

Oregon Judicial Department's

***Civil Justice Improvements
Task Force***

Report to the Chief Justice



June 20, 2018

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OREGON JUDICIAL DEPARTMENT
CIVIL JUSTICE IMPROVEMENTS (CJI) TASK FORCE
REPORT TO THE CHIEF JUSTICE

1.0 Introduction

While state court improvement efforts understandably often focus on criminal and family law cases, civil cases -- which account for a significant percentage of cases filed in state courts -- tend to receive less attention. In recent years, however, questions have arisen about how to more effectively and efficiently manage civil cases of all kinds, to the benefit of the litigants and the courts alike.

This report evaluates civil case management in the Oregon state courts and makes recommendations for civil justice improvements in a variety of areas. As will be seen, Oregon courts already have many tools and practices in place to help ensure effective case management. The recommendations in this report are intended to recognize both what is currently working well and what could be improved; to address identified gaps; to promote statewide consistency where appropriate; and to improve access to justice and procedural fairness in the courts.

2.0 Call to Action Report and Recommendations

With the support of the National Center for State Courts (NCSC), the Conference of Chief Justices (CCJ) in 2014 appointed a Civil Justice Improvements Committee (CJIC), chaired by Oregon Supreme Court Chief Justice Thomas A. Balmer, to research and prepare recommendations on improvements in processing and resolving civil cases in state courts. In 2016, the CJIC issued its report, entitled *Call to Action: Achieving Civil Justice for All* (July 2016), which was intended to serve as "a roadmap for restoring function and faith" in the civil justice system.¹ *Call to Action* 4.

As part of its work, the CJIC undertook a multijurisdictional, statistical study of the civil litigation landscape in general jurisdiction courts ("*Landscape*"), which "presented a very different picture of civil litigation than most lawyers and judges envisioned based on their own experiences and on common criticisms of the American civil justice system." *Id.* at 8. Specifically, "[a]lthough high-value tort and commercial contract disputes are the predominant focus of contemporary debates, collectively they comprised only a small proportion of the *Landscape* caseload." *Id.* Instead, high-volume civil cases filed in state courts today most often involve debt collection, landlord-tenant disputes, mortgage foreclosures, and small claims. Notably, those types of

¹ The full CCJ *Call to Action* report and recommendations, together with an Executive Summary, appendices, and related materials, are available at <http://www.ncsc.org/Microsites/Civil-Justice-Initiative/Home/CCJ-Reports.aspx>.

cases tend to involve smaller amounts at stake than more traditional tort or contract cases, such that the cost of litigation often exceeds the monetary value of the case. *Id.* at 9. They also frequently involve at least one self-represented litigant, who often is procedurally disadvantaged when compared to institutional or represented litigants on the opposing side. *Id.* at 10. The *Landscape* also revealed that most civil cases are resolved through a nonadjudicative process, such as default judgment or dismissal. *Id.* at 9. Finally, the *Landscape* showed that, other than small claims cases, most cases filed in state courts tend not to comply with the nationally adopted Model Time Standards for State Trial Courts. *Id.* at 10.²

Drawing from the realities of the *Landscape*, *Call to Action* emphasizes several imperative responses on the part of the courts, to ensure efficient and effective civil case management. First, the entire court -- judges together with staff working as a team -- must lead the process of case management and moving a case forward to resolution, instead of allowing lawyers to control the pace of litigation. *Id.* at 12. Second, a "one-size-fits-all" approach -- for example, one set of inflexible procedural rules that applies to all types of cases -- prevents courts from effectively managing cases not suited to such rules. "Instead, cases should be 'right-sized' and triaged into appropriate pathways at filing," and those pathways should remain sufficiently flexible to permit reassignment if the needs of the case change over time. *Id.* Finally, courts must pay close attention to high-volume dockets, to ensure that cases do not languish unnecessarily for long periods of time for no reason, and to engage the parties in the process. *Id.* at 14.

Call to Action sets out 13 specific recommendations that are intended to reshape how courts approach civil case management. In general, the recommendations urge the courts to exercise ultimate responsibility in case management; to triage case filings with mandatory pathway assignments; to strategically deploy court personnel and resources; to use technology wisely; to focus attention on high-volume dockets and uncontested cases; and to provide superior access for litigants. *Id.* at 15.

² The Model Time Standards for State Trial Courts were approved in 2011 by the CJC, the Conference of State Court Administrators, the ABA, and the National Association for Court Management. They were the product of a joint effort involving those groups, as well as the NCSC and the State Justice Institute. See <http://www.ncsc.org/Services-and-Experts/Technology-tools/~media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx>.

3.0 OJD CJI Task Force, Mission and Membership

3.1 Mission

Following the 2016 release of *Call to Action*, in May 2017, Chief Justice Balmer, together with a small Oregon planning group that included a trial court judge, a private lawyer, a legal aid lawyer, a trial court administrator, and two lawyer staff from the Oregon Judicial Department (OJD), attended a three-day Western Regional Summit presented by the National Center for State Courts. At the Summit, the planning group learned about proposals and best practices working in other states to improve civil case management -- from filing to resolution -- and to improve access and uniformity for litigants.

In August 2017, Chief Justice Balmer issued Chief Justice Order (CJO) 17-046, which created and appointed the OJD Civil Justice Improvements (CJI) Task Force. See [Appendix A](#) (setting out CJO 17-046). The Task Force was established to:

- (1) Review the *Call to Action* recommendations;
- (2) Review civil justice reforms implemented or under consideration in other state courts;
- (3) Consider other related concepts for civil justice reform in Oregon; and
- (4) Make recommendations to OJD, to the extent feasible, necessary, and appropriate to implement improvements to Oregon's civil justice system.

Pursuant to CJO 17-046, the Task Force was directed to formulate and develop, without limitation, recommendations for:

- (1) Concrete actions that can be taken to increase and improve access to civil justice, improve procedural fairness in civil cases, and reduce cost and delay in civil cases;
- (2) Consistent statewide standards to ensure appropriate case management and timely disposition of civil cases, including, without limitation:
 - (a) Enforcing the requirements set out in Uniform Trial Court Rule (UTCR) 7.020, Oregon's statewide rule for managing civil cases from filing to disposition;
 - (b) Setting firm trial dates; and

- (c) Determining appropriate pathways for managing different types of cases, including high-volume cases that often involve self-represented parties;
- (3) Proposed rules, procedures, or best practices for civil case management within each case pathway; and
- (4) Leveraging available technology to facilitate civil case processing improvements.

CJO 17-046 additionally provided:

"The Task Force's recommendations should be based on existing Oregon statutes and the Oregon Rules of Civil Procedure, although the Task Force may identify recommended statutory or rule changes where appropriate. Recommendations may form the basis for new or revised Uniform Trial Court Rules (UTCs); Chief Justice Orders (CJOs); Supplementary Local Rules (SLRs); or Statements of Best Practices directed toward increasing and improving access to Oregon's courts, and ensuring the fair, timely, and cost-effective disposition of cases. In developing recommendations for case management practices, the Task Force may consider the need for local court flexibility as appropriate. In assessing feasibility, the Task Force should assume that judicial, staff, and other resources available within the Oregon Judicial Department will remain at current levels."

3.2 Membership

The Task Force members and staff are:

Co-Chairs	
Honorable Stephen Bushong	Presiding Judge, Multnomah County
Dana Sullivan	Attorney, Portland
Members	
Honorable Scott Shorr	Judge, Court of Appeals
Honorable Benjamin Bloom	Judge, Jackson County
Honorable Brett Pruess	Judge, Coos County
Melissa Bobadilla	Attorney, Beaverton
Dominic Campanella	Attorney, Medford
Emily Teplin Fox	Attorney, Oregon Law Center, Portland
Jeff Hall	Trial Court Administrator, Deschutes County
Helen Hirschbiel	Oregon State Bar, Chief Executive Officer, Tigard
Linda Hukari	Trial Court Administrator, Benton County
Michelle Freed	Attorney, Portland
Megan Livermore	Attorney, Eugene
J. Christian Malone	Attorney, Bend
Daniel Skerritt	Attorney, Portland
Julie Vacura	Attorney, Portland
Lead OJD Staff	
Lisa Norris-Lampe	Oregon Supreme Court, Appellate Legal Counsel
Other OJD Staff	
Sam Dupree	eServices Legal Liaison, OJD
Daniel Parr	Appellate Court Administrator/Director
Sarah Smith	Management Assistant, OJD

4.0 Work of the OJD CJI Task Force

The Task Force met eight times from September 2017 through May 2018, with additional subgroup meetings. Its work included the following:

- (1) Reviewing *Call to Action* and its Appendices, and each of its 13 recommendations for civil justice improvements in state courts of general jurisdiction;
- (2) Reviewing Oregon-specific statistical information similar to the *Landscape* contained in *Call to Action*;
- (3) Reviewing various studies, reports, articles, and recommendations relating to *Call to Action* and civil justice improvements, including -- but not limited to -- reports and resources developed by the National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAALS), and the State Justice Institute (SJI); and reports, recommendations, proposed rules, model forms, and lessons learned from other states;
- (4) Reviewing Oregon statutes, Oregon Uniform Trial Court Rules (UTCs) and Supplementary Local Rules (SLRs), and federal court rules on several topics, including various statutory deadlines; mandatory arbitration; establishing timelines for proof of service and motions for default orders based on defendant's failure to appear; setting trial dates; complex cases and complex litigation court; expedited civil jury trials; discovery; various other procedural requirements; specific statutory timelines and related requirements in small claims and residential foreclosure cases; and new Oregon legislation relating to debt buyers and court facilitation programs;
- (5) Gaining an understanding about various components of the statewide Oregon eCourt system, including automated case management deadlines and ticklers; reporting; eFiling; statewide printable and interactive forms; online resources (particularly for self-represented litigants); and public access;
- (6) Gaining an understanding of OJD's website (available at <http://www.courts.oregon.gov/Pages/default.aspx>) and an ongoing website redesign project; and of other ongoing OJD initiatives, such as the OJD Time-to-Disposition Standards and the Oregon Docket Management Initiative; various local court initiatives, and the use of mediation in the courts;
- (7) Gaining an understanding of current OJD and local court training programs for new judges, all judges, and court staff;

- (8) Obtaining information about the 2017 Oregon State Bar (OSB) Futures Task Force Report, including recommendations about paraprofessional licensing and self-navigators in the courts, and the creation of a joint web team to coordinate online resources for self-navigators; as well as other OSB programs and initiatives, such as the Lawyer Referral Service, the Modest Means Program, and online public-education video content;
- (9) Discussing how various statewide Uniform Trial Court Rules (UTCRRs) that govern timelines and procedures in civil cases operate in practice in the courts, including local expedited civil jury trial pilot programs;
- (10) Discussing and identifying differences in a variety of case management processes across the state, including judicial assignments; case management conferences; setting trial dates; court staff responsibilities; court notifications; dismissals; communications with parties; and conducting trials;
- (11) Discussing and identifying a variety of difficulties faced by lawyers and self-represented litigants involved in cases across the state, and local efforts to address some of those difficulties;
- (12) Discussing low-cost innovations by the courts and their justice partners that are intended to address issues of efficient case management and procedural fairness to litigants; and
- (13) Deliberating on each of the 13 *Call to Action* recommendations and reaching consensus decisions about related recommendations for the Oregon state courts, including the drafting two UTCRR proposals, all of which are set out in this Report.

5.0 Oregon Circuit Courts, 2016 Statistical Data

Under ORS 1.001, Oregon's judicial branch of government -- unlike in many other states -- is organized as a unified state court system that includes two appellate courts, the Oregon Tax Court, and all the county circuit courts, which are arranged into 27 judicial districts encompassing Oregon's 36 counties. For administrative purposes, all the state courts are managed as part of the Oregon Judicial Department (OJD); the Chief Justice of the Oregon Supreme Court is the administrative head of OJD. ORS 1.002. The circuit courts, whose work is the subject of this Report, are trial courts of general jurisdiction that handle a wide array of cases, generally covering the following areas: criminal, civil, family, juvenile, and probate.

As part of its initial work, the Task Force evaluated the *Landscape* compiled in *Call to Action*, which showed that, in state courts across the country, high-value tort and commercial contract disputes that so often are the focus of uniform court rules compose only a small proportion of the overall civil caseload in general jurisdiction courts. By contrast, the vast majority of civil cases filed in state courts are debt collection, landlord-tenant, mortgage foreclosure, and small claims cases. *Call to Action* 8.

The Task Force reviewed Oregon statewide circuit court statistics for the year 2016 and observed similar trends. See [Appendix B](#) (setting out Oregon statistics). For example, in the traditional category of "civil" cases filed in Oregon that are addressed in *Call to Action*, almost half were small claims cases, followed by about 24% that were contract cases (which can include collections cases not filed as small claims cases), and about 16% that were residential landlord-tenant cases. Only 6% were tort cases.³ [Appendix B](#), Figure 1. Other notable 2016 Oregon circuit court statistics include the following:

- *Amount of Relief Sought:* The vast majority of contract cases -- 86% --sought less than \$10,000. [Appendix B](#), Figure 2.

³ The following notes accompany the Oregon statistics:

- As in *Call to Action*, the Task Force focused on traditional "civil" case types, as listed in [Appendix B](#). Family law cases are outside the scope of the Task Force's mission statement, as are other "civil" cases of a more unique nature -- such as petitions for post-conviction relief, appeals of agency rulings, and actions seeking remedial contempt sanctions.
- Oregon's designated case types do not always precisely match some of the case categories discussed in *Call to Action*. For example, a "collection" case could be filed in Oregon as a "contract" case or as a "small claims" case, and a "mortgage foreclosure" case is a subset of the cases filed in Oregon as "property foreclosure" cases.

- *Self-Represented Parties:* The vast majority of the parties in residential landlord-tenant cases and property foreclosure cases -- 85% and 68%, respectively -- were self-represented. In small claims cases, 99% of the parties were self-represented.⁴ [Appendix B](#), Figure 3.
- *Dismissals:* Depending on the case type, either almost half, or more than half, of almost all types of civil cases were disposed of by dismissal (reasons could include failure to serve the defendant with the complaint, failure of the defendant to appear, settlement, or some other reason). For example: Between 84-92% of all tort cases ended in a dismissal. Similarly, 54% of residential landlord-tenant cases, 44% of contract cases, and 43% of property foreclosures ended in dismissal. By contrast, small claims cases had the lowest rate of dismissal (30%). [Appendix B](#), Figure 4.
- *Jury Trials:* A little more than half (52%) of all civil jury trials were held in in general tort cases (excluding malpractice, products liability, and wrongful death); 24% were held in contract cases. Other categories made up comparatively small percentages of the total. [Appendix B](#), Figure 6. The number of jury trials also, of course, varies by county. For example, in the first nine months of 2017, Multnomah County (Oregon's largest county) held 80 civil jury trials, while Jackson County held about 12. (Those totals are fairly comparable based on a per capita comparison of the population of the two counties.)
- *Time to Resolution:* A significant percentage of "civil - general" cases (excluding landlord-tenant and small claims) -- 88% -- were resolved within 12 months of filing, and 95% were resolved within 18 months of filing. As to landlord-tenant and small claims cases, 70% were resolved within 75 days of filing. [Appendix B](#), Figure 7.

⁴ Under ORS 55.090(1), unless the court consents, lawyers are not permitted to become involved in, or in any manner interfere with the prosecution or defense of, the litigation in a small claims case.

6.0 OJD CJI Task Force Recommendations

6.1 **Call to Action Recommendation 1: Courts must take responsibility for managing civil cases from time of filing to disposition.**

Call to Action begins by emphasizing that the court, not the parties, must exercise ultimate responsibility for managing civil cases from filing to disposition. Effective case management includes effectively communicating the case requirements to litigants, setting a firm date for commencing trial, and enforcing rules designed to promote the just, prompt, and inexpensive resolution of civil cases. *Call to Action* 16.

In discussing Recommendation 1, the Task Force repeatedly returned to the cornerstone of civil case management in Oregon: Uniform Trial Court Rule (UTCRC) 7.020. As discussed below, consistent statewide application of UTCRC 7.020 is a key tool for the Oregon circuit courts in ensuring court-centered civil case management.

6.1.1 ***Moving Cases Toward Resolution Under UTCRC 7.020***

Current UTCRC 7.020 establishes a series of mandatory statewide deadlines and procedural steps in civil cases, including timelines for setting a trial date. See [Appendix C](#) (setting out UTCRC 7.020). The key provisions are:

- ***Proof of Service:*** After filing the complaint, the plaintiff has 63 days to file a return or acceptance of service. *If not:* The court must notify the plaintiff that it will dismiss the case within 28 days, *unless* (1) proof of service is filed; (2) the plaintiff moves for more time (with good cause shown); or (3) the defendant has appeared. UTCRC 7.020(2).
- ***Defendant Nonappearance/Default:*** If the plaintiff has filed a return or acceptance of service, the defendant has 91 days to appear (from filing of complaint). *If not:* the case is deemed "not at issue" and the court must notify the plaintiff that it will dismiss as to any nonappearing defendant within 28 days, *unless* (1) the plaintiff applies for an order of default; (2) the plaintiff moves for continuing the case (with good cause shown); or (3) the defendant has appeared. UTCRC 7.020(3).
- ***Case "At Issue:"*** If all defendants timely appear, then the case is deemed "at issue" at the earlier of (1) 91 days after complaint filed; or (2) when the pleadings are complete. UTCRC 7.020(4).
- ***Firm Trial Date:*** The trial date "must be" no later than one year from filing (or six months from filing of a third-party complaint, ORCP 22 C, whichever is later), unless good cause is shown to the presiding judge or designee. UTCRC 7.020(5). The parties may agree with the presiding judge, or designee, on a particular trial date (via conference or otherwise), so long as it is within the timeframe just set out, ORS 7.020(6); if not, the court will calendar within that timeframe, ORS 7.020(7).

UTCR 7.020 thus establishes, as a matter of statewide policy, a series of required mechanisms intended to move all civil cases forward toward resolution -- whether that resolution ultimately be dismissal for failure to provide proof of service, dismissal due to failure to move for an order of default, judgment based on a defendant's default, settlement, trial, or some other resolution. That rule is a critical tool on which Oregon circuit courts already rely to achieve Recommendation 1 in *Call to Action* -- that courts take responsibility for managing civil cases from filing to disposition.

Many cases filed in the Oregon circuit courts, including a significant number of the high-volume types of cases identified in *Call to Action*, resolve before the time for setting a trial date occurs under UTCR 7.020(5). But, if a court does not adhere to each of the timelines and procedural steps mandated under UTCR 7.020(2) and (3), those cases may languish at various procedural steps longer than they should. By way of example, the Task Force discussed that lawyers sometimes do not receive the time-scheduled notices that the court is required to issue under UTCR 7.020(2) and (3). As a fundamental best practice, the circuit courts should consistently apply all provisions of UTCR 7.020.⁵

➔ Task Force Recommendation, Best Practices:

6.1.1.1 *Each court should consistently apply all provisions of UTCR 7.020, in all cases in which that rule applies.*

6.1.2 Setting Firm Trial Dates

A second important element of UTCR 7.020 is the "firm trial date" provision set out in subsection (5). That subsection provides that, once a case is at issue, trial must be scheduled no later than one year from the date of filing (or six months from the filing of a third-party complaint, whichever is later), absent good cause shown. In reviewing *Call to Action*, it appeared to the Task Force that many states lack a mechanism for consistently and timely scheduling cases for trial, and that, as a result, cases may languish unnecessarily. Oregon has such a mechanism, however, in UTCR 7.020(5). As noted in the recommendation above, if courts consistently set firm trial dates once a case is at issue under UTCR 7.020(5), then cases that have not resolved at that point in the process will move towards trial (or settlement). And, as provided in the rule, the Task Force agreed that the courts and the parties alike benefit when the parties are allowed to select an agreed-upon trial date that also is workable for the court, and is

⁵ As part of Recommendation 1, *Call to Action* states that courts must "effectively communicate to litigants all requirements for reaching just and prompt case resolution." *Call to Action* 16. As described later in this Report, using automated time standards and templates incorporated in the Oregon eCourt system, court staff generate and send form notices to litigants under UTCR 7.020(2) and (3), explaining the next required action under those rules and the results of noncompliance. OJD also has online form packets with instructions, for filings in high-volume cases, that explain the required steps under UTCR 7.020. OJD strives to draft all statewide forms at an eighth-grade reading level.

within the established time limit. Engaging the parties in the process of trial date selection minimizes the need to reschedule a trial date due to a party's unavailability on the date selected by the court.

Of course, the concept of setting a "firm trial date" is undercut if scheduled trial dates are regularly continued. In discussing setting firm trial dates, the Task Force considered various reasons for continuances. In some counties, trials are rescheduled due to resource issues -- for example, given the significant criminal workload in the courts, courtrooms or judges sometimes are not available for a scheduled civil trial. Rescheduling in that instance can result in cost increases for the litigants, because it is expensive to prepare for trial multiple times, and can cause the parties to opt for settlement in lieu of trial.

The Task Force also discussed the "good cause" exception in UTCR 7.020(5), which permits continuance of a scheduled trial date. The Task Force identified a key issue with that exception: practices vary widely from court to court, and from judge to judge, as to what qualifies as "good cause." For example, one court may grant a continuance based on a representation of settlement only if the parties have agreed to the terms but need time to finalize the documentation, whereas another court may grant a continuance if the parties generally state that they are working on a settlement (when, in reality, they may be far apart in their negotiations). The Task Force agreed that resolution of the case -- through trial or settlement -- is what is ultimately desired, but there should be clear time standards for achieving that resolution. Setting firm trial dates in a consistent manner is an overarching goal that drives effective case management, and the courts therefore should strive for greater statewide consistency in granting continuances.⁶

➔ Task Force Recommendations, Best Practices:

- 6.1.2.1** *Courts should set firm trial dates and adhere to them, with only limited exceptions.*

- 6.1.2.2** *Each court should designate the most appropriate point of time in the case management process, for that court, for setting a firm trial date, and then consistently set trial dates at that time.*

⁶ Throughout its work, the Task Force observed that *Call to Action* points out that courts in many states have difficulty moving civil cases to trial in a timely manner, due to onerous discovery and other issues, resulting in increased costs in litigation. UTCR 7.020 helps to limit the difficulty of establishing a trial date in Oregon. In addition, as noted elsewhere in this Report, Oregon's discovery rules are not as burdensome as in other jurisdictions -- most notably, Oregon has no interrogatory requirement, and expert discovery is not permitted.

6.1.2.3 *Each court should establish its own transparent practice for continuing a scheduled trial date. Guidelines should include:*

- *Permissible justifications:*
 - *Joint party motion for continuance, when parties represent that they have agreed on material terms of settlement, but they need more time to negotiate remaining details.*
 - *True emergencies affecting the availability of lawyers, parties, or witnesses.*
- *Impermissible justifications:*
 - *Joint party motion to continue, generally stating that parties intend to settle or are settling.*
 - *Some or all parties seek additional time to conduct discovery.*

6.1.3 ***Additional Considerations, Court Management of Cases to Timely Disposition***

The Task Force discussed additional topics relating to courts taking responsibility for civil case management. One such topic was the practice of holding case management conferences. The Task Force discussed that some cases -- such as complex cases, discussed later in this Report -- naturally benefit from an early case management conference, but others do not, depending on the nature of the case, the parties, and the progress of the case at different points in time. Also, in some counties, regularly holding case management conferences works well for the court and the parties -- for example, once a judge is assigned based on individual docketing, an early conference permits the court and the lawyers to meet face to face and identify the issues.⁷ In other counties, however, case management conferences are often not a good use of the court's or the parties' time -- for example, they can be premature based on how a particular case is progressing, and many cases settle early anyway. The Task Force declined to make a statewide recommendation about holding case management conferences, except as noted later in this Report pertaining to complex cases. See section 6.5.1.

