

# SUPPLEMENTARY LOCAL RULES

CIRCUIT COURT  
OF THE STATE OF OREGON

TENTH JUDICIAL DISTRICT  
UNION AND WALLOWA COUNTIES

Effective  
February 1, 2007

# TABLE OF CONTENTS

## CHAPTER 1

### GENERAL PROVISIONS

1.034 Payment in U.S. Dollars.....	1
1.035 Credit Cards.....	1
1.151 Hours of Court operation.....	1
1.171 Court Websites.....	1

## CHAPTER 2

### STANDARDS FOR PLEADINGS AND DOCUMENTS

2.012 Addresses and Telephone Numbers .....	1
2.014 Form of Documents .....	2

## CHAPTER 3

### DECORUM IN PROCEEDINGS

3.051 Participation in Hearing by Telephone.....	2
3.181 Media or Other Public Access Coverage of Court Events.....	2

## CHAPTER 5

### PROCEEDINGS IN CIVIL CASES

5.005 Depositions.....	3
------------------------	---

## CHAPTER 6

### TRIALS

6.012 Settlement Conferences.....	4
6.014 Voluntary Settlement Conference.....	6
6.016 Settlement Agreement.....	6
6.035 Motion to Postpone.....	6
6.055 Delivery of Trial Memoranda and Other Documents.....	6
6.081 Copies of Exhibits.....	6
6.082 Stipulation of Exhibits.....	7
6.135 Trial Reporter and Jury Fees.....	7

**CHAPTER 7  
CASE MANAGEMENT AND CALENDARING**

7.015 Video Appearances..... 7  
7.111 Time Lines..... 8  
7.112 Preliminary Hearing Decision..... 8  
7.113 Plea Hearing..... 9  
7.114 Pretrial hearing..... 9  
7.115 Twenty-four Hour Status Conference..... 9  
7.215 Scheduling Court Appearances..... 9

**CHAPTER 8  
DOMESTIC RELATIONS PROCEEDINGS**

8.005 Settlement Conferences..... 10  
8.006 Coordination of Cases..... 10  
8.012 Parent Education Class and Mediation Orientation..... 10  
8.031 Motions for Temporary Child Support and Spousal Support..... 11  
8.041 Time for Filing Uniform Support Affidavits..... 11

**CHAPTER 9  
PROBATE AND ADOPTION PROCEEDINGS**

9.052 Wrongful Death and Personal Injury Proceeds..... 11  
9.081 Oral Objections in Protective Proceedings..... 12  
9.135 Probate Commissioners..... 12  
9.145 Court Visitors..... 12  
9.155 Reports..... 12  
9.165 Decedents' Estate Cases Pending for One Year or Longer..... 13

**CHAPTER 11  
JUVENILE COURT PROCEEDINGS**

11.005 Appearance in Juvenile Court Dependency Cases..... 13

**CHAPTER 12  
MEDIATION**

12.013 Mediation of Child Custody and Parenting Time Disputes..... 13  
12.014 Court’s Authority..... 15  
12.015 Confidentiality of Mediation..... 15  
12.016 Mediation where a Power of Imbalance Exists..... 16  
12.017 Non-Resident Participants..... 16  
12.018 Disputed Parentage..... 16  
12.019 Appointment of Counsel for the Minor Child..... 16  
12.021 Mediator Qualifications..... 17  
12.022 Objection to Mediator..... 17  
12.015 Small Claims Mediation..... 17

**CHAPTER 13  
ARBITRATION**

13.015 Action Tried to Court Exempted..... 17  
13.025 Request for and Objections to Arbitration..... 17  
13.035 Court Shall Determine Whether Case is Subject to Arbitration..... 18  
13.042 Referral to Arbitration..... 18  
13.048 Waiver of Deferral of Fee..... 18  
13.055 Arbitrators..... 19  
13.065 Stipulations..... 19  
13.066 Motions..... 19  
13.075 Alternate Mediation Procedure..... 19  
13.085 No Award Filed Without Proof of Notice..... 20  
13.125 Arbitrator’s Compensation..... 20

**CHAPTER 15  
SMALL CLAIMS**

15.015 Applicable Supplementary Local Rules..... 20  
15.025 Small Claims Mediation..... 20

**CHAPTER 16  
VIOLATION OFFENSES**

16.005 Violations Bureau..... 21  
16.015 Trials by Affidavit..... 21

## **CHAPTER 1 GENERAL PROVISIONS**

### **1.034 PAYMENT IN U.S. DOLLARS**

All fees, costs, fines, and assessments shall be paid in U.S. Dollars. Unless otherwise ordered by a judge of this Court, or required by law, the Trial Court Administrator shall not accept any foreign currency and shall return any checks payable in foreign currency to the payor for replacement.

### **1.035 CREDIT CARDS**

Credit cards may be used and fees assessed as provided in ORS 1.005.

