundment of the vehicle listed on the citation to enforce the

collection of the fine. Citations may also {**have collection and late fees added to the financial obligations to be paid and**} be assigned [*to the Department of Revenue*] for collection. Unless otherwise ordered by the court, a judgment of conviction on the parking citation shall be entered against the registered owner of the vehicle.

(2) A defendant against whom a judgment is entered under subsection (1) of this section, may file a written motion for relief from default judgment within a reasonable time, not to exceed one year. An accompanying affidavit must set forth facts demonstrating that the failure to appear on the citation in a manner set forth herein, was due to mistake, inadvertence, surprise or excusable neglect. At the time the motion for relief is filed with the court, the defendant must post bail in the amount of the fine imposed in the judgment. The bail requirement may be waived by the Court for good cause. A motion for relief cannot be filed until the bail is posted or waived by the Court. The Court may rule on the motion without a hearing or may require the defendant to present oral argument, and may grant or deny relief from the default judgment.

CHAPTER 18

FORCIBLE ENTRY AND DETAINER (FED)

18.015 STAY OF DEFAULT, FED EX PARTE TIME

A party seeking to set aside a default judgment in an FED proceeding must obtain a judicial order to stay the judgment pending disposition on the motion to set aside the default. Motions for stay must be presented at FED ex parte proceedings in courtroom 120 at 8:30 am on each judicial day.

18.025 AUTHORIZED AGENTS

An agent shall be designated by any organization filing an FED. The designated agent may be ordered to appear before the court and answer questions regarding the assets and debts of the organization.

18.035 MEDIATION IN FED FIRST APPEARANCES

If an FED case is not resolved by the parties at first appearance, parties may be required to participate in mediation orientation before the case is set for trial.

18.045 PAYMENT OF ADDITIONAL FILING FEES FOR TRIAL DEMAND

(1) If a defendant makes a demand for a trial under ORS 105.137 (5) at the time of the first appearance, the filing fees required to be paid under ORS 105.130 (3) and (6) shall be paid no later than 5:00 pm of the same judicial day unless otherwise ordered by the court. No trial will be scheduled in the action until the required fees are satisfied.

(2) Failure of the plaintiff to pay the fee required will result in dismissal of the action.

(3) Failure of the defendant to pay the fee required may result in a judgment by default against the defendant.

18.055 See SLR 7.045 for Motion for Change of Judge

18.065 See SLR 7.055 for Call/Assignment

18.075 See SLR 7.055(7) for Abated and Stayed Cases

18.085 See SLR 7.055(8) for Duty of Attorney at Call/Assignment

18.095 See SLR 15.095 for Requests to Postpone Hearings

FORMS APPENDIX
TO SUPPLEMENTARY LOCAL RULES

The following forms are referred to in the Supplementary Local Rules. They can be photocopied or reproduced in your own word processing system. Please follow as closely as possible the format of the form. Where indicated, please be sure to provide the required number of copies for processing.

SPACE RESERVED FOR
FORM 03-58 (7/11) TITLE
(See SLR 4.007 (3))

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

_____ Plaintiff,	)	Case No.
v.	)	
	)	**MOTION PRAECIPE**
_____ Defendant.	)	

☐ Defendant
☐ Plaintiff

Notice is hereby given that _____, attorney for _____ has set a motion for hearing as follows:

Judge (or Pro Tem):

Date _____ Time _____ Room

OR

On Call _____ in Room 208 at 9:00 a.m. for assignment for hearing on _____
(Date) (Date)

This is a ☐ first ☐ subsequent setting for this motion.

☐ Moving party waives appearance ☐ Reporting is requested (fee required when motion filed)

☐ Hearing by telephone requested (office more than 25 miles from courthouse)

Length of time requested for this motion hearing

TYPE OF MOTION:

☐ ORCP 21	☐ Prima Facie Default	☐ Set Aside Default
☐ Summary Judgment	☐ Compel Production	☐ Change Venue
☐ Other		

I certify that I served a copy of this praecipe as required by SLR 5.015 on the _____ day of_____, _____ on the following (indicate name and address):

_____ _____
Date Signed Signature

OSB NO. _____ Telephone Number _____

IMPORTANT: If applicable, the certification required by UTCR 5.010, "conferring on MOTIONS under ORCP 21,23 and 34-46," must be filed separately.

Distribution: *Original Praecipe (Blue)* - to Judge (if assigned) **OR** to Rm. 210, Calendar Clerk (if on call), with courtesy copy of motion; *Copy of Praecipe* - to opposing parties, with courtesy copy of motion. See, SLR 5.015

(DO **NOT** FILE A COPY OF PRAECIPE WITH ORIGINAL MOTION PAPERS)

Motion Praecipe
05-06 (1/98) (See SLR 5.015 (7))

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

_____ Plaintiff	)	Case Number
	)	**EX PARTE**
v.	)	
	)	**MOTION FOR SHOW CAUSE HEARING and ORDER**
_____ Defendant	)	

_____ comes now before the court and moves the court to set a show cause
(insert the name of the party requesting the show cause hearing)
hearing. The original of the underlying show cause documents are presented to the court herewith to be filed in the office of the clerk of the court.

Nature of the Proceeding For Which A Show Cause Hearing Is Requested:

☐ For Preliminary Injunction. ☐ For Writ of Review. ☐ For Receivership.

☐ Provisional Process. ☐ For Claim and Delivery.

☐ Other Proceeding As Follows:_____.

Estimated Length of Hearing:_____.

I certify to the court that I have complied with SLR 5.025 (3) regarding one judicial day's notice of an ex parte appearance to opposing parties, that I will appear at Call as required by SLR 7.055 (8)(A), and will comply with UTCR 7.040 and give the court **immediate notice of resolution of this matter**.

_____
Signature

_____
Name Typed or Printed and OSB Number

ORDER

The request for a Show Cause Hearing is:

☐ Denied and the original show cause documents are returned.

☐ Allowed: The Motion for an order to show cause is set for Call on _____, at 9:00 am, in Courtroom 208, for assignment for hearing on _____ (date). The original show cause documents will be filed by the court with this order.

Date signed:_____.

_____
Signature

_____
Name of Judge Typed or Printed

MOTION FOR SHOW CAUSE HEARING
05-27 (5/00) Distribution: Original--Court Copies--Moving Party (See SLR 5.025 (1))

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

_____	)	Case No.
Plaintiff	)	
v.	)	**PETITION FOR EXPEDITED HEARING**
	)	**(Ex Parte)**
_____	)	
Defendant	)	

Comes now _____, by the attorney named below, and petitions
(insert the name of the party requesting the expedited setting)
for an expedited hearing on the motion indicated below. The underlying motion is presented herewith

for filing with the clerk.

1. Nature of the underlying motion for which an expedited hearing is requested:

☐ Motion to Compel ☐ Motion to Quash

☐ Other Motion As Follows:

2. Nature of the emergency which requires the setting of the motion to be expedited:

3. Trial date: _____; Date certain? ☐ Yes ☐ No

4. The Civil Calendaring Department of the court has been contacted and indicates the court is setting motion hearings on the five week cycle for the week of _____.

5. Judges who have heard previous motions in this matter are: _____.

6. Judges scheduled to hear pending motions in this matter are: _____.

I certify that I have complied with SLR 5.025 (3) regarding notice of this ex parte appearance to the opposing parties.

Date signed: _____ _____

Signature (Attorney)

_____

Name (Typed or Printed) and OSB Number

PETITION FOR EXPEDITED HEARING (EX PARTE) (See SLR 5.025 (2)(b))

05-28A (5/09)

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

_____ Plaintiff(s)	)	**Case No.**
vs.	)	**CERTIFICATE OF ALTERNATIVE DISPUTE RESOLUTION**
_____ Defendant(s)	)	

PURSUANT TO Multnomah County SLR 7.075:

The parties signed below certify that they have complied with the rule by participation in arbitration, mediation, a judicial settlement conference, or some other form of appropriate dispute resolution. The parties participated in the following forms of dispute resolution (check any that apply):

- ❑ Judicial Settlement Conference
- ❑ Arbitration
- ❑ Mediation
- ❑ Other _____ (describe)

Signatures and Date of Signing

Party	Date	Party's Attorney	Date
Party	Date	Party's Attorney	Date
Party	Date	Party's Attorney	Date
Party	Date	Party's Attorney	Date
Party	Date	Party's Attorney	Date
Party	Date	Party's Attorney	Date

05-31 (2002) CERTIFICATE OF ALTERNATIVE DISPUTE RESOLUTION (See SLR 7.075(2))

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

_____ Plaintiff(s)	)	Case No.
v.	)	**ABATEMENT ORDER**
_____ Defendant(s)	)	

IT APPEARING TO THE COURT that the above case cannot proceed for the following reason:

- ❑ Bankruptcy; a copy of the petition or notice of bankruptcy is attached
- ❑ Independent Binding Arbitration (stipulation of the parties is attached)
- ❑ Other

IT IS THEREFORE ORDERED that the above case be removed from the active docket of this Court for a period not to go beyond or exceed this date _____. (The date cannot be more than two(2) years from the date of this order.)

IT IS FURTHER ORDERED that this order shall not be rescinded without an order for reinstatement; and

IT IS FURTHER ORDERED that this case shall be dismissed without prejudice at the expiration of the date set and following notice of intent to dismiss pursuant to ORCP 54B(3), unless this case has been reinstated as an active case before the Court, or otherwise continued or resolved.

