FREQUENTLY ASKED QUESTIONS RE UTCR 5.100
IN MULTNOMAH COUNTY FAMILY COURT

1. What does the rule now require?

The rule requires that in most situations, you provide notice to the other party before submitting a proposed order or judgment. If the other party is self-represented, you must also include notice of the timeframe that that party has to object. If you received objections, the rule details your obligation to try to resolve them. Finally, the rule requires that *every* proposed order and judgment contain a Certificate of Readiness telling the Judge why the document is ready for judicial signature and setting out the status of any objections received.

2. Why do we need this rule?

Three reasons prompted the 2016 revisions to this rule.

A. Separate routing -- Under the court's electronic case management system, proposed orders and judgments must be submitted separately from any other case filings. UTCR 21.040(2)(a). This segregation is necessary so that documents requiring judicial signatures can be routed promptly and directly to electronic queues developed for this purpose. This segregation means that the Judge does not have ready access in that queue to the supporting documentation (motions, declarations, correspondence, etc.) relevant to the proposed order/judgment. The Judge does have the ability to access the supporting documents, but that step requires more electronic maneuvering and time. Having all the "readiness" information in one place is efficient for the court and expedites the fastest signing, routing, and entry of orders and judgments. Moreover, even though the rule is based in part on eCourt needs, the UTCR 5.100 revisions apply as well to *paper* documents needing judicial signatures, for convenience and for the reasons expressed below.

B. No ability to "hold" documents – The Court cannot "hold" documents electronically, waiting for required time periods to pass before the Judge can sign the document. The Court's queues do not have the functionality to "tickle" cases for specific reasons or timeframes. Court staff also cannot assume the responsibility for holding *paper* orders submitted simultaneously with service on the other party. Documents requiring court signatures should not be submitted until they are ready for judicial signature.

C. Notice needed for Self-Represented Litigants -- No UTCR has required that self-represented litigants (SRLs) be given notice of the opportunity or timeframe for objecting to proposed orders and judgments, although certain statutes and rules have required specific notice in some situations and ORCP 7 has controlled notice regarding summons. The 2016 rule revisions make sure that no document is sent to an SRL without that recipient knowing what action was needed, by when, if a dispute existed.

3. What is the notice period for proposed orders and judgments under this rule?

When the other side is represented, the drafter must wait 3 days, plus an additional 3, before submitting the document to court. When the other side is self-represented, the drafter must wait 7 days, plus an additional 3. The "3 extra days" requirement derives from ORCP 10B, which was modified by the 2015 Oregon Legislature to apply the 3-day extension to service by email, fax, and electronic service instead of just posted mail. UTCR 1.130 applies ORCP 10 to time periods set by the UTCRs.

4. Aren't there situations in which I shouldn't have to give notice to the other party that I am submitting a proposed order or judgment?

Yes. The rule recognizes that *ex parte* (non-noticed) submission of orders and judgments is appropriate in some situations. Subsection (3) of the rule sets out those situations:

(a) the document is presented in open court with the parties present,

(b) a statute or rule authorizes submission of the document for signature without notice (*see Question #5)*,

(c) an order of default has already been entered against the other party or that default order is being submitted simultaneously with the judgment or other order,

(d) the judgment resolves the review of a final DMV order,

(e) the document involves an uncontested probate or protective proceeding, or

(f) the proposed order addresses certain issues filed by the Oregon Child Support Program (CSP). All of the CSP issues involve situations in which the court is required to hold a hearing on the issue the CSP has certified to the court. Those issues include: what amount of past support should be ordered, contested issues of paternity, contested name change issues, and objections to the CSP's decision resolving a "multiple order" conflict.

5. What are the situations where "a statute or rule authorizes submission [of a proposed order] without notice"?

ORS, UTCRs, and SLRs provide these answers. In the Family Law arena, *ex parte* orders are permissible in some situations under the Family Abuse Prevention Act, the Elderly Persons and Persons with Disabilities Prevention Act, Stalking Protective Order legislation, and the Sexual Abuse Protective Order Act. In addition, pre-judgment immediate danger orders are authorized as an *ex parte* matter under ORS 107.097. And pre-judgment Temporary Protective Orders of Restraint may be obtained *ex parte* in our county as long as the petition has not been served. *See* SLR 8.018. Moreover, under ORCP 79, certain restraints against person, assets, or property can be obtained without notice if the requisite showing is met. Post-judgment, an immediate danger order requires a good faith attempt to confer, so this is not strictly a permissible *ex parte* appearance. Claims for attorney fees need not be submitted to a party already found in default. OCRP 68C(4)(a)(ii). It has also been the practice of the court to allow Orders to Show Cause to be signed without notice, since that action is administrative rather than merit-focused (although from a professionalism standpoint notice to the other side should be considered). Orders for mediation and for statutory financial restraint probably fall in this category as well

since they simply implement rules mandating the particular relief sought.