⁷ As discussed later in this Report, some Oregon circuit courts assign judges to civil cases early in the case using individual docketing, but others assign judges based on central docketing, such that one or more judges might resolve motions in a case, and then a different judge is later assigned for trial.

The Task Force also discussed the Oregon circuit courts' longstanding Standards for Timely Disposition (adopted in 1990 by the Oregon Judicial Conference). See [Appendix D](#) (setting out Standards). Those Standards expressly state that, when evaluating a request for postponement of any proceeding, the court's obligation is to meet the Standards, and so the court must constantly monitor the age of pending cases -- both from a court-driven case management perspective and so that parties can rely on the timelines for disposition of filed actions.⁸ The Standards for civil cases, based on the time for resolution by settlement, trial, or otherwise, are as follows:

General civil cases:

- 90% resolved within 12 months of filing (in 2016, 88% reached that goal)
- 98% resolved within 18 months of filing (in 2016, 95% reached that goal)
- Remainder resolved within 24 months of filing (in 2016, 98% reached that goal)

Summary civil cases (such as small claims and landlord-tenant cases):

- 100% resolved within 75 days after filing (in 2016, 70% reached that goal).

OJD is currently in the process of reviewing those Standards, with each county setting a goal to complete a percentage of cases falling within each Standard. The group agreed that, as part of that work, courts that are reaching the goals set under the Standards should share strategies for what is working well with other courts.

The Task Force discussed additional issues that affect moving a case to trial or other resolution, including cases referred to arbitration,⁹ with recommendations noted below.

⁸ OJD also created, in 2014, a workgroup for an Oregon Docket Management Initiative, which is evaluating OJD's docket management system and case flows. Each court is developing case management improvements as part of the Initiative, including reviewing the Standards for timely dispositions to see how to improve court processing and to establish best practices.

⁹ As discussed later in this Report, by statute, Oregon has mandatory arbitration for civil cases involving \$50,000 or less.

➔ **Task Force Recommendations, Best Practices:**

- 6.1.3.1** *When arbitration is required, courts should refer cases to arbitration quickly, and arbitrators should schedule and hold the arbitration quickly.*
- 6.1.3.2** *Courts should set a standard timeline for dismissal for cases working toward settlement, if a proposed judgment is not submitted within 30-60 days, absent good cause, following notification to court of the parties' settlement effort.*
- 6.1.3.3** *Courts that are achieving their goals under OJD's Standards for Timely Disposition should share strategies of what is working with other courts.*
- 6.1.4** ***Additional Considerations, Litigant Expectations about Case Management and Trial Processes***

The Task Force identified additional steps that courts could take to ensure that parties know what to expect as part of moving a civil case to trial. For example, at least three counties -- Multnomah, Jackson, and Clackamas -- have adopted "civil motion consensus" documents that are available on each county's website. Those consensus documents notify parties about the court's standard practices in granting different types of motions regularly filed in civil cases. See [Appendix E](#) and [Appendix F](#) (setting out examples from Multnomah and Jackson counties). Given differences among the circuit courts, the Task Force does not recommend adoption of a statewide consensus statement, but it does encourage each court to draft such a statement, made available on its website, to promote consistency in rulings and address practitioner expectations.

The Task Force also discussed mandatory disclosures in discovery, which is required in the federal courts under Federal Rule of Procedure 26. Some aspects of mandatory disclosures are beneficial -- for example, in certain types of cases, there is some information that is always logically necessary at the outset, and receiving that information early can help each side assess the strengths and weaknesses of their cases. The Task Force does not recommend establishing statewide requirements for mandatory disclosures, however -- in part due to past evaluations of that topic by interested practice groups and also in light of Oregon's unique rules of civil procedure, which do not permit expert discovery and do not provide for the use of interrogatories. See *generally* Oregon Rules of Civil Procedure 36, 39-40 (general provisions governing discovery and specific deposition provisions; none permit interrogatories or expert discovery). In addition, developing a workable list of appropriate mandatory disclosures for different types of civil cases is beyond the scope of the Task Force's work. The Task Force does think, however, that early production of basic presumptive categories of documents for different types of cases could be developed as a best practice, which would streamline discovery in many cases.

Also along the lines of managing expectations and eliminating confusion, the Task Force discussed one aspect of "trial by ambush" in Oregon -- that is, not learning until trial is underway the identity of the opposing side's experts. Although the Task Force makes no recommended changes to the procedural rules regarding nondisclosure of expert identity, it does think it useful, from a trial management perspective, for the court to determine the appropriate point in time during the trial when expert disclosure is appropriate, and to so inform the parties.

The Task Force also identified varying court practices regarding the treatment of confidential and sealed documents, noting some confusion both in the courts and among practitioners about when a document should be treated as sealed, confidential, or neither. Eliminating confusion in that area is a worthwhile goal.

➔ **Task Force Recommendations, Best Practices:**

6.1.4.1 *Each court should draft and regularly update a "civil motion consensus" document that includes the court's motion standards in civil cases, including the issuance of protective orders in discovery. Each court should make that document available on its website.*

6.1.4.2 *If a case goes to trial, the parties and the court should agree, at or before the start of trial, when experts must be identified to the other side (e.g., at the start of trial, or on the day before the expert's testimony, or during the last break before that testimony, etc.).*

➔ **Task Force Recommendations, To OJD:**

6.1.4.3 *OJD should work with the Oregon State Bar (OSB) to request that appropriate OSB sections each develop a statewide "Best Practices" list of presumptive categories of early discovery that should be disclosed in certain case types, akin to Federal Rule of Civil Procedure 26(a)(1) (Initial Disclosures) and District of Oregon Local Rule 26-7 (Initial Discovery Protocols for Employment Cases Alleging Adverse Action). Lawyers should be encouraged to make those disclosures and other appropriate voluntary disclosures, in noncomplex cases.*

6.1.4.4 *OJD should develop a statewide "Best Practices" document about "sealed" and "confidential" documents, to improve statewide consistency.*

6.2 Call to Action Recommendation 2: Beginning at the time each civil case is filed, courts must match resources with the needs of the case.

Call to Action explains that general jurisdiction courts often take a one-size-fits all approach to case management, with a single set of procedural rules that apply in all cases regardless of size, complexity, or the nature of the dispute. Recommendation 2, by contrast, calls for the "right-sizing" of court resources, such that a court expends only the resources necessary to manage each case, depending on the needs of that case. A key component of Recommendation 2 is that each case have an appropriate plan, from the date of filing, and then the entire court system must execute that plan until resolution. *Call to Action* 18.

The Task Force discussed Recommendation 2 at length. Many of the recommendations set out elsewhere in this Report are designed to meet the goal of "right-sizing" and executing plans for effective and consistent case management. See, e.g., Report Recommendations 6.1.1.1 (consistent application of UTCR 7.020), 6.1.2.1 (setting firm trial dates under UTCR 7.020(5)), 6.1.4.1 (civil motions consensus documents), 6.5.1.3-4 (case management conferences in complex cases), 6.6.2.1-2 (process for establishing trial readiness and resolving discovery disputes in General Pathway cases), 6.7.1.1-2 (court staff responsibility to monitor cases and ensure compliance with statutory and rule-based deadlines), 6.8.1.1 (court plans for right-sized case management, within available resources), 6.9.1.1 (evaluation of judicial assignment processes), 6.10.1.1, 6.12.1.2 (running system reports based on UTCR 7.020 and other deadlines), 6.12.1.1 (institutional commitment to using UTCR 7.020 as case management tool). Those recommendations are incorporated here by reference.

The Task Force adds the recommendations set out below, regarding matching court resources with case needs.

➔ *Task Force Recommendations, Best Practices:*

- 6.2.1** *Courts should have a useful, easy, and frequent means of sharing information with other courts about strategies that are working for keeping cases on track.*

- 6.2.2** *Court should continue to utilize pro tem judges, law clerks, and law student interns, to assist with judicial decision-making and legal research and writing.*

6.3 Call to Action Recommendation 3: Courts should use a mandatory pathway-assignment system to achieve right-sized case management.

Call to Action recommends that courts utilize a three-pathway approach to managing cases: Streamlined, Complex, and General. Cases should be triaged and assigned to a pathway at filing, based on case characteristics and issues presented, although courts must include flexibility in the pathways so that a case can be transferred from one pathway to another if significant needs arise or circumstances change. *Call to Action* 19.

The Task Force generally agreed with this recommendation, but with some variation. Some cases filed in the Oregon courts already are readily identified at or near the outset as having the characteristics fitting a particular pathway -- including certain "streamlined" cases based on case type and accompanying statutory or rule-based requirements (residential landlord-tenant actions and small claims cases) or based on the use of a current "expedited jury trial" rule, UTCR 5.150 (see section 6.4, Streamlined Pathway); and also "complex" cases so designated early in the process via a different rule, UTCR 7.030 (see section 6.5, Complex Pathway). However, other cases that begin as "general" pathway cases subject to generally applicable processing timelines ultimately may be processed in a "streamlined" manner by operation of UTCR 7.020(2) or (3) -- that is, within a relatively short time after filing, a case may be dismissed for failure to file proof of service or failure to move for a default order or judgment, or may be resolved by default judgment. Also, cases that begin as "general" pathway cases later may be designated as "complex" under UTCR 5.150.¹⁰

The Task Force makes the recommendations set out below, concerning the pathway-assignment system as a general matter. More particular recommendations about each pathway are set out in sections 6.4, 6.5, and 6.6 of this Report.

➔ *Task Force Recommendations:*

- 6.3.1** *Applying the updated practices recommended in this Report, courts should utilize the following case management pathways: Streamlined (section 6.4), Complex (section 6.5), and General (section 6.6).*

¹⁰ The Task Force also discussed the use of cover sheets that could be completed by litigants to assist in assigning a case to the appropriate pathway upon filing, and it reviewed cover sheets used in other jurisdictions. The Task Force declines to make a recommendation about cover sheets, for two reasons. First, many self-represented litigants read at or below an eighth-grade reading level, and cover sheets thus would be difficult for many litigants to complete correctly. Second, cover sheets are unnecessary in light of the Task Force's recommendations about how the pathways are most workable in Oregon -- that is, based on the case type (small claims or residential landlord-tenant), or by a post-filing designation as a streamlined jury trial case or a complex case, or by post-filing operation of UTCR 7.020 that results in dismissal or default judgment.

6.3.2 *Streamlined Pathway cases may be readily identified by case type or by party request for "streamlined" case processing under UTCR 5.150. See section 6.4.*

6.3.3 *Complex Pathway cases may be readily identified at or near the outset by a party's request to designate the case as a "complex" case under UTCR 7.030. See section 6.5.*

6.4 Call to Action Recommendation 4: Courts should implement a Streamlined Pathway for cases that present uncomplicated facts and legal issues, and require minimal judicial intervention but close court supervision.

Call to Action explains that a "Streamlined Pathway" for uncomplicated cases -- with expedited deadlines and processing practices -- conserves court resources. Under Recommendation 4, courts should establish deadlines to complete key stages of the case, including setting a firm trial date, with a recommended time to disposition of six to eight months. This recommendation otherwise urges judges to manage trials in an efficient and time-sensitive manner, so that trial becomes an affordable option for litigants. *Call to Action* 21.¹¹

The Task Force agrees that Oregon should adopt the concept of a Streamlined Pathway; indeed, as discussed below, many cases already are processed in a streamlined manner as envisioned in *Call to Action*, based on timelines that are shorter than those for ordinary civil cases by statute or rule, and also based on a 75-day processing goal for certain cases under OJD's Timely Standards for Disposition (see [Appendix D](#).) Oregon also already has a means of requesting streamlined treatment of a civil case, including expeditiously setting a jury trial, under current UTCR 5.150 (also discussed below). And, any case that otherwise begins on an ordinary path can be resolved in a "streamlined" manner, post-filing, by operation of UTCR 7.020(2) and (3) (also discussed below). Together, those collective processing tools compose Oregon's "Streamlined Pathway." In light of those existing tools for streamlining cases, the Task Force does not recommend standard criteria or case types for identifying cases as

¹¹ Recommendation 4 also suggests that courts should require mandatory disclosures in streamlined pathway cases. As noted earlier, the Task Force does not make any recommendation about mandatory disclosures as a general matter, in light of earlier discussion among interested groups in Oregon debating the benefits and detriments of that sort of approach. In section 6.4.2 and a companion proposal set out in [Appendix K](#), this Report explains that UTCR 5.150 (expedited/streamlined civil jury trials), in its current and proposed amended form, incorporates some mandatory disclosure requirements. Also, at 6.1.4.3, this Report does recommend that OJD work with appropriate Oregon State Bar practice sections to ascertain which information might be appropriate for mutually agreed-upon, voluntary disclosure in certain types of cases, as a best practice for efficient case management.

"Streamlined Pathway" cases at the outset, except as those criteria already exist for certain cases or may arise in new case types that the legislature identifies.

6.4.1 Streamlined Cases Upon Filing, Based on Case Type: Residential Forcible Entry and Detainer (FED) (landlord-tenant) and Small Claims

Oregon currently has two types of cases that, due to statutory or statewide rule requirements, are processed in a "streamlined" manner: Residential FED (landlord-tenant) cases and small claims cases.

The expedited timelines for residential FED proceedings are established by statute, ORS 105.135 - 105.140. Those timelines include a first appearance date scheduled seven to 14 days after the next judicial day following the plaintiff's payment of filing fees. ORS 105.135(2). If the plaintiff appears but the defendant does not, the court must enter a default judgment in the plaintiff's favor, awarding possession of the premises. ORS 105.137(1). Conversely, if the defendant appears but the plaintiff does not, the court must enter a judgment in the defendant's favor, dismissing the complaint. ORS 105.137(2). The plaintiff may obtain a continuance of the action only as necessary to obtain legal representation. ORS 105.137(5). If both parties appear, the court must set the trial date for "as soon as practicable," but no later than 15 days after the joint appearance. ORS 105.137(6). Either party also may move the court to submit the matter to arbitration, if an enforceable arbitration agreement exists. ORS 105.138(1). Continuances are limited to two days, with only narrow exceptions. ORS 105.140. Under the residential FED statutory scheme, forms for the parties' use are prescribed by statute, and the summons must inform the defendant of the procedures, rights, and responsibilities of each party. ORS 105.135(6). Statewide forms that comply with the statutory requirements are available on OJD's website, including an interactive option.

As to small claims cases, the types of claims that qualify are established by statute, ORS 46.405:

- Action for the recovery of money, damages, specific personal property, or any penalty or forfeiture (excluding class actions and inmate v. inmate actions, ORS 46.405(2)-(4)), as follows:
 - If the amount sought does not exceed \$750, the action *must* be filed in small claims court, ORS 46.405(2);
 - If the amount sought is more than \$750 but does not exceed \$10,000, the action *may* be filed in small claims court, ORS 46.405(3).
- Action for statutory attorney fees (excluding if based on contract, authorized under ORS 20.082), in which the amount or value claimed does not exceed \$750, *may* be filed in small claims court, ORS 46.405(5).

The expedited timelines for small claims cases are established by statewide rule, UTCR 15.020. See [Appendix G](#) (setting out statewide rules for small claims cases). UTCR 15.020(2) permits the court to dismiss a small claims action after 63 days if the plaintiff does not file a proof of service of the complaint. (By contrast, under UTCR 7.020(2), after the 63rd day in an ordinary civil case, the court notifies the plaintiff that it will dismiss 28 days after that, if the plaintiff has not filed a proof of service.) Under UTCR 15.020(3), the defendant is required to appear within 35 days; if the defendant does not appear, the plaintiff must apply for a default judgment; if not, the court may dismiss the complaint. (By contrast, under UTCR 7.020(3), the defendant has 91 days to appear, and the plaintiff is notified on the 91st day that he or she has 28 days to apply for an order of default.) UTCR 15.010 establishes forms that must be used in small claims cases; statewide forms setting out the required content are available on OJD's website, including interactive options.

The Task Force agrees that, pursuant to the statutory and rule-based requirements set out above, residential FED cases and small claims cases should be considered part of Oregon's "Streamlined Pathway." The Task Force does not, however, recommend developing automatic expedited timelines for other cases upon filing, based on their case type or other characteristics (such as amount sought). Many other cases that logically could be treated in a streamlined manner -- for example, simple collections actions -- often are filed as small claims cases anyway; or they will resolve early on in the process under UTCR 7.020(2) or (3) (or by settlement) (discussed further below); or they are filed as a case type that does not categorically fit as a streamlined pathway case (for example, a simple breach-of-contract action or a property dispute).

➔ Task Force Recommendations:

6.4.1.1 *Oregon's Streamlined Pathway should continue to include residential FED cases and small claims cases, which are subject to statewide expedited timelines and streamlined case processing requirements by statute (FEDs) and rule (small claims).*

6.4.1.2 *If the legislature in the future identifies another type of civil case that is subject to expedited timelines, then such cases also should be considered part of Oregon's Streamlined Pathway.*

6.4.2 "Streamlined" Civil Jury Cases, UTCR 5.150

As explained, Recommendation 4 is aimed at adjusting court rules and processes for cases that, based on their characteristics, should be handled in a streamlined manner. In that regard, *Call to Action* identifies the following case characteristics as appropriate for the streamlined pathway: limited number of parties;

routine issues concerning liability and damages; few anticipated pretrial motions; limited discovery needs; few witnesses; minimal documentary evidence; and anticipated trial length of one or two days. *Call to Action 21*.

In Oregon, most civil cases involving \$50,000 or less must be referred to mandatory arbitration before proceeding to trial. ORS 36.400, ORS 36.405(1).¹² See [Appendix H](#) (setting out those statutes). Since 2010, however, Oregon has had an optional "expedited civil jury cases" statewide rule, UTCR 5.150, that was intended to move less complex cases, such as those bearing the characteristics identified above, to trial more quickly, without first proceeding to arbitration if otherwise required. UTCR 5.150 was intended to encourage the use of jury trials for a number of reasons -- to involve citizens in the judicial system, to give lawyers and judges more opportunities to develop civil trial skills -- and also to help litigants resolve cases more quickly and with less expense. Under the rule, parties may seek designation of a civil case that is eligible for a jury trial as an "expedited" case, subject to expedited timelines, mandatory disclosures, limits on discovery, and other requirements. In exchange for agreeing to proceed under those elements of the rule, the parties are ensured a trial within four months of the designation. The statewide rule takes an optional, "opt-in" approach.

In addition to the statewide rule, "pilot" courts in two counties -- Jackson and Lane -- have adopted Supplementary Local Rules (SLR), SLR 5.151, designed to increase the number of "expedited" civil jury trials in those counties. See [Appendix I](#) (Jackson County SLR 5.151) and [Appendix J](#) (Lane County SLR 5.151). Per those SLRs, case qualifications include a complaint seeking recovery of money damages not exceeding \$100,000, counsel on both sides, and the exclusion of certain case types (in both courts, family law and probate; in Lane, also consumer collections, FEDs, and small claims; in Jackson, also juvenile and post-conviction). Each county employs an "opt-out" model, meaning that qualifying cases begin as "expedited jury trial" cases, and a party must affirmatively seek removal of that designation.

To date, UTCR 5.150 has been underutilized -- largely, as the Task Force understands it, due to litigant concerns about its discovery limitations and concerns about mandated timelines (including four months to trial). The SLRs in the two "pilot" counties also have been underutilized.¹³ In Jackson County, it appears that parties may plead around the rule, based on the amount of damages sought. In Lane County, for parties who agree that a speedier trial schedule is needed, civil cases ordinarily can be set for trial within two to three months after becoming at issue, and so the rule can be viewed as unnecessary. In both counties, a high number of cases settle and so do not reach trial anyway.

¹² Under ORS 36.405(3), if a court has established a mediation program for an action that otherwise would be subject to mandatory arbitration, and the parties agree to mediation, then the case is submitted for mediation instead of arbitration.

¹³ Indeed, both pilot programs initially were structured as "opt-in," optional programs, but they transitioned to "opt-out" to attempt to increase participation.

The Task Force also acknowledged that UTCR 5.150 often is not well-suited to certain types of cases -- for example, insurance defense cases in which parties must rely on third parties for discovery. It is well-suited, however, to two-party, noninsurance cases with more easily identifiable and obtainable discovery needs and legal issues -- such as business disputes between buyers and sellers of goods, or debt disputes between businesses.

The Task Force agreed that UTCR 5.150 could be a useful tool for right-sized case management, if lawyers were not so reluctant to use it. After identifying the aspects of the rule that appear most problematic, and also considering the overarching goals of right-sized case management and flexible case processing, the Task Force recommends renaming UTCR 5.150 as a "streamlined" civil jury trial rule; amending various provisions with a goal of flexibility while retaining the general structural framework and mandatory disclosure requirements; extending the trial time from four months to 180 days; and amending the accompanying motion and order forms. See [Appendix K](#) (setting out proposed amendments). The proposed amendments -- which the Task Force hopes will make the rule a more attractive option as opposed to ordinary civil case processing when appropriate -- are summarized in the recommendations set out below.

Also concerning UTCR 5.150, the Task Force spent considerable time debating the "opt-in" and "opt-out" approaches (as explained, the current statewide rule contemplates opt-in, while the two pilot courts take an "opt-out" approach). Discussion in the Task Force revealed conflicting views about whether Oregon's mandatory arbitration statutes, ORS 36.400 and ORS 36.405, permit adoption of a statewide "opt-out" rule. In particular, ORS 36.405 provides, in part:

"(1) Except as provided in ORS 30.136 [(concerning the federal Servicemembers Civil Relief Act)], in a civil action in a circuit court where all parties have appeared, the court *shall* refer the action to arbitration under ORS 36.400 to 36.425 if either of the following applies:

"(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding \$50,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

"(b) The action is a domestic relations suit, as defined in ORS 107.510 [(including dissolution, annulment, or separation)], in which the only contested issue is the division or other disposition of property between the parties.

"(2) *The presiding judge for a judicial district may do either of the following:*

"(a) Exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be referred to arbitration under this section.

"(b) Remove from further arbitration proceedings a civil action that has been referred to arbitration under this section, when, in the opinion of the judge, good cause exists for that exemption or removal."

(Emphasis added.)

Several members of the Task Force think that the emphasized statutory text precludes adoption of a statewide streamlined civil jury trial rule that requires parties to opt-out of the streamlined trial process and proceed to mandatory arbitration -- rather, the presiding judge may approve exemption from mandatory arbitration on only a case-by-case basis, for any case not yet referred. In the view of those members, the Task Force's recommended amendments to UTCR 5.150 should not conflict with that clear legislative policy choice. Other members, however, think that ORS 36.425(2) permits an opt-out approach similar to those set out in both Jackson and Lane County SLR 5.151, and that the Task Force's recommendations should not be constrained by conflicting, conceptual statutory interpretations, regarding presiding judge authority to remove a case from mandatory arbitration. In the view of those members, "opt-out" would ensure greater use of the rule, as well as counterbalance the decrease in civil jury trials, and the Task Force should recommend that favorable policy choice. Largely due to those differing viewpoints, the Task Force as a whole does not recommend amending UTCR 5.150 to become a statewide "opt-out" rule. The Task Force does, however, recommend that OJD consider gathering data to evaluate the effectiveness of mandatory arbitration in moving civil cases to resolution in an efficient and just manner.¹⁴

The Task Force identified additional "best practice" recommendations intended to alert or remind parties about the availability of UTCR 5.150, set out below. In doing so, the Task Force also declined to propose amending the statewide rule to require the "streamlined" designation to occur at a particular point in time, so as to ensure greater flexibility.