Signed _____ _____
Date Presiding Judge

Presented By:

Print Name & OSB#

Attorney for

05-32 (4/07) ABATEMENT ORDER (See SLR 7.055(7))

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

_____ Plaintiff	)	No.
v.	)	**MOTION AND ORDER FOR REINSTATEMENT**
_____ Defendant	)	

Plaintiff moves the Court to reinstate the above case, which was dismissed on _____, as to defendant(s) (indicate)_____ or ☐ All, by the following order:

☐ UTCR 7.020 Judgment of Dismissal
☐ ORCP 54B(3) Judgment of Dismissal (including cases that were reported settled and cases dismissed for failure to appear at trial assignment pursuant to SLR 7.055(8)(A))
☐ Abated or inactive status due to bankruptcy, independent arbitration, appeal or other
☐ Judgment of Dismissal for failure to comply with rules of arbitration (requests under this provision must be presented to the Dispute Resolution Department)

Signature of Attorney:
Print Name and OSB #:

****

IT IS HEREBY ORDERED THAT the judgment of dismissal is vacated, the case is reinstated, and:

☐ Continued under UTCR 7.020, subject to the condition that plaintiff obtain service on the defendant(s), secure the necessary appearances to place the case at issue, take default judgment(s), or move for further continuance no later than _____ (specify date)
☐ The trial is set for
☐ A trial date will be assigned in the REGULAR COURSE
☐ The final judgment submitted with this motion and order shall be entered forthwith
☐ Other:

Dated:_____ _____
Presiding Judge

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

_____ Plaintiff(s)	)	Case No.
v.	)	**ORDER FOR SEVERANCE OF PARTY AND ABATEMENT**
_____ Defendant(s)	)	

IT APPEARING TO THE COURT that a party in the above case cannot proceed for the following reason:

- ❑ Bankruptcy; a copy of the petition or notice of bankruptcy is attached
- ❑ Other:

IT IS THEREFORE ORDERED that the above case be removed from the active docket of this Court for a period not to go beyond or exceed this date _____. (The date cannot be more than two(2) years from the date of this order.)

IT IS FURTHER ORDERED that this order shall not be rescinded without an order for reinstatement; and

IT IS FURTHER ORDERED that this case shall be dismissed without prejudice at the expiration of the date set and following notice of intent to dismiss pursuant to ORCP 54B(3), unless this case has been reinstated as an active case before the Court, or otherwise continued or resolved.

Signed _____ _____
Date Presiding Judge

Presented By:

Print Name & OSB#

Attorney for

05-38 (12/00) (See SLR 7.055(7))

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

_____ Plaintiff, vs. _____ Defendant.	Case No. **MOTION AND ORDER FOR CONTINUANCE (UTCR 7.020)**

Plaintiff moves the Court for an order extending the reporting period established by UTCR 7.020, as to ☐ the defendant(s) listed below, or ☐ all defendants, based upon the attached affidavit and/or the reasons stated below:

Defendant(s):

☐ Service upon defendant(s) indicated above is not complete
☐ Defendant(s) served, and extension for appearance requested
☐ Defendant(s) defaulted by order, but final judgment not yet entered
☐ Continuance necessary to allow for Prima Facie hearing set for _____ (Specify date)
☐ Other:

Signature of Attorney/Party:
Print Name and OSB#:

****

IT IS HEREBY ORDERED THAT the motion for continuance is hereby:

☐ DENIED

☐ GRANTED, subject to the condition that plaintiff obtain service on the defendant(s), secure the necessary appearances to place the case at issue, take default judgment(s), or move for further continuances no later than_____(specify date).

☐ GRANTED, and this case is **STAYED** as to the defendant(s) listed above pursuant to SLR 7.015(3) pending the outcome of the trial.

Date signed:

_____
Presiding Judge

05-41 (10/99) MOTION AND ORDER FOR CONTINUANCE (See SLR 7.021 (1))

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

_____ Plaintiff	)	No.
v.	)	
	)	**MOTION AND ORDER TO POSTPONE CIVIL TRIAL**
_____ Defendant	)	

Pursuant to UTCR 6.030, ☐ Plaintiff ☐ Defendant moves the court to postpone the current trial date of _____ for the following reason(s):

Case Filing (or Reinstatement) Date:
Number of prior postponements:

REQUESTED SETOVER:	☐ Regular course; ☐ to _____ (specify date)	
Opposing Party:	☐ Consents	☐ Objects
Probable Trial Status	☐ Court	☐ Jury

Estimated Total Length of Trial:

I certify that I have advised my client of this request and served a copy of this motion on all opposing parties. If objected to, at least one judicial day's notice of the date and time of the Ex Parte appearance was give to all opposing counsel.

Dated: _____

Signature of Attorney:
Print name and OSB #:
Attorney for:
Phone number:

****

ORDER

The motion to postpone is **GRANTED**: ☐ in the regular course ☐ to

Dated: _____

_____
Presiding Judge

SUBMIT THE ORIGINAL AND ONE COPY OF THIS FORM

Attach stamped, self addressed confirmation cards for all parties. Any contested request must be presented at Ex Parte. See UTCR 6.030 and SLR 7.035 for further guidelines.

05-82 (9/99) MOTION AND ORDER TO POSTPONE CIVIL TRIAL (See SLR 7.035 (2)(a))

Case Number:

(inserted by clerk)

CIVIL CASE MANAGEMENT SHEET
(Not for Small Claims, FEDs, Family Law, Protective Proceedings or Probate Matters)

PARTIES:

Plaintiffs:	Defendants:

Related cases in Multnomah County Circuit Court (case **number(s)**):
_____
_____

PLAINTIFF ATTORNEY:
Name: _____ OSB Number: _____
Phone Number: _____
Address: _____

□ **If this is not your current address in OJIN, check the box if you wish this to serve as notice of a change of address pursuant to UTCR 2.010(14). THE COURT DOES NOT COORDINATE WITH THE OREGON STATE BAR REGARDING CHANGES OF ADDRESS – SEPARATE NOTICE TO THE COURT IS REQUIRED.**

Email address **FOR ALL COURT-GENERATED NOTICES**: _____

TYPE OF CASE (check **ONE**):

Tort and Employment

___ Motor vehicle (including (UM & UIM)
___ Product liability
___ Wrongful Death
___ Negligence
___ Professional negligence
___ Defamation
___ Fraud
___ Intentional injury to property (including nuisance and trespass)
___ Intentional personal injury (including assault, battery, false arrest, intentional infliction of emotional distress)
___ Employer liability (ELL)
___ Employment discrimination/wrongfuldischarge
___ Wage and hour
___ Employment contract
___ Other (specify): _____

Contract (other than employment)

___ Collections (consumer credit)
___ Insurance
___ Negotiable instrument
___ Shareholder suit
___ Other (specify): _____

Real Property

___ Quiet Title
___ Condemnation/Eminent Domain
___ Foreclosure
___ Specific Performance
___ Other (specify): _____

Other

___ Declaratory Judgment/Injunctive Relief
___ Intellectual property
___ Other (specify): _____
___ Elder Abuse
___ Interpleader (ORCP 31)

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

_____)
Plaintiff Case No. _____

v. **INITIAL CASE MANAGEMENT ORDER**

_____
Defendant

To facilitate the efficient and effective management of this case, the court orders:

____ On stipulation of the parties, the case is designated an **Expedited Civil Jury Case** and is assigned to Judge _____ . (See Expedited Civil Jury Case procedures.)

____ The case is assigned to **arbitration**. The case shall proceed under the rules for court-annexed arbitration (SLR chapter 13). Arbitration must occur within 120 days of the date of this order.

____ The parties will ask the Presiding Judge for **complex case designation**. The presiding judge will conduct a conference on the request on _____ at _____ pm.

___ The case will be heard in the **regular track**.

All pretrial motions will be heard by Judge _____

A trial readiness conference will be held and a trial date will be set on _____ at _____ am/pm. Absent extraordinary circumstances, trial will be held by _____ (12 months from the filing of the complaint).

Dated: _____

_____
Judge

05-96 (7/11) Initial Case Management Order (See SLR 7.011 (5))

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

STATE OF OREGON,	)	Citation #
	)	
vs.	)	
	)	
_____	)	

NOTICE TO DEFENDANT

You may choose any one of the following ways to take care of the citation issued to you:

☐ 1. Enter a guilty or "no contest" plea in person in Court and make a statement to the judge.

☐ 2. Enter a guilty plea or a no contest plea and submit a written explanation. No personal appearance is necessary, but BAIL MUST BE POSTED. *This option may result in a fine or forfeiture of all or part of the bail posted.*

☐ 3. Enter a not guilty plea and have a trial before the judge with the police officer present. If you do not receive a trial notice and court date within two weeks, you must contact the court immediately.

☐ 4. Enter a not guilty plea but agree to have the police officer's testimony present by affidavit. This means that you will appear in Court, but the officer's testimony will be in writing only, unless more information is needed by the judge.

☐ 5. Enter a not guilty plea and submit the entire trial by affidavits of the officer, defendant and any witnesses. This means that your testimony and that of the officer and any witnesses will be submitted to the judge in writing. You will not have to appear in Court, however, your testimony must be completed and turned in to Room 106 by 5:00 P.M. today . Only if the judge needs more information will testimony other than the written affidavits be considered. The case would be set for a hearing and you would be notified of the date and time of the hearing.

I, the above-named defendant, understand the options available to me and have chosen the option checked above. I agree that if I have chosen option #5, I will pay any fines and fees imposed within 30 days of being so notified by the Court. I understand that if I fail to pay the fines and fees as required, my driver's license and right to apply for a license will be suspended.