6. Can I combine my Certificate of Readiness with a Certificate of Service?

Yes, nothing in the rule prohibits this – as long as your Certificate of Service is part of your proposed order/judgment and not a separate document. Just make sure to label your content as including a "Certificate of Readiness."

7. Is the Certificate of Readiness filed as a separate document, or somehow incorporated into my proposed order of judgment?

A Certificate of Readiness must be "attached" to the proposed order or judgment, according to UTCR 5.100(2)(leading sentence). For efiling purposes, a document that is "attached" must be a part of the same unified PDF as the primary document. UTCR 21.040(2). So it is important that you do not submit the Certificate of Readiness as an independently filed document as it will not end up in the Judge's queue along with the proposed order or judgment. Even if your proposed order or judgment is submitted in paper, the Certificate of Readiness must be part of the underlying order. Overall, it may be helpful to simply insert the Certificate of Readiness immediately below the judge's signature line, and before any other stipulating or submitting signatures.

8. Where in the proposed order or judgment should I insert the Certificate of Readiness?

The rule does not specify but see the last sentence in the answer to Question #7.

9. Do I have to set out the entire UTCR template as my Certificate of Readiness, or may I just insert the sentence that applies to my situation?

Again, the rule does not explicitly answer this. Some attorneys prefer to include the entire template, and just "X" the applicable sentence/s. Others prefer to list only the specific reason applicable. From a judge's standpoint, what is critical is that the section be labeled "Certificate of Readiness" so we can find it easily and that you set out the ground for readiness in a format that the UTCR states rather than in some alternative language.

10. Does my Certificate of Readiness have to set out the address at which I served the other party with the copy of the proposed order/judgment?

The rule is not clear. The rule states you must "describe . . . the manner of compliance" with the service requirement (when the notice is required by the rule). Whether the "manner" includes the address is not clear but the better practice would be to include the address. It is best if the Certificate states not just the date and *method* of service (in person delivery, mail, fax, email, or electronic service) but also the address of delivery. That best ensures a record should any dispute arise about whether notice was given.

11. Do I have to provide a Certificate of Readiness on <u>every</u> proposed Order or Judgment?

Yes. The exceptions in the rule are for the notice requirement, not for the Certificate requirement.

12. Does this rule apply in Criminal case?

No. The UTCR is set out in Chapter 5, which addresses civil cases. However, in Multnomah County, we have a specific Supplemental Local Rule that applies UTCR 5.100 to "matters under this chapter [8]" and SLR 8.011 lists the wide variety of matters handled by the Family Court. Because contempt matters seeking remedial sanctions are legally part of the underlying case, ORS 33. 055(3), a Certificate of Readiness is needed in our remedial contempt orders and judgments.

13. Does this rule apply in a Juvenile case?

Yes – in Multnomah County. This UTCR is set out in chapter 5, which addresses civil cases. Juvenile matters are neither criminal nor civil but *sui generis.* However, we have a local SLR that explicitly applies UTCR 5.100 to Juvenile proceedings. SLR 11.046.

14. Does this rule apply to Notices of Withdrawal?

No. Only a proposed Order to withdraw (i.e., a document requiring judicial signature) triggers the application of this rule.

15. Does this rule apply to Motions to Postpone?

UTCR 6.030(6) does state that UTCR Chapter 5 (with exceptions not relevant here) does not apply to Motions for Postponement, so it is hard to argue that the new rule should apply in this scenario. However, if a Motion to Postpone is served on the other side without notice of what that other party should do or by when, you will very likely encounter Family Court Judges who delay consideration of such a motion or require other steps. The best practice would be to apply UTCR 5.100 to Motions to Postpone but we realize that emergent circumstances can affect how much advance notice to the other side is reasonable regarding a postponement request. Remember that our SLR 8.041(3) requires 2 business days' notice to the other side on matters presented at ex parte time where no statute or rule authorizes an unnoticed (a true *ex parte*) appearance. So please consider applying UTCR 5.100 to Motions to Postpone if the motion isn't time-sensitive. And remember that under SLR 2.501(3), motions to postpone must be submitted conventionally (in paper).

16. Will the Court accept judgments and orders that do not comply with UTCR 5.100?

We have been accepting non-compliant orders and judgments since the rule revisions went into effect on January 1, 2016, but have been encouraging attorneys the last 3 months to change their templates. Across the entire court, we will be returning orders and judgments non-compliant with UTCR 5.100 as of May 2, 2016.

McKnight, 4/18/16