➔ Task Force Recommendation:

6.4.2.1 *Oregon's Streamlined Pathway should include cases designated as "streamlined" civil jury cases under UTCR 5.150.*

¹⁴ Along those lines, the Task Force discussed that arbitration may not be as cost-effective in small courts because those courts can find it difficult to attract qualified arbitrators, particularly when a party obtains a fee waiver. And, the quality of arbitrators can vary. But, the Task Force also agreed that arbitration can work well, depending on the nature of the dispute.

➔ Task Force Recommendations, Amendment to UTCR 5.150:

- 6.4.2.2** *A proposed amendment to UTCR 5.150, and accompanying forms, should be submitted to the OJD UTCR Committee, applying to streamlined civil jury trials. (See following recommendations for specific proposed amendments and [Appendix K.](#))*
- 6.4.2.3** *UTCR 5.150 should be renamed as a "streamlined" civil jury trial rule (from "expedited").*
- 6.4.2.4** *The trial timeline in UTCR 5.150 should be changed from four months to 180 days from the date of the streamlined case designation.*
- 6.4.2.5** *The current requirement in UTCR 5.150 for a pretrial conference at a designated time should be eliminated.*
- 6.4.2.6** *The current requirement in UTCR 5.150 for a written agreement about the scope, nature, and timing of discovery, and the date by which discovery must be completed, should be eliminated. However, the rule should clarify that such agreements are permitted and encouraged.*
- 6.4.2.7** *The express limitations on discovery in UTCR 5.150 (e.g., number of depositions and requests for production; deadline for service of discovery requests) should be eliminated.*
- 6.4.2.8** *The timeline in UTCR 5.150 for completing discovery should be changed from 21 days to 14 days before trial.*
- 6.4.2.9** *UTCR 5.150 should be amended to permit streamlined procedures for resolving discovery disputes.*
- 6.4.2.10** *UTCR 5.150 should be amended to require the parties to file, no later than three days before trial, stipulations regarding the admission of exhibits, the manner for submitting expert testimony, the use of deposition excerpts (if any), and the conduct of trial.*
- 6.4.2.11** *The motion and order forms currently set out as UTCR Form 5.150.1a and 5.150.1b, should be amended so that they conform with amended UTCR 5.150, and those forms should*

be moved out of the UTCR Appendix of Forms and to OJD's website.¹⁵

➔ **Task Force Recommendations, to OJD:**

- 6.4.2.12** OJD should convey to the Presiding Judges that a streamlined trial process under UTCR 5.150 is an available option for all courts to use, even for counties that have not adopted a companion SLR.
- 6.4.2.13** OJD should consider gathering data to evaluate the effectiveness of mandatory arbitration statewide, in moving civil cases to resolution in an efficient and just manner.
- 6.4.2.14** After evaluating the effectiveness of mandatory arbitration statewide, OJD should coordinate with the Oregon State Bar, to identify and seek Bar drafting of possible legislative amendments to the mandatory arbitration statutes, ORS 36.400 - 36.405, with the goal of improving effective and timely civil case processing.

➔ **Task Force Recommendations, Best Practices:**

- 6.4.2.15** All court arbitration notices should include the following statement: "In lieu of arbitration, a party may seek court approval to designate the case as a streamlined civil jury case under Uniform Trial Court Rule 5.150. For more information, see <https://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>"
- 6.4.2.16** Court should send arbitration notices, in appropriate cases, to parties 30 days after the answer is filed in the case.

¹⁵ Since the statewide Oregon eCourt system rollout, discussed later in this Report, OJD has been working to move many forms currently contained in the UTCR Appendix of Forms to OJD's online Forms Center on its website, instead. Removing the forms from the UTCR Appendix of Forms gives OJD more flexibility to update them due to legislative and other changes. An opportunity for public comment on all statewide forms is available in the online Forms Center, and OJD has an established, multi-step process for reviewing and approving changes to statewide forms.

6.4.3 Streamlined Cases After Filing: Dismissal or Default Order and Judgment Under UTCR 7.020

Call to Action describes the pathway approach as identifying which cases, upon filing and based on various characteristics, are appropriate for various right-sized case management pathways. As explained earlier, however, UTCR 7.020 creates a series of dispositional opportunities at several early stages of any civil case, which in essence can result in streamlined case processing. Stated another way, many cases that are ostensibly filed within a "general" case pathway quickly move to streamlined processing by operation of UTCR 7.020(2) and (3) post-filing. Most notably:

- *Dismissal, want of prosecution, no proof of service:* If the plaintiff does not file return or acceptance of service of complaint, by 63rd day after filing, the court notifies the plaintiff that the case will be dismissed for want of prosecution 28 days from date of mailing, unless proof of service is filed within that time period (or unless a good cause exception applies or the defendant appears), UTCR 7.020(2).
- *Dismissal, want of prosecution, no motion for order of default:* If proof of service is filed and the defendant has not appeared by 91st day from the filing of the complaint, the court deems case "not at issue" and issues written notice to the plaintiff that it will dismiss the case against each nonappearing defendant for want of prosecution, 28 days from date of notice, unless plaintiff files for order of default and entry of judgment (or unless good cause exception applies or the defendant appears), UTCR 7.020(3).
- *Judgment Following Order of Default:* If the plaintiff timely files for order of default and entry of judgment, and the defendant does not appear, the court issues judgment on a showing of a prima facie case.

In the Task Force's view, cases that are resolved post-filing by operation of UTCR 7.020(2) and (3) are logically part of Oregon's Streamlined Pathway.

In discussing case dispositions under UTCR 7.020(2) and (3), the Task Force also agreed that, if a party seeks to "undo" a judgment entered pursuant to one of those provisions, the party must move pursuant to ORCP 71 for relief from judgment -- as opposed to an inaccurate, and procedurally inadequate, request to "reinstate" the case.

➔ Task Force Recommendation:

- 6.4.3.1** *Oregon's Streamlined Pathway should include cases that, after filing, proceed to disposition by dismissal or judgment following order of default, by operation of UTCR 7.020(2) or (3).*

➔ **Task Force Recommendations, Best Practices:**

6.4.3.2 *If the court has entered judgment under UTCR 7.020(2) due to service or nonappearance issues, and a party seeks to undo the judgment due to mistake, etc., then the party must seek relief from the judgment, not a "reinstatement" of the case.*

6.5 **Call to Action Recommendation 5: Courts should implement a Complex Pathway for cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision.**

As part of right-sized case processing, *Call to Action's* Recommendation 5 explains that more complex civil cases require more substantial court involvement, such as the assignment of a single judge for the life of the case; an early case management conference followed by periodic conferences or other informal monitoring; establishing key deadlines early on, for each stage of the case; early development of a detailed discovery plan; informal communications between the court and the parties as appropriate, to encourage a narrowing of the issues; and judicial management of trials in an efficient and time-sensitive manner. *Call to Action* 23. A case may be complex for a variety of reasons -- including legal complexity, evidentiary complexity, and logistic complexity, or a combination of any of those characteristics.

6.5.1 ***Designation as a "Complex Case" Under UTCR 7.030***

In considering Recommendation 5, the Task Force first evaluated Oregon's current statewide rule relating to "complex" cases, UTCR 7.030. That rule permits any party to apply to the presiding judge to have a case designated as "complex," based on the following nonexclusive criteria: the number of parties involved; the complexity of the legal issues; the expected extent and difficulty of discovery; and the anticipated length of trial. Once a case is designated as "complex," it is assigned to a specific judge who thereafter has full or partial responsibility for the case. Trial must be scheduled within two years from the date of filing, unless extended for good cause. See [Appendix L](#) (setting out UTCR 7.030).¹⁶

¹⁶ UTCR 7.030 provides:

"7.030 COMPLEX CASES

"(1) Any party in a case may apply to the presiding judge to have the matter designated as a 'complex case.'

"(2) The criteria used for designation as a 'complex case' may include, but shall not be limited to, the following: the number of parties involved, the

The Task Force agreed that current UTCR 7.030 works well in the courts. Parties have a good sense of when they should seek a "complex case" designation, and the presiding judge has discretion to deny the motion if he or she disagrees with the proposed designation. The Task Force does not think that any particular type of case should be presumptively designated as a "complex case." It also does not propose any amendment to UTCR 7.030, although it does make the recommendations set out below regarding the operation of UTCR 7.030 in practice.

➔ **Task Force Recommendations, Best Practices:**

- 6.5.1.1** *If a judge thinks that a civil case is appropriate for designation as a complex case under UTCR 7.030, then the judge should encourage the parties to file a motion for complex case designation with the presiding judge.*
- 6.5.1.2** *After designation of a "complex case" under UTCR 7.030, a court that uses centralized docketing should expeditiously assign the case to a judge, for the life of the case.*
- 6.5.1.3** *After a complex case designation under UTCR 7.030 and assignment to a judge, the assigned judge should schedule an early case management conference, within 30 days. The judge should have discretion about when to set the case for trial and, otherwise, in establishing a case management order.*
- 6.5.1.4** *If a case management conference already has been held in a complex case under UTCR 7.030 and a party later wishes to have another case management conference, then that party first should meet and confer with the other party, before requesting that the court hold a conference. The court thereafter should hold the conference.*

complexity of the legal issues, the expected extent and difficulty of discovery, and the anticipated length of trial.

- "(3) A presiding judge shall assign any matter designated as a 'complex case' to a specific judge who shall thereafter have full or partial responsibility for the case as determined by the presiding judge.
- "(4) A 'complex case' shall not be subject to the time limitation or trial setting procedures set forth in UTCR 7.020(5), (6) and (7); however, any such case will be set for trial as soon as practical, but in any event, within two years from the date of filing unless, for good cause shown, the trial date is extended by the assigned judge."

- 6.5.1.5** *Courts should adopt procedures for, and encourage litigants to, resolve discovery disputes informally, to reduce the cost of litigation in complex cases.*

6.5.2 Oregon Complex Litigation Court, UTCR Chapter 23

The Task Force also discussed UTCR Chapter 23, adopted statewide in 2010, which establishes an Oregon Complex Litigation Court (OCLC). See [Appendix M](#) (setting out UTCR Chapter 23). The OCLC involves assigning experienced judges, identified as "OCLC judges," to be assigned to complex cases, even if the judge is from a different county. UTCR 23.010. The OCLC is managed by a "managing panel" consisting of three circuit court judges (appointed by the Chief Justice) -- among other things, the managing panel confers with the parties and the presiding judge, and, if appropriate based on established criteria, accepts the case into the OCLC; and then assigns the case to a single OCLC judge. UTCR 23.010, UTCR 23.020. The assigned judge manages the case for all purposes, including potential assignment to a settlement judge. A case management conference is required, and the parties are required to take several steps before that conference, including exploring early resolution of the case, preparing a discovery plan, attempting to reach agreement on as many issues as possible, and conferring as needed. UTCR 23.040. The case management conference is governed by rule; several topics may be covered or resolved at the conference, but discussion or resolution is not required, so the rule retains flexibility depending on the case. A case management order must issue following the conference, encompassing the matters addressed and any others that the judge thinks appropriate. UTCR 23.050. Within 10 days of trial, several exhibit-related requirements must be satisfied. UTCR 23.040.

The Task Force agreed that UTCR Chapter 23 -- which addresses many of the concerns expressed in *Call to Action*, regarding effective and successful case management of complex cases -- is a useful tool for managing appropriate complex cases in Oregon. However, the chapter is not currently widely used, and the Task Force noted a few reasons: (1) local judges often prefer to handle complex cases filed locally; (2) local voters often expect their local courts and locally elected judges to handle such cases; and (3) logistically, some courthouses are not able to effectively host an additional judge trying a complex case for an extensive period of time, due to lack of space and technological capacity. One alternative solution to the OCLC, courtroom space permitting, is for a visiting judge (who could be a current circuit court judge or a retired "senior judge") to handle overflow work for a smaller county, when one of that county's judges is trying a complex case.

➔ Task Force Recommendation:

- 6.5.2.1** *OJD should make Oregon civil practitioners aware of UTCR Chapter 23 -- the Oregon Complex Litigation Court -- as a useful tool for managing complex cases from early in the*

case through trial. OJD should work with the Oregon State Bar to provide such educational opportunities.

6.5.2.2 *When the Oregon Complex Litigation Court rules are utilized, UTCR Chapter 23, and the visiting trial court judge is assigned, the hosting county's court and the visiting judge, together with his or her immediate staff and technology staff, should develop a communication and technology plan to ensure effective and efficient management of the case.*

6.5.2.3 *As an alternative to the Oregon Complex Litigation Court, UTCR Chapter 23, a visiting judge could be used to handle overflow, routine cases in another county while a local judge handles a locally filed complex case.*

6.6 Call to Action Recommendation 6: Courts should implement a General Pathway for cases whose characteristics do not justify assignment to either the Streamlined or Complex Pathway.

For civil cases that do not fit either the Streamlined or Complex Pathways, *Call to Action* recommends establishing a General Pathway with a number of accompanying practices to assist with effective case management. Those include establishing deadlines for key stages, including a firm trial date; holding an early case management conference on party request; requiring mandatory disclosures and tailored additional discovery; utilizing expedited approaches to resolving discovery disputes; engaging in informal communications with the parties regarding dispositive motions and possible settlement; and managing trials in an efficient and time-sensitive manner. *Call to Action* 26.

6.6.1 Managing General Pathway Cases Under UTCR 7.020

In sections 6.4 and 6.5, this Report describes the Task Force's recommended approach to identifying "Streamlined" and "Complex" case pathways in Oregon. Consistently with those descriptions, the Task Force defines a "General Pathway" case as a case that is neither (1) "complex" under UTCR 7.030; (2) "streamlined" at or near the outset of the case based on case type or designation (small claims, residential FED, or cases designated as streamlined under UTCR 5.150); nor (3) "streamlined" because, post-filing, the case was dismissed or an order of default and judgment issued under UTCR 7.020(2) or (3). Also as described earlier, provisions of current UTCR 7.020 already establish, as a matter of statewide case management protocols, various requirements and associated deadlines for moving a civil case through each stage, including setting a firm trial date. See UTCR 7.020(4) (if all defendants have appeared, case is deemed "at issue" 91 days after the earlier of the filing of the complaint or when the pleadings are complete); 7.020(5) (trial date must be no later than one year from filing, unless a third-party complaint filed); 7.020(6) (parties may agree on a trial date

within that timeframe or seek a conference to set a date). See generally [Appendix C](#) (setting out UTCR 7.020).

The Task Force sets out the following "best practice" recommendations, to ensure consistent statewide application of UTCR 7.020, as well as to encourage effective case management practices that apply to the General Pathway.¹⁷

➔ **Task Force Recommendations, Best Practices:**

- 6.6.1.1 *Courts should consistently rely on UTCR 7.020(4), (5), (6), and (7) to move General Pathway cases toward resolution in a timely manner, including setting firm trial dates.*
- 6.6.1.2 *Courts should encourage parties to confer and agree on a trial date within the parameters established in UTCR 7.020(5).*
- 6.6.2 ***Tracking General Pathway Cases, Informally Resolving Discovery Disputes, and Holding Case Management Conferences***

In addition to recommending consistent statewide application of UTCR 7.020, the Task Force discussed other strategies for ensuring that General Pathway cases move toward trial without unnecessary delay or the filing of unnecessary motions, set out below.

➔ **Task Force Recommendations, Best Practices:**

- 6.6.2.1 *Courts should have a process for establishing trial readiness in General Pathway cases and, once established, to track the case and enforce the trial date or schedule a conference to select a trial date.*
- 6.6.2.2 *Each court should have a system for quickly resolving minor discovery disputes in General Pathway cases that do not require a party to file a motion. For example, questions about the scope of discovery, or issues that might otherwise require a party to move to compel production, often can be resolved via a short phone call with the judge. If, in addressing the issue informally, the judge determines that a*

¹⁷ The Task Force does not make any recommendation about mandatory disclosures in the General Pathway, other than proposing that OJD coordinate with the Oregon State Bar to encourage subject-matter sections to develop best practices about mandatory disclosures, as appropriate. See recommendation 6.1.4.3.

hearing is needed, then the judge should schedule a hearing.

6.6.2.3 *A party seeking a case management conference in a General Pathway case should meet and confer with the other party before requesting a conference. The court then should hold the conference. The assigned judge also may convene a case management conference, if it would be useful to move the case to resolution. Case management conferences can be informal, depending on the case.*

6.7 Call to Action Recommendation 7: Courts should develop civil case management teams consisting of a responsible judge supported by appropriately trained staff.

Call to Action describes a "civil case management team" as utilizing court staff, in addition to the judge, in actively managing civil cases -- specifically, case management should be a "team effort aided by technology and appropriately trained and supervised staff," in light of the skill sets of different staff members. *Call to Action* 27-28. To facilitate that approach, Recommendation 7 recommends that courts conduct a thorough examination of their civil case processing practices to determine the degree of discretion required for each task; then, each task should be performed by staff whose experience and skills correspond with the staff requirements. Also, courts should delegate administrative authority to specially trained staff to make routine case management decisions. *Id.* at 27.

6.7.1 Civil Case Management Structure and Responsibilities in the Oregon Circuit Courts

In discussing *Call to Action's* Recommendation 7, the Task Force agreed that it is not workable for the Oregon circuit courts to adopt a one-size-fits-all approach to civil case management. Each court is different -- varying in size, management structure, and effective methods for case processing. Additionally, some jurisdictions implementing the "civil case management team" approach are increasing the job requirements for court staff positions -- including creating new Civil Case Manager positions -- which include changes in minimum qualifications that include higher levels of education in relevant fields. OJD does not have the resources to staff its courts with Civil Case Managers or to fund a reclassification effort to create those types of positions.

No matter the court size or management structure, however, each circuit court must ensure that designated staff is sufficiently trained to ensure compliance with established deadlines -- such as those set out in UTCR Chapter 7 -- are met and who otherwise ensure that civil cases are progressing toward resolution, without judicial involvement until necessary. Court staff who assist the judges in tracking cases vary in

the courts, but can include teams or designated individuals in the court's records office, the judge's clerk, and the judge's judicial assistant. The key is for the court to ensure compliance with UTCR 7.020 and 7.030 -- which provide the ultimate guidelines for case aging, trial deadlines, and trial readiness -- and otherwise effectively track cases to ensure forward movement.

➔ **Task Force Recommendations, Best Practices:**

6.7.1.1 *Courts should make certain that designated staff ensures compliance with deadlines that are established by statute, rules of procedure, court rules (such as UTCR 7.020, 7.030, and 5.150, or applicable Supplementary Local Rules), or court orders.*

6.7.1.2 *Designated staff should have authority to monitor civil cases, run various system reports, and ensure that cases are progressing toward resolution, without judicial involvement until necessary.*

6.7.1.3 *Designated staff who can assist with active civil case management should include central court staff, the judge's clerk, the judge's judicial assistant, or any a combination, as appropriate in each court.*

6.8 **Call to Action Recommendation 8: For right-size case management to become the norm, not the exception, courts must provide judges and court staff with training that specifically supports and empowers right-sized case management. Courts should partner with bar leaders to create programs that educate lawyers about the requirements of newly instituted case management practices.**

To facilitate adopted improvements to civil case processing, *Call to Action* recommends three general training components. First, courts should develop a comprehensive judicial training program, including web-based training modules, regular training of new judges and sitting judges, and a system for identifying judges who could benefit from additional training. Second, court staff must be trained on the skills necessary for effective case management, technology improvements, and consumer expectations (for example, working with self-represented litigants). Third, judges and court administrators should partner with the bar to create CLE programs and bench/bar conferences that help practitioners understand whatever civil improvement efforts are being undertaken and what will be expected of lawyers as a result. *Call to Action* 29.

6.8.1 **Judicial and Staff Training**

Oregon's circuit court judges have several regular statewide training opportunities. OJD presents an annual, comprehensive new-judge training and also

holds a multi-day annual conference for all the judges in the state, as well as a bi-annual conference for all the circuit court judges in the state.

Educational opportunities also are provided to OJD staff, but training is not as comprehensive as in past years. OJD's budget has been significantly reduced over the last nine years, leaving insufficient resources for such training. When budget cuts are directed, staff training is one of the first items to be cut, to preserve staff positions.¹⁸ As a result of reductions to its budget, OJD has been forced to eliminate, or significantly reduce the frequency of, statewide staff trainings that it regularly had offered in the past. For example, OJD used to present an annual, comprehensive, one-week "Clerk College" to train court staff on statewide business processes and data entry, including managing civil cases, as well as an annual multi-day "Supervisor Camp" training for supervisors and lead workers. Budget cuts required OJD to suspend both programs for several years. Both programs have been revived, but scaled back. For example, the Clerk College program is held a fewer number of days and has largely been replaced with monthly business process webinars to provide some minimal training. Individual courts also provide training as needed on court business processes, data entry, and customer service skills.

The Task Force agrees that better-trained staff results in better case processing. OJD would like to provide meaningful, comprehensive statewide training, and staff wants to be trained, but, as just described, budget difficulties have hampered OJD's ability to thoroughly train court staff. In light of those difficulties, the Task Force recommends some low-cost strategies and best practices for development of staff skills in relation to effective and efficient case management, summarized below.

➔ Task Force Recommendations, Best Practices:

- 6.8.1.1** *The Presiding Judge and the Trial Court Administrator of each court should develop a plan for developing right-sized case management and UTCR Chapter 7 staff training, within their available resources.*

- 6.8.1.2** *Courts should continue to organize internal trainings to ensure that designated staff understand their responsibilities under UTCR Chapter 7 and otherwise to keep civil cases moving forward toward resolution -- such as the ability to run tickler and other reports, evaluating cases for items needing action, developing action plans with the judge as needed, and ensuring that outstanding fee issues are appropriately resolved by the end of a case.*

¹⁸ The vast majority of OJD's budget pays for salaries of judges, court staff, and other OJD staff. However, under the Oregon Constitution, judicial compensation cannot be reduced, so, when budget cuts are required, they have a disproportionate impact on court staffing. OJD has not yet recovered to staffing levels in place before the 2008 recession (OJD's budget during the 2009 legislative session was reduced by 15%).

6.8.1.3 *Courts should share information on successful strategies and staff resources with each other -- for example, trial court administrators sharing information at regular meetings, and staff from one court receiving training from more experienced staff in another court. This could become a regular agenda item for Trial Court Administrator Peer Review meetings.*

6.8.1.4 *In addition to system and business process training, resources permitting, staff should receive ad hoc training -- via judge or lawyer-presented information sessions -- about various substantive areas (for example, how a medical malpractice case works), to provide context for their daily work.*

6.8.2 State and Local Bar Association Outreach

The Task Force agrees with Recommendation 8 that outreach to state and local bar associations is an important component to effective civil case management, and offers the recommendation set out below.

➔ Task Force Recommendation:

6.8.2.1 *At the completion of the work of the OJD CJI Task Force, OJD should engage in outreach to the Oregon State Bar and the legislature to share this Report and its recommendations, and to ensure that courts moving forward are communicating with their local bars about any resulting practice changes.*

6.9 Call to Action Recommendation 9: Courts should establish judicial assignment criteria that are objective, transparent, and mindful of a judge's experience in effective case management.

Call to Action notes that, traditionally, the only criteria for judicial assignment has been a judge's request for a particular assignment and seniority; by contrast, important qualities such as judicial experience or training were not top priorities in making assignments. Recommendation 9 therefore recommends several factors to consider in developing appropriate judicial assignment criteria: demonstrated case management skills; civil case litigation experience; previous civil litigation training; specialized knowledge; interest in civil litigation; reputation with respect to neutrality; and professional standing with the trial bar. *Call to Action* 30.