Date:_____

_____
Defendant's Signature

_____
Address

_____
City / State / Zip

_____
Telephone Number

06-45 (1/04) Trial by Affidavit (See SLR 16.025 (1)(c))

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON, Plaintiff, vs. _____, Defendant.	)))))))	Case No. _____ **DUII Diversion Form 6** MOTION TO EXTEND THE DUII DIVERSION PERIOD AND ORDER

I am the defendant in the above case and I request that the court extend my diversion agreement for _____ (insert time that is not longer than 180 days). I offer the following information in support of this request:

1. I have made a good faith effort to complete the conditions of the diversion agreement.

   a. I have completed the following conditions of the diversion agreement: _____

   _____

   _____

   b. I have <u>not</u> completed the following conditions of the diversion agreement: _____

   _____

   _____

   c. I have <u>not</u> completed the diversion conditions listed in "b" above because (explain): _____

   _____

   _____

   _____

   _____

2. I will be able to complete the conditions of the diversion agreement within the extended period because (explain):

   _____

   _____

   _____

3. I have not asked for or been granted any previous extension of the diversion agreement under ORS 813.225.

4. I understand that:

   a. If I fully comply with the conditions of the diversion agreement within the extended diversion period, the court may dismiss the charge with prejudice if I file a motion under ORS 813.250.

If I fail to comply with the diversion agreement within the extended diversion period, the court will enter a judgment of conviction on the DUII charge and proceed to sentence me without a trial.

This motion and proposed order are respectfully submitted by:

_____	_____	_____
Defendant's Name (typed or printed)	Signature of Defendant	Date

_____				_____
Address	City	State	Zip	Telephone Number

ORDER

FINDING. The court finds the defendant named in the above motion ☐ (made) ☐ (did not make) a good faith effort to complete the conditions of the diversion agreement and that the defendant ☐ (can) ☐ (cannot) complete the conditions of the diversion agreement in the requested extended diversion period.

ORDER. The court ☐ (allows) ☐ (denies) the above motion for an order extending the diversion period in case number _____. If "allowed," this court orders the diversion period in this case extended for _____ (not longer than 180 days) beginning on _____ and ending on _____.

_____	_____	_____
Name of Judge	Signature of Judge	Date

UNIFORM DUII DIVERSION PETITION AND AGREEMENT - DUII Diversion Form 1

DUII diversion forms 2, 3, and 4 must be filed with this form and served on the district attorney or city attorney who filed the charge.

Petitioner is to provide the information required in this box as follows (print or type):

Petitioner's Name and Residence:

First Middle Last

Street City State ZIP

Mailing Address (if different)

Court where charge was filed and petition is to be submitted:
Multnomah Circuit Court
Court Name

Court Case Number

Date of DUII Offense

Date of Birth:	Phone #:	Driver License:
____ /____ /_____ Month Day Year	_____	_____ _____ Number State

For Court File Stamp

Petitioner's Agreement and Waiver

I, the petitioner, request that this court grant a diversion under ORS 813.200 to 813.270 in this case for the charge of driving under the influence of intoxicants (DUII). If the court allows this petition:

1) I agree to all of the items listed under the "Agreement with the Court" section of DUII Diversion Form 2 (located on the back of this form unless filed electronically) and have read and understand all of the other information in Form 2;

2) I plead guilty or no contest to the DUII charge as shown in the plea petition (DUII Diversion Form 4) submitted with this diversion petition;

3) I waive (give up) the rights listed in the plea petition; and

4) I waive my former jeopardy rights under the federal or state constitutions and ORS 131.505 to 131.525 in any future action on the charge or any other offenses based on the same criminal incident.

5) I waive the right to have diversion show cause proceedings in Gresham if the arrest for this offense occurred east of 122nd Avenue.

_____ _____ _____
Petitioner's Signature Petitioner's Name (typed or printed) Date

COURT ORDER

For Court File Stamp

The court ☐ **(allows)** ☐ **(denies)** the petition for diversion. The DUII charge is alleged to have occurred on _____, 20____. If "allowed," this court withholds entry of a judgment of conviction pending completion or termination of the diversion, and orders that:

1) The diversion period is one year beginning on ____ /____ /_____ and ending on ____ /____ /_____;

2) The petitioner must pay fees to the court for the diversion as required by statute unless waived or deferred; **Fees: $358**

The court waives the following fees: ☐**None** ☐**INDF $25** ☐**DICO $100** ☐**OPTS $136** ☐**UNAS $97**

TOTAL FEES OWING: $_____

☐**Due immediately**, or ☐**Payment schedule:** $____ per month due by the ____ day of each month beginning ____ /____ /____

3) The petitioner must attend a victim impact panel approved by this court.

4) The petitioner must pay any court-appointed attorney fees as ordered by the court.

5) The petitioner must file a motion at the end of the diversion requesting that the DUII charge be dismissed.

6) Other:_____

_____ _____ _____
Name of Judge Signature of Judge Date

08-27 (01/08) Distribution: Original – Court Copies – DA, DMV, Evaluator, Petitioner, Defense Attorney (See SLR 4.075)

EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT – DUII Diversion Form 2

Read this entire form carefully. You are charged with driving under the influence of intoxicants (DUII). You may apply for the DUII Diversion Program but can enter the program only if you meet all eligibility requirements. The court will appoint a lawyer to help you if you request one and the court finds that you are indigent.

ELIGIBILITY FOR DIVERSION PROGRAM. You are eligible to participate in the diversion program only if:

- you meet all requirements described in the attached *Petitioner Sworn Statement of Eligibility* (DUII Diversion Form 3); **and**
- you appeared in court on the date scheduled for your first appearance on the charge or the court finds good reason to excuse your failure to do so; **and**
- you file this petition with the court within thirty (30) days of your first appearance in court, unless the court finds there is good cause to allow a later date.

AGREEMENT WITH THE COURT. The *Uniform DUII Diversion Petition and Agreement* (DUII Diversion Form 1) is your agreement with the court. **To have the DUII charge dismissed, you must do all the following**:

a. Pay to the court the required diversion fees identified in Section 1 of the *Summary of DUII Diversion Fees* (DUII Diversion Form 5). If you cannot afford to pay these fees, tell the judge. The court may waive some of the fees or allow you to make payments over time, depending on your financial situation.

b. Complete an alcohol and drug abuse assessment as directed by the court. You must pay the assessment fee directly to the assessment agency. You must also give the agency accurate and truthful information about your use of drugs and alcohol. The agency will recommend a treatment program if the agency determines that you need treatment.

c. Complete the recommended treatment program. You must pay the treatment provider directly. If you cannot pay the cost of treatment, tell the treatment provider. The provider may be able to waive certain costs or allow you to make payments over time.

d. Attend a victim impact panel and pay the participation fee as ordered by the court.

e. Comply with state laws that discourage use of intoxicants in conjunction with motor vehicle operation.

f. Do not operate a motor vehicle with any intoxicant in your blood system or while using intoxicants.

g. Keep the court advised at all times of your current mailing and residential addresses.

h. Install an approved ignition interlock device in all the vehicles you operate if ordered to do so by the court.

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

a. The diversion agreement applies only to the DUII charge. Prosecution of the DUII charge will be delayed during the diversion period. If you are charged with other offenses arising from the same incident as the DUII, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (former jeopardy).

b. If you have a prior DUII conviction, the Interstate Compact for Adult Offender Supervision rules may prohibit you from leaving the state without permission during the diversion period.

c. If you successfully complete the diversion agreement, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge. If you do not file a motion within six months after the end the diversion period, the court may, after giving notice to the district attorney, on its own motion dismiss the DUII charge.

d. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can "show cause" why the court should not terminate your diversion. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest.**

e. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will sentence you without a trial.

f. You may file a motion asking the court to extend the diversion period, **but you must file the motion within the last 30 days of your scheduled diversion period.** The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension **only once** and for **not more than 180 days**.

g. The court will find that you have violated the diversion agreement if the court receives notice, at any time during the diversion period, that you committed the offense of DUII or of the open container laws under ORS 811.170.

h. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in Form 4) when the state continues the prosecution.

DUII Diversion Form 2 (back of 08-27) (See SLR 4.075)

Circuit Court of the State of Oregon for Multnomah County
PETITIONER SWORN STATEMENT OF ELIGIBILITY - DUII Diversion Form 3
(This sworn statement must be filed with DUII diversion forms 1, 2, and 4)

(To be filled in by petitioner, please print or type:)

Circuit Court	Multnomah County	
Court Name	Court Location	Court Case Number

By signing this document, I swear that I am eligible to participate in a driving under the influence of intoxicants (DUII) diversion program in the case described above, and that all of the following are true:

1. I have never been convicted of a felony DUII offense in Oregon or any other place.

2. On the date I sign the attached petition for a DUII diversion agreement:
   a. There is no charge pending against me in Oregon or any other place, except for the DUII charge in this case, for an offense involving operation of a vehicle while:
      - under the influence of alcohol, a controlled substance, an inhalant, or any combination of the three; or
      - having a blood alcohol content above the allowable blood alcohol content;
   b. I am not participating in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except a program I may have entered as a result of the charge for the present offense of DUII; and
   c. There is no charge of an offense pending against me in Oregon or any other place for any degree of aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle.

3. During the ten (10) years before the date of the presently alleged DUII offense and during the time between the presently alleged DUII offense and the date I sign the attached petition:
   a. I have not been convicted in Oregon or any other place for an offense involving the operation of a vehicle while:
      - under the influence of alcohol, a controlled substance, an inhalant, or any combination of the three; or
      - having a blood alcohol content above the allowable blood alcohol content;
   b. I have not participated in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place; and
   c. I have not been convicted, in Oregon or any other place, on any charge of an offense in any degree for aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle.