### **1.151 HOURS OF COURT OPERATION**

The Circuit Court office in La Grande is open to conduct business from 8:00 a.m. to 5:00 p.m. Some public service counters may be closed between noon and 1:00 p.m. The Circuit Court office in Enterprise is open to conduct business from 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m.

In La Grande the entry to the courtrooms, the traffic and accounting offices, and the criminal records office is at 1007 4<sup>th</sup> Street. The entry to the civil records office is at 1008 K Avenue. In Enterprise the courtroom and the Court operations office are located on the second floor of the Wallowa County Courthouse, 101 S. River Street.

### **1.171 COURT WEBSITES**

Website addresses for the Circuit Court of Oregon, Tenth Judicial District, are:  
[www.unioncountycourt.org](http://www.unioncountycourt.org) and [www.wallowacountycourt.org](http://www.wallowacountycourt.org).

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

### **2.012 ADDRESSES AND TELEPHONE NUMBERS**

(1) Defendants in criminal, violation and infraction cases. During the pendency of any case charging an offense, including traffic, boating, game, infraction, violation, and criminal cases, or while any monetary or other obligations imposed by the Court in such case remain unsatisfied, defendant must keep the Court advised in writing of defendant's current name, mailing address, and telephone or message telephone number.

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

#### 2.014 FORM OF DOCUMENTS

(1) All documents filed with the Court shall be two-hole punched in advance at the top of each page, by the party submitting the document. Documents shall be stapled in the upper left corner.

(2) Exhibits appended to filed documents shall be affixed to the document with staples or binder clamps.

(3) Documents filed with the Court or submitted for signature by a judge shall not be stamped or marked "original".

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

#### 3.051 PARTICIPATION IN HEARING BY TELEPHONE

(1) Counsel or a party may be granted permission to appear for a hearing by telephone. A written request must be submitted at least one day prior to the scheduled hearing.

(2) When counsel, parties, or witnesses are granted permission to appear by telephone, they may participate by mobile or cell telephone only:

(a) When the call is made from a location affording good quality communication and

(b) The caller is not operating or a passenger in a moving vehicle.

#### 3.181 MEDIA OR OTHER PUBLIC ACCESS COVERAGE OF COURT EVENTS

Media or public access coverage is prohibited in the hallways outside of any courtroom or Court office. Upon request, on a case by case basis, the Court will consider designating an area outside of the courtrooms and prohibited Court areas for media and public access coverage.

## 5.005 DEPOSITIONS

### (1) Scope of Deposition

ORCP 36B(1) provides that any matter not privileged may be inquired into during a deposition if reasonably calculated to lead to admissible evidence. This standard will be interpreted broadly the Tenth Judicial District bench. If unreasonable or bad faith deposition techniques are being used, the deposition may be suspended briefly and a motion to limit pursuant to ORCP 39E may be made and heard by a judge.

### (2) Objections

Most objections are typically reserved until trial. Under ORCP 41C, only errors that can be obviated, removed, or cured are waived unless a reasonable objection is made during the deposition. ORCP 39D creates a mechanism so that the attorney whose question is objected to may accept the objection as an invitation to correct an alleged defect in the question. Rejection of the invitation may result in exclusion of the question and answer at trial. Attorneys should not state anything more than the legal grounds for an objection to preserve the record. Objections should be made without comment to avoid contamination of the answers of the witness. Argument in response to the objection is neither necessary or desirable.

### (3) Instructions Not to Answer

The only basis for an instruction not to answer a question reasonably calculated to lead to the discovery of admissible evidence is in response to an attempt by the attorney taking the deposition to inquire into an area of privacy, right, privilege, or area protected by the constitution, statute, work product, or questioning amount to harassment of the witness. Any objection to the form of the question or the responsiveness of the answer can be preserved with a brief objection.

### (4) Deposition Disputes

The parties should be able to resolve deposition disputes. If the parties have a problem that cannot be resolved without the assistance of the Court, they should briefly suspend the deposition and contact the Judge, or designee, for hearing, either on or off the record, by phone or at the courthouse.

### (5) Pending Questions

If a question is pending, it shall be answered before a break is taken, unless the question involves a matter of privacy right, privilege, an area protected the Constitution, statute, or work product.

#### (6) Persons Present

Any party may attend a deposition. Non-party witnesses are excluded at the request of any party.

## CHAPTER 6 TRIALS

### 6.012 Settlement Conferences:

(1) The Court on its own motion or on the request of any party may set a mandatory settlement conference. Scheduling of a settlement conference is subject to judicial availability and a settlement conference shall not be scheduled so as to delay trial of the case. The pretrial settlement conference will not be required if either party demonstrates good cause why the settlement conference should not be held.

(2) The purpose of the settlement conference is to provide a forum to resolve disputes before trial through the active participation of counsel and the Court. The attendance of all parties and their trial attorneys is required. When a party is insured, a representative of the insurance company with authority to settle the case shall be in attendance or readily available by telephone. Upon a showing of good cause, the judge conducting the settlement conference may excuse a party from personally appearing, but the party may be required to participate by telecommunication.