6.9.1 Judicial Assignments, Generally

In discussing Recommendation 9, the Task Force reached several points of agreement. First, in light of the Oregon courts' large criminal caseloads, judges often cannot be designated as only "civil judges," because they need to be available to handle both civil and criminal cases.¹⁹ Additionally, the Oregon circuit courts assign judges differently, based in large part on the size of the court, the needs of the county, and court practices. For example, except in designated complex cases, Multnomah County assigns a "motions judge" soon after a case becomes "at issue," but does not assign a trial judge until much closer to the trial date. Deschutes County, in other than complex cases, uses a central docketing assignment system (based on availability at the time a judge is needed in a case); by contrast, Marion and Benton counties use individual docketing, assigning a judge once a case is at issue, and that judge then handles all motions and the trial. Jackson County assigns criminal cases based on central docketing, but civil cases based on individual docketing. Given the statewide disparity in court size, management structure, number of judges, and types of cases filed, the Task Force agreed that each court should continue to determine which assignment structure -- whether individual docketing, central docketing, or a mix of both -- is the most effective means of judicial assignment purposes in that court.²⁰

As to judicial experience as a criterion for case assignments, the Task Force agreed in concept that, for courts that do not randomly assign judges to incoming cases, judicial experience in relation to the case type or complexity should be a factor for consideration in judicial assignments. However, another factor for consideration is that less-experienced judges need to gain experience, by being assigned to cases that allow them to grow in their judicial roles.

Finally, the Task Force discussed that, unlike in many other states, Oregon law permits a party to seek judicial reassignment if the party submits an affidavit stating that the party believes in good faith that the judge originally assigned will not be fair or impartial. See [Appendix N](#) (setting out ORS 14.260 and ORS 14.270). Those statutes help to frame the judicial assignment process in courts across the state.

In sum, the Task Force does not recommend any statewide changes to the judicial assignment process, although it does offer the recommendations set out below.

¹⁹ In 2015, in the Oregon circuit courts, 142,002 civil cases were filed statewide (including general civil, FED, and small claims; excluding family law and probate cases). By contrast, more than double that number of criminal cases were filed statewide -- 288,253 (felonies, misdemeanors, and violations). *2016 Annual Report: Focus on Technology*, Oregon Judicial Branch 75, available at <http://www.courts.oregon.gov/about/Documents/OJD2016AnnRptWEB-VERSION2.pdf>.

²⁰ There are benefits to the different approaches. Central docketing maintains much-needed flexibility in the court's management of its judicial resources. But, individual docketing ensures continuity and early, individual judicial engagement in the case.

➔ **Task Force Recommendation:**

- 6.9.1.1** *Courts should evaluate their judicial assignment processes (be they central docketing, individual docketing, or a mix of both), to ensure that current processes provide the most efficient means of civil case management, in light of the court's size, management structure, and case load.*
- 6.9.1.2** *Judicial experience should be a criterion for judicial assignment in civil cases; however, an additional consideration is that new, challenging case assignments will help judges develop their skills and grow in the role of judge.*

6.9.2 *Judicial Experience and Assignments, Transparency*

The Task Force thinks it important that courts be transparent about each judge's judicial experience and the court's judicial assignment process. Among other things, transparency helps to provide information to self-represented litigants and also to lawyers who are litigating in unfamiliar courts. Of course, because judges are elected in Oregon, their experience is ultimately transparent to the voters through the election process, as well as through a vetting process by the Oregon State Bar.²¹ But, the Task Force agreed that courts could take additional steps to support a transparent approach regarding judicial experience and the judicial assignment process.

➔ **Task Force Recommendations:**

- 6.9.2.1** *For judicial experience transparency purposes, as part of information about "Going to Court," each court's website should include a summary of each judge's experience.*
- 6.9.2.2** *For judicial assignment transparency purposes, as part of information about "Going to Court," each court's website should include a general statement of when and how judges are assigned to cases.*
- 6.9.2.3** *Court staff should be trained on the judicial assignment process, so that they can answer questions from litigants and the public on that topic.*
- 6.9.2.4** *Ideally, each courthouse should have an easily accessible means for self-represented litigants to learn which judge is*

²¹ See Or Const, Art VII (Amended), § 1 (all state court judges in Oregon shall be elected by the legal voters of state or, as appropriate, by the legal voters of each district, for six-year terms).

handling their hearing or trial, and where the judge's courtroom is located (for example, a conspicuous display screen or a marked terminal with calendar search available).

6.9.2.5 *OJD's statewide form instructions for civil case filings should state that, depending on the court, (1) different judges may preside at different stages of the case; and (2) the court's process for assigning judges should be available on the court's website.*

6.10 Call to Action Recommendation 10: Courts must take full advantage of technology to implement right-size case management and achieve useful litigant-court interaction.

To facilitate many of its other recommendations, *Call to Action* urges courts to use technology wisely, including to support a courtwide, team approach to case management; to establish business processes that would ensure forward momentum of civil cases; to regularly collect and use standardized, real-time information about civil case management; and to inventory and analyze existing civil dockets. *Call to Action* 31. A key function of case management automation is to generate deadlines for case action based on court rules; to alert judges and court staff to missed deadlines; to provide digital data and searchable options for scheduled events; and to trigger appropriate compliance orders. *Id.* at 32. Courts also are encouraged to publish measurement data as a means of increasing transparency and accountability. *Id.* at 31.

6.10.1 *Oregon eCourt and Automation*

OJD is unique in a technological sense, because all the circuit courts have been using the same statewide Oregon eCourt system since at least 2016 -- including a case management system with electronic documents and workflows, as well as integrated financial management, ePayment, and eFiling systems. The Oregon eCourt system has moved the courts from a paper-based environment to an electronic, paper-on-demand environment that allows multiple judges and staff to simultaneously access a single electronic case file, and that facilitates a judge's ability to remotely access case information and documents. It also permits the courts to share data and information within a single database.

The circuit courts' case management system includes automated ticklers, tickler reporting, and court-generated notices that are tied to deadline and notification requirements established by various statutes, rules of procedure, UTCR Chapter 7, and other court rules. For example, based on event entries made in a case register of actions, the court can run reports for cases that require court action under UTCR 7.020(2) and (3) (expired timelines for plaintiffs to file proof of service or move for order of default) -- such as a Time Standards Tickler Report and an Overdue Time Standards Event Listing Report. The system also provides real-time information on cases and

custom reports that include measuring data, and it permits a wide variety of ad hoc reporting.²²

In light of OJD's significant recent efforts to configure, implement, maintain, and improve the Oregon eCourt system, the Task Force does not make any specific recommendations about the functionality of that system in relation to Recommendation 10. The Task Force does recommend, however, that courts continue to leverage that system to ensure efficient and effective case management, as noted below.

➔ Task Force Recommendation, Best Practices:

6.10.1.1 *Courts should ensure that they are regularly running and evaluating reports based on UTCR 7.020 and other deadlines, including the Oregon eCourt system's Time Standard Tickler Reports and Overdue Time Standards Event Listing Reports.*

6.10.1.2 *Trial Court Administrators and the Office of the State Court Administrator should regularly share information with each other about how they are using the Oregon eCourt system to collect and analyze data, and to ensure efficient case management.*

6.11 Call to Action Recommendation 11: Courts must devote special attention to high-volume dockets that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.

Call to Action identifies several characteristics of high-volume cases that, although not posing complex issues, can require special court attention: (1) factual and legal issues tend to be relatively uniform from case to case; (2) plaintiffs often are corporate entities and, in any event, are likely to be represented by a lawyer or a representative who often handles that type of case; (3) plaintiffs are likely to have significantly greater knowledge of formal and informal court practices, greater resources, and greater access to case information than defendants; (4) defendants are likely to be self-represented individuals, often of low or modest income, and are likely to be ill-equipped to handle formal court proceedings; and (5) defendants often face additional barriers that impede effective navigation of the civil justice system, such as limited literacy, limited English proficiency, cognitive impairments, and distrust of the courts based on prior experience or upbringing in a different culture. *Call to Action*, Appendix I, 4.

²² Other aspects of the Oregon eCourt system -- including statewide forms in both printable and interactive format, public access, and OJD's website -- are discussed in sections 16.11 and 16.13 of this Report.

In Recommendation 11, *Call to Action* emphasizes several actions that courts can take to ensure that litigants in high-volume cases -- particularly those who are self-represented -- are treated fairly and not placed, from the court's perspective, at an unfair disadvantage due to their lack of representation. *Call to Action* 33. Those actions include (1) implementing systems to ensure that entry of judgments complies with basic procedural requirements (notice, standing, timeliness, sufficiency of documentation); (2) ensuring that litigants have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests; (3) ensuring that the courtroom environment in high-volume cases minimizes the risk that litigants will be confused or distracted by overcrowding, excessive noise, or inadequate case calls; and (4) preventing opportunities for self-represented persons to become confused about the roles of the court and opposing counsel. *Id.*

6.11.1 *Procedural Fairness and Access to Justice*

The Task Force discussed concepts of procedural fairness involving self-represented litigants in the courts -- such as ensuring that litigants understand the court process, their rights, the decisions that are made; and the next steps in the case; and that courts communicate with them in an understandable and respectful manner. Procedural fairness is becoming a more urgent need across the state, and the Task Force thinks it important that judges are trained statewide on that topic and remain mindful of it when they conduct court sessions.

➔ *Task Force Recommendations:*

- 6.11.1.1** *Judges should focus on procedural fairness at open calls and in hearings and trials -- such as providing self-represented litigants with understandable information about courtroom procedure and next steps in the case, while remaining neutral in the case.*

- 6.11.1.2** *As part of new judge training and, as appropriate, as agenda items for Presiding Judge meetings, the annual Judicial Conference, and the bi-annual circuit court judge conference, OJD should provide judges with specific strategies for ensuring procedural fairness, particularly to ensure that self-represented litigants in high-volume cases understand what is happening in court.*

- 6.11.1.3** *Resources permitting, OJD and the courts should train staff on procedural fairness issues, such as avoiding the perception that lawyers or frequently appearing litigants have an advantage based on their familiarity with court staff.*

As part of discussing procedural fairness, the Task Force also discussed an issue that can arise for litigants who request that an associated fee be waived or deferred: If the court does not rule on the request at the outset of the case for some reason, the court sometimes does not revisit the issue at case closing, which results in the fee obligation being imposed and, typically, additional administrative fees added, in connection with a payment plan. Although the Task Force did not view OJD's statewide process for waiving or deferring fees to be part of the scope of its work, it does recommend that courts implement a case-closing review process, such that any outstanding fee question is affirmatively resolved by the end of the case.²³

➔ Task Force Recommendation, Best Practices:

6.11.1.2 *As part of managing a civil case, designated court staff must ensure that any application for a fee waiver or deferral is resolved by case closing.*

Of course, ensuring procedural fairness in court proceedings addresses just a small part of the myriad access-to-justice issues facing self-represented litigants. In general, the Task Force considered in-depth discussion and recommendations about access to justice to be beyond the scope of its work. The Task Force did agree, however, that courts should continue to work collaboratively to share access-to-justice strategies and solutions. For example, the Deschutes County Bar Association has an Access to Justice Committee that recently implemented a "Lawyers in the Library" program, in conjunction with the county library. Through the program, one branch of the Deschutes Public Library offers self-represented litigants a 30-minute free consultation with a lawyer, one evening per week, concerning general legal information or referrals to public agencies, legal service providers, or the Oregon State Bar's Attorney Referral Service.²⁴

➔ Task Force Recommendation:

6.11.1.3 *Courts should engage in regular and deliberate information sharing about access to justice strategies and solutions that are working in their counties.*

²³ On May 1, 2018, the Chief Justice issued a new Chief Justice Order (CJO) amending OJD's standards and practices for deferral and waiver of fees in civil actions and proceedings. CJO 18-024. Among other things, that order approved new "case closing" forms that may be used to assist the courts in evaluating an applicant's qualification for fee waiver or deferral at the conclusion of the case.

²⁴ See <https://www.deschuteslibrary.org/files/LawyerintheLibraryhandout1-18.pdf>.

6.11.2 Online Resources -- General Information, Forms, and Case Information

As part of Oregon eCourt, OJD has implemented several statewide tools intended to assist self-represented litigants -- including those in the types of cases mentioned in *Call to Action's* Recommendation 11. For example, OJD's website, which is user-friendly and generally adheres to an eighth- or ninth-grade reading level standard, includes easy-to-find links for litigants seeking certain information. The website includes a prominently placed Self-Help Center and also a Forms-Rules-Fees link, with links to a Rules Center (containing all applicable court rules), a Forms Center, and a page containing information about filing and other fees. The website also includes a prominently placed "find a court" link that lets users access the local court's webpage for more particular information about that court and its processes. The website can be accessed by -- and is easily adaptable to -- a computer, tablet, or smartphone.

OJD's online Self-Help Center provides links to resources for self-represented litigants and other members of the public. OJD also has partnered with the Oregon State Bar (OSB) and the Oregon legal aid organizations -- which regularly provide information to self-represented litigants about different types of cases and court processes -- to form a "Self-Navigator's Work Group." The Work Group coordinates information that is available online about high-volume cases that typically involve at least one self-represented party -- including small claims, residential FED, and consumer collections cases (as well as family law cases). While OJD provides statewide forms online, as well as other court-related information, the other entities provide additional information about how different types of cases work, including online video content being offered and continually developed by OSB (available on OSB's website and YouTube.com²⁵), and online information about different types of legal proceedings maintained by the OSB and by Legal Aid Services of Oregon at <https://oregonlawhelp.org/>. OSB also offers a Lawyer Referral Service and a Modest Means Program (which assists lower-income litigants in certain types of cases who do not qualify for legal aid services), with information about both available online.²⁶ The three entities are working to effectively cross-link to each other's sites -- for example, so that a user who accesses OSB's or the Oregon legal aid organizations' website for certain content information can then easily link to OJD's online Forms Center to access the necessary forms.²⁷

²⁵ For example, the Oregon State Bar has a video about appearing at small claims court, available at http://www.osbar.org/public/legalinfo/1061_SmallClaims.htm. Newer video content is shorter and includes frequently asked questions. (Sample family law videos are available at <http://www.osbar.org/public/legalinfo/family.html>.)

²⁶ Information about the Oregon State Bar's Lawyer Referral Service and its Modest Means Program is available at https://www.osbar.org/public/legalinfo/1171_LRS.htm.

²⁷ The coordinating Work Group was formed as a result of recommendations issued in 2017 by the Oregon State Bar's Futures Task Force. As part of its Regulatory Committee, the

OJD's online Forms Center contains two types of statewide forms: (1) printable PDF forms that a litigant can print, complete, and file conventionally with the appropriate court; and (2) for many of the same forms, an interactive option that -- through an online interview process -- generates completed forms that the litigant may either print and conventionally file or, in most cases, electronically submit to the court, instead. The available forms, with instructions, currently include those for small claims and residential FED cases, satisfaction of a money award, applications for fee waiver or deferral, and limited scope representation for lawyers who offer that service,²⁸ as well as many family law and other forms. New form packets continue to be developed based on statewide priority assessment, with a focus on forms needed for high-volume filings with greater percentages of self-represented litigants. (In section 6.11.5 of this Report, the Task Force recommends development of new forms for consumer debt collection cases.)

As to case information and documents, OJD offers free access to case registers in most nonconfidential cases over the Internet; the registers display basic information about the case and events that have occurred to date, based on a case number or party name search. OJD also offers a subscription service that can include remote access to case documents, but only lawyers and certain authorized users -- not including general public users -- can access documents through the subscription service at this time.²⁹ OJD has worked for many years on issues concerning remote electronic access to case documents, addressing competing tensions between providing access for parties, which is a favored goal, versus indiscriminately disseminating nonconfidential case information and documents online, which can subject case parties and participants (witnesses, children, vulnerable persons, etc.) to various risks of harm. The current limitations in the Oregon eCourt system are largely based on system feasibility -- many access points are "all or nothing," without any option for a more nuanced approach, such as access for a party to his or her own case. The Task Force discussed the imbalance between remote electronic access to case documents for lawyers but not for self-represented litigants, generally favoring an approach that expands remote access for the latter group.

Task Force had an original "Self-Navigators Workgroup," which issued extensive recommendations intended to assist self-represented litigants in the courts. See <https://www.osbar.org/search.html?addsearch=futures+task+force> (link to Executive Summary; Self-Navigators Work Group high-level recommendations set out on p 11); see *also id.* (link to full Futures Task Force report; Self-Navigator's Work Group report and recommendations begins on p 47).

²⁸ Under UTCR 5.170, a lawyer who offers "limited scope representation" in a civil case must file a notice describing the scope of the services being provided to the client. Once the services have been completed, the lawyer must file a termination notice.

²⁹ OJD provides nonconfidential document remote access, in nonconfidential cases, to users who are active Oregon State Bar members or are employees of governmental entities that regularly conduct business with the courts. Other users may apply for nonconfidential document remote access in most of the same types of cases, but the application must be based on the user's business need.

➔ **Task Force Recommendation:**

- 6.11.2.1** *OJD should continue to work to expand remote electronic access to nonconfidential case documents to self-represented litigants, at least in their own cases.*

6.11.3 **Mediation**

The Task Force is generally in favor of local court mediation programs as an available alternative to trial that can keep costs down and move cases toward resolution. The availability of mediation services depends on the court and, of course, necessary resources -- for example, some courts have mandatory mediation for certain case types; many other courts have mediation available as an option, including in contested small claims and residential FED cases. Where mediation is available, parties should be advised about that option early in the case, and courts otherwise should work to expand and maintain current services as feasible.³⁰

➔ **Task Force Recommendations:**

- 6.11.3.1** *Courts should consider the use of mediation programs to resolve disputes in high-volume cases, to save court time and move the case toward resolution.*
- 6.11.3.2** *Courts should train staff about when mediation is required or is an option in their counties, so that staff can provide accurate and timely information to parties about mediation.*

➔ **Task Force Recommendations, Best Practices:**

- 6.11.3.3** *In counties where mediation is available, the form of summons for a high-volume case should state that, if the defendant wants to resolve the case, mediation is available as a more simple form of resolution.*

³⁰ As an example of a successful mediation program, Jackson County has employed a private contractor to mediate residential landlord-tenant Forcible Entry and Detainer (FED) actions and small claims actions. Participant survey statistics provided over the last six months of 2017 show a high percentage of agreements reached in FED cases in the program -- 85% of survey participants -- with a 50% rate in small claims cases. All survey participants reported a high degree of satisfaction (92% in FED cases and 84% in small claims cases; 90% of participants in both types of cases would use the program again).

6.11.4 Residential Forcible Entry and Detainer (FED) Cases

As noted in *Call to Action*, defendants in residential FED (landlord-tenant) cases are often self-represented and of modest means, whereas plaintiffs tend to be experienced litigants who are represented either by counsel or by property managers. In Oregon, the timelines, process, and court forms for these cases are governed by statute. See section 6.4.1 (discussing FED statutes).

Many difficulties for defendants in residential FED cases occur before the eviction action is filed -- for example, the defendant may not have understood an initial communication, notice of payment, or other required action sent earlier by a bank or a trustee, and then does not understand the implications of not responding. Recognizing that the courts are not involved until an action is filed, the Task Force recommends that defendants be provided with information about how residential FED cases work at the earliest point in the process, namely, at the time when the summons is served.

Additionally, once a judgment in favor of a landlord is entered, courts do not always appear to follow the statutory timelines and process for providing a four-day notice period for the tenant, before issuing a writ for purposes of executing the judgment. See ORS 105.151 (if the court enters judgment, the landlord can enforce judgment only if (1) the court issues a notice of restitution, served on the tenant, giving the tenant four days to move out and remove all personal property; and (2) after the four-day period expires, the court issues a writ of execution of judgment of restitution that is served on the tenant). The Task Force agreed that better and more consistent statewide training about that statutory process would benefit the parties and courts alike.

The Task Force discussed an additional statutory requirement that can arise in residential FED cases: payment of rent into court. In certain circumstances, a court must or may order the defendant to pay rent into court, in the form of an escrow-like account, until an underlying dispute is resolved. See ORS 90.370 (court may order payment of rent accrued and thereafter accruing into court, on party's request, if tenant has counterclaimed against a landlord action either for possession based on nonpayment of rent, or for rent when tenant in possession).³¹ Particularly in rural counties, payment of rent into court does not occur very often, and so the courts do not have any established or consistent process to handle and maintain the payments, or to disburse the payments when appropriate.

³¹ See also ORS 105.137(6) (court must order payment of rent into court when matter not tried within 15-day period and delay not attributable to landlord); ORS 105.138(2) (court may so order pending arbitration, if court finds order necessary to protect parties' rights); ORS 105.140 (if court has ordered defendant to pay rent into court as becomes due from filing until entry of judgment, and defendant fails to do so, action shall be tried forthwith).

➔ **Task Force Recommendations:**

- 6.11.4.1** *OJD should update its statewide FED summons form, generated out of the case management system, to include an informational statement to the following general effect: "For more information on the court process for Forcible Entry and Detention (eviction) cases, see the "Self-Help Center" on the Oregon Judicial Department website, <http://www.courts.oregon.gov/help/Pages/default.aspx>."³²*
- 6.11.4.2** ***OJD should provide court staff with specific training on the statutory timing requirements in a residential FED case, for issuance of a notice and service of the notice (and proof of service), followed by a writ of execution, under ORS 105.151, ORS 105.158, and ORS 105.159.***
- 6.11.4.3** *OJD should develop a standard court process for paying rent into court under ORS 90.370, ORS 105.137(6), and ORS 105.138(2), and provide consistent statewide training on that process, particularly to provide structure as needed to rural courts, in which the process is not regularly used.*

6.11.5 Consumer Debt Collection Cases

The Task Force next focused on debt collection cases filed against individuals, seeking to collect consumer debt. Such cases do not have their own "case type" in the Oregon eCourt system (relating to either "collections" or "consumer collections") -- they typically are in the nature of "contract" disputes, but they also frequently qualify as "small claims" cases. As discussed further below, the Task Force conceptually grouped consumer debt collection cases into two categories: (1) those filed by regular purchasers of charged-off debt for the purpose of collecting that debt ("debt buyers"), including actions filed by collectors on behalf of those purchasers; and (2) other debt collection cases in which the plaintiff is a debt collector and the debtor is a consumer.

The Task Force agreed that, as described in *Call to Action*, defendants in both types of consumer debt collection cases are often self-represented and can be disadvantaged from a procedural standpoint for reasons described earlier. Additionally, such actions sometimes can be filed improperly due to reasons relating to the

³² OJD's online Self-Help Center links to OJD's statewide forms and each of the circuit court's webpages. It also sets out basic Frequently Asked Question type of information, as well as links to Oregon State Bar resources and to OregonLawHelp.org, which is the website maintained by Legal Aid Services of Oregon that provides information about different types of legal cases to low-income citizens. As noted earlier, OJD is working to provide links at logical points in its website to the Oregon State Bar's online resources and to OregonLawHelp.org, and those entities are providing similar cross- links.

circumstances of the debt or the parties (e.g., the plaintiff may not own the debt, the defendant may not be the actual debtor, the statute of limitations may have run, etc.). And, they often languish at the point of service. The Task Force agreed that a rigorous, judicial-type of evaluation is needed to ensure that default judgments in such cases are properly entered.