4. The DUII offense described in the attached petition for which I am charged did not involve any deaths or any physical injury to any other person ("physical injury" means impairment of physical condition or substantial pain—ORS 161.015).

5. At the time of the alleged offense, I did not have a commercial driver's license.

6. At the time of the alleged offense, I was not operating a commercial motor vehicle.

_____	_____	_____
Petitioner's Signature	Petitioner's Name (typed or printed)	Today's Date

Subscribed and sworn before me this _____ day of _____, 20_____.

_____
Notary Public for Oregon / Court Clerk / Circuit Court Judge

My commission expires _____.

08-20 (01/08) Distribution: Original – Court (See SLR 4.075)

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON, Plaintiff, vs. _____, Defendant	**Case No.** _____ **DUII Diversion Form 4** PETITION FOR ENTRY OF PLEA, WAIVER OF JURY TRIAL, AND ORDER

2. My true name is _____, but I also am known as _____.

3. I am _____ years old. I have gone to school through _____. My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except _____

4. I have checked the following that describes me:

☐ I am able to read, write, and understand the English language, and I have read this petition completely;
☐ I am able to read, write, and understand the English language, and this petition has been read aloud to me completely;
☐ I am unable to read the English language, and this petition has been read aloud to me completely;
☐ I am unable to read, write, or understand the English language, and this petition has been read aloud to me in the _____ language by _____, a person qualified to interpret the English language into the _____ language.

5. I ☐ (am) ☐ (am not) represented by a lawyer. I understand that I have the right to hire a lawyer or have the court appoint a lawyer to represent me, if the court finds that I cannot afford to hire a lawyer. I choose to give up my right to a lawyer. I will represent myself. (_____) [Defendant initial if giving up right to a lawyer.]

6. If represented by a lawyer, I have told my lawyer all the facts I know about the charge against me. My lawyer has advised me of the nature of the charge and the defenses, if any, that I have in this case. I am satisfied with the advice and help my lawyer has given me.

7. I understand that I have the following rights: a) the right to jury trial; b) the right to see, hear, and cross-examine or question all witnesses who testify against me at trial; c) the right to remain silent about all facts of the case; d) the right to subpoena witnesses and evidence in my favor; e) the right to have my lawyer assist me at trial; f) the right to testify at trial; g) the right to have the jury told, if I decided not to testify at trial, that they cannot hold that decision against me; and h) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.

8. I understand that I give up all of the rights listed in paragraph 6 when I plead guilty or no contest. I understand I give up: a) any defenses I may have to the charge; b) objections to evidence; and c) challenges to the accusatory instrument.

9. By this petition, I am pleading ☐ (guilty) ☐ (no contest) to the crime of driving under the influence of intoxicants (DUII) which is a Class A misdemeanor under Oregon law. The maximum penalties are one year in jail and a fine of $6,250 or $10,000 if the offense was committed in a motor vehicle and there was a passenger younger than 18 and at least three years younger than me. The minimum penalties are 48 hours of imprisonment or 80 hours of community service; and a fine of $1,000 if this is my first conviction, $1,500 if this is my second conviction, or $2,000 if this is my third conviction and I am not sentenced to a term of imprisonment. I will be required to pay a filing fee, unitary assessment fee, and additional fee unless the court finds me indigent and waives all or part of these fees. I will also be required to complete and pay for an alcohol or drug abuse assessment and any recommended treatment. There will be a mandatory suspension of my driving privileges for ____ year(s), and the court may order me to attend a victim impact panel and pay a participation fee.

10. I am submitting this plea along with a petition to enter the diversion program under ORS 813.200 to 813.270. I understand that, if the court grants the petition, the court will accept this plea but will not enter a judgment of conviction at this time.

11. I understand that:

a. If I fully comply with the conditions of the diversion agreement within the diversion period requested in the attached petition, the court will dismiss the charge with prejudice under ORS 813.250. If the court does not have a policy of automatically dismissing the DUII charge at the end of one year, I will have to file a motion at the end of the diversion period requesting that the charge be dismissed.

Distribution: Original – Court Copies – DA, Evaluator, Petitioner, Defense Attorney (See SLR 4.075)

b. If I fail to comply with the diversion agreement within the diversion period, the court will enter a judgment of conviction on the charge and will sentence me.

12. I understand that if the court enters judgment on this plea, it is equivalent to conviction and that on this plea alone, without receiving any evidence, this court can find me guilty of the crime of DUII.

13. I understand that, if the court denies the diversion petition and I go to trial, nothing in this petition will be used against me.

14. I understand that if I am not a citizen and the court enters judgment on this plea, it may result in my removal from this country, exclusion from admission to the United States, or denial of naturalization.

15. This plea is based only on what is written on this petition. No promises have been made to me by my lawyer or any officer or agent of any branch of government (federal, state, or local) that I will receive a particular sentence or form of treatment from this or any other court, on these or any other charges, other than is set forth in this petition.

16. ☐ I plead no contest - OR –

☐ I plead guilty because in _____ County, Oregon, I did the following:

_____

_____

_____

_____

_____

_____

_____

_____

17. I ☐ (am) ☐ (am not) currently on probation, parole, or postprison supervision. I know that if I am and the court enters judgment on the plea in this case, it may cause revocation of my probation, parole, or postprison supervision and I may be required to serve jail or prison time in that case in addition to any sentence imposed on me in this case.

18. I understand the charge against me and the information in this petition. I am signing this petition and entering this plea voluntarily, intelligently, and knowingly.

19. I understand that if I fail to comply with the terms of the diversion and the court enters a judgment of conviction, I have the right to appeal the conviction by complying with the rights to appeal explained or provided to me at the time the court enters the judgment of conviction.

_____	_____	_____
Date	Defendant's Signature	Defendant's Name (printed or typed)

ORDER

The court finds the defendant's plea of ☐ (no contest) ☐ (guilty) to be knowingly, intelligently, and voluntarily made. The court accepts this plea for purposes of ORS 813.200 to 813.270.

_____	_____	_____
Date	Judge's Signature	Judge's Name (printed or typed)

CERTIFICATE OF COUNSEL

I am the attorney for the defendant in this proceeding and I certify that:

1. I have fully explained to my client the charge and possible defenses that may apply in this case.
2. I have personally examined this plea petition, explained all its provisions to my client, and discussed fully with my client all matters described and referred to in the petition.
3. I have explained to my client the maximum penalty and other consequences of entering a guilty or no contest plea, including possible immigration consequences.
4. To the best of my knowledge and belief, my client's decision to enter this plea is made voluntarily, intelligently, and knowingly.
5. I have told my client that if he or she is eligible for court-appointed counsel and wishes to pursue an appeal, I will transmit the information necessary to perfect the appeal to the Office of Public Defense Services.

Signed by me in the presence of the above-named defendant and after full discussion of the contents of the certificate with the defendant this _____ day of _____, 20____.

_____	_____	_____
Defendant's Attorney's Signature	Attorney Name (typed or printed)	Bar Number

CERTIFICATE OF INTERPRETER

I, the undersigned interpreter, hereby certify that I have read aloud the petition to the above defendant in the _____ language.

Signed by me in the presence of the above-named defendant this _____ day of _____, 20 _____.

_____	_____
Interpreter's Signature	Interpreter Name (typed or printed)

SUMMARY OF DUII DIVERSION FEES - DUII Diversion Form 5

A defendant allowed into a driving under the influence of intoxicants (DUII) diversion program will be required to pay the fees listed below.

Section 1: Fees to the Court

A. The defendant must pay the following fees to the court:

- $261 filing fee
- $97 unitary assessment fee
- Court-appointed attorney fees

The court may waive all or part of these fees if it finds the defendant is indigent. The court may also allow the defendant to pay in installments over time.

Section 2: Other Fees

A. The defendant must complete an alcohol and drug abuse assessment.

- The cost of the assessment is $150. The defendant must pay this fee directly to the agency or organization conducting the assessment.
- The defendant must pay for any treatment recommended by the assessment. The cost of treatment varies. The defendant must pay treatment costs directly to the agency or organization providing the treatment. If the defendant is unable to pay, the agency or organization providing the treatment may allow payment in installments over time.

B. The court may order the defendant to attend a victim impact panel and pay a participation fee. The fee can range from $5 to $50. The defendant must pay this fee directly to the panel coordinator on the day of the panel.

C. The court may order the defendant to install an approved ignition interlock device in any vehicle operated by the defendant. The defendant must pay to the provider installing the device any costs associated with leasing, installing, and maintaining the device, unless the Department of Transportation finds that the defendant is indigent and waives all or part of these fees. The department may also defer the costs or allow payment in installments over time.