(3) Pretrial settlement conferences shall be conducted by a judge other than the assigned trial judge unless all parties stipulate in writing that the trial judge may also conduct the settlement conference.

(4) For a meaningful settlement conference to occur, all attorneys and parties must participate in good faith. The failure of any person to comply with these rules, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, may result in the Court imposing appropriate sanctions as described in UTCR 1.090. Cases set for a settlement conference shall retain their place on the trial docket.

(5) If settlement negotiations are not successful, counsel should be prepared to proceed to trial on the date scheduled. The Court will make every effort to ensure the case proceeds to trial on the date scheduled. This Court will deny all requests for

continuance except in case of emergency or highly unusual circumstances.

(6) If a settlement is reached, the parties shall place notice of the settlement on the record before the scheduled trial date, in accordance with UTCR 6.020.

(7) Upon a settlement being reached, the Court will enter an order of dismissal on settlement giving the parties 30 days in which to submit the final judgment. A longer period may be allowed if requested by the parties.

(8) In every case, the party shall present directly to the settlement judge, not less than seven (7) days prior to the date of the settlement conference, a detailed settlement conference statement and serve a copy on opposing counsel. The date and time of hearing shall be typed on the face sheet of the statement.

(a) In the case of personal injury/property damage litigation, the plaintiff shall include in the settlement conference statement a summary of facts, the injuries and/or damages, any special legal issues involved, and a settlement demand, and shall attach a copy of the most recent medical report(s).

(b) The defendant shall prepare a similar statement setting forth a summary of the facts, the injuries, legal issues, defendant's settlement offer, and a copy of the most recent defense medical report(s).

(c) In actions for dissolution, annulment, or separation, and actions for modification of judgments therein, the parties shall present directly to the settlement judge seven (7) days prior to the date of the settlement conference, all documents otherwise required by UTCR Chapter 8 pertaining to domestic relations proceedings.

(d) In other cases, each party shall prepare an appropriate settlement statement setting forth a summary of the facts, legal issues, damages and relief demanded, together with all demands and offers.

(9) Statements and other documents submitted to the judge by the parties and materials or notes prepared by the settlement conference judge are confidential and will not be placed in the trial Court file in the event that the case does not settle or upon request of either party, and in that event, the materials or notes shall be destroyed by the settlement conference judge.

#### 6.014 VOLUNTARY SETTLEMENT CONFERENCE

A voluntary settlement conference may be requested by any party to an action at any stage of the proceeding by filing a request for a voluntary settlement conference with

the clerk. The Presiding Judge or designee shall consider the request and, if appropriate, calendar the matter for a voluntary settlement conference to be conducted pursuant to SLR 6.013.

#### 6.016 SETTLEMENT AGREEMENT

Unless a settlement agreement signed by all parties is filed before the time set for trial, all parties are required to appear for trial. Appearance may be in person or by telephone. The terms of the settlement agreement shall be read into the record and the parties will announce their agreement with the terms of settlement.

#### 6.035 MOTION TO POSTPONE

(1) No motion for postponement shall be considered unless the motion is filed more than one week before the trial or hearing date; provided, however, an exception may be made if the party seeking such exception shall in addition to any statutory requirements or the requirements of ORCP 52, satisfy the Court that the cause for

postponement came to the knowledge of the party and counsel too late to be timely presented.

(2) The first paragraph of the motion must state the current trial or hearing date and in criminal cases whether or not defendant is in custody.

#### 6.055 DELIVERY OF TRIAL MEMORANDA AND OTHER DOCUMENTS

In civil cases, trial memoranda shall be received by the Court and opposing counsel at least two judicial days prior to the commencement of the trial.

#### 6.081 COPIES OF EXHIBITS

One photo-copy of every documentary exhibit required to be marked pursuant to UTCR 6.080 shall be delivered to opposing counsel and one copy to the Court before the commencement of trial.

#### 6.082 STIPULATION TO EXHIBITS

All exhibits marked pursuant to UTCR 6.080 shall be shown to opposing counsel before the commencement of trial. Counsel shall stipulate to those exhibits to which there are no objections and shall deliver the stipulated exhibits to the clerk. At the

commencement of the trial the judge shall state on the record that the stipulated exhibits have been received into evidence.

#### 6.135 TRIAL REPORTER AND JURY FEES

Pursuant to ORS 21.270 and 21.275, in all civil cases, the trial fee, hearing fee and jury fee shall be paid to the Court Administrator prior to the scheduled trial. Failure to pay the fees as set forth in this rule shall be deemed waiver of reporter and jury. No Court or jury trial shall proceed to trial until fees under this rule are paid to the Court Administrator.

### **CHAPTER 7 CASE MANAGEMENT AND CALENDARING**

#### 7.015 VIDEO APPEARANCES

The Tenth Judicial District presently has video capability at the courthouses in La Grande and Enterprise, and the Union County Correctional Facility.

