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## OREGON SUPREME COURT

June 13, 2023  
**(BY EMAIL)**

Oregon Judicial Department  
Criminal Justice Advisory Committee (CJAC)  
CJAC Case Processing Subcommittee  
c/o Co-Chairs Judge Oden-Orr and Judge Francesconi  
[Melvin.Oden-Orr@ojd.state.or.us](mailto:Melvin.Oden-Orr@ojd.state.or.us)  
[Bryan.B.Francesconi@ojd.state.or.us](mailto:Bryan.B.Francesconi@ojd.state.or.us)

Oregon Criminal Defense Lawyers Association (OCDLA)  
Mae Lee Browning, Legislative Director  
[MLBrowning@ocdla.org](mailto:MLBrowning@ocdla.org)

Oregon District Attorneys Association (ODAA)  
Daniel Primus, ODAA President  
[Daniel.Primus@umatillacounty.net](mailto:Daniel.Primus@umatillacounty.net)

Uniform Trial Court Rules (UTCRC) Committee  
c/o Aja Holland, UTCRC Reporter  
[Aja.T.Holland@ojd.state.or.us](mailto:Aja.T.Holland@ojd.state.or.us)

Re: OCDLA Criminal Case Processing Submissions – UTCRC Outcomes and Next Steps

Dear Members of the CJAC Case Processing Subcommittee and the UTCRC Committee,  
and Representatives of OCDLA and ODAA,

I am writing to provide an update on the proposals that the OCDLA submitted to the UTCRC Committee and to summarize next steps, as well as to express my appreciation to all involved in the process.

As a general reminder, OCDLA presented a series of proposals to the UTCRC Committee for its fall 2022 meeting, intended to improve efficiencies in Oregon's criminal justice

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system. As you all know, the cycle for evaluating and adopting the UTCRs is a deliberate process that ensures a thoughtful and thorough review – including an opportunity for public input – relating to proposed trial court rules that, if adopted, would have an impact on attorneys and court users across the state.

At its fall meeting, after considering the OCDLA’s proposals, as well as a letter from then-Chief Justice Walters suggesting process considerations, the UTCR Committee agreed to work with the Case Processing Subcommittee of the Chief Justice’s Criminal Justice Advisory Committee (CJAC), to consider the proposals in joint fashion and also to distribute the proposals for public comment (in their submitted form) before the Committee’s spring 2023 meeting. That joint interim work resulted in a CJAC subcommittee recommendation memo that summarized benefits and obstacles involved in each proposal.

At its spring meeting, the UTCR Committee then separately evaluated each proposal, along with the CJAC subcommittee’s memo. The UTCR Committee ultimately recommended adoption of one new rule similar to one in the OCDLA packet – proposed UTCR 4.130 (Remote Appearance in Lieu of Transportation), renumbered to UTCR 4.040 – which will permit the parties to agree that a defendant in custody may appear by remote means at a proceeding to resolve multiple cases, when the appearance is required in a court not located in the county in which the defendant is in custody (unless the court finds good cause to require in-person appearance). I have approved that recommendation; new UTCR 4.040 will become effective August 1, 2023.

The UTCR Committee also partially agreed with another OCDLA proposal – amending current UTCR 7.010(2) to expressly permit parties to present plea agreements up to and including the day of trial. Following the spring UTCR meeting, I solicited additional input on that proposal from our courts, including from Presiding Judges, Trial Court Administrators, and court staff members. That inquiry revealed concerns that, if the rule expressly allowed plea agreements to be presented up to the day of trial, parties could be encouraged to delay negotiations and agreement, which in turn could result in the need for the court to schedule multiple trials on the same dates – in anticipation that more cases would be settled immediately before trial. Based on that feedback, I have adopted a modified version of UTCR 7.010(2), which more simply removes plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. That modified rule – which becomes effective August 1, 2023 – should accomplish the proponents’ goals, by in effect removing the deadlines that currently

apply to plea negotiations and agreements, but without inadvertently encouraging parties to delay resolving cases.