As part of evaluating civil justice improvements in consumer debt collection cases, the Task Force reviewed recent legislation enacted by the Oregon Legislative Assembly, House Bill 2356 (2017), Or Laws 2017, ch 625, which addressed a variety of issues relating to the first category of cases identified above -- that is, those filed by debt buyers or collectors on behalf of debt buyers. That legislation established a series of licensing and related requirements for debt buyers, and also established requirements that apply to legal actions filed by debt buyers, or by debt collectors on behalf of debt buyers, to collect or attempt to collect on purchased debt. The key requirements that apply to legal actions -- now codified at ORS 646A.670 and effective January 1, 2018 -- provide as follows:

- In its complaint, the plaintiff must include
 - Specific information about both the debt buyer and the original creditor (e.g., names, contact information, whether plaintiff is a debt buyer); and
 - Specific information about the debt (e.g., account number; detailed and itemized statement showing balance, payment, interest, and fee information; and date of purchase);
- The court may not enter judgment if the plaintiff does not comply with the pleading requirements; if the court does so, the debtor can petition for relief (or the court may grant on its own motion); and
- The plaintiff must provide to the debtor a specified list of documents, if the debtor requests them, within 30 days after the request.³³

³³ ORS 646A.670 provides, in part:

"(1) A debt buyer that brings legal action to collect or brings legal action to attempt to collect purchased debt, or a debt collector that brings legal action on the debt buyer's behalf, shall include in an initial pleading that begins the legal action:

"(a) The original creditor's name, written as the original creditor used the name in dealings with the debtor;

"(b) The name, address and telephone number of the person that owns the debt and a statement as to whether the person is a debt buyer;

"(c) The last four digits of the original creditor's account number for the debt, if the original creditor's account number for the debt had four or more digits;

See [Appendix O](#) (setting out ORS 646A.670).

In light of the recent enactment of ORS 646A.670, the Task Force recommends adoption of a new "consumer debt collection" statewide rule that both facilitates and supplements operation of that statute. (The proposed rule, new UTCR 5.180, is discussed in greater detail below.) In conjunction with the new rule, the Task Force recommends that OJD adopt a statewide form for plaintiffs to provide the information that is statutorily required.

The Task Force deliberated whether to expand the new proposed statewide rule to the second category of consumer debt collection cases -- that is, non-debt-buyer legal actions filed by debt collectors to collect consumer debt. The Task Force members agree that the parties and the courts alike would benefit from an expanded rule. For example, the rule would require the plaintiff to provide important debt information in a consistent format and would preclude the court from entering judgment if the plaintiff did not comply with that requirement. Such an approach benefits the parties and the court alike: (1) the plaintiff is assured that, by providing the necessary information in an understandable format, it will unquestionably be able to obtain a default order and judgment if the plaintiff does not appear, and, otherwise, the plaintiff

"(d) A detailed and itemized statement that shows:

"(A) The amount the debtor last paid on the debt, if the debtor made a payment, and the date of the payment;

"(B) The amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt, if the debtor made a payment;

"(C) The balance due on the debt on the date on which the debt became charged-off debt;

"(D) The amount and rate of interest, any fees and any charges that the original creditor imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

"(E) The amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

"(F) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector expects to recover attorney fees; and

"(G) Any other fee, cost or charge the debt buyer seeks to recover; and

"(e) The date on which the debt buyer purchased the debt.

"(2)(a) A court may not enter a judgment for a debt buyer or debt collector that has not complied with the requirements set forth in this section."

will have cleanly presented its case for collection; (2) the debtor is provided the necessary information to confirm whether he or she actually owes the debt, so that he or she can respond appropriately; and (3) the court will have a consistent means of ensuring that the plaintiff set out all the necessary information, which was communicated to the debtor, before entering judgment. That approach also would address some of the access-to-justice issues that arise in high-volume civil cases discussed earlier -- for example, ensuring that the debtor receives accurate and understandable information about the debt at issue, and ensuring procedural fairness in relation to the entry of default judgments. Although the Task Force as a whole recommends adoption of the rule for both categories of consumer debt collection cases, some members were more reluctant to expand a statewide court rule to non-debt-buyer legal actions, when the legislature did not include those types of actions within the scope of ORS 646A.670, and when the rule proposal -- unlike other court rules -- in effect would require the showing of a prima facie case.³⁴ The Task Force agrees that submitting the rule through OJD's UTCR Committee process -- which includes a public comment period -- will facilitate additional discussion, by a larger group of stakeholders, about the proposed expansion of the proposed rule.

The new draft rule, proposed new UTCR 5.180, is set out in [Appendix P](#). The first two sections set out definitions and applicability provisions. Then, section (3) sets out provisions that apply to legal actions under ORS 646A.670, and section (4) sets out provisions that would apply to other consumer debt collection actions filed by debt collectors. In conjunction with the rule, the Task Force recommends adoption of a companion "Consumer Debt Collection Disclosure Statement" form, which would be available on OJD's website (also set out in [Appendix P](#)). In the Task Force's view, the proposed new rule will provide a helpful tool for the parties and the courts -- to ensure the communication of complete and accurate communication to the debtor and to the court; to ensure that the debtor also is told how to obtain additional information; to keep the case moving forward as appropriate; and to ensure that a default judgment is entered only if warranted.

➔ Task Force Recommendation, New UTCR 5.180

6.11.5.1 *A proposed new UTCR 5.180 ("Consumer Debt Collection") should be submitted to the OJD UTCR Committee, applying to the following actions: (1) Consumer debt collection actions filed under ORS 646A.670 (plaintiff is a debt buyer or*

³⁴ The Task Force considered some of the legislative history of HB 2356 (2017) -- most notably, that it always had been drafted as a "debt buyer" bill (not a general collections bill later narrowed to cover only debt buyers) and that the legislature's goal had been to address several issues arising in debt buyer collections. In the Task Force's view, the legislature's understandable focus on debt buyers did not mean that the legislature would disapprove of the concept of requiring non-debt-buyer plaintiffs to set out certain debt and related information in an understandable way in the complaint or that the court should not issue judgment until confirming that such a plaintiff had done so. The Task Force also learned that an additional goal of the legislation was for OJD to develop statewide forms for use in consumer debt collection cases, to ensure that accuracy and consistency of information submitted to the court.

a collector for a debt buyer); and (2) other consumer debt collection actions, when the plaintiff is a debt collector. (See following recommendations for specific proposed amendments and [Appendix P](#).)

- 6.11.5.2** *Under the new rule, the initiating pleading must:*
- *Include a special designation in the title, so that OJD can "count" the case as a debt buyer collection case;*
 - *State that the debtor can obtain more information about debt collection cases on OJD's website;*
 - *Attach and incorporate by reference a completed Consumer Debt Collection Disclosure Statement in substantially the form set out on OJD's website; and*
 - *If a debt buyer action, include a statement that the plaintiff has complied with ORS 646A.670.*
- 6.11.5.3** *Under the new rule, if the initiating pleading does not comply with the pleading requirements just identified, the court must issue a 30-day dismissal notice to the plaintiff, with 30 days to comply.*
- 6.11.5.4** *Under the new rule, if the plaintiff moves for entry of a judgment of default, the motion must include a declaration, under penalty of perjury, that the initial pleading complied with either ORS 646A.670 or the pleading requirements set out above.*
- 6.11.5.5** *Under the new rule, if the case is not subject to ORS 646A.670, the court may not enter judgment for a plaintiff who has not complied with the pleading requirements set out above.*
- 6.11.5.6** *In conjunction with new UTCR 5.180, OJD should adopt a new Consumer Debt Collection Disclosure Statement form (see [Appendix P](#)).*

As part of discussing proposed new UTCR 5.180, the Task Force also identified some recommended Oregon eCourt system updates, as well as court business processes, best practices, and other recommendations concerning consumer debt collections cases, set out below:

➔ Task Force Recommendation, Updated Case Management System Configurations and Court Business Processes

- 6.11.5.7** OJD should add two new flags to the case management system, so that consumer debt collection cases can be searched, counted, and otherwise tracked, as follows:
- Debt buyer consumer collection cases subject to ORS 646A.670 and proposed new UTCR 5.180(3); and
 - Non-debt-buyer consumer collection cases subject to proposed new UTCR 5.180(4).
- 6.11.5.8** When creating a new consumer debt collection case, court staff should designate the appropriate new flag, depending on the designation set out in the caption of the initiating pleading, as required by proposed new rule UTCR 5.180.
- 6.11.5.9** OJD should add to the case management system the ability to generate a 30-day dismissal notice for failure of an initiating pleading to comply with either ORS 646A.670(1) or new UTCR 5.180(4), with an accompanying tickler report.
- 6.11.5.10** Pursuant to ORS 646A.670(2), courts may not enter judgment for qualifying plaintiffs who have not complied with the requirements of ORS 646A.670(1).

➔ Task Force Recommendation, Best Practices

- 6.11.5.11** Before preparing an order of default and judgment in a consumer debt collection case, courts should use the following checklist to screen the motion for default:
- Whether the motion includes a notice of default, with service completed;
 - If the defendant is an active duty servicemember, whether the plaintiff complied with the federal Servicemembers Civil Relief Act, 50 USC §§ 3901-4043;
 - Whether all fees paid or previously waived or payment obligation deferred;
 - If a debt buyer case subject to ORS 646A.670, whether the motion includes a declaration that the initiating pleading complied with ORS 646A.670(1).

- *If a non-debt-buyer case, whether the motion includes a declaration that the initiating pleading complied with new UTCR 5.180(4).*

6.11.5.12 *Courts should ensure that staff assigned the responsibility of reviewing motions for default in consumer debt collection cases are appropriately trained, using an approved checklist as a guide. If staff sees anything unusual, questions should be directed to the appropriate judge.*

6.11.5.13 *At the prelitigation stage of collections, debt collectors should provide to debtors information about their rights and the debt collection case process -- for example, by referring to online content offered by the Oregon State Bar (OSB) or Oregon's legal aid organizations <https://oregonlawhelp.org/>. OJD and OSB should work with the OSB Debtor-Creditor section to facilitate this recommendation.*

➔ Other Task Force Recommendations:

6.11.5.14 OJD should develop online forms for collection cases, which should be available in Spanish. A sample Summons form should include a cross-reference to OJD's online Self-Help Center, which in turn links to forms and other available online help content.

6.11.5.15 OJD should work with the Oregon State Bar to coordinate development of online video help content for debtors in consumer collection cases, which in can be referred to in initiating pleadings and prelitigation collection notices.

6.12 Call to Action Recommendation 12: Courts must manage uncontested cases to assure steady, timely progress toward resolution.

Recommendation 12, regarding effective management of uncontested cases, has two components. First, to prevent uncontested cases from languishing on the court's docket, courts should monitor case activity and identify uncontested cases in a timely manner; once uncontested status is confirmed, courts should prompt plaintiffs to move for dismissal or final judgment. Second, final judgments must meet the same standards for due process and proof as contested cases. *Call to Action 35.*

In discussing this recommendation, the Task Force again recognized that reductions to OJD's budget over the last nine years have prompted the courts to hold multiple vacant positions open, rather than fill them, to try to conserve resources without losing additional positions. The number of vacant positions impacts the public, because OJD is not able to fully provide the public with services on which it depends. Even with

staff vacancies, however, the Task Force agrees that UTCR 7.020 should guide the courts' management of uncontested cases, as noted below.

6.12.1 Statewide Enforcement of UTCR 7.020

As discussed earlier in this Report, UTCR 7.020 provides the key tool for managing civil cases from filing to resolution, including if a case is uncontested. See section 6.1.1 and [Appendix C](#) (discussing and setting out UTCR 7.020). By using that rule -- most notably, the provisions requiring court action to determine whether a case should be dismissed for failure to file proof of service or motion for default order, UTCR 7.020(2)-(3) -- courts can keep cases moving forward and prevent them from languishing, and lawyers, upon receiving notices under that rule, are prompted to confer and work toward case resolution.

➔ Task Force Recommendations, Best Practices:

- 6.12.1.1** *OJD should demonstrate an institutional commitment to using UTCR 7.020 (subsections (2) and (3)) as the primary tool for managing uncontested cases.*
- 6.12.1.2** *Designated court staff should regularly run case management system reports that track cases that have missed UTCR 7.020(2) or (3) deadlines, or are otherwise stale -- for example, the Time Standards Tickler Report and the Overdue Time Standards Event Listing Report. Staff should be consistently trained on which reports to run at particular time intervals, how to review the reports, and how to identify next steps to ensure timely management of cases.*

6.13 Call to Action Recommendation 13: Courts must take all necessary steps to increase convenience to litigants by simplifying the court-litigant interface and creating on-demand court assistance services.

Call to Action's Recommendation 13 encourages judges to promote the use of remote audio and video services for case hearings and case management meetings. It also builds on some of the earlier recommendations and encourages courts to simplify court-litigant interfaces and screen out unnecessary technical complexities as possible; to establish Internet portals and stand-alone kiosks to facilitate litigant access to court services; and to provide real-time assistance for navigating the litigation process. *Call to Action* 37.

6.13.1 *Judicial and Court Staff Interaction with Lawyers and Litigants*

As discussed earlier in relation to procedural fairness, the Task Force agrees that, in the courtroom setting, self-represented litigants often are placed at a disadvantage because they do not understand the court process. See section 6.11.1 (setting out recommendations to ensure procedural fairness). The Task Force further agrees that, at times, judges, court staff, and lawyers can interact in an overly familiar manner, prompting self-represented litigants to feel like outsiders to the court system, sometimes even misunderstanding that a lawyer might work for the court, instead of for other litigants in the case.

The optics of a court proceeding, relating to fairness and an opportunity to be heard, are critically important. All regular participants in the court process -- judges, court staff, lawyers, and other regular participants -- must be mindful of procedural fairness issues and the need for all litigants, whether represented or not, to be assured fair, respectful, and impartial treatment. Judges and court staff alike should be trained accordingly, and lawyers so educated.

In addition to the procedural fairness discussion set out earlier in this Report, the Task Force offers the following recommendations.

➔ *Task Force Recommendations, Best Practices:*

- 6.13.1.1** *All judges should focus on procedural fairness at open calls and in hearings and trials -- such providing self-represented litigants with understandable information about courtroom procedure while remaining neutral in the case.*
- 6.13.1.2** *OJD should work with the Oregon State Bar's Bench-Bar Professionalism Commission about opportunities to train lawyers about procedural fairness -- for example, so that lawyers avoid interactions with judges or court staff that can prompt self-represented litigants to think that the lawyers have a special advantage based on familiarity with court staff or court procedures.*
- 6.13.1.3** *Resources permitting, local courts should present staff trainings that provide staff with information about different areas of law and diverse communities, to provide additional staff education and improve customer service -- such as "Lunch and Learn" sessions with outside volunteer speakers on various topics.*

6.13.2 Telephone and Video Appearances

The Task Force discussed current UTCR 5.050(2), which permits parties to request telephonic hearings on nonevidentiary motions in civil cases.³⁵ See [Appendix Q](#) (setting out UTCR 5.050(2)). The Task Force thinks that telephonic conferences can be an efficient case management tool, but noted that a lawyer appearing by phone or other remote appearance can at times feel disadvantaged if the other party appears in person -- a lawyer in that position therefore may opt for an in-person appearance instead, which can increase litigation costs.³⁶ The Task Force therefore agreed on several recommendations that are intended to ensure that the judge provides sufficient direction about telephonic or other remote appearances, while being mindful of perceived disadvantages.

➔ Task Force Recommendations, Best Practices:

6.13.2.1 *Judges should clarify for the parties, at the outset of the case, the judge's preference for handling disputes about discovery and procedural issues -- for example, when briefing would be required or when resolution by phone conference would be preferred, as opposed to a hearing.*

6.13.2.2 *Courts should encourage the use of UTCR 5.050(2) (providing for telecommunication hearings on nonevidentiary motions), when in-person argument is unnecessary, to save time and cost for lawyers and litigants.*

³⁵ UTCR 5.050(2) provides:

"A party may request that a nonevidentiary hearing or a motion not requiring testimony be heard by telecommunication.

"(a) A request for a nonevidentiary hearing or oral argument by telecommunication must be in the caption of the pleading, motion, response, or other initiating document.

"(b) If appearance or argument by telecommunication is requested, the first paragraph of the pleading, motion, response, or other initiating document must include the names and telephone numbers of all parties served with the request. The request must be granted.

"(c) The first party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise."

³⁶ For example, to protect against a sense of being disadvantaged, a lawyer may drive more than an hour for a 15-minute hearing, which the Task Force thinks is unnecessary if the issue can be resolved via a telephonic hearing.

- 6.13.2.3** *If one party requests a phone appearance and the court approves the request, the judge should direct the other party to also appear by phone, so as to avoid misperceptions about any advantage for a party appearing in person.*
- 6.13.2.4** *Courts should be open to having witnesses appear by live video, particularly when requiring travel would result in unnecessary costs to the litigants. In considering objections to video testimony, courts should consider whether the objection may be an effort to increase costs for the other side or otherwise has merit based on the importance of the witness and the nature of the testimony. Courts also must ensure that one party's access to technology solutions does not result in procedural unfairness against the opposing party.*
- 6.13.2.5** *As appropriate, judges should be available to resolve simple discovery disputes by phone. The judge must consider, as part of resolving such a dispute, whether any ruling must be docketed on the register of actions for the case.*

6.13.3 Resources for Litigants

In section 6.11.2, this Report describes several components of the Oregon eCourt system that are designed to assist litigants in their interactions with the courts and to gain familiarity with the court process -- including OJD's user-friendly website with an online Forms Center (including interactive forms), an online Self-Help Center, and public access to certain case information.³⁷

Of course, effective human interaction is also essential. In addition to service by court staff at the courthouse counter, almost all the Oregon circuit courts have courthouse family law facilitation programs, which provide in-person assistance to litigants -- for example, reviewing forms, providing information about court processes, providing post-hearing support, and providing community-resource information. They do not, however, provide legal advice. See ORS 3.428 (authorizing family law facilitation programs).³⁸ Under new legislation enacted in 2018 and effective in 2019, the courts will be able to expand those services beyond the family law arena. See Or Laws 2018, ch 29, § 2 (HB 4097 (2018)). Regarding expansion of those programs, the

³⁷ OJD's website is available at <http://www.courts.oregon.gov/Pages/default.aspx>.

³⁸ Facilitation programs differ from court to court due to funding difficulties and the needs of each judicial district. Unfortunately, many facilitation programs lost funding during the recession years, so, for several years, they assisted increasing numbers of self-represented litigants using fewer resources.

Oregon State Bar's Futures Task Force report sets out an extensive recommendation, from the Self-Navigators Work Group of the Regulatory Committee, that proposed several guidelines that should be considered -- such as the types of cases that should be in-scope for the programs, eligibility for assistance, staffing, supervision, resources, and coordination with others.³⁹ Also as part of the 2018 legislation, Oregon's largest circuit court -- Multnomah County -- will be transitioning its current law library to a Legal Resource Center, in conjunction with opening a new courthouse. The new Legal Resource Center is anticipated to include expanded access to case information, as well as statutes and other legal materials.⁴⁰

Otherwise, as explained earlier, budget cuts have significantly affected OJD's ability to dedicate court resources to services other than direct staff services. The Task Force agreed, however, that, resources permitting, there are steps that OJD can take to make improvements under Recommendation 13, set out below.

➔ Task Force Recommendations:

- 6.13.3.1** *Consistently with Or Laws 2018, ch 29, § 2 (HB 4097 (2018)), and resources permitting, courts should evaluate whether to expand current court facilitator services as permitted in that legislation. In doing so, courts should consider Recommendation 3.2 from the Self-Navigators Workgroup of the Oregon State Bar's Futures Task Force's Regulatory Committee, concerning expansion of Oregon courthouse facilitation services.*
- 6.13.3.2** *Resources permitting, OJD should develop simple, statewide "what to expect when you go to court" materials and short-hand reference guides that are easily accessible online and at the courthouse for to self-represented litigants. Alternatively, court websites and court staff should direct self-represented litigants toward those resources as*

³⁹ See <https://www.osbar.org/search.html?addsearch=futures+task+force> (link to full Futures Task Force report; Self-Navigators Work Group Recommendation 3.2, concerning court facilitator programs, begins on p 50). Among other things, that recommendation proposed that key areas for providing services should include family law, landlord-tenant, consumer issues (specifically, debt collection), and small claims, with possible future expansion into other areas, such as guardianships, conservatorships, and probate.

⁴⁰ Another resource for self-represented litigants on the horizon in Oregon is the development of a paraprofessional licensing program, in which licensed paraprofessionals may assist litigants in certain types of cases in a more extensive way than court facilitation programs. See OSB Board of Governors, Minutes, February 23, 2018, 2 (areas of focus for 2018 include consideration of recommendations from OSB's Paraprofessionals Implementation Committee), available at https://www.osbar.org/_docs/leadership/bog/minutes/20180223BOGminutesDRAFT.pdf.

available from other sources (for example, if maintained by the Oregon State Bar or Oregon's legal aid organizations).

- 6.13.3.3** *Resources permitting, OJD should install court kiosks that provide the public with information about court processes. Courthouses also should provide easily understandable information about where to go in the courthouse upon arrival.*
- 6.13.3.4** *OJD's statewide summons forms for high-volume cases that typically involve self-represented litigants should include a simple statement to the effect of, "if you need help, go to..." and list website information for OJD's Self-Help Center, which in turn links to online information offered by Oregon State Bar and Oregon's legal aid organizations (<https://oregonlawhelp.org/>).*
- 6.13.3.5** *OJD should work with the Oregon State Bar to encourage local bar associations to work on innovative access to justice solutions, as well as procedural fairness issues, at a local level. This should include providing general information to underserved populations about common legal issues and proceedings, as well as developing other innovative volunteer opportunities.⁴¹*

7.0 Conclusion

In some key respects, Oregon's circuit courts are already equipped with tools for effective, right-sized civil case management. Most notably, within the context of Oregon's unified court system, statewide rules are designed to prevent cases from languishing at early stages and to move them to some form of resolution; to provide for setting firm trial dates; and to permit the designation of both streamlined and complex cases. Statutory and other requirements provide additional tools in certain streamlined cases, such as residential FEDs, small claims, and debt buyer consumer collections. And, the Oregon eCourt system provides statewide tools for efficiently tracking cases at different procedural stages, statewide forms for litigants, and extensive online information about the courts, including an online Self-Help Center.

Of course, as in any organizational setting, improvements can be made and gaps addressed. Among many other recommendations in this Report, the OJD CJI Task Force recommends consistent statewide application of all parts of UTCR 7.020; institutional commitment to setting firm trial dates; adoption of a "pathway" approach to civil case management as explained in this Report; effective staff training; and

⁴¹ Examples of innovative local improvements include the Deschutes County Bar Association's Lawyers in the Library Program, see section 6.11.1; Multnomah County's planned Legal Resource Center, see section 6.13.3; and anticipated expansion of courthouse facilitation services, see section 6.13.3.

encouragement of efficient solutions to case management and to resolving discovery disputes. The Task Force further recommends the submission of two comprehensive statewide rule proposals -- a proposed revision of UTCR 5.150 and its companion forms (streamlined civil jury trials), and adoption of a new UTCR 5.180 with a companion form (consumer debt collection cases).

The Task Force recognizes that Oregon's Judicial Branch has not yet recovered from budget cuts that followed the 2008 recession, which affect OJD's ability to expend additional resources on effective civil case management. This Report is intended to recommend court-focused civil justice improvements, within the confines of existing resources. In the view of the Task Force, in moving forward with effective right-sized case management, the recommendations set out in this Report will benefit the courts statewide. They also should help to reduce cost and delay that can occur in civil cases, improve access to justice for civil litigants, and improve procedural fairness in the courts.