(1) Criminal cases - When handled by video, a completed plea petition document must be filed with the Court prior to any change of plea.

(2) Habeas Corpus and Post-Conviction Relief cases - If a defendant is in the custody of a correctional institution, the defendant's pretrial motions, pretrial hearings, and Court trial shall be conducted by video camera, if available.

(3) Civil cases - Parties wishing to use video technology in civil cases shall, where available, make arrangements with the Trial Court Administrator prior to trial and pay all expenses of the video.

(4) Mental Commitment cases - If an alleged mentally ill person is in a mental health facility, the motions, hearings, and trial shall be conducted by video appearance, if available, at the expense of the Mental Health Division. The court shall have the discretion to have the allegedly mentally ill person transported to appear at the hearing in person.

(5) Scheduling - Parties requesting appearances via video shall contact the judicial assistant or docketing clerk where their case is filed to obtain permission for appearance via video. That jurisdiction will then coordinate with other judicial assistants on the use and availability of the video system. The first priority for use of video is criminal matters.

(6) Exhibits - All exhibits will be presented to the Court no later than three (3) judicial days prior to the scheduled Court proceeding. Any party presenting exhibits to the Court will also provide a self addressed, pre-paid postage mailing package to the Court for the return of the exhibits. Prior to the hearing, copies of exhibits shall be provided to witnesses appearing by video.

#### 7.111 TIME LINES

The following time lines will be observed in all criminal cases:

(1) Preliminary hearing decision. Defendant shall advise the Court of a preliminary hearing decision/waiver within ten (10) days after arraignment.

(2) Plea hearing. A hearing for entry of plea to felony charges shall be set approximately 42 days (six weeks) after the arraignment. A hearing for entry of plea to misdemeanor charges shall be set approximately 28 days (four weeks) after the arraignment. This schedule does not apply to 60 day rule cases. See ORS 136.290.

(3) Pretrial hearing. A pretrial hearing shall be held approximately 35 days after entry of plea for defendants not in custody and approximately 21 days for defendants in custody. As discussed in more detail below in Section 7.114, this hearing is the last opportunity defendant has to accept a plea bargain.

(4) Twenty-four hour status conference. This status conference will be held in open Court one day before the scheduled trial.

#### 7.112 PRELIMINARY HEARING DECISION

All requests and waivers of preliminary hearings must be in writing or on the record in open Court. Notice to the Court by telephone will not be accepted. If defendant is in custody a preliminary hearing will be set within five judicial days of the defendant's request. If defendant is not in custody a preliminary hearing will be set within 30 days of the defendant's request. The Court will make reasonable efforts to expedite appointment proceedings when the defendant is in custody. Discovery shall be expedited so that defense counsel will have discovery prior to the preliminary decision date.

#### 7.113 PLEA HEARING

If the defendant enters a plea of not guilty counsel shall report whether a jury trial is desired and advise the Court of the probable length of the trial. The parties will advise the Court of potential motions to suppress evidence and other pretrial motions and will advise the Court of the need to set an omnibus hearing pursuant to ORS 135.037. The

Court will fix a date for filing the motions.

#### 7.114 PRETRIAL HEARING

This hearing is held in open Court. The pretrial hearing will be held no later than 35 days before the trial date for those out of custody and no later than 21 days before trial for those in custody. The District Attorney, defense counsel and defendant are required to appear. The District Attorney shall promptly notify all victims in advance of all such hearings. Absent good cause shown, this will be defendant's final opportunity to accept any offer made by the District Attorney by entering a change of plea at such hearing. This will be the District Attorney's final opportunity to make any change in any plea offer. If the defendant rejects the plea offer or if the District Attorney declines to make a plea offer, the District Attorney must go to trial on all charges, or the defendant must plead guilty to all charges, or the District Attorney must move to dismiss all charges. The Court will establish deadlines for filing proposed jury instructions and verdict forms pursuant to UTCR 6.060 and for the marking, delivering, and stipulating to exhibits pursuant to UTCR 6.080, SLR 6.081, and SLR 6.082. Relief from the dates set pursuant to this section shall be granted for good cause shown.

#### 7.115 TWENTY-FOUR HOUR STATUS CONFERENCE

Counsel and the defendant must appear at this conference scheduled the full business day prior to the date set for trial. If defendant does not appear, an arrest warrant will issue and no jury will be called. The parties will advise the Court of any unresolved motions, any issues regarding scheduling of witnesses, and any other matters that may facilitate trial by the avoidance of unnecessary proof or by simplification of issues to be tried. The parties will advise the court of any special security considerations or equipment needs.

#### 7.215 SCHEDULING COURT APPEARANCES

Trials, motions and show cause hearings shall be scheduled in writing to the parties, except that short-notice hearings may be arranged telephonically. Trials commence daily at 9:00 a.m. and continue through 5:00 p.m. Non-custodial matters are scheduled every Tuesday at 9:00 a.m. Custodial matters are scheduled daily at 1:15 p.m.