08-27B (01/08) DUII Diversion Financial Obligation (See SLR 4.075)

CIRCUIT COURT OF OREGON
Fourth Judicial District
MULTNOMAH COUNTY PROBATE COURT
1021 SW Fourth Avenue, #224
Portland, OR 97204
503/988-3022

GUARDIANSHIP REPORT

Minor's Name: **Case Number:**

Minor's Date of Birth: **Date of Guardian's Appointment:**

(1) The address of the minor is:_____

(2) The telephone number for the minor's residence is:_____

(3) The address of the Guardian is:_____

(4) The telephone number for the Guardian is:_____

(5) How is this household financially supported:_____
_____

(6) Is the minor still residing with you? _____yes _____no
If not, tell us with whom the child is living, the relationship of that person to the child, and why the child is no longer living with you: _____
_____
_____
_____

(7) How long has the minor lived with someone else? _____

(8) Please tell us about the child's school attendance and grades:_____
_____
_____
_____
_____

(9) Please list any hobbies or recreational interests enjoyed by this child during the past year: _____
_____
_____
_____

10. During the past year I have received $_____ from _____ _____to help support this child. I spent $_____ of that income on behalf of this child and I now have $_____ remaining

11. I have (___) / have not (___) been convicted of a crime since my last report.

12. I have (___) / have not (___) filed to receive bankruptcy since my last report.

13. I have (___) / have not (___) had my driver's license suspended or revoked since my last report because of: _____

14. Please provide any other information you feel should be provided to the Court regarding this child's adjustment to your care (use the back of this report form 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 for perjury."

Guardian's Signature: _____ Today's Date: _____
Printed Name: _____

If applicable:

Co-Guardian's Signature: _____ Today's Date: _____
Printed Name: _____

Annual Guardian's Report/minors-(5/16/08) (See SLR 9.075(4))

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNY OF MULTNOMAH
PROBATE MEDIATION PILOT/SUPPLEMENTAL LOCAL RULES 9.016 AND 12.045

IN THE MATTER OF THE _____	) CASE NO. _____
_____	) NOTICE OF SELECTION OF MEDIATOR
_____	) AND SETTING DATE FOR HEARING

PARTY/ATTORNEY	PARTY/ATTORNEY
PHONE NO.	PHONE NO.
FAX NO.	FAX NO.
E-MAIL ADDRESS:	E-MAIL ADDRESS:

THE PARTIES HAVE AGREED THAT THE MEDIATOR WILL BE:

NAME _____ OSB# _____
PHONE _____ FAX NO _____
ADDRESS: _____
_____
_____

THE FACTS IN DISPUTE ARE:

_____
_____
_____

CERTIFICATION

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND THAT I HAVE SENT COPIES OF THIS NOTICE TO ALL PARTIES/ATTORNEYS OF RECORD AND THE MEDIATOR.

DATED: _____

Signature of Party/Attorney (OSB#_____

Certified to be a true copy:

_____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNY OF MULTNOMAH

IN THE MATTER OF THE _____ _____ _____	)	CASE NO. _____
	)	MOTION TO WAIVE MEDIATION
	)	

ON BEHALF OF _____ _____,I MOVES TO WAIVE MEDIATION. GOOD CAUSE EXISTS TO WAIVE THE MEDIATION REQUIREMENT IN THIS CASE BECAUSE: _____
_____
_____
_____

CERTIFICATION

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND THAT I MAILED A TRUE COPY OF THIS MOTION TO ALL PARTIES/ATTORNEYS OF RECORD AS FOLLOWS:

PARTY/ATTORNEY PARTY/ATTORNEY
_____
_____
_____

DATED: _____
Signature of Party/Attorney OSB#_____

Certified to be true copy:

_____

Filed: December 30, 2011

IN THE SUPREME COURT OF THE STATE OF OREGON

A.G.,

Plaintiff-Appellant,
Petitioner on Review,

v.

ROBERT GUITRON,

Defendant-Respondent,

and

AEROBIC AND DANCEWEAR SHOPPE, LLC,
dba Lake Oswego Academy of Dance,

Defendant-Respondents,
Respondent on Review.

(CC 060909578; CA A137591; SC S059166)

En Banc.

On review from the Court of Appeals.*

Argued and submitted September 20, 2011.

Jonathan A. Clark, PC, Stayton, argued the cause and filed the brief for petitioner on review.

Janet M. Schroer, Hoffman Hart & Wagner, Portland, argued the cause for respondent on review Aerobic and Dancewear Shoppe. Matthew J. Kalmanson, Hoffman Hart & Wagner, filed the brief. With him on the brief was Janet M. Schroer.

Charles S. Tauman, Corson & Johnson Law Firm, Eugene, filed a brief for *amicus curiae* Oregon Trial Lawyers Association. With him on the brief was Travis Eiva.

WALTERS, J.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

*Appeal from Multnomah County Circuit Court, Adrienne Nelson, Judge. 238 Or App 223, 241 P3d 1188 (2010).

WALTERS, J.

In this civil action, we decide that ORCP 44 C required plaintiff to deliver to defendants, at defendants' request, a copy of all written reports of examinations related to the psychological injuries for which plaintiff sought recovery, including, specifically, the report of an examination by a psychologist retained by plaintiff's counsel for the purpose of the litigation. Because defendants requested and plaintiff failed to deliver that report, the trial court entered an order, pursuant to ORCP 44 D, precluding the psychologist from testifying at trial, and defendants ultimately prevailed. The Court of Appeals affirmed the decision of the trial court. *A.G. v. Guitron*, 238 Or App 223, 241 P3d 1188 (2010). We affirm the decision of the Court of Appeals and the judgment of the trial court.

The facts underlying plaintiff's claim for damages are not relevant to the issue of statutory interpretation that we decide, and we need not repeat them in detail here.[1] It is sufficient to explain that plaintiff sought damages for psychological injuries and, before trial, defendants requested that plaintiff produce the following:

"Copies of any and all detailed written narrative reports of all treatments

[1] Plaintiff alleged that she was sexually abused by her dance instructor (Guitron) at Lake Oswego Academy of Dance (Academy) when she was 14 and 15 years of age. Plaintiff raised three claims: sexual battery, intentional infliction of emotional distress, and negligence (against defendant Academy only). One of the issues in the case was whether plaintiff's claims were barred by the statute of limitations. Resolution of that issue depended on when plaintiff had discovered or should have discovered the alleged abuse or the damages caused by the alleged abuse.

> and examinations of the Plaintiff which have been conducted by any healthcare professional setting forth the examiner's findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier treatments and examinations for the same condition which relate to the Plaintiff's claimed injuries. This is a continuing request."

Plaintiff produced the reports of her treating psychologist, Dr. Puma, but did not produce the reports of Dr. Green, a psychologist whom plaintiff's counsel had retained for purposes of the litigation.

At trial, plaintiff called Green to testify. Defendants objected on the grounds that Green had conducted an examination of plaintiff and that plaintiff had failed to provide the reports of that examination. As a result, defendants argued, plaintiff should not be permitted to call Green as a witness. Plaintiff responded that Green's report was not discoverable because he was an expert witness retained for the purpose of litigation, and the Oregon Rules of Civil Procedure do not require disclosure of the reports of such experts. Plaintiff argued that defendants could have retained their own expert to examine plaintiff, but had not done so.

The trial court agreed with defendants and excluded Green's testimony.[2] The court then entered a directed verdict in favor of one of the defendants, and the jury

[2] Green testified through an offer of proof made outside the presence of the jury. Green opined that plaintiff "has many of the characteristics consistent with someone who has been sexually abused" and that he did not believe that plaintiff had discovered the connection between the abuse or the damages it had caused until she entered treatment in February 2004.

returned a verdict in the other defendant's favor.[3] After entry of judgment for defendants, plaintiff appealed.[4] The Court of Appeals affirmed, and we allowed plaintiff's petition for review.

As noted, the question presented in this court is one of statutory interpretation -- specifically, whether ORCP 44 C required plaintiff to produce the report of an expert who examined plaintiff for purposes of litigation and not for purposes of treatment. ORCP 44 C provides:

> "In a civil action where a claim is made for damages for injuries to the party * * *, upon the request of the party against whom the claim is pending, the claimant shall deliver to the requesting party a copy of all written reports and existing notations of any examinations relating to injuries for which recovery is sought unless the claimant shows inability to

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[3] At the close of plaintiff's case, both defendants moved for directed verdicts. The trial court directed a verdict in favor of defendant Academy because plaintiff had not presented any evidence that defendant Academy knew of the sexual abuse. The trial court allowed the claims against defendant Guitron to proceed to the jury. The jury returned a verdict in favor of defendant Guitron. In response to the first question on the verdict form -- "Did plaintiff * * * discover the connection between the abuse and her injuries after September 12, 2003?" -- the jury answered "[y]es." In response to the second and third questions, whether Guitron engaged in conduct constituting a sexual battery or intentional infliction of emotional distress, the jury answered "[n]o" and awarded no damages.

[4] On appeal to the Court of Appeals, plaintiff raised two assignments of error. First, plaintiff assigned error to the trial court's grant of a directed verdict in favor of defendant Academy. Second, plaintiff assigned error to the trial court's exclusion of Green's testimony. The Court of Appeals concluded that the trial court did not err in excluding Green's testimony, and, in light of its resolution of that issue and the jury verdict in favor of defendant Guitron, the court also concluded that, if there was any error in directing a verdict for defendant Academy, that error was harmless. On review in this court, plaintiff does not ask that we review the Court of Appeals decision on defendant Academy's motion for directed verdict.

comply."

The text of ORCP 44 C supports the decision of the trial court. ORCP 44 C required plaintiff, the party making a claim for injuries, to deliver to defendants, the party against whom the claim was pending, at defendants' request, a copy of "all written reports" of "any examinations" relating to plaintiff's injuries.[5] Defendants requested that plaintiff produce all reports of "examinations for the same condition which relate to the Plaintiff's claimed injuries." Green had examined plaintiff, and that examination was related to her claimed injuries. Plaintiff failed to provide Green's written reports to defendants, and, under the plain terms of ORCP 44 D(2), the trial court had authority to exclude Green's testimony.[6]

Plaintiff argues, however, that ORCP 44 C cannot be read in isolation. Read in context, plaintiff argues, ORCP 44 C governs only the reports of experts who examine and treat a plaintiff (treating experts). It is ORCP 44 B, plaintiff asserts, that

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[5] Although either party may seek and obtain the examination of the other party, the party seeking the examination will ordinarily be the defendant, and the party who makes a claim for injuries and who will be subjected to the examination will ordinarily be the plaintiff. For simplicity, we will refer to those parties, respectively, by those terms -- defendant and plaintiff.