Finally, although the UTCR Committee did not recommend amending UTCR 4.010 (Pretrial Motions), the Committee recommended by consensus that the CJAC Case Processing Subcommittee should continue to consider that proposal, in light of any insights gained from Multnomah County Circuit Court’s Omnibus Hearings Pilot project. The subcommittee met on March 23, 2023, and May 25, 2023, in part to continue discussion of the proposed amendment to UTCR 4.010. Based on feedback that I received from the subcommittee and others, I have adopted a modified version of UTCR 4.010, which is intended to accomplish the proponents’ aims by allowing early resolution of pretrial motions in appropriate cases, including motions which may be dispositive or which, once ruled upon, may assist parties in reaching tentative plea agreements prior to trial. Amended UTCR 4.010 will allow a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause. That amendment becomes effective on August 1, 2023, but will be placed back on the fall 2024 UTCR Committee agenda for further consideration in the next rules cycle.

New UTCR 4.040 and amended UTCR 4.010 and UTCR 7.010 will take effect on August 1, 2023. Amended UTCR 4.010 and UTCR 7.010 have been posted for public comment at <https://www.courts.oregon.gov/programs/utcr/pages/currentrules.aspx>. The public comment period will be open until 5:00 p.m. on Friday, September 22, 2023, and any comments received will be discussed at the October 19, 2023, UTCR Committee meeting. I invite anyone who would like to comment on the amendment to submit feedback to the Committee. I ask that UTCR Committee members carefully consider any public comments received and, if necessary, make any further recommendations necessary to ensure that the rules, particularly UTCR 4.010, operate as intended and promote the fair and efficient resolution of criminal cases. I plan to carefully consider whether further modification of that rule may be required, based on any feedback that I receive from the committee, judges, trial court administrators, and the public.

Full descriptions of all of the UTCR Committee’s actions for this rules cycle, as well as the text of all approved and disapproved rules, are also available at the link above under the “Future Rules” heading (see the document titled “Preface” for explanations).

As you know, the OCDLA submitted several other proposals which the UTCR Committee did not recommend for approval. Those include:

- UTCR 4.020 (new) – Allowing parties to file a form in lieu of attending a status conference or other status appearance;
- UTCR 4.040 (new) – Allowing parties to schedule certain hearings by email;
- UTCR 4.060 (repeal) – Repealing the motion to suppress rule (this proposal was withdrawn by OCDLA during the interim work period);
- UTCR 7.010 (amendments) – Setting discovery deadlines in criminal cases, requiring the state to provide an initial plea offer, and allowing continuances by party agreement (the latter two proposals were withdrawn by OCDLA during the interim work period).

Although the UTCR Committee did not recommend those proposals for approval as court rules, the Committee nevertheless made related recommendations that are scheduled for further action, as follows:

- The CJAC Case Processing Subcommittee and OJD’s Law and Policy Workgroup will evaluate whether OJD’s interactive form and eFiling system, Guide and File, should be used to facilitate the scheduling of certain criminal hearings, via use of a statewide form (this recommendation arose out of proposed UTCR 4.040);
- OJD will continue to evaluate other system-wide improvements and efficiencies in criminal cases – either by OJD or particular courts, or through other pathways, such as through legislative planning that could lead to creation of a body of Oregon Rules of Criminal Procedure.

I offer my sincere thanks to each of you for your hard work on these proposals over the last nine months. I greatly appreciate the OCDLA and its members taking the time to submit a thoughtful package of proposed rules to improve efficiencies in the criminal justice system and, relatedly, to address issues relating to Oregon’s public defender crisis. I also appreciate the ODAA for participating and providing its perspective as to how OCDLA’s proposed rules could affect its stakeholders at the local level. And I thank the dedicated members of the UTCR Committee, and also the CJAC Case Processing Subcommittee, for their collaborative and contemplative work. I truly appreciate the time and commitment that went into developing, advocating for, and evaluating the proposed

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changes, and your collective ability to come together to reach agreements and make recommendations to help improve our court processes in criminal cases.

I look forward to continuing to work with you to make improvements through our court rules and otherwise. Thank you again for your excellent work.

Sincerely,

A handwritten signature in blue ink that reads "Meagan A. Flynn". The signature is written in a cursive, flowing style.

Meagan A. Flynn  
Chief Justice

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