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

#### 8.005 SETTLEMENT CONFERENCES

In actions for dissolution, annulment, or separation, and actions for modification of judgments therein, the parties shall present directly to the settlement judge fourteen (14)

days before a SLR 6.012 and 6.014 settlement conference, all documents otherwise required by UTCR Chapter 8.

#### 8.006 COORDINATION OF CASES

(1) Neither counsel nor parties shall bring an action for custody or parenting time in any civil action without disclosing the existence and status of any other pending or closed case relating to those issues, whether the other case is a governmental action (such as a child support or juvenile matter), a probate action (such as a guardianship), or an out of state action.

(2) Where more than one case filed in this Judicial District relates to the same parties, every attempt will be made to calendar all related cases before the same judge and, where appropriate, at the same time.

#### 8.012 PARENT EDUCATION CLASS AND MEDIATION ORIENTATION

(1) In any domestic relations action involving the custody or parenting time of minor children, including enforcement or modification proceedings and proceedings involving parties who are non-parents, all parties shall attend a parent education class and mediation orientation session provided by the Court prior to a judicial determination of the issues. For purposes of this rule, domestic relations actions include dissolution of marriage, separation, annulment, filiation, dissolution of domestic partnership, guardianship and such other cases as shall be designated by the Presiding Judge.

(2) Attendance at a parent education class and mediation orientation shall not be required in any case arising under the Family Abuse Prevention Act, ORS 107.700-107.730, or the stalking act, ORS 163.730-163.755.

(3) The parent education class shall include information about parenting children during the process of separation or dissolution of marriage, and shall be designed to assist parents and other adults in meeting children's needs during this period. Mediation orientation shall include information about the mediation process, other dispute resolution processes, including litigation, and circumstances in which mediation may not be appropriate. The classes shall be open to the public.

(4) Parties may attend a similar parent education session in another Oregon county and file a certificate of attendance with the Court. With prior Court approval parties may attend a similar parent education session in another state.

(5) The Court, upon the motion of any party or upon its own motion, may order parties in any action identified in subparagraph (1), above, to attend such supplemental education programs as the Court deems to be in the best interest of the minor children.

## 8.031 MOTIONS FOR TEMPORARY CHILD SUPPORT AND SPOUSAL SUPPORT

Pendente lite motions for temporary child and/or spousal support filed pursuant to ORS 107.095(1)(b) may be determined without testimony based on the affidavits of the parties and their Uniform Support Affidavits. Such motions shall be filed separately from other pendente lite motions. The due date for filing a response to such motions shall be not later than fourteen days from the date of service of the motion. In cases involving temporary child support, the affidavits filed by the parties shall include a child support computation worksheet. After the due date for the response of the nonmoving party, the moving party shall notify the Court, in writing, that the motion is ready for decision. With due regard for other pending matters, the Court will attempt to issue a ruling within 14 days of such notice. The Court reserves the right to schedule oral argument before issuing its decision, on the Court's own motion or for good cause shown.

## 8.041 TIME FOR FILING UNIFORM SUPPORT AFFIDAVITS

Pursuant to UTCR 8.010(6)(1)(a), the moving party seeking child support or spousal support shall file the Uniform Support Affidavit required by UTCR 8.010(5), UTCR 8.040(3), or UTCR 8.050(1) with their initial pleading seeking such support. The responding party shall file their Uniform Support Affidavit within 14 days of service of a motion for temporary support, and within 30 days of service of a petition or other pleading which seeks support on other than a temporary basis.

## **CHAPTER 9 PROBATE AND ADOPTION PROCEEDINGS**

### 9.052 WRONGFUL DEATH AND PERSONAL INJURY PROCEEDS

When wrongful death and/or personal injury proceeds are assets in probate, conservatorship and guardianship proceedings, that fact shall be alleged by a separate titled paragraph in the initial petition filed with the Court.

### 9.081 ORAL OBJECTIONS IN PROTECTIVE PROCEEDINGS

Oral objections to petitions in protective proceedings may be made in the following places:

Circuit Court of Oregon for Union County: Civil Records Office, 1008 K Avenue, Third Floor, La Grande, Oregon

Circuit Court of Oregon for Wallowa County: Circuit Court Office, Second Floor, Room 204, Wallowa County Courthouse, 101 South River Street, Enterprise, Oregon.

### 9.135 PROBATE COMMISSIONERS

As provided by law, these rules, and where not inconsistent with the Uniform Trial Court Rules, a Probate Commissioner appointed by this Court shall assist in the administration of decedents' estates, guardianships, conservatorships, and other similar proceedings, and is empowered:

(1) To act upon uncontested petitions for appointment of special administrators, for probate of wills, and for appointment of personal administrators, guardians and conservators.

(2) To make and enter orders on behalf of the Court admitting wills to probate and appointing special administrators, personal representatives, guardians and conservators.

(3) To set the amount of the bond for special administrators, personal representatives, guardians and conservators; and to approve such bonds.