[6] ORCP 44 D(2) provides:

> "If a party fails to comply with sections B and C of this rule, or if a physician or psychologist fails or refuses to make a detailed report within a reasonable time, or if a party fails to request that the examining physician or psychologist prepare a written report within a reasonable time, the court may require the physician or psychologist to appear for a deposition or may exclude the physician's or psychologist's testimony if offered at the trial."

addresses production of the reports of experts who examine claimants for the purpose of litigation (litigation experts). ORCP 44 B provides:

> "If requested by the party against whom an order is made under section A of this rule or the person examined, the party causing the examination to be made shall deliver to the requesting person or party a copy of a detailed report of the examining physician or psychologist setting out such physician's or psychologist's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, * * *. This section applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise."

Under ORCP 44 B, a defendant who has a plaintiff examined by a litigation expert must provide the plaintiff with a copy of that expert's report. After delivery, the defendant has the right to request and receive "like" reports from the plaintiff, *i.e.*, reports of the plaintiff's litigation experts. ORCP 44 C, plaintiff contends, is intended to address a different subject -- production of the reports of *treating* experts. According to plaintiff, ORCP 44 C requires a plaintiff to disclose the reports of his or her treating experts without regard to whether a defendant has had or will have the plaintiff examined by the defendant's own litigation experts. If ORCP 44 C were to also require a plaintiff to produce the reports of his or her litigation experts, plaintiff asserts, it would be redundant of ORCP 44 B and inconsistent with that section's more particular exchange requirements.

As further context for that interpretation of ORCP 44 C, *amicus curiae* Oregon Trial Lawyers Association points to the fact that, in the absence of specific

authorization, the Oregon Rules of Civil Procedure do not permit expert discovery. *See* *Stevens v. Czerniak*, 336 Or 392, 404, 84 P3d 140 (2004) (so stating). In deciding whether such authority exists, *amicus* argues, this court should be cognizant that the physician-patient, psychologist-patient, and attorney-client privileges protect the confidentiality of expert communications. *Amicus* urges that we consult the legislative history of ORCP 44 and its predecessor, *former* ORS 44.620 (1974), *repealed by* Or Laws 1979, ch 284, § 199, contending that that history establishes that the legislature intended to limit the reach of ORCP 44 C to the reports of treating experts.

ORCP 44 C is a rule "to which we apply the usual method of statutory interpretation." *Pamplin v. Victoria*, 319 Or 429, 433, 877 P2d 1196 (1994). Plaintiff and *amicus* are therefore correct that, to determine its meaning, we look to its context as well as its text, and that, to the extent we deem appropriate, we may also consider legislative history. *See* *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993) (explaining statutory interpretation methodology). Existing case law forms a part of a statute's context, *SAIF v. Walker*, 330 Or 102, 108-09, 996 P2d 979 (2000), and we begin our analysis with a review of the law as it existed in 1973 when the legislature enacted the predecessors to ORCP 44, *former* ORS 44.610 through 44.640 (1974), *repealed by* Or Laws 1979, ch 284, § 199.

At that time, this court had decided that a defendant in a personal injury action could request, and a trial court had "inherent general power" to order, that the plaintiff submit to a physical examination by medical experts selected by the defendant or

designated by the court. *Carnine v. Tibbets*, 158 Or 21, 27, 74 P2d 974 (1937). In reaching that conclusion, the court rejected the minority view. *Id*. at 31. That view was described and rejected in a Washington case that this court cited with approval. *Id*. at 28-29. In *Lane v. Spokane Falls & N. Ry. Co.*, 21 Wash 119, 121, 57 P 367, 367 (1899), the Washington court summarized the minority view that

> "it is abhorrent to the principles of liberty to compel a party to submit to such an examination; that it invades the inviolability of the person, is an indignity involving an assault and a trespass, and an impertinence to which a modest woman would not consent."

Instead, this court agreed with the majority view identified by the Washington court. *Carnine*, 158 Or at 29-31. In *Lane*, the Washington court explained that "[c]ourts should not sacrifice justice to notions of delicacy, and knowledge of the truth is essential to justice." *Lane*, 21 Wash at 121, 57 P at 367.[7]

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[7] This court also expressly rejected the view that the plaintiff's gender was a justification for denying the defendants' motion for an examination. The court quoted the following:

> "'As already shown, where the inherent power of a court to order a physical examination of a party is recognized, no exception is made in favor of women. And in statutes conferring the power women are not exempted. As against the contention that a physical examination is an impertinence to which a modest woman would not consent, it has been observed that the demands of justice not infrequently occasion private inconvenience and annoyance, and that a witness is frequently required to answer questions which shock modesty and offend the sense of delicacy; and that if she has submitted to an examination by her own physicians, even of organs peculiar to female functions, it is no greater indignity to be examined by other doctors. A woman's delicacy and refinement of feeling, though of course entitling her to the most considerate and tender treatment consistent with the rights of others, cannot be permitted to stand between

As of 1973, this court also had decided that a plaintiff could obtain a copy of the report of the defendant's examining expert. *Nielson v. Brown*, 232 Or 426, 374 P2d 896 (1962). In *Nielson,* the court considered whether the plaintiff could call, as a witness in her case, a physician who had been retained by defense counsel to examine the plaintiff. The defendant objected to the physician's testimony on the ground that it was confidential under the attorney-client privilege and was part of defense counsel's "work product." The court answered the former argument by pointing out that there was no attorney-client relationship between plaintiff and defense counsel. Whatever communication the plaintiff had with the physician retained by defense counsel was not confidential communication between the plaintiff and her lawyer, and, thus, was not protected by the attorney-client privilege.

The court responded to the defendant's argument that it would be unfair to permit the plaintiff to benefit from the "work product" for which the defendant had paid by observing that there would be a competing unfairness in suppressing the evidence that the plaintiff had supplied by submitting to the defense examination. "On balance," the court said, "we think that the problem should be resolved by letting the evidence in, no matter at whose instance or whom it hurts, as an aid in the 'search for truth and justice.'" *Id.* at 444 (quoting *Oregon v. Cahill*, 208 Or 538, 582, 293 P2d 169, 298 P2d 214, *cert*

> the defendant and a legitimate defense against her claim of a considerable sum of money.'"

158 Or at 33 (quoting 14 R.C.L., Inspection and Physical Examinations § 17 (1916)).

den, 352 US 895 (1956)). The court also noted that it was the practice in some Oregon counties for trial courts to order that defendants provide a copy of the report of the examination to plaintiffs, "as the [f]ederal rules require." The court concluded that there was no reason that such orders should not be issued. *Id.* at 443.

Under the federal rules to which the court referred in *Nielson*, a defendant could obtain an examination of the plaintiff and, on request, was required to deliver a copy of a report of that examination to the plaintiff. After delivering the report, the defendant could request, and was entitled to receive, a copy of "a like report" from the plaintiff. *Former* FRCP 35(b)(1) (1937).[8]

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[8] At the time *Nielson* was decided, FRCP 35 provided:

> "(a) Order for Examination. In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons to whom it is to be made.
>
> "(b) Report of Findings.
>
> "(1) If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such report the court may exclude his testimony if offered at the trial.

In 1973, the Oregon State Bar (Bar) drafted House Bill (HB) 2101 (1973), which the legislature passed without amendment and which provided:

> "Section 1. In a civil action where a claim is made for damages for injuries to the party or to a person in the custody or under the legal control of a party, the court in which the action is pending may order the person claiming to be injured to submit to a physical or mental examination by a physician employed by the moving party. The order may be made only on motion for good cause shown and upon notice to the persons to be examined and to all parties. The motion and order shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.
>
> "Section 2. Upon the request of any party the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his finding, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition.
>
> "Section 3. Upon the request of the party against whom the claim is pending the claimant shall deliver to him a copy of all written reports of any examinations relating to injuries for which recovery is sought unless the claimant shows that he is unable to comply."

Or Laws 1973, ch 136, §§ 1 - 3. In 1974, section 1 was codified as ORS 44.610, and sections 2 and 3 were codified as ORS 44.620(1) and (2), respectively.

> "(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition."

Former FRCP 35 (1937).

Sections 1 and 2 reflected the court's rulings in *Carnine* and *Nielson* and addressed only the rights and duties of a party who seeks and obtains an examination of another party. Section 1 permitted a defendant to obtain an examination of a plaintiff, and section 2 required the defendant to deliver a copy of the examining physician's report and "like reports of all earlier examinations of the same condition" to the plaintiff. Unlike the federal rule,[9] section 2 did not provide that, after delivering those reports, the

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[9] When the Oregon statutes at issue here were enacted in 1973, FRCP 35 provided:

> "(a) When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.
>
> "(b)(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at trial.
>
> "(2) By requesting and obtaining a report of the examination so

defendant had the right to request and receive from the plaintiff "*a like report* of any examination, previously or thereafter made, of the same condition[.]" (Emphasis added.) *See former* FRCP 35(b)(1). Instead, section 3 provided that, at the request of a defendant, the plaintiff must deliver to the defendant copies of "*all written reports* of any examinations relating to injuries for which recovery is sought." (Emphasis added.)