APPENDICES

APPENDIX A

In the Matter of the Establishment of) CHIEF JUSTICE ORDER
the Oregon Judicial Department Civil) No. 17-046
Justice Improvements Task Force and)
Appointment of Task Force Members) ORDER ESTABLISHING THE OREGON
) JUDICIAL DEPARTMENT CIVIL JUSTICE
) IMPROVEMENTS TASK FORCE AND
) APPOINTING TASK FORCE MEMBERS

I HEREBY ORDER, pursuant to ORS 1.002, the establishment of the Oregon Judicial Department Civil Justice Improvements Task Force (Task Force). The Task Force is established to:

- 1) Review the Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee (July 2016);
- 2) Review civil justice reforms implemented or under consideration in other state courts;
- 3) Consider other related concepts for civil justice reform in Oregon; and
- 4) Make recommendations to the Oregon Judicial Department to the extent feasible, necessary, and appropriate to implement improvements to Oregon’s civil justice system.

The Task Force should formulate and develop, without limitation, recommendations for:

- 1) Concrete actions that can be taken to increase and improve access to civil justice, improve procedural fairness in civil cases, and reduce cost and delay in civil cases;
- 2) Consistent statewide standards to ensure appropriate case management and timely disposition of civil cases, including, without limitation:
 - a) enforcing UTCR 7.020 requirements;
 - b) setting firm trial dates; and
 - c) determining appropriate pathways for managing different types of cases, including high-volume cases that often involve self-represented parties;
- 3) Proposed rules, procedures, or best practices for civil case management within each case pathway; and
- 4) Leveraging available technology to facilitate civil case processing improvements.

The Task Force’s recommendations should be based on existing Oregon statutes and the Oregon Rules of Civil Procedure, although the Task Force may identify recommended statutory or rule changes where appropriate. Recommendations may form the basis for new or revised Uniform Trial Court Rules (UTCRRs); Chief Justice Orders (CJOs); Supplementary Local Rules (SLRs); or Statements of Best Practices directed toward increasing and improving access to

Oregon's courts, and ensuring the fair, timely, and cost-effective disposition of cases. In developing recommendations for case management practices, the Task Force may consider the need for local court flexibility as appropriate. In assessing feasibility, the Task Force should assume that judicial, staff, and other resources available within the Oregon Judicial Department will remain at current levels.


I FURTHER ORDER that the following persons are appointed to the Task Force:

Name
Hon. Judge Stephen K. Bushong (Multhomah County), Co-Chair
Dana L. Sullivan, Buchanan Angeli Altschul & Sullivan LLP (Portland), Co-Chair
Hon. Judge Scott A. Shorr (Court of Appeals)
Hon. Judge Benjamin M. Bloom (Jackson County)
Jeff Hall, Deschutes County Trial Court Administrator
Linda Hukari, Benton County Trial Court Administrator
Helen M. Hirschbiel, Chief Executive Officer, Oregon State Bar
Melissa Bobadilla, Bobadilla Law PC (Beaverton)
Emily Teplin Fox, Oregon Law Center (Portland)
Dominic M. Campanella, Brophy Schmor LLP (Medford)
Michelle Freed, Eblen Freed LLP (Portland)
Megan I. Livermore, Hutchinson Cox Coons Orr & Sherlock PC (Eugene)
J. Christian Malone, Schmid Malone Buchanan LLC (Bend)
Brett A. Pruess, Oregon Law Center (Coos Bay)
Daniel H. Skerritt, Tonkon Torp LLP (Portland)
Julie R. Vacura, Larkins Vacura Kayser LLP (Portland)

The Task Force shall complete its work no later than August 31, 2018, unless another Chief Justice Order grants an extension.

This order takes effect immediately.

Dated this 22nd day of August, 2017



 Thomas A. Balmer
 Chief Justice

APPENDIX B

OREGON LANDSCAPE STATISTICS, YEAR-END 2016 CIVIL, LANDLORD-TENANT, AND SMALL CLAIMS CASES

Figure 1: Cases Filed

Case Type	# Filed in 2016	% of all Filings within Case Type Category	% of all Civil, Landlord-Tenant, and Small Claims Filings
Civil			
Contract	26,446	70.3%	23.8%
Injunctive Relief	217	0.6%	0.2%
Property - General	979	2.6%	0.9%
Property - Foreclosure	2,984	7.9%	2.7%
Property - Water Rights	5	0.0%	0.0%
Tort - General	6,644	17.7%	6.0%
Tort - Malpractice Legal	42	0.1%	0.0%
Tort - Malpractice Medical	184	0.5%	0.2%
Tort - Products Liability	40	0.1%	0.0%
Tort - Wrongful Death	65	0.2%	0.1%
Civil Totals	37,606	(100%)	33.8%
Landlord-Tenant			
Landlord-Tenant - General	1,123	5.8%	1.0%
Landlord-Tenant - Residential	18,072	94.1%	16.2%
Landlord-Tenant - Appeal	5	0.0%	0.0%
Landlord-Tenant Totals	19,200	(100%)	17.3%
Small Claims			
Small Claims - General	54,465	100.0%	48.9%
Small Claims - Appeal	2	0.0%	0/0%
Small Claims Totals	54,467	(100%)	48.9%

Figure 2: Amount in Controversy

Case Type	# Less than \$10,000	% Less than \$10,000	# \$10,001 - \$50,000	% \$10,001 - \$50,000	# \$50,001 - \$1 Million	% \$50,001 - \$1 Million
Civil						
Contract	8,997	86%	1,285	12%	217	2%
Injunctive Relief	1	33%	2	67%	0	0%
Property - General	39	27%	21	14%	83	56%
Property - Foreclosure	48	5%	39	4%	785	89%
Tort - General	24	38%	19	30%	20	32%
Tort - Malp. Legal	0	0%	0	0%	2	100%
Tort- Malp. Medical	5	29%	1	6%	4	24%
Tort - Products Liability	3	75%	1	25%	0	0%
Tort - Wrongful Death	1	25%	0	0%	2	50%
Statewide Totals	9,118	78%	1,368	12%	1,113	10%

Case Type	# \$1 Million - \$10 Million	% \$1 Million - \$10 Million	# \$10 Million and Higher	% \$10 Million and Higher	Statewide Totals
Civil					
Contract	7	0%	0	0%	10,506
Injunctive Relief	0	0%	0	0%	3
Property - General	4	3%	0	0%	147
Property - Foreclosure	7	1%	0	0%	879
Tort - General	0	0%	0	0%	63
Tort - Malp. Legal	0	0%	0	0%	2
Tort - Malp. Medical	6	35%	1	6%	17
Tort - Products Liability	0	0%	0	0%	4
Tort - Wrongful Death	1	25%	0	0%	4
Statewide Totals	25	0%	1	0%	11,625

Case Type	# Under \$2,500	% Under \$2,500	# Over \$2,500	% Over \$2,500	Statewide Totals
Landlord-Tenant , Small Claims					
Landlord-Tenant Residential	8	100%	0	0%	8
Small Claims-General	25,885	79%	6,776	21%	32,661
Small Claims-Appeal	0	0%	2	100%	2
Statewide Totals	25,893	79%	6,778	21%	32,671

**Figure 3: Parties with and without Representation
(Figures based on parties, not cases)**

Case Type	# With Rep'n	% With Rep'n	# Without Rep'n*	# Identified as Pro Se**	% Without Rep'n & Pro Se	Total # of Parties
Civil						
Appeal - Lower Court	4	44%	5	0	56%	9
Contract	38,692	58%	27,855	612	42%	67,159
Injunctive Relief	804	74%	251	26	26%	1,081
Property - General	1,848	55%	1,444	94	45%	3,386
Property - Foreclosure	6,016	32%	12,394	113	68%	18,523
Tort - General	288	83%	56	1	17%	345
Tort - Malp. Legal	147	89%	16	3	11%	166
Tort - Malp. Medical	842	86%	128	8	14%	978
Tort - Products Liability	262	77%	78	1	23%	341
Tort - Wrongful Death	361	89%	41	3	11%	405
Landlord-Tenant						
LL-Tenant - General	436	37%	744	13	63%	1,193
LL-Tenant - Residential	7,842	15%	45,300	456	85%	53,598
LL-Tenant - Appeal	6	55%	4	1	45%	11
Small Claims						
Small Claims - General	768	1%	119,575	3,509	99%	123,852
Small Claims - Appeal	2	17%	9	1	83%	12
Statewide Totals	58,318	22%	207,900	4,841	78%	271,059

* Counts parties with no representation entered in the case, who do not otherwise identify as "pro se."

** Counts parties who identify as "pro se" in case-imitating filing.

Figure 4: Form of Disposition (cont. on next page)

Case Type	# Converted Judgment	% Converted Judgment	# General Dismissal	% General Dismissal	# General Dismissal w/ Lien	% General Dismissal w/ Lien
Civil						
Appeal - Lower Court	1	8%	6	50%	0	0%
Contract	2	0%	13,077	44%	10	0%
Injunctive Relief	0	0%	115	65%	1	1%
Property - General	0	0%	334	38%	0	0%
Property - Foreclosure	0	0%	2,279	43%	1	0%
Property - Wtr Rights	0	0%	1	100%	0	0%
Tort - General	0	0%	5,278	86%	11	0%
Tort - Malp. Legal	0	0%	38	88%	0	0%
Tort - Malp. Medical	0	0%	142	92%	0	0%
Tort - Products Liability	0	0%	28	90%	0	0%
Tort - Wrongful Death	0	0%	52	84%	0	0%
Statewide Totals	3	0%	21,350	50%	23	0%
Landlord-Tenant						
LL-Tenant - General			230	48%	3	1%
LL-Tenant - Residential			10,726	54%	49	0%
LL-Tenant - Appeal			1	50%	0	0%
Statewide Totals			10,957	54%	52	0%
Small Claims						
Small Claims - General	2	0%	19,421	30%	18	0%
Small Claims - Appeal	0	0%	1	50%	0	0%
Statewide Totals	2	0%	19,422	30%	18	0%
Combined Statewide Totals	5	0%	51,729	40%	93	0%

Figure 4: Form of Disposition (cont. from prev. page)

Case Type	# General Judgment	% General Judgment	# General Judgment w/ Lien	% General Judgment w/ Lien	Statewide
Civil					
Appeal - Lower Court	2	17%	3	25%	12
Contract	452	2%	16,375	55%	29,916
Injunctive Relief	28	16%	32	18%	176
Property - General	423	48%	129	15%	886
Property - Foreclosure	2,698	51%	363	7%	5,341
Property - Wtr Rights	0	0%	0	0%	1
Tort - General	85	1%	754	12%	6,128
Tort - Malp. Legal	0	0%	5	12%	43
Tort - Malp. Medical	3	2%	9	6%	154
Tort - Products Liability	0	0%	3	10%	31
Tort - Wrongful Death	3	5%	7	11%	62
Statewide Totals	3,694	9%	17,680	41%	42,750
Landlord-Tenant					
LL-Tenant - General	144	30%	104	22%	481
LL-Tenant - Residential	4,382	22%	4,597	23%	19,754
LL-Tenant - Appeal	1	50%	0	0%	2
Statewide Totals	4,527	22%	4,701	23%	20,237
Small Claims					
Small Claims - General	34,610	53%	9,584	15%	65,527
Small Claims - Appeal	1	50%	0	0%	2
Statewide Totals	34,611	53%	9,584	15%	65,529
Combined Statewide Totals	42,832	33%	31,965	25%	128,516

Figure 5: Cases with Orders of Default

Case Type	Statewide Count
Civil	
Contract	6,003
Injunctive Relief	3
Property - General	49
Property - Foreclosure	490
Tort - General	152
Tort - Products Liability	1
Civil Totals	6,698
Landlord-Tenant	
Landlord-Tenant - General	2
Landlord-Tenant - Residential	7
Landlord-Tenant Totals	9
Small Claims	
Small Claims - General	5
Small Claims Totals	5
Statewide Totals	6,712

Figure 6: Trials Held

Case Type	# Trials	# Court Trials	# 6-Person Jury Trials	# 12-Person Jury Trials	# Total Trials	% of Civil Cases Tried
Civil						
Appeal - Lower Court	0	6	0	0	6	1%
Contract	6	55	3	47	111	24%
Injunctive Relief	0	8	0	2	10	2%
Property - General	2	32	2	5	41	9%
Property - Foreclosure	4	24	0	3	31	7%
Tort - General	17	16	12	190	235	52%
Tort - Malp. Legal	1	0	0	0	1	0%
Tort - Malp. Medical	1	0	0	8	9	2%
Tort - Products Liability	1	0	0	3	4	1%
Tort - Wrongful Death	0	1	0	6	7	2%
Statewide Totals	32	142	17	264	455	(100%)

Case Type	# Trials	# Court Trials	# 6-Person Jury Trials	# 12-Person Jury Trials	# Stipulated Trials	# Total Trials	% of Civil Cases Tried
Landlord-Tenant-Small Claims							
LL-Tenant - General	7	56	1	0	0	64	2%
LL-Tenant - Residential	192	1,168	6	1	6	1,373	46%
LL-Tenant - Appeal	0	1	0	0	0	1	0%
Small Claims - General	57	1,459	0	1	0	1,517	51%
Small Claims - Appeal	0	2	0	0	0	2	0%
Statewide Totals	256	2,686	7	2	6	2,957	(100%)

Figure 7: Time to Disposition

(Note: The figures in this chart are based on OJD's Timely Standards for Disposition (See Appendix D))

Case Type	# Decided in Under 12 Months	% Reaching Goal of 90% within 12 Months	# Decided in 13-18 Months	% Reaching Goal of 98% within 13-18 Months
Civil				
Contract	24,970	93%	1,006	97%
Injunctive Relief	138	78%	22	91%
Property - General	761	87%	66	95%
Property - Foreclosure	3,355	77%	644	92%
Property - Wtr Rights	1	100%	0	100%
Tort - General	4,548	74%	1,158	93%
Tort - Malp. Legal	20	49%	11	76%
Tort - Malp. Medical	62	43%	38	69%
Tort - Products Liability	24	67%	7	86%
Tort - Wrongful Death	31	51%	20	84%
Statewide Totals	33,910	88%	2,972	95%

Case Type	# Decided in 19-24 Months	% Reaching Goal of 100% within 19-24 Months	# Beyond 24 Months	% Beyond Goal of 100% within 24 Months	Total Cases
Civil					
Contract	398	98%	493	2%	26,867
Injunctive Relief	5	94%	11	6%	176
Property - General	21	97%	22	3%	870
Property - Foreclosure	157	95%	212	5%	4,368
Property - Wtr Rights	0	100%	0	0%	1
Tort - General	251	97%	156	3%	6,113
Tort - Malp. Legal	3	83%	7	17%	41
Tort - Malp. Medical	30	90%	15	10%	145
Tort - Products Liability	3	94%	2	6%	36
Tort - Wrongful Death	5	92%	5	8%	61
Statewide Totals	873	98%	923	2%	38,678

Case Type	# Under 75 Days	% Reaching Goal of 100% within 75 Days	# Beyond 75 Months	% Beyond Goal of 100% within 75 Days	Total Cases
LL-Tenant - General	387	89%	47	11%	434
LL-Tenant - Residential	16,584	91%	1,668	9%	18,252
LL-Tenant - Appeal	2	25%	6	75%	8
Small Claims - General	33,913	62%	20,523	38%	54,436
Small Claims - Appeal	3	75%	1	25%	4
Statewide Totals	50,889	70%	22,245	30%	73,134

APPENDIX C

CURRENT UTCR 7.020 -- CIVIL CASE MANAGEMENT

7.020 SETTING TRIAL DATE IN CIVIL CASES

- (1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.
- (2) If no return or acceptance of service has been filed by the 63rd day after the filing of the complaint, written notice shall be given to the plaintiff that the case will be dismissed for want of prosecution 28 days from the date of mailing of the notice unless proof of service is filed within the time period, good cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order, or the defendant has appeared.
- (3) If proof of service has been filed and any defendant has not appeared by the 91st day from the filing of the complaint, the case shall be deemed not at issue and written notice shall be given to the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution 28 days from the date of mailing of the notice unless one of the following occurs:
 - (a) An order of default has been filed and entry of judgment has been applied for.
 - (b) Good cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order.
 - (c) The defendant has appeared.
- (4) If all defendants have made an appearance, the case will be deemed at issue 91 days after the filing of the complaint or when the pleadings are complete, whichever is earlier.
- (5) The trial date must be no later than one year from date of filing for civil cases or six months from the date of the filing of a third-party complaint under ORCP 22 C, whichever is later, unless good cause is shown to the presiding judge or designee.
- (6) Parties have 14 days after the case is at issue or deemed at issue to:
 - (a) Agree among themselves and with the presiding judge or designee on a trial date within the time limit set forth above.
 - (b) Have a conference with the presiding judge or designee and set a trial date.
- (7) If the parties do neither (a) nor (b) of (6) above, the calendar clerk will set the case for trial on a date that is convenient to the court.

APPENDIX D

OREGON JUDICIAL CONFERENCE STANDARDS FOR TIMELY DISPOSITION

The circuit court manages pre-judgment actions to meet the Standards for Timely Disposition adopted by the Oregon Judicial Conference. The Oregon Judicial Conference is a plenary body of all state judges. The standards adopted by the Judicial Conference apply to all circuit courts, and have been in effect since 1990. When requesting a postponement of any proceeding, bear in mind that the court's obligation is to meet these standards. To do so, it monitors constantly the age of pending cases, and parties should be able to rely on these time lines for the disposition of filed actions.

General Civil--90 percent of all civil cases should be settled, tried or otherwise concluded within 12 months of the date of case filing; 98 percent within 18 months of such filing, and the remainder within 24 months of such filing, except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.

Domestic Relations--90 percent of all domestic relations matters should be settled, tried or otherwise concluded within 9 months of the date of case filing, and 100 percent within one year, except for exceptional cases in which continuing review should occur.

Summary Civil--Proceedings using summary hearing procedures, as in small claims, landlord-tenant and replevin actions, should be concluded within 75 days after filing.

Criminal: Felony--90 percent of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arraignment, 98 percent within 180 days, and 100 percent within one year, except for exceptional cases in which continuing review should occur.

Criminal: Misdemeanor--90 percent of all misdemeanors, infractions and other non-felony cases should be adjudicated or otherwise concluded within 90 days from the date of arraignment, 98 percent within 180 days, and 100 percent within one year, except for exceptional cases in which continuing review should occur.

Persons in Pretrial Custody--Persons detained should have a determination of custodial status or bail set within 36 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

APPENDIX E

CIVIL MOTION PANEL STATEMENT OF CONSENSUS (Multnomah County)

Current as of February 1, 2013

The Civil Motions Panel of the Circuit Court is a voluntary group of judges who agree to take on the work of hearing and deciding pretrial motions in civil actions that are not assigned specially to a judge. Periodically, the motion panel judges discuss their prior rulings and the differences and similarities in their decisions. When it appears panel members have ruled similarly over time on any particular question, it is announced to the bar as a "consensus" of the members.

The current consensus of the Panel's members are set out below. The statements do not have the force of law or court rule; the statements are not binding on any judge. A consensus statement is not a pre-determination of any question presented on the merits to a judge in an action. In every proceeding before a judge of this court, the judge will exercise independent judicial discretion in deciding the questions presented by the parties.

1. ARBITRATION

A. Motions - Once a case has been transferred to arbitration, all matters are to be heard by the arbitrator. UTCR 13.040(3). A party may show cause why a motion should not be decided by the arbitrator.

B. Punitive Damages - Where the actual damages alleged are less than \$50,000, the pleading of a punitive damages claim which may be in excess of the arbitration amount does not exempt a case from mandatory arbitration.

2. DISCOVERY

A. Medical Examinations (ORCP 44)

1. Vocational Rehabilitation Exams - Vocational rehabilitation exams have been authorized when the exam is performed as part of an ORCP 44 examination by a physician or a psychologist.

2. Recording Exams and Presence of Third Persons - Audio recordings have been allowed absent a particularized showing that such recording will interfere with the exam. Videotaping or the presence of a third person has been denied absent a showing of special need (e.g., an especially young plaintiff).

3. We have ordered the pretrial disclosure of the percentage of an examiner's income received from forensic work and amount of the examiner's charges. We have ordered that the information be provided for the most recent three years. We have permitted the information to be provided by an affidavit from the examiner, instead of the underlying documentation. We have not conditioned the examination itself on the disclosure of the information.

**Motion Panel Statement of Consensus
As Of February 1, 2013**

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B. Depositions

1. Attendance of Experts - Attendance of an expert at a deposition has generally been allowed, but has been reviewed on a case-by-case basis upon motion of a party.
2. Attendance of Others - Persons other than the parties and their lawyers have been allowed to attend a deposition, but a party may apply to the court for the exclusion of witnesses.
3. Out-of-State Parties - A non-resident plaintiff is normally required to appear at plaintiff's expense in Oregon for deposition. Upon a showing of undue burden or expense, the court has ordered, among other things, that plaintiff's deposition occur by telephone with a follow-up personal appearance deposition in Oregon before trial. Non-resident defendants normally have not been required to appear in Oregon for deposition at their own expense. The deposition of non-resident corporate defendants, through their agents or officers, normally occurs in the forum of the corporation's principal place of business. However, the court has ordered that a defendant travel to Oregon at either party's expense, to avoid undue burden and expense and depending upon such circumstances as whether the alleged conduct of the defendant occurred in Oregon, whether defendant was an Oregon resident at the time the claim arose, and whether defendant voluntarily left Oregon after the claim arose.
4. Videotaping - Videotaping of discovery depositions has been allowed with the requisite notice. The notice must designate the form of the official record. There is no prohibition against the use of BOTH a stenographer and a video, so long as the above requirements are met.
5. Speaking Objections - Attorneys should not state anything more than the legal grounds for the objections to preserve the record, and objection should be made without comment.

C. Experts

Discovery under ORCP 36B(1) generally has not been extended to the identity of nonmedical experts.

D. Insurance Claims Files

An insurance claim file "prepared in anticipation of litigation" has been held to be protected by the work product doctrine regardless of whether a party has retained counsel. Upon a showing of hardship and need pursuant to ORCP 36B(3) by a moving party, the court has ordered inspection of the file in camera and allowed discovery only to the extent necessary to offset the hardship (i.e., not for production of entire file).

**Motion Panel Statement of Consensus
As Of February 1, 2013**

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E. Medical Chart Notes

1. Current Injury - Medical records, including chart notes and reports, have been generally discoverable in personal injury actions. These are in addition to reports from a treating physician under ORCP 44. The party who requests an ORCP 44 report has been required to pay the reasonable charges of the practitioner for preparing the report.

2. Other/Prior Injuries - ORCP 44C authorizes discovery of prior medical records "of any examinations relating to injuries for which recovery is sought." Generally, records relating to the "same body part or area" have been discoverable, when the court was satisfied that the records sought actually relate to the presently claimed injuries.

F. Photographs

Photographs generally have been discoverable.

G. Privileges

Psychotherapist - Patient - ORCP 44C authorizes discovery of prior medical records of any examinations relating to injuries for which recovery is sought. Generally, records relating to the same or related body part or area have been discoverable. In claims for emotional distress, past treatment for mental conditions has been discoverable. See OEC 504(4)(b)(A).

H. Tax Returns

In a case involving a wage loss claim, discovery of those portions of tax returns showing an earning history, i.e., W-2 forms, has been held appropriate, but not those parts of the return showing investment data or non-wage information.