### 9.145 COURT VISITORS

A Court visitor for any alleged incapacitated person (ORS 125.005, 125.125 et seq) is a designee of the Court. The petitioner shall serve the visitor with all applications, proposed orders and correspondence. The petitioner is responsible for the payment of the visitor's fees in the amount established by the Presiding Judge by General Order. Any request for fees in excess of this amount, or for extraordinary expenses, must be submitted to the Presiding Judge for consideration. The visitor's fee shall be paid to the Court at the time the order appointing visitor is submitted for approval. The fee will be disbursed to the visitor when the visitor's report is received.

### 9.155 REPORTS

In addition to other matters, the fiduciary of any incapacitated person and the guardian of any minor ward shall file and serve annually the report required by ORS 125.325.

### 9.165 DECEDENTS' ESTATE CASES PENDING FOR ONE YEAR OR LONGER

When one year has elapsed after the initial filing of a decedents' estate, the Personal Representative shall file, in the annual accounting, a statement advising the Court of the status of the estate. The statement shall indicate the date the Personal Representative anticipates closing the estate.

## **CHAPTER 11 JUVENILE COURT PROCEEDINGS**

## 11.005 APPEARANCE IN JUVENILE COURT DEPENDENCY CASES

(1) A parent who is served with a summons in a child dependency case shall appear personally in Court at the time and place specified in the summons for a hearing on the allegations of the petition.

(2) A parent who fails to appear shall be subject to entry of a default order and/or judgment granting the relief sought by the petitioner.

## **CHAPTER 12 MEDIATION**

### 12.013 MEDIATION OF CHILD CUSTODY AND PARENTING TIME DISPUTES

(1) It is the Court's policy that resolution of family issues through good faith participation in competent, professional mediation is in the interest of both the family and the public.

(2) Mediation of custody/parenting time disputes may be commenced at any stage in a civil action by the stipulation of the parties or by the order of the Court. The Court may order mediation on the motion of either party or on the Court's own motion. For purposes of this rule, civil actions include dissolution of marriage, separation, annulment, filiation, dissolution of domestic partnership, guardianship and such other cases as shall be assigned by the Presiding Judge.

(3) The Court may decline to hear a contested custody or parenting time issue until and unless the parties have participated in mediation in a good-faith attempt to resolve the issues between themselves. A notice from the assigned mediator must be filed with the Court stating that the parties have cooperated and that mediation has nevertheless not resulted in an agreement before trial or hearing on the merits will be calendared.

(4) Parties ordered to mediation shall be referred to the Court's Family Mediation Program.

(5) Parties may select, by stipulation, a private mediator. The parties shall directly contract with the private mediator and be responsible for payment of the mediator's fees. If private mediation is selected, a written stipulation indicating the name of the mediator shall be filed with the Court. Private mediators should have education and experience equivalent to the minimum requirements for membership in the Court's family mediation panel.

(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 or parenting time, upon the request of both parents, the mediator may assist in resolving the support issue as well.

(7) If the parties cannot agree on the division of their assets and debts or other economic issues, and they are also in dispute as to custody or parenting time, upon the request of both parties the mediator may assist in resolving the additional issues as well.

(8) At any point during mediation, the Court may approve a custody and parenting time order reflecting the parents' full or partial agreement as to the issues. If the agreement is reached through the Court's Family Mediation Program and prepared by one of the Court mediators, the mediator 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 Program. The mediator shall forward the signed agreement to the Court for approval unless, within that time period, the mediator receives written notice of a party's repudiation of the agreement.

(9) Mediation shall not be used by any party in bad faith for the purposes of delay or undue influence on other issues. If the Court finds at any time that the mediation process is being misused, it may determine that further mediation is inappropriate, have the case removed from the mediation process and impose sanctions, as appropriate.

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

(11) In the following cases, notice of mediation must be filed in the other appropriate court files and provided to all other interested parties:

- (a) Where there is a pending Juvenile Court petition regarding the child or children in question; or
- (b) Where temporary or permanent custody or wardship of the child or children in question has been granted to the Oregon Department of Human Services or the Oregon Youth Authority; or
- (c) Where the Juvenile Court has assumed temporary or permanent jurisdiction over the child or children in question.

#### 12.014 COURT'S AUTHORITY

A civil case filed in the Circuit Court remains under the control of the Court in all phases of the proceedings, including mediation. The Court referring a case to mediation

may set, in its referral order, the limits of the mediator's scope of authority in the case. Absent an order to the contrary:

(1) The mediator has authority and control over the mediation process but has no authority over the parties or over their decisions in the case;

(2) Unless otherwise agreed in writing by the parties and mediator, the parties' legal counsel shall not be present at mediation sessions;

(3) The mediator shall encourage disputing parties to obtain individual legal advice at any time during the process and individual legal review of any mediated agreement before signing any agreement;

(4) The mediator shall not act as a lawyer for either party or the children of the parties in the current or any related matter absent the written consent of both parties.