Two representatives of the Bar, Austin Crowe and David Landis, testified in favor of HB 2101. Their testimony, *amicus* argues, demonstrates that the legislature intended section 3 to require plaintiffs to produce only the reports of treating experts.

At the February 12, 1973, meeting of the House Judiciary Subcommittee, Crowe and Landis explained that they had drafted sections 1 and 2 of the bill to codify

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> ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.
>
> "(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule."

The current version of FRCP 35 contains a similar exchange provision. FRCP 35(b)(3) provides:

> "Request by the Moving Party. After delivering the reports, the party who moved for the examination may request -- and is entitled to receive -- from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them."

existing case law. As recorded in the minutes of the meeting, Crowe identified section 3's purpose as follows:

> "[T]his bill is designed to correct a situation which has existed in this state for several years; namely, that medical reports of the *private treating physician* of an injured person filing a lawsuit are not subject to being produced by the plaintiff, whereas if defendant orders an independent medical examination of plaintiff, such a report is required to be produced."

Minutes, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, 1 (statement of Austin Crowe) (emphasis added). However, the tape recording of the meeting reveals Crowe as having used the term "doctors," not "private treating physician." Tape Recording, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, Tape 6, side 1 (statement of Austin Crowe).

Crowe then stated, according to the minutes and the tape recording, that "it has been decided by both the plaintiffs' and defense bar in Oregon that it would be more fair and appropriate if there were an *exchange between the parties of any doctor's report* dealing with a specific action or suit." Minutes, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, 1 (statement of Austin Crowe) (emphasis added); Tape Recording, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, Tape 6, side 1 (statement of Austin Crowe). He explained that such an exchange would promote settlement and reduce the costs of litigation.

Landis related a particular incident that had occurred in a case that he had

tried.[10] Landis said that he had requested a *treating* physician's report from plaintiff and that the plaintiff's attorney had declined, stating that he "preferred the sporting theory of justice." Minutes, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, 3 (statement of David Landis). The court had then denied Landis's motion seeking to compel discovery of that report, and Landis testified that, under current law, a plaintiff could "thumb his nose at us." Tape Recording, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, Tape 6, side 1 (statement of David Landis).

When the Senate Judiciary Committee heard the bill, Crowe and Landis again testified. At a hearing on May 2, 1973, Crowe explained that, "[u]nder the present status of the law, a person who brings a personal injury case does not have to divulge any of the information concerning the nature of the claim until such a time as she or he gets on the witness stand." Minutes, Senate Judiciary Committee, HB 2101, May 2, 1973, 4 (statement of Austin Crowe). Crowe testified that the Bar had drafted the bill to promote settlements and eliminate unnecessary medical examinations. The Bar had incorporated existing law and provided "some additional tools so the medical reports will come out in the beginning and at the start of a lawsuit, everyone will find out what the nature of your claim is." *Id.* The act, Crowe said, "intends to make the report of the *treating physician* available to the defense lawyer in the case." *Id.* (emphasis added).

In his testimony, Landis reiterated that sections 1 and 2 of HB 2101 would

[10] Landis provided the legislative committees with the motion and memorandum that he had filed in that case.

codify existing case law and that section 3 was a new provision. Landis further testified that the bill would help to alleviate the "inequities in the exchange of material between the lawyers before a trial." Section 3 would require the plaintiff's attorney to forward "copies of [his or her] reports" to the defense attorney. Minutes, Senate Judiciary Committee, HB 2101, May 2, 1973, 5 (statement of David Landis).

In hearings before both committees, Landis answered questions from legislators. One question from Representative Stults was whether section 3 contemplated "that monthly forms filled out [by] a doctor regarding the continuation of a disability would be included[.]" Landis replied that he "doubted whether it would include those monthly check-off forms saying a claimant was still unable to return to work, but that *the examination report of the injured worker* would be subject to discovery." Minutes, House Judiciary Subcommittee II, HB 2101, Feb 12, 1973, 3 (statement of David Landis) (emphasis added).

In response to a question from another legislator, Landis said that sections 2 and 3 did not require delivery of reports until after a lawsuit had been filed, but that "[t]here is no timing provision that the plaintiff can wait on the independent examination until he has to deliver copies of the report. Then you get into playing games if you are going to have an independent medical examination." Minutes, Senate Judiciary Committee, HB 2101, May 2, 1973, 5 (statement of David Landis). Landis also explained the difference between sections 2 and 3 by saying that the intent of section 2 was to give the report of the examination to the plaintiff's attorney, if the examination was done at the defendant's request. In that instance, Landis said, the defendant could go

to court and get a similar report from the plaintiff under section 3, but a defendant also could get the report from the plaintiff under section 3, notwithstanding sections 1 and 2. Tape Recording, Senate Judiciary Committee, HB 2101, May 2, 1973, Tape 28, side 2 (statement of David Landis).

That testimony demonstrates that the drafters of HB 2101 contemplated that, on request, at any time after initiation of an action for personal injuries, a plaintiff would be required to produce the reports of his or her treating experts. The drafters anticipated that early disclosure of such reports could eliminate the need for a defense examination, promote settlement, and reduce costs. Whether the drafters, and, more importantly, the legislature, intended to limit the bill's disclosure requirements to that circumstance is, however, far less clear. We therefore consult the legislature's later discussion and amendment of those statutes for assistance.

In 1978, the Council on Court Procedures (Council) promulgated the Oregon Rules of Civil Procedure. Under ORS 1.735, those rules became effective on January 1 of the following year unless the legislature amended, repealed, or supplemented them. One of the rules that the Council promulgated in 1978 was ORCP 44. The legislature made certain amendments to that rule,[11] none of which are pertinent

[11] The legislature amended ORCP 44 A to add "agent[s]," "employee[s]," and "spouse[s]" to the list of individuals who may be subject to an examination under the rule. The legislature amended the portion of ORCP 44 A permitting an examination when the "blood group" of such an individual is in controversy, to permit an examination when "the blood relationship" is in controversy. Or Laws 1979, ch 284, § 27. The legislature also amended ORCP 44 E, providing for access to hospital records, to clarify

here, and the rule, as amended, became effective on January 1, 1979. ORS 1.735. When the Council promulgated ORCP 44, the new rule included the substance and much of the text of ORS 44.610 and ORS 44.620. The legislature therefore repealed those statutes. Or Laws 1979, ch 284, § 199.

To interpret ORCP 44, we look to the text and context of the rule and the Council's intent. *Waddill v. Anchor Hocking, Inc.*, 330 Or 376, 382 n 2, 8 P3d 200 (2000), *adh'd to on recons*, 331 Or 595, 18 P3d 1096 (2001) ("unless the legislature amended the rule at issue in a particular case in a manner that affects the issues in that case, the Council's intent governs the interpretation of the rule"). *See also Lake Oswego Review v. Steinkamp*, 298 Or 607, 610-12, 695 P2d 565 (1985) (referring to Council's legislative history to interpret rule).

Through ORCP 44 A, the Council extended the applicability of *former* ORS 44.610 beyond personal injury actions. ORCP 44 A mirrored *former* FRCP 35(a) and permitted a court to order the examination of a party in any case in which a "mental or physical condition * * * is in controversy."[12]

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the scope of that provision and to provide for notice to the party whose records are sought. Or Laws 1979, ch 284, § 28.

[12] As promulgated in 1979, ORCP 44 A provided:

> "When the mental or physical condition or the blood relationship of a party, or of an agent, employee, or person in the custody or under the legal control of a party (including the spouse of a party in an action to recover for injury to the spouse), is in controversy, the court may order the party to submit to a physical or mental examination by a physician or to

In ORCP 44 B, the Council added the report exchange provisions of *former* FRCP 35(b)(1) to *former* ORS 44.620(1). ORCP 44 B provided:

> "If requested by the party against whom an order is made under section A of this rule or the person examined, the party causing the examination to be made shall deliver to the requesting person or party a copy of a detailed report of the examining physician setting out such physician's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows inability to obtain it. This section applies to examinations made by agreement of the parties unless the agreement expressly provides otherwise."

In the commentary to the first draft of ORCP 44, included in the Council's "Legislative History,"[13] the Council explained that

> "ORS 44.620(1) provides for a delivery of a copy of a report on request of the examined party when the examination is pursuant to a court order, and ORS 44.620(2) * * * provides for delivery of the claimant's reports but not related to any request for defendant's reports or even a court-ordered examination."

> produce for examination the person in such party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made."

[13] The Council on Court Procedures published bound volumes entitled Legislative History Relating to the Promulgation of the Oregon Rules of Civil Procedure (1979). Those volumes include, *inter alia*, meeting minutes, committee reports and internal memoranda, draft rules and commentary, and the final draft rules. We use this legislative history as we would use comparable history from the Oregon Legislature. *See Lake Oswego Review*, 298 Or at 610-12 (using Council's legislative history to interpret rule).

Comment, Discovery Committee Draft Rules, Council on Court Procedures, Mar 27, 1978, 57.[14] In contrast, the comment stated, the new rule imposes the exchange procedure found in the federal rule such that "[i]f no request for a report is made by the examined party, no right to reports from the examined party arises for the examining party." *Id.* In choosing to adopt that federal procedure, the Council's stated aim was to "choose the best rule, with some deference to recent legislative enactment." Introduction, Discovery Committee Draft Rules, Council on Court Procedures, Mar 27, 1978, 1.