I. Witnesses

1. Identity - the court has required production of documents, including those prepared in anticipation of litigation, reflecting the names, addresses and phone numbers of occurrence witnesses. To avoid having to produce documents which might otherwise be protected, attorneys have been allowed to provide a "list" of occurrence witnesses, including their addresses and phone numbers.

2. Statements - Witness statements, if taken by a claims adjuster or otherwise in anticipation of litigation, have been held to be subject to the work-product doctrine. Generally, witness statements taken within 24 hours of an accident, if there is an inability to obtain a substantially similar statement, have been discoverable. ORCP 36B(3) specifies that any person, whether a party or not, may obtain his or her previous statement, concerning the action or its subject matter.

J. Surveillance Tapes

Surveillance tapes of a plaintiff taken by defendant generally have been protected by the work-product privilege, and not subject to production under a hardship or need argument.

3. VENUE

A. Change of Venue (*forum non conveniens*) - Generally, the court has not allowed a motion to change venue within the tri-county area (from Multnomah to Clackamas or Washington counties) on the grounds of *forum non conveniens*.

B. Change of Venue - FELA - The circuit court generally has followed the federal guidelines regarding choice of venue for FELA cases.

4. MOTION PRACTICE

A. Conferring and Good Faith Efforts to Confer (UTCR 5.010) -

1. "**Conferring.**" We have held that "to confer" means to talk in person or on the phone.

2. **Good Faith Efforts to Confer.** Because "confer" means to talk in person or on the phone, a "good faith effort to confer" is action designed to result in such a conversation. In various cases, motion judges have held that a letter to opposing counsel, even one that includes an invitation to call for a discussion, does not constitute a good faith effort to confer unless the moving attorney also makes a follow-up phone call to discuss the matter. We have held that a phone call leaving a message must be specific as to the subject matter before it constitutes a good faith effort to confer. Likewise, a message that says simply: "This is Jane. Please call me about Smith v. Jones," is not enough. Last minute phone messages or FAX transmissions immediately before the filing of a motion have been held not to satisfy the requirements of a good faith effort to confer.

3. **Complying with the Certification Requirement.** UTCR 5.010(3) specifies that the certificate of compliance is sufficient if it states either that the parties conferred, or contains **facts** showing good cause for not conferring. The judges on the Motion Panel have held that the certificate is not sufficient if it simply says "I made a good faith effort to confer." It must either state that the lawyers actually talked or state the facts showing good cause why they did not.

B. Copy of Complaint - The failure to attach a marked copy of the complaint to a Rule 21 motion pursuant to UTCR 5.020(2) has resulted in denial of the motions. UTCR 1.090.

5. DAMAGES

Non-economic Cap - The court has not struck the pleading of non-economic damages over \$500,000 on authority of ORS 31.710 (*former* ORS 18.560) (Note: the Oregon Supreme Court ruled that ORS 18.560(1) violates Article I section 17, Oregon Constitution, to the following extent: " ... The legislature may not interfere with the full effect of a jury's assessment of noneconomic damages, at least as to civil cases in which the right to jury trial was customary in 1857, or in cases of like nature." *Lankin v. Senco Products, Inc.*, 329 Or 62, 82 (1999)).

6. REQUESTING PUNITIVE DAMAGES

A. All motions to amend to assert a claim for punitive damages are governed by ORS 31.725, ORCP 23A, UTCR Chapter 5 and Multnomah County SLR Chapter 5. Enlargements of time are governed by ORS 31.725(4), ORCP 15D and UTCR 1.100.

B. A party may not include a claim for punitive damages in its pleading without court approval. A party may include in its pleading a notice of intent to move to amend to claim punitive damages. While discovery of a party's ability to pay an award of punitive damages is not allowed until a motion to amend is granted per ORS 31.725(5), the court has allowed parties to conduct discovery on other factual issues relating to the claims for punitive damages once the opposing party has been put on written notice of an intent to move to amend to claim punitive damages.

C. All evidence submitted must be admissible per ORS 31.725(3); evidence to which an objection is not made is deemed received. Testimony generally is presented through deposition or affidavit; live testimony has not been permitted at the hearing absent extraordinary circumstances and prior court order.

D. If the motion is denied, the claimant has been permitted to file a subsequent motion based on a different factual record (i.e. additional or different facts) without the second motion being deemed one for reconsideration prohibited by Multnomah County SLR 5.045.

E. For cases in mandatory arbitration, the arbitrator has the authority to decide any motion to amend to claim punitive damages. The arbitrator's decision may be reconsidered by a judge as part of de novo review under UTCR 13.040(3) and 13.100(1).

APPENDIX F

CIVIL MOTION CONSENSUS STATEMENT (Jackson County)

Periodically, the Circuit Court Judges assigned to civil cases in Jackson County will confer regarding their prior rulings on motions in civil cases. These judges have developed a consensus statement on particular issues that regularly come up in motions made in civil cases.

This consensus statement does not have the force of statute or court rule, and the statements are not binding on any judge, but are a good indication of how Judges handling civil cases will rule on similar issues. The following is not a predetermination of any question presented on the merits to a judge in a particular action. The statement may be of assistance in guiding practitioners as to anticipated rulings on a specific question and may eliminate the time and expense of presenting the issues to the court.

1. Arbitration

A. Motions - Once a case has been transferred to arbitration, all matters are to be heard by the arbitrator. UTCR 13.040(3). A party may show cause (by application to the judge assigned to the case) why a motion should not be decided by the arbitrator.

B. Punitive Damages - Where the damages alleged are less than \$50,000, the subsequent pleading of a punitive damages claim, which results in the prayer exceeding \$50,000, will not exempt a case from mandatory arbitration.

2. Motion Practice

A. Conferring and Good Faith Efforts to Confer (UTCR 5.010)

1. **"Conferring."** We have held that "to confer" means to talk in person or on the phone.
2. **Good Faith Efforts to Confer.** Because "confer" means to talk in person or on the phone, a "good faith effort to confer" is action designed to result in such a conversation. In various cases, judges have held that a letter to opposing counsel, even one that includes an invitation to call for a discussion, does not constitute a good faith effort to confer unless the moving attorney also makes a follow-up phone call to discuss the matter. We have held that a phone call leaving a message must be specific as to the subject matter before it constitutes a good faith effort to confer. Likewise, a message that says simply: "This is Jane. Please call me about Smith v. Jones," is not enough. Last minute phone messages or FAX transmissions immediately before the filing of a motion have been held not to satisfy the requirements of a good faith effort to confer. If, after hearing the motion, the court finds that efforts to confer have not been made in good faith, the court may decide the motion against the moving party.
3. **Complying with the Certification Requirement.** UTCR 5.010(3) specifies that the certificate of compliance is sufficient if it states either that the parties conferred, or contains facts showing good cause for not conferring. The judges have held that the certificate is not sufficient if it simply says "I made a good faith effort to confer." It must either state that the lawyers actually talked or state the facts showing good cause why they did not talk.

B. Copy of Complaint

The failure to attach a marked copy of the complaint to a Rule 21 motion pursuant to UTCR 5.020(2) may result in denial of the motions. UTCR 1.090.

C. Motions for Reconsideration

Motions for Reconsideration on any pre-trial, trial, or post-trial civil or criminal matter generally will not be considered except as set forth below.

This statement will not apply to any statutory motion to modify, set aside, vacate, suppress, or rescind; nor will it obstruct the authority of the assigned trial judge to review any previously-filed motions.

3. Discovery

A. Motions to Compel

A motion to compel discovery will set out at the beginning of the motion the specific items the moving party seeks to compel a party to produce (ORCP 46A(2)). Simply asserting that the party has not complied with the attached request for production will not satisfy this requirement.

B. Medical Examinations (ORCP 44)

1. The court generally authorizes (1) the recording of an examination by audio tape at the examined party's expense, and (2) the presence of a family member or friend of the examined party at the examination.
2. An examiner's qualifications (*curriculum vitae*) will be promptly provided to the examined party, upon request.
3. As soon as is reasonably possible before the examination, defendant will provide the examined party with copies of all forms the examiner will require the examined party to complete as part of the examination.
4. No later than fourteen days after the examination, defendant will provide the examined party a copy of any report prepared by the examiner.
5. If requested, prior to the testimony of the examiner on cross examination, the party calling the examiner as a witness will provide the opposing party with copies of the examiner's 1099 and W-2 forms showing the examiner's income for the past two years from performing ORCP 44 examinations or medical record reviews. All such documents provided by the examiner will be retained by the examiner after review by the opposing party.
6. When entitled, a party generally may have an ORCP 44 examination performed by a doctor selected by the requesting party. For an examination taking place in Jackson County, the requesting party may schedule the examination at a reasonable time and place without any payment to the other party.

If the examination is to be scheduled outside Jackson County, the requesting party shall pay travel costs at the rate allowed for mileage by the IRS or shall pay air fare. If the entire travel and examination time will take 4 hours or more, the reasonable costs of meals shall be paid. If the entire travel and examination time will take 8 hours or more, the reasonable costs of meals and lodging will be paid.

Reasonable accommodations as to the type of travel and the scheduling needed by the person to be examined shall be made.

C. Depositions

1. Attendance of Experts - Attendance of an expert at a deposition has generally been allowed, but has been reviewed on a case-by-case basis upon the motion of a party.

2. Attendance of Others - Persons other than the parties and their lawyers are generally not allowed to attend a deposition. Upon a showing of need, exceptions have been granted.

3. Out-of-State Parties -A non-resident plaintiff is normally required to appear at plaintiff's expense in Oregon for depositions. Upon a showing of undue burden or expense, the court has ordered, among other things, that plaintiff's deposition occur by telephone with a follow-up personal appearance in Oregon before trial. Non-resident defendants normally have not been required to appear in Oregon for deposition at their own expense. The deposition of non-resident corporate defendants, through their agents or officers, normally occurs in the forum of the corporation's principal place of business. However, the court has ordered that a defendant must travel to Oregon at either party's expense, to avoid an undue burden and expense and depending upon such circumstances as (a) whether the alleged conduct of the defendant occurred in Oregon, (b) whether defendant was an Oregon resident at the time the claim arose, and (c) whether defendant voluntarily left Oregon after the claim arose.

4. Videotaping - Videotaping of discovery depositions has been allowed with the requisite notice. The notice must designate the form of the official record. There is no prohibition against the use of both a stenographer and a video, so long as the notice requirements are met.

D. Experts

Discovery under ORCP 36B(1) has not been extended to the identity of expert witnesses.

E. Witnesses

Identity - the court has required production of documents, including those prepared in anticipation of litigation, reflecting the names, addresses and phone numbers of occurrence witnesses. To avoid having to produce documents which might otherwise be protected, attorneys have been allowed to provide a "list" of occurrence witnesses, including their addresses and phone numbers.

APPENDIX G

CURRENT UTCR CHAPTER 15 -- SMALL CLAIMS

15.010 SMALL CLAIMS FORMS

- (1) The following small claims documents shall be accepted, when the proper fee is tendered, by all judicial districts that accept small claims filings:
 - (a) Small Claim and Notice of Small Claim substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, to commence a small claims action pursuant to ORS 46.425 and 46.445 or 30.642 – 30.650. In an action by an inmate, the inmate must include the inmate's identification number in the caption.
 - (b) Motion for Default Judgment and Defendant Status Declaration substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, to request a default judgment pursuant to ORS 46.475(2).
 - (c) Declaration of Noncompliance and Request for Judgment substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, to request a judgment for failure to comply with a Small Claims Agreement.
 - (d) Small Claims Judgment and Money Award substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, as a form for use to enter judgment in a small claims action under ORS 46.475(2), 46.485, and 46.488.
 - (e) Defendant's Response substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, as a form for use to respond to a claim and notice of claim in a small claims action pursuant to ORS 46.455.
 - (f) Small Claims Agreement substantially in the form of the corresponding document made available to the public on <http://www.courts.oregon.gov/forms/Pages/default.aspx>, as a form for use when the parties agree to resolve a small claims action.
- (2) Forms in these formats may be made mandatory by SLR. SLR 15.011 is reserved for making such formats mandatory in the judicial district.

15.020 DISMISSAL OF SMALL CLAIMS FOR WANT OF PROSECUTION

- (1) After service is made, the serving party must forthwith file the return or acceptance of service with the trial court administrator.
- (2) If no return or acceptance of service is filed by the 63rd day after the filing of the complaint, the court may dismiss the case for want of prosecution.
- (3) If proof of service is filed and any defendant does not appear by the 35th day after the proof of service is filed, the court may dismiss the complaint against each nonappearing defendant for want of prosecution unless the plaintiff has applied for a default judgment.

APPENDIX H

ORS 36.400 - 36.405 -- MANDATORY ARBITRATION

ORS 36.400 Mandatory arbitration programs.

(1) A mandatory arbitration program is established in each circuit court.

(2) Rules consistent with ORS 36.400 to 36.425 to govern the operation and procedure of an arbitration program established under this section may be made in the same manner as other rules applicable to the court and are subject to the approval of the Chief Justice of the Supreme Court.

(3) Each circuit court shall require arbitration under ORS 36.400 to 36.425 in matters involving \$50,000 or less.

(4) ORS 36.400 to 36.425 do not apply to appeals from a county, justice or municipal court or actions in the small claims department of a circuit court. Actions transferred from the small claims department of a circuit court by reason of a request for a jury trial under ORS 46.455, by reason of the filing of a counterclaim in excess of the jurisdiction of the small claims department under ORS 46.461, or for any other reason, shall be subject to ORS 36.400 to 36.425 to the same extent and subject to the same conditions as a case initially filed in circuit court. The arbitrator shall not allow any party to appear or participate in the arbitration proceeding after the transfer unless the party pays the arbitrator fee established by court rule or the party obtains a waiver or deferral of the fee from the court and provides a copy of the waiver or deferral to the arbitrator. The failure of a party to appear or participate in the arbitration proceeding by reason of failing to pay the arbitrator fee or obtain a waiver or deferral of the fee does not affect the ability of the party to appeal the arbitrator's decision and award in the manner provided by ORS 36.425.

ORS 36.405 Referral to mandatory arbitration; exemptions.

(1) Except as provided in ORS 30.136, in a civil action in a circuit court where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to 36.425 if either of the following applies:

(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding \$50,000, exclusive of attorney fees, costs and disbursements and interest on judgment.

(b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

(2) The presiding judge for a judicial district may do either of the following:

(a) Exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be referred to arbitration under this section.

(b) Remove from further arbitration proceedings a civil action that has been referred to arbitration under this section, when, in the opinion of the judge, good cause exists for that exemption or removal.

(3) If a court has established a mediation program that is available for a civil action that would otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the proceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a mediation program offered by a court shall not be required to participate in arbitration under ORS 36.400 to 36.425.

APPENDIX I

CURRENT JACKSON COUNTY SLR 5.151 -- STREAMLINED TRIAL PROJECT

(9/26/17)

SLR 5.151 Streamlined Trial Project

- (1) Except as provided in subsections 2 and 3 of this rule, civil cases in which the only relief sought is recovery of money damages not exceeding \$100,000, exclusive of attorney fees, costs, disbursements and interest, are assigned to the Streamlined Trial Project (STP). This rule does not apply to domestic relations, probate, juvenile, or post-conviction relief cases.
- (2) Any case in which one or more parties is not represented by counsel is excluded from the STP.
- (3) Any case in which one of the parties serves and files a timely notice to remove the case from the STP is excluded from the STP.
 - (a) A plaintiff must file the notice within thirty (30) days of the filing of the action or, if a counterclaim is asserted, within fourteen (14) days of the filing of the counterclaim.
 - (b) A defendant or third party defendant must file the notice with that party's first appearance.
 - (c) A party must state the reason for removal in the notice. Removal is automatic and the statement for removal is for planning purposes only.
 - (d) After the time for filing the notice has expired and no later than the trial date, a party may by motion request that the case be removed from the STP for good cause shown related to a new development that could not have been previously identified.
- (4) For each case assigned to the STP, the presiding judge shall exempt the case from mandatory arbitration, pursuant to ORS 36.405(2)(a), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.
- (5) For each case assigned to the STP, the court shall set a trial date as provided by UTCR 7.020 with a pretrial conference no later than 14 days before trial. The trial date shall be set within ten months of the date the case is fully at issue, subject to the requirements of the court's calendar and the availability of judges.

- (6) Pretrial Procedures - Unless otherwise agreed to by the parties or upon order of the court for good cause shown:
- (a) Each party must provide to all other parties within four weeks of the date the court issues the Ready for Trial Notice:
 - (i) 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.
 - (ii) A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
 - (iii) A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 8(2).
 - (b) No party shall:
 - (i) Take more than four hours of deposition.
 - (ii) Serve more than one set of requests for production.
 - (iii) Serve more than one set of requests for admission.
 - (iv) File a pretrial motion, including a motion for summary judgment, absent prior leave of the court.
 - (c) All discovery requests must be served no later than 60 days before the trial date.
 - (d) All discovery must be completed no later than 21 days before the trial date.
 - (e) Before filing a motion to compel, motion for a protective order, or any other discovery motion, the parties must contact the motions judge by telephone and request assistance in resolving the dispute. The motions judge may resolve the dispute informally, without requiring the parties to file a written motion or scheduling a hearing.
 - (f) A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the trial date.

(7) Trial Procedures.

- (a) The Oregon Rules of Civil Procedure (ORCP), Oregon Evidence Code (OEC), and Uniform Trial Court Rules (UTCRC) apply to cases under the STP. However, the parties shall consider modification of these rules to expedite the trial and reduce the costs of litigation, including;
 - (i) Stipulation to a six or eight person jury.
 - (ii) Stipulation to the admissibility of documents such as those described in UTCRC 13.190.
- (b) The court will discuss trial procedure and modification of trial procedure and rules of evidence at the pre-trial conference set pursuant to subsection 5 of this rule.

APPENDIX J

CURRENT LANE COUNTY SLR 5.151 -- STREAMLINED TRIAL PROJECT

(2/18/18)

5.151 STREAMLINED JURY TRIAL PROJECT

- (1) ELIGIBILITY: Except as provided in subsections (a) and (b) of this section, civil cases in which the only relief sought is recovery of money damages not exceeding \$100,000, exclusive of attorney fees, costs, disbursements and interest, are included in the Streamlined Jury Trial Project (SJTP). This rule does not apply to consumer collections, foreclosure, domestic relations, probate, or cases filed in the Small Claims Department.
 - (a) All parties must be represented by counsel or the case will be excluded from the SJTP.
 - (b) A party may serve and file a timely notice to remove the case from the SJTP. Removal is automatic subject to the following:
 - (i) A plaintiff must file the notice within thirty (30) days of the filing of the action or, if a counterclaim is asserted, within fourteen (14) days of the filing of the counterclaim.
 - (ii) A defendant or third party defendant must file the notice with that party's first appearance.
 - (iii) A party must state the reason for removal in the notice.
 - (iv) After the time for filing the notice has expired and no later than the trial date, a party may by motion request that the case be removed from the SJTP for good cause shown related to a new development that could not have been previously identified.
- (2) For all cases subject to the SJTP, the filing party must place in the title of a pleading (including a claim, counterclaim, cross claim, and third-party claim): "SUBJECT TO STREAMLINED JURY TRIAL PROJECT".
- (3) Each case assigned to the SJTP shall be exempt from mandatory arbitration, pursuant to ORS 36.405(2)(a), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.
- (4) For each case assigned to the SJTP, the court shall set a trial date as provided by UTCR 7.020 with a case status conference within 45 days of the date the court issues the Ready for Trial Notice. The trial date shall be set within eleven months of the case initiation date.

- (5) PRETRIAL PROCEDURE: Unless otherwise agreed to by the parties or upon order of the court for good cause shown:
- (a) Each party must provide to all other parties within 30 days of the date the court issues the Ready for Trial Notice:
 - (i) 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.
 - (ii) A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
 - (iii) A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 B(2).
 - (b) Except for good cause shown and approval by the court, no party shall:
 - (i) Take more than four hours of depositions.
 - (ii) Serve more than one set of requests for production.
 - (iii) Serve more than one set of requests for admission.
 - (iv) File a pretrial motion, including a motion for summary judgment, absent prior leave of the court.
 - (c) All discovery requests must be served no later than 60 days before the trial date.
 - (d) All discovery must be completed no later than 21 days before the trial date.
 - (e) Before filing a motion to compel, motion for a protective order, or any other discovery motion, the parties must contact the motions judge by telephone and request assistance in resolving the dispute. The motions judge may resolve the dispute informally, without requiring the parties to file a written motion or scheduling a hearing.
 - (f) A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the trial date.
- (6) TRIAL PROCEDURE: The Oregon Rules of Civil Procedure (ORCP), Oregon Evidence Code (OEC) and Uniform Trial Court Rules (UTCRC) apply to cases under the SJTP. However, the parties shall consider modification of these rules to expedite the trial and reduce the costs of litigation, including;

- (a) Stipulation to a six or eight person jury.
 - (b) Stipulation to the admissibility of documents such as those described in UTCR 13.190.
- (7) The court will discuss trial procedure and modification of trial procedure and rules of evidence at the case status conference set pursuant to subsection (4) of this rule.

APPENDIX K

PROPOSED AMENDED UTCR 5.150 (Clean)

5.150 STREAMLINED CIVIL JURY CASES

- (1) A civil case eligible for jury trial may be designated as a streamlined case. The availability of the designation may vary by judicial district and is dependent on the availability of staff, judges, and courtrooms. A party seeking the designation must confer with the court to determine whether the designation is available. If it is available, a party seeking the designation must do all of the following:
 - (a) Obtain the agreement of all other parties to designate the case as a streamlined civil jury case.
 - (b) Submit a joint motion and an order to the presiding judge in substantially the form as set out on the Oregon Judicial Department website (<http://www.courts.oregon.gov/Pages/default.aspx>).
- (2) The decision to accept or reject a case for designation as a streamlined case is within the sole discretion of the presiding judge or designee. The judge will consider the request on an expedited basis, when possible, and enter an order granting or denying the motion. If the judge grants the motion and designates the case as a streamlined case, the judge will:
 - (a) Exempt or remove the case from mandatory arbitration, pursuant to ORS 36.405(2)(a) and (b), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.
 - (b) Set a trial date certain no later than 180 days from the date of the order.
- (3)
 - (a) Within 30 days of the designation, each party must provide to all other parties:
 - (i) 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;
 - (ii) A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment; and
 - (iii) A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 B(2).
 - (b) The parties may, and are encouraged to, file stipulations regarding the scope, nature, and timing of discovery.

- (c) The parties must complete discovery no later than 14 days before trial.
- (d) The parties may request, and the court may utilize, streamlined procedures for resolving any discovery disputes.
- (4) No later than 3 days before trial, the parties must file stipulations regarding the admission of exhibits, the manner for submitting expert testimony, the use of deposition excerpts (if any), and the conduct of the trial.
- (5) After an order designating the case as a streamlined case, a party shall not file a pretrial motion without prior leave of the court.
- (6) A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the streamlined case trial date.

- d. Exchange names, and if known, the addresses and phone numbers, of witnesses
Describe categories of witnesses _____ (e.g., those described in UTCR 5.150(3)(a)(i), percipient, lay, expert, all)
Exchange by _____ (date)
- e. Exchange existing witness statements
Describe categories of witnesses _____ (e.g., those described in UTCR 5.150(3)(a)(i), percipient, lay, expert, all)
Exchange by _____ (date)
- f. Insurance agreements and policies discoverable pursuant to ORCP 36 B(2)
Produce by _____ (date)
- g. Other, if any:

Produce by _____ (date) (describe)

4. To expedite the trial, the parties further agree as follows (describe stipulations such as those concerning marking and admissibility of exhibits, damages, and other evidentiary issues):

DATED this _____ day of _____, 20_____.