#### 12.015 CONFIDENTIALITY OF MEDIATION

(1) All communications occurring in the course of mediation are confidential pursuant to ORS 107.785. Mediators are mandated reporters regarding any allegation of child abuse or neglect and shall so advise each party prior to commencement of mediation.

(2) Except as provided by rule 12.020(1), above, or as agreed to by both parties after mediation ends, the mediator shall not communicate to any third party regarding the mediation, other than to inform the Court of the terms of the parties' agreement or, if full agreement was not reached, of that fact. The mediator shall not make any recommendation. The mediator may not be subpoenaed or called as a witness regarding any aspect of the mediation other than whether the mediation resulted in agreement and, if so, the specific terms of the agreement as communicated to the Court.

#### 12.016 MEDIATION WHERE A POWER IMBALANCE EXISTS

(1) Where there is a restraining order between the parties, a history of domestic violence or abuse, an extreme imbalance in the power relationship between the parties or other reason to believe that mediation may be inappropriate, a party may contact the assigned mediator to request that the parties meet with the mediator separately, the presence of a support person during mediation, telephonic mediation or another remedy. A mediator may exclude a support person from a session if the support person disrupts the process of mediation.

(2) The mediator may arrange separate sessions, require telephonic mediation or terminate mediation at any time if the mediator believes that issues of violence, abuse,

threatening behavior, manipulation or power imbalance make further mediation inappropriate. In any telephonic mediation, both parties will participate by telephone.

#### 12.017 NON-RESIDENT PARTICIPANTS

If one of the parties is not a resident of the county in which mediation is scheduled, that party may request that mediation occur by telephone. If the needs of both parties would be better served by telephonic mediation, they may agree to such mediation. If telephonic mediation occurs, both parties will appear by telephone and will arrange to be available in a quiet place, not in the presence of the parties' children. All others present at the time of telephone mediation must be identified. Costs of telephonic mediation will be paid proportionately by the party(ies) appearing by telephone.

#### 12.018 DISPUTED PARENTAGE

If parentage is disputed, the issue need not be resolved by the Court prior to mediation. Mediation shall not be denied to the parties on the basis that parentage is an issue in the proceeding before the Court. The Court may make a temporary order granting parenting time to a non-custodial parent absent a parentage determination upon a finding that the granting of such visitation would be in the best interest of the child.

#### 12.019 APPOINTMENT OF COUNSEL FOR THE MINOR CHILD

Where appropriate, the mediator may recommend that the Court appoint counsel to represent the minor child.

#### 12.020 [Not used - See UTCR 1.080(3)]

#### 12.021 MEDIATOR QUALIFICATIONS

To qualify as a Court Family Mediation Program panel member, person must:

(1) Meet the requirements of OAR 718-30-0 through 718-30-100 and of the Oregon Dispute Resolution Commission for mediation of custody-parenting disputes; if the mediator is assigned additional responsibility per rules 8.013(6) and 8.013(7), the mediator shall meet the minimum requirements set by the Oregon Dispute Resolution Commission for those additional responsibilities.

(2) Sign and file an application with the Court; and

(3) Be approved by the Presiding Judge.

#### 12.022 OBJECTION TO MEDIATOR

Within 5 days of notice of the identify of the appointed mediator and prior to the conduct of the first mediation session, a party may, one time only, object in writing to the assignment of the mediator, without giving a reason, and request assignment of another mediator. Thereafter, any objection must be for cause and must be resolved by the Court.

#### 12.015 SMALL CLAIMS MEDIATIONS

See Supplementary Local Rule 15.015 below.

### **CHAPTER 13 ARBITRATION**

#### 13.015 ACTION TRIED TO COURT EXEMPTED

Civil cases may be exempted or removed from arbitration in accordance with ORS 36.405(2).

#### 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 Court decision on an exemption filed pursuant to ORS 36.405(2) will be rendered within 5 days following the filing of a motion for exemption from arbitration. If the motion is allowed, the case will be returned to the active trial docket for future disposition. If the motion is denied, the case will remain in arbitration in accordance with these rules and the UTCR.

#### 13.035 COURT SHALL DETERMINE WHETHER CASE IS SUBJECT TO ARBITRATION

(1) A case assigned to arbitration will not be removed, except as might occur under (2) of this Rule, without an affidavit, motion and order.

(2) Only in extraordinary circumstances will the Court order a case returned from arbitration to the Court docket after a case has been assigned to an arbitrator. The Presiding Judge of the judicial district in which the case was filed does retain the authority to remove a case from arbitration any time the Presiding Judge is of the opinion that such extraordinary circumstances exist.

(3) In the event that amended pleadings are allowed by the arbitrator (e.g.

amended complaint, third party complaint, etc.) in which a party or parties will be added to the case, or which causes the case not to be subject to mandatory arbitration, the party filing such an amended pleading must notify the Trial Court Administrator. Such a case, when again appropriate, may be reinstated into arbitration. In the event the case is not thereafter subject to mandatory arbitration, the party requesting removal from arbitration shall file a motion to exempt the case from arbitration, or to remove it if it was previously referred to arbitration.