Finally, in ORCP 44 C, the Council retained the text of *former* ORS 44.620(2). ORCP 44 C provided:

> "In a civil action where a claim is made for damages for injuries to the party or to a person in the custody or under the legal control of a party, upon the request of the party against whom the claim is pending, the claimant shall deliver to the requesting party a copy of all written reports of

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[14] The commentary to the final draft rules is consistent with, albeit less detailed than, the Discovery Committee's commentary. It provides:

> "This rule is a combination of ORS sections and Federal Rule 35. Section 44 A comes from the federal rule and extends the possibility of a medical examination from personal injury cases to any situation where the mental and physical condition of a party is at issue. * * *
>
> "Section 44 B is also adapted from the federal rule. It provides for a more complete exchange of reports than that contemplated by the existing ORS sections. In one respect the rule is narrower than existing practice; it only allows the examined party to secure a copy of the report, as opposed to any party.
>
> "Section 44 C is based on ORS 44.620(2)."

Comment to Rule 44, Final Draft, Proposed Oregon Rules of Civil Procedure, Council on Court Procedures, Nov 24, 1978, at 129-30.

> any examinations relating to injuries for which recovery is sought unless the claimant shows inability to comply."

The Council's commentary explained that ORCP 44 C was taken from ORS 44.620(2) and did not exist in the federal rule. It was "expressly designed to create a duty on the part of plaintiffs in personal injury cases to furnish medical reports *apart from any exchange with the defendant or any court-ordered examination*." Comment, Discovery Committee Draft Rules, Council on Court Procedures, Mar 27, 1978, 58 (emphasis added). The Council's commentary quoted an earlier comment by the Practice and Procedure Committee of the Bar to the 1973 bill, HB 2101, that is not included in the legislative history of that bill. That comment included the statement that "[t]he purpose of this bill is to require plaintiff to produce copies of the medical reports of his *treating physician*." *Id*. (emphasis added).

While the Council was considering ORCP 44, it also was considering a rule that would have permitted much broader discovery of expert reports. That rule, designated as draft rule 36 B(4), and referred to as the Bodyfelt rule, would have required the mandatory exchange of all expert reports, "somewhat equivalent to the existing provisions following a physical examination of an opponent." Fredric Merrill, Memorandum on the Discovery of Experts 1, Council on Court Procedures (1978). In discussing the overlap between draft rule 36 and ORS 44.620, Professor Merrill said:

> "The rule [draft rule 36] is not clear what happens in situations where there is a medical examination of an opponent, presently covered by ORS 44.620-630. The report specified under those statutes appears to be more detailed and *also there is a specific provision dealing with the medical reports of the experts of the claiming party whether or not the claiming party plans to call these doctors as witnesses.* It is suggested that

> the Bodyfelt rule, if used, be specifically made subject to whatever rule is adopted that is the equivalent of ORS 44.620 to ORS 44.640."

Id. at 18 (emphasis added). Draft rule ORCP 36 B(4) was controversial, and the legislature declined to adopt it. *See* Stevens v. Czerniak, 336 Or 392, 403-04, 84 P3d 140 (2004) (discussing legislative history of ORCP 36 B(4)). Since 1979, the legislature has made some minor changes to ORCP 44, but has not further discussed the purpose or effect of its provisions.[15]

The history that we have laid out is not definitive on the issue before us, but it is informative. First, that history reveals that, when the Oregon Legislature rejected a broad expert discovery rule in 1978, it had already decided, in 1973, to permit limited discovery of the reports of examining experts. The fact that the legislature declined to expand the discovery permitted by *former* ORS 44.610 and ORS 44.620 to permit discovery of all expert reports does not assist us in determining the meaning of those existing statutes and their successor, ORCP 44 C. However, it is important to recognize and emphasize that *former* ORS 44.610 and ORS 44.620 permitted discovery of the reports of a narrow class of experts -- those who examine claimants.

Second, the legislative history that we have reviewed reveals that the redundancy that plaintiff finds in ORCP 44 B and C, and that is the lynchpin of her

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[15] In 1986, the legislature amended ORCP 44 C to require that a plaintiff produce "all written reports *or existing notations* of any examinations relating to injuries for which recovery is sought." *Former* ORCP 44 C (1987). In 1988, the legislature substituted "and existing notations" for "or existing notations." ORCP 44 C.

argument that we must construe ORCP 44 C to be limited to reports of treating experts, did not exist in *former* ORS 44.620. *Former* ORS 44.620(1) required a defendant to produce the reports of his or her litigation experts, but did not require plaintiffs to produce "like" reports. Thus, there could be no argument that, if *former* ORS 44.620(2) required a plaintiff to produce the reports of his or her litigation experts, it was duplicative of *former* ORS 44.620(1). Unless *former* ORS 44.620(2) required a plaintiff to produce the reports of his or her litigation experts, the plaintiff could obtain the reports of the defendant's litigation experts under *former* ORS 44.020(1), but refuse to disclose his or her own "like" reports.

The legislative history of *former* ORS 44.620 does not demonstrate an intent to require such an unequal exchange. In fact, Landis, one of the drafters of that statute, considered the existing case law -- requiring defendants and not plaintiffs to produce the reports of their examining experts -- to be objectionable and informed the legislature of his objection. In this case, plaintiff concedes that the legislature intended to address that problem, but argues that it did so by requiring only that plaintiffs produce the reports of their treating experts. However, there is little evidence that the legislature intended a limited rather than a more complete remedy to the expressed problem. Although both Landis and Crowe referred to a plaintiff's duty to produce the reports of treating experts, Landis also told legislators that the bill permitted defendants to obtain reports from plaintiffs that were "similar" to the reports that defendants were required to provide, and defendants were required to provide the reports of their litigation experts. Both Crowe and Landis generally referred to an "exchange" of reports and emphasized

their interest in moving away from the "sporting theory of justice" and the gamesmanship that existing law permitted, and toward early disclosure of all relevant facts.

When the Council promulgated ORCP 44 some five years later, it stated, in the commentary to ORCP 44 B, that, "[i]f no request for a report is made by the examined party, no right to reports from the examined party arises for the examining party." However, the Council also stated, in the commentary to ORCP 44 C, that that rule required plaintiffs to produce reports of examinations "apart from any exchange with the defendant or any court-ordered examination." That commentary is consistent with an intent to adopt, in ORCP 44 B, the specific exchange procedure of *former* FRCP 35(b)(1), but does not establish that the Council intended to restrict discovery of the reports of litigation experts to that procedure. The Council retained the wording of ORS 44.620 in ORCP 44 C, and there is a good argument that the text of ORS 44.620 required plaintiffs to produce, on request, the reports of all examining experts, including litigation experts.

Although plaintiff has raised a substantial question about the meaning of ORCP 44 C, the contextual clues and history that she has provided and that we have reviewed are not convincing, particularly given the text of the rule which, on its face, is unambiguous. ORS 44.620(2) required, and ORCP 44 C requires, plaintiffs to produce copies of "all written reports * * * of any examinations" relating to the injuries that plaintiffs' claim. The words of statutes and rules of civil procedure are the best indication of the intent of those who promulgate them. *See* State v. Gaines, 346 Or 160, 171, 206 P3d 1042 (2009) (words used by legislature to give expression are best evidence of

intent). Here, those words are encompassing rather than limiting. The words "all written reports * * * of any examinations" encompass the reports of both litigation and treating experts who examine a plaintiff. Those words do not define or limit the experts whose reports are subject to discovery, as long as those experts have examined the plaintiff.

Plaintiff in this case may well be correct that that interpretation of ORCP 44 C requires plaintiffs to disclose reports of litigation experts that, in the absence of ORCP 44 C, would be protected by the physician-patient, psychotherapist-patient, or attorney-client privileges. The response to that argument is that the legislature created those privileges and, in adopting ORCP 44, limited their reach. Plaintiff agrees that ORCP 44 B requires that the parties exchange the reports of their litigation experts and thereby requires the production of reports that otherwise might have been considered confidential. There is no reason that ORCP 44 C should not have the same effect. In fact, HB 2101 included an amendment of the physician-patient privilege that made that privilege "subject to" the provisions of that act. Or Laws 1973, ch 136, § 6. Crowe told the legislature that he had obtained the "full approval" of the Oregon Medical Society for that change. Minutes, House Judiciary Subcommittee II, Feb 12, 1973 (statement of Austin Crowe). OEC 504 and OEC 504-1 also provide that there is no psychotherapist-patient or physician-patient privilege for communications in the course of an ORCP 44 examination, except as provided in ORCP 44 and OEC 503. The lawyer-client privilege defines "representative of the lawyer" to exclude a physician making a physical or mental

examination under ORCP 44.[16] The legislature has recognized that the discovery that ORCP 44 permits and requires is an exception to the privileges that the legislature has created.

We conclude that, in adopting ORCP 44 C, the legislature, as did this court in *Carnine* and *Nielson*, considered the "search for truth and justice" to be paramount and required plaintiffs to produce, on request, the reports of the experts who examine them for purposes of litigation as well as for treatment. Therefore, we also conclude that, in this case, the trial court was correct that plaintiff was required to produce the report of Green, and did not err by excluding his testimony under ORCP 44 D.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

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[16] Or Laws 1973, ch 136, § 6, provided that the physician-patient privilege of *former* ORS 44.040(1)(d) (1974), *repealed by* Or Laws 1981, ch 829, § 98, was subject to the provisions of HB 2101. When the legislature enacted the Oregon Evidence Code, it repealed *former* ORS 44.040 and replaced it with the cited provisions of the Oregon Evidence Code. As originally enacted, and today, OEC 503, OEC 504, and OEC 504-1 contain express exemptions for examinations conducted under ORCP 44.