#### 13.042 REFERRAL TO ARBITRATION

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

#### 13.048 WAIVER OR DEFERRAL OF FEE

(1) Indigent parties must seek waiver or deferral of the arbitrator's fee within 14 days from the date the case is transferred to arbitration. The request must be submitted by motion and order, supported by an affidavit setting forth with specificity the party's income, assets, and expenses, and presented to the Presiding Judge for approval.

(2) In the event funds are available under ORS 36.420 for the payment of fees that are waived or deferred, the arbitrator shall be reimbursed after completion of the arbitration, filing of the arbitration award, and submission of the form approved by the State Court Administrator for such purpose.

#### 13.055 ARBITRATORS

(1) To qualify as an arbitrator, a person must sign and file an application as arbitrator 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. During any period of suspension or disbarment from the practice of law by the Oregon State Bar or the Supreme Court, an arbitrator will be removed from the Court's list of arbitrators and may re-apply when the attorney is reinstated or readmitted to the Bar.

(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, address and phone number, and if they have any preference against certain types of cases. A list showing the names of arbitrators to hear

cases will be available for public inspection with the Trial Court Administrator for each individual county.

(3) The appointment of an arbitrator is subject to the right of that person to refuse to serve. An arbitrator must notify the Court 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. No arbitrator shall have pending at any given time more than three arbitration cases, subject to the discretion of the Presiding Judge.

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

### 13.065 STIPULATIONS

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

### 13.066 MOTIONS

Motion practice is discouraged in cases assigned to arbitration.

### 13.075 ALTERNATE MEDIATION PROCEDURE

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

### 13.085 NO AWARD FILED WITHOUT PROOF OF NOTICE

At the conclusion of arbitration, if the arbitrator attempts to file the award with the Court without the proof of service of a copy of the decision and award upon each party as required by ORS 35.425(1), the award will not be filed and will be returned to the arbitrator.

### 13.125 ARBITRATOR'S COMPENSATION

(1) Plaintiff(s) shall be responsible for one-half of arbitrator's fee. Defendant(s) shall be responsible for one-half of the arbitrator's fee. [Note: The Arbitration Commission has set an arbitrator's compensation at \$100 per hour (or any greater sum agreed upon by the parties) with a maximum of ten hours per case except for good cause shown and approved by the Presiding Judge. Travel time shall not be compensated unless an arbitrator must travel from one county to another county for hearing, in which case the arbitrator will be paid \$50 per hour while traveling, with a maximum payment for travel time of \$200.]

(2) The parties shall pay the arbitrator a fee deposit of \$500 before the arbitrator begins work on a case. If the plaintiff fails to pay plaintiff's share of the deposit within fourteen (14) calendar days of assignment to the arbitrator, the Court may exercise its authority to strike plaintiff's complaint. If the defendant fails to pay defendant's share of the deposit within fourteen (14) calendar days of assignment to the arbitrator, the Court may exercise its authority under UTCR 1.090 and impose an appropriate sanction, including striking the answer and entering a default judgment against the defendant.

(3) The parties must pay the arbitrator's fee in full before the arbitrator files the award with the Court. This requirement is waived for any portion of the fee payable under ORS 36.420.

## **CHAPTER 15 SMALL CLAIMS**

### **15.015 APPLICABLE SUPPLEMENTARY LOCAL RULES**

Supplementary Local Rules 2.012(2) and 2.014 apply in small claims cases.

### **15.025 SMALL CLAIMS MEDIATION**

(1) All contested small claims cases shall be subject to mediation, pursuant to ORS 36.185. A case will be removed from mediation and proceed in the normal fashion if either party files a written objection to mediation.

(2) These mediation services shall be provided by the Court without cost to the litigants through the use of volunteer mediators.

(3) All parties must appear for mediation. A party not appearing for mediation may have a judgment entered against him or her.

(4) An authorized representative may appear on behalf of a business but must be familiar with the facts of the case and must have full authority to settle.

(5) Attorneys shall not be permitted to attend a small claim mediation session unless they are parties to the case, or with permission of the Court.

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

(7) Failure to 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.

**CHAPTER 16**  
**VIOLATION OFFENSES**

16.005 VIOLATIONS BUREAU

(1) A Violations Bureau is established pursuant to ORS 153.800.

(2) The Trial Court Administrator is appointed as Violations Clerk, and duly appointed deputies of the Administrator are further appointed as Deputy Violations Clerks.

(3) The Violations Bureau may exercise authority over all offenses authorized by ORS 153.800.

(4) Appearances before the Violations Bureau shall be permitted on any authorized offenses to a maximum of two (2 ) occurrences within any 12-month period.

16.015 TRIAL BY AFFIDAVIT

If a signed waiver is filed by the alleged violator, testimony in a violation trial is allowable by affidavit. ORS 153.080. Copies of affidavits by either party will be available if requested in writing at least five days before trial.