Attorney for _____

Attorney for _____

Attorney for _____

PROPOSED AMENDED UTCR 5.150 (Redline)

5.150 ~~EXPEDITED~~STREAMLINED CIVIL JURY CASES

- (1) A civil case eligible for jury trial may be designated as ~~an expedited~~ streamlined case. The availability of the designation may vary by judicial district and is dependent on the availability of staff, judges, and courtrooms. A party seeking the designation must confer with the court to determine whether the designation is available. If it is available, a party seeking the designation must do all of the following:
 - (a) Obtain the agreement of all other parties to designate the case as ~~an expedited~~ streamlined civil jury case.
 - (b) Submit a joint motion and an order to the presiding judge in substantially the form ~~of UTCR Forms 5.150.1a and 5.150.1b as set out on the Oregon Judicial Department website (<http://www.courts.oregon.gov/Pages/default.aspx>).~~
- (2) The decision to accept or reject a case for designation as ~~an expedited~~ streamlined case is within the sole discretion of the presiding judge or designee. The judge will consider the request on an expedited basis, when possible, and enter an order granting or denying the motion. If the judge grants the motion and designates the case as ~~an expedited~~ streamlined case, the judge will:
 - (a) Exempt or remove the case from mandatory arbitration, pursuant to ORS 36.405(2)(a) and (b), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.
 - (b) Set a trial date certain no later than ~~four months~~ 180 days from the date of the order ~~with a pretrial conference to be set no later than 14 days before trial.~~
- ~~(3) The parties in an expedited case may file (a written agreement with the court, in substantially the form of UTCR Form 5.150.1a, section 4, stating all of the following:~~
 - ~~(a) The scope, nature, and timing of discovery.~~
 - ~~(b) The date by which discovery will be complete, which must be not later than 21) Within 30 days before trial.~~
 - ~~(c) Stipulations regarding the conduct of the trial, which may include stipulations for the admission of exhibits and the manner of submission of expert testimony of the designation.~~
- ~~(4) If the parties in an expedited case do not file a discovery agreement pursuant to subsection (3) of this rule, then each party must do all of the following:~~
 - (a) ~~Provide~~ provide to all other parties ~~within four weeks of the expedited case designation:~~

- (i) 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;
- (ii) A copy of all unprivileged ORCP 43 A(1) documents and tangible things that the party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment; and
- (iii) A copy of all insurance agreements and policies discoverable pursuant to ORCP 36 B(2).

~~(b) Take no more than two depositions after a party has requested an expedited case designation.~~

~~(c) Serve no more than one set of requests for production after a party has requested an expedited case designation.~~ The parties may, and are encouraged to, file stipulations regarding the scope, nature, and timing of requests for production after a party has requested an expedited case designation.

~~(d) Serve no more than one set of requests for admission after a party has requested an expedited case designation.~~

(e) ~~Serve all discovery requests no later than 60 days before the trial date.~~

~~(f) Complete all (c)~~ The parties must complete discovery no later than 14 days before trial.

~~(d) The parties may request, and the court may utilize, streamlined procedures for resolving any discovery disputes.~~

(4) ~~21~~ No later than 3 days before trial, the parties must file stipulations regarding the admission of exhibits, the manner for submitting expert testimony, the use of deposition excerpts (if any), and the conduct of the trial.

(5) After an order designating the case as ~~an expedited~~ a streamlined case, a party shall not file a pretrial motion without prior leave of the court.

(6) A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the ~~expedited~~ streamlined case trial date.

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

Plaintiff

v.

Defendant

)
) Case No. _____
)
)

**MOTION FOR AN STREAMLINED EXPEDITED
CIVIL JURY CASE DESIGNATION**

1. The parties move the court for an order designating this case as a streamlined ~~non-expedited~~ civil jury case and exempting or removing it from mandatory arbitration, pursuant to ORS 36.405(2)(a) and (b), and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.

2. Each party agrees:

~~a. To fully comply with section (3)(a) of UTCR 5.150, regarding mandatory disclosures to be made within 30 days of the date of this order. any agreements set forth in section 4 of this motion as to the scope, nature, and timing of discovery or, if there are no such agreements, to fully comply with the requirements of UTCR 5.150(4).~~

b. That all discovery will be completed by _____ (which must be no later than 1424 days before the trial date).

c. That the parties ~~y~~ have consulted with the office of the trial court administrator and have agreed on a trial date of _____. (The trial date must be no later than 180-120 days from the date of this request and is based on the understanding that streamlined ECJC designation will occur expeditiously.)

d. To fully comply with section (4) of UTCR 5.150, regarding the filing of stipulations due no later than 3 days before trial.

~~3. The parties agree: (Check one)~~

~~To conduct discovery in accordance with section 4 of this motion. The terms of section 4 supersede UTCR 5.150(4).~~

~~To conduct discovery in accordance with the requirements of UTCR 5.150(4).~~

34. (If applicable): The parties agree to the following ~~If the parties agree to the scope, nature, and timing of discovery pursuant to UTCR 5.150(3), these additional discovery provisions are stated here and supersede UTCR 5.150(4);~~

a. Document discovery
____ Set(s) of Requests for Production per party
Serve by _____ (date)
Produce by _____ (date)

b. Depositions

____ Depositions per party
Complete by _____ (date)

~~Page 1 — Form 5.150.1a — MOTION FOR AN EXPEDITED CIVIL JURY CASE DESIGNATION — UTCR 5.150 (05-06-10)~~

- c. Requests for admissions
____ Sets of Requests for Admission per party
Serve by _____ (date)
Serve response by _____ (date)
- d. Exchange names, and if known, the addresses and phone numbers, of witnesses
Describe categories of witnesses _____ (e.g., those described in UTCR 5.150(34)(a)(i), percipient, lay, expert, all)
Exchange by _____ (date)
- e. Exchange existing witness statements
Describe categories of witnesses _____ (e.g., those described in UTCR 5.150(34)(a)(i), percipient, lay, expert, all)
Exchange by _____ (date)
- f. Insurance agreements and policies discoverable pursuant to ORCP 36 B(2)
Produce by _____ (date)
- g. Other, if any: _____ (describe)
Produce by _____ (date)

~~5. — The parties agree that expert testimony will be submitted at trial by (specify all that apply):~~

- ~~Report (specify date for exchange) _____~~
- ~~An alternative to in-person testimony _____ (describe)~~
- ~~In-person testimony~~

46. To expedite the trial, the parties further agree as follows (describe stipulations such as those concerning marking and admissibility of exhibits, damages, and other evidentiary issues):

DATED this _____ day of _____, 20_____.

Attorney for _____

Attorney for _____

Attorney for _____

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

Plaintiff

v.

Defendant

)
) Case No. _____
)

) **ORDER DESIGNATING CASE AS AN**
) **STREAMLINED EXPEDITED CIVIL JURY**
) **CASE**

I HEREBY ORDER that:

1. This case is designated as a streamlined ~~n~~-expedited civil jury case.
2. Good cause having been shown, pursuant to ORS 36.405(2)(a) and (b), this case is
 exempt
 removed
from mandatory arbitration and from all court rules requiring mediation, arbitration, and other forms of alternative dispute resolution.
2. Trial is set for _____ (date) at _____ (time).
3. [If applicable] This case is assigned to Judge _____, and the parties are directed to call the judge and arrange for a pretrial conference if feasible.
4. This order takes effect immediately.

DATED this _____ day of _____, 20_____.

Circuit Court Judge

APPENDIX L

CURRENT UTCR 7.030 -- COMPLEX CASES

7.030 COMPLEX CASES

- (1) Any party in a case may apply to the presiding judge to have the matter designated as a “complex case.”
- (2) The criteria used for designation as a “complex case” may include, but shall not be limited to, the following: the number of parties involved, the complexity of the legal issues, the expected extent and difficulty of discovery, and the anticipated length of trial.
- (3) A presiding judge shall assign any matter designated as a “complex case” to a specific judge who shall thereafter have full or partial responsibility for the case as determined by the presiding judge.
- (4) A “complex case” shall not be subject to the time limitation or trial setting procedures set forth in UTCR 7.020(5), (6) and (7); however, any such case will be set for trial as soon as practical, but in any event, within two years from the date of filing unless, for good cause shown, the trial date is extended by the assigned judge.

APPENDIX M

CURRENT UTCR CHAPTER 23 -- OREGON COMPLEX LITIGATION COURT

23.010 OREGON COMPLEX LITIGATION COURT

- (1) The criteria used for assignment of a case to the Oregon Complex Litigation Court (OCLC), pursuant to UTCR 23.020, may include, but are not limited to, the number of parties, the complexity of the legal issues, the complexity of the factual issues, the complexity of discovery, and the anticipated length of trial.
- (2) The UTCR apply to cases in the OCLC except where the rules in this chapter specifically provide otherwise.
- (3) Absent a motion and order for a change of venue pursuant to ORS 14.110, assignment of a case to the OCLC does not change the venue of a case.
- (4) The OCLC will be managed by a panel of three circuit court presiding judges appointed by the Chief Justice of the Oregon Supreme Court.

23.020 ASSIGNMENT OF CASES TO THE OCLC

- (1) Assignment of a case to the OCLC requires agreement of the parties, the presiding judge or designee of the court with venue, and the managing panel of the OCLC.
- (2) The following must occur for a case to be considered for assignment to the OCLC:
 - (a) The parties and the presiding judge or designee of the court with venue must confer to determine whether there is agreement to assign the case to the OCLC and to determine the special needs, facts, and issues of the case.
 - (b) The presiding judge or designee of the court with venue and the managing panel of the OCLC must confer to discuss whether the case is appropriate for assignment to the OCLC and to discuss the special needs, facts, and issues of the case.
- (3) If the agreement required by UTCR 23.020(1) is reached and the managing panel accepts a case into the OCLC, the parties must submit a stipulated order for assignment of the case to the OCLC to the presiding judge or designee of the court with venue over the case and to the managing panel of the OCLC.
- (4) Once a case is accepted into the OCLC, the managing panel of the OCLC will assign the case to a single OCLC judge.

- (5) The parties must:
- (a) Share equally, unless otherwise agreed, the cost of copying and providing the entire court file to the OCLC judge assigned to the case.
 - (b) Make all necessary arrangements to have a copy of the entire court file delivered to the OCLC judge within 14 days of assignment of the case to the OCLC judge.
 - (c) Continue, after assignment of the case to the OCLC judge, to file all documents in the court with venue and provide copies of all filed documents to the OCLC judge.

23.030 REMOVAL OF CASES FROM THE OCLC

- (1) When an OCLC judge finds good cause to remove a case from the OCLC, the judge must confer with the managing panel of the OCLC. If the managing panel agrees that the case should be removed, the managing panel will discuss the removal and return of the case with the presiding judge or designee of the court with venue before any action is taken.
- (2) If venue has not been changed, the case may then be returned to the originating circuit court.
- (3) If venue has been changed, the case may then be returned to the circuit court with current venue absent a motion and order for change of venue pursuant to ORS 14.11 O and 14.120.

23.040 CASE MANAGEMENT

- (1) Cases assigned to the OCLC are under the direct supervision of a single OCLC judge for all purposes including referral to mediation, assignment to a settlement judge, and trial.
- (2) Before the date set by the court for a case management conference, all parties must do all of the following:
 - (a) Explore early resolution of the case and prepare a discovery plan.
 - (b) Confer concerning the matters to be raised at the conference.
 - (c) Attempt to reach agreement on as many of the issues as possible.
 - (d) Report the results of their conference to the court at the case management conference.
- (3) No later than 10 days prior to trial, unless the OCLC judge has ordered otherwise, the parties must do all of the following:

- (a) Confer and disclose to each other all exhibits, except impeachment exhibits.
 - (b) Number all exhibits.
 - (c) Reach, to the extent possible, agreement on the admissibility of exhibits.
 - (d) File with the court and provide to the OCLC judge a list of exhibits indicating the status of each exhibit.
 - (e) Reach, to the extent possible, agreement on foundation for other exhibits to which they might have substantive objections. Any agreement must be noted on the exhibit list filed with the court.
- (4) Upon compliance with UTCR 23.040(3)(a)-(e), the OCLC judge will confer with the parties to resolve any disputes on exhibits or other matters upon which a stipulation might be reached to make the trial more efficient.

23.050 CASE MANAGEMENT CONFERENCE; CASE MANAGEMENT ORDER

- (1) A case management conference will be held within 30 days of assignment of a case to an OCLC judge or at such other time as the court may order. The purpose of the case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome, or duplicative discovery and other pretrial procedures to ensure the prompt resolution of the dispute. The case management conference may include discussion of the following:
- (a) The trial date.
 - (b) The need for additional parties.
 - (c) Time limits for filing of third-party complaints or bringing in additional parties.
 - (d) Severance, consolidation, or coordination with other actions.
 - (e) A discovery plan, including a schedule for the exchange of documents, conducting discovery from third parties, use of common number systems for documents production and exhibits identification, a schedule for conducting depositions, the need for protective orders or other limitations allowed by ORCP 36 C, and a date for the close of discovery.
 - (f) A time schedule for motion practice and date for submission of dispositive motions.
 - (g) Mediation or settlement, and the identity of the assigned neutral facilitator. If the case has not settled within 45 days of the trial date, the case may be assigned for settlement conference to a judge other than the OCLC judge.
 - (h) Use of technology in discovery and at trial, such as electronic or physical document depositories, videotaping of depositions, videoconferencing, and teleconferencing.

- (i) A master list of contact information.
 - (j) The method of jury selection and resolution of disputes relating to forms for juror questionnaires, if any.
 - (k) Scheduling of a Rule 104 hearing on scientific issues, if necessary.
 - (l) Scheduling of further conferences.
 - (m) Other matters the court or the parties deem appropriate to manage or expedite the case such as whether the parties will mutually employ a court reporter to serve for the creation of the official record, use of a trial plan having timelines for the submission and resolution of pretrial motions, motions in limine, deposition designations, submission of trial memoranda and jury instructions, and timelines for the examination of witnesses and evidentiary presentations by the parties.
- (2) Following the case management conference, the OCLC judge will issue a case management order. The case management order will encompass the matters addressed at the case management conference and any other matters the judge considers appropriate for the order.
- (3) The case management order may be modified or revised, as the OCLC judge deems necessary, to meet the purpose of the OCLC rules. The parties must not deviate from deadlines and requirements established in the case management order unless authorized by the OCLC judge.

23.060 SETTLEMENTS AND DISCONTINUANCES

If a case in the OCLC is settled or dismissed, the parties must immediately inform the OCLC judge assigned to the case by telephone or email.

APPENDIX N

ORS 14.260 AND 14.270 -- STATUTORY AFFIDAVIT AND MOTION FOR CHANGE OF JUDGE

ORS 14.260 Affidavit and motion for change of judge; time for making; limit of two changes of judge.

(1) Any party to or any attorney appearing in any cause, matter or proceeding in a circuit court may establish the belief described in ORS 14.250 by motion supported by affidavit that the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay. No specific grounds for the belief need be alleged. The motion shall be allowed unless the judge moved against, or the presiding judge for the judicial district, challenges the good faith of the affiant and sets forth the basis of the challenge. In the event of a challenge, a hearing shall be held before a disinterested judge. The burden of proof is on the challenging judge to establish that the motion was made in bad faith or for the purposes of delay.

(2) The affidavit shall be filed with the motion at any time prior to final determination of the cause, matter or proceedings in uncontested cases, and in contested cases before or within five days after the cause, matter or proceeding is at issue upon a question of fact or within 10 days after the assignment, appointment and qualification or election and assumption of office of another judge to preside over the cause, matter or proceeding.

(3) A motion to disqualify a judge may not be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding. A motion to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides may not be filed more than five days after the party or attorney appearing in the cause receives notice of the assignment.

(4) In judicial districts having a population of 200,000 or more, the affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.270.

(5) In judicial districts having a population of 100,000 or more, but less than 200,000, the affidavit and motion for change of judge shall be made at the time and in the manner prescribed in ORS 14.270 unless the circuit court makes local rules under ORS 3.220 adopting the procedure described in this section.

(6) A party or attorney may not make more than two applications in any cause, matter or proceeding under this section.

ORS 14.270 Time of making motion for change of judge in certain circumstances; limit of two changes of judge.

An affidavit and motion for change of judge to hear the motions and demurrers or to try the case shall be made at the time of the assignment of the case to a judge for trial or for hearing upon a motion or demurrer. Oral notice of the intention to file the motion and affidavit shall be sufficient compliance with this section providing that the motion and affidavit are filed not later than the close of the next judicial day. No motion to disqualify a judge to whom a case has been assigned for trial shall be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding; except that when a presiding judge assigns to the presiding judge any cause, matter or proceeding in which the presiding judge has previously ruled upon any such petition, motion or demurrer, any party or attorney appearing in the cause, matter or proceeding may move to disqualify the judge after assignment of the case and prior to any ruling on any such petition, motion or demurrer heard after such assignment. No party or attorney shall be permitted to make more than two applications in any action or proceeding under this section.

APPENDIX O

ORS 646A.670 -- DEBT BUYER COLLECTION ACTIONS

ORS 646A.670 Legal action to collect debt; requirements for pleadings; judgments; attorney fees.

(1) A debt buyer that brings legal action to collect or brings legal action to attempt to collect purchased debt, or a debt collector that brings legal action on the debt buyer's behalf, shall include in an initial pleading that begins the legal action:

(a) The original creditor's name, written as the original creditor used the name in dealings with the debtor;

(b) The name, address and telephone number of the person that owns the debt and a statement as to whether the person is a debt buyer;

(c) The last four digits of the original creditor's account number for the debt, if the original creditor's account number for the debt had four or more digits;

(d) A detailed and itemized statement that shows:

(A) The amount the debtor last paid on the debt, if the debtor made a payment, and the date of the payment;

(B) The amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt, if the debtor made a payment;

(C) The balance due on the debt on the date on which the debt became charged-off debt;

(D) The amount and rate of interest, any fees and any charges that the original creditor imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(E) The amount and rate of interest, any fees and any charges that the debt buyer or any previous owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

(F) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector expects to recover attorney fees; and

(G) Any other fee, cost or charge the debt buyer seeks to recover; and

(e) The date on which the debt buyer purchased the debt.

(2)(a) A court may not enter a judgment for a debt buyer or debt collector that has not complied with the requirements set forth in this section.

(b) If a court grants a judgment for a debt buyer or debt collector that does not comply with the requirements set forth in this section, the debtor in a motion under ORCP 71 may petition the court for relief from the judgment or the court may grant relief on the court's own motion.

(3) A debt buyer or debt collector may obtain attorney fees in a legal action to collect or attempt to collect a debt only if:

(a) The debt buyer or debt collector prevails in the legal action; and

(b) The contract or writing described in ORS 646.639 (4)(b) provides that the creditor may obtain attorney fees from the debtor in a legal action to collect or attempt to collect the debt or another provision of law allows an award of attorney fees to the debt buyer or debt collector.

(4) A debt buyer or a debt collector that acts on the debt buyer's behalf shall provide to a debtor all of the documents described in ORS 646.639 (4)(b) within 30 days after receiving a request for information about the debt from the debtor.

APPENDIX P

PROPOSED NEW UTCR 5.180 AND COMPANION FORM

UTCR 5.180 CONSUMER DEBT COLLECTION

- (1) Definitions. As used in this rule, unless otherwise indicated:
 - (a) "Consumer" means a natural person who purchases or acquires property, services or credit for personal, family, or household purposes.
 - (b) "Debt" means an obligation or alleged obligation that arises out of a consumer transaction.
 - (c) "Debt collector" means any person whose principal business purpose is the collection or attempted collection of debts owed to another.
- (2) Applicability. This rule applies to an action for collection of a debt that:
 - (a) Is an action under ORS 646A.670, when the plaintiff is either a debt buyer as defined in ORS 646.639(1)(g) or is a debt collector as defined in ORS 646.639(1)(h), bringing the action on a debt buyer's behalf; or
 - (b) Involves a plaintiff who is a debt collector as defined in subsection (1)(c) of this rule, but the action otherwise does not satisfy the requirements of subsection (2)(a) of this rule.
- (3) The following requirements apply to an action under subsection (2)(a) of this rule:
 - (a) The initiating pleading must:
 - (i) In the title, contain the words, "SUBJECT TO ORS 646A.670(1) and UTCR 5.180(3)";
 - (ii) In the body, include a statement to the following effect: "See the Oregon Judicial Department's website for information about debt collection cases"; and
 - (iii) Attach and incorporate by reference a completed Consumer Debt Collection Disclosure Statement in substantially the form as set out on the Oregon Judicial Department website (<http://www.courts.oregon.gov/Pages/default.aspx>), including a statement that the plaintiff has complied with ORS 646A.670(1).
 - (b) If the initiating pleading does not comply with subsection (3)(a)(iii) of this rule, written notice shall be given to the plaintiff that the case will be dismissed 30 days from the date of mailing of the notice, unless the plaintiff complies with subsection (3)(a)(iii) by that time.

- (c) If the plaintiff moves for entry of a judgment of default, the motion must include a declaration, under penalty of perjury, that the initial pleading complied with ORS 646A.670(1).
- (4) The following requirements apply to an action under subsection (2)(b) of this rule:
 - (a) The initiating pleading must:
 - (i) In the title, contain the words, "SUBJECT TO UTCR 5.180(4)";
 - (ii) In the body, include a statement to the following effect: "See the Oregon Judicial Department's website for information about debt collection cases."
 - (iii) Attach and incorporate by reference a completed Consumer Debt Collection Disclosure Statement in substantially the form as set out on the Oregon Judicial Department website (<http://www.courts.oregon.gov/Pages/default.aspx>).
 - (b) If the initiating pleading does not comply with subsection (4)(a)(iii) of this rule, written notice shall be given to the plaintiff that the case will be dismissed 30 days from the date of mailing of the notice, unless the plaintiff complies with subsection (4)(a)(iii) by that time.
 - (c) If the plaintiff moves for entry of a judgment of default:
 - (i) The plaintiff's motion must include a declaration, under penalty of perjury, that the initial pleading complied with UTCR 5.180(4)(a)(iii).
 - (ii) The court may not enter judgment for a plaintiff who has not complied UTCR 5.180(4)(a)(iii).

PROPOSED CONSUMER DEBT COLLECTION DISCLOSURE STATEMENT

[Check all that apply]

- 1. I am the plaintiff, and
 - I am a debt buyer, and this is an action seeking collection on a debt under ORS 646A.670. (UTCR 5.180(3))
 - I have complied with ORS 646A.670(1).
 - I am a debt collector, and this is an action seeking collection on a debt, and on a debt buyer's behalf, under ORS 646A.670. (UTCR 5.180(3))
 - I have complied with ORS 646A.670(1).
 - I am a debt collector seeking collection on a debt, but this action is not subject to ORS 646A.670(1). (UTCR 5.180(4))

2. I provide the following information about the debt sought to be collected:

A. Original creditor's name, as used in dealings with debtor:

B. Name, address, and telephone number of the person that owns the debt:

C. Last four digits of the original creditor's account number for the debt, if the account had four or more digits: _____

D. If this action is subject to ORS 646A.670 and UTCR 5.180(3), the date on which the debt buyer purchased the debt:

(Continued on next page)

E. If this action is subject to ORS 646A.670 and UTCR 5.180(3):

Either:

i. The following information applies:

Payment Information:

The debtor made at least one payment:

Amount debtor last paid: _____

Date of last payment: _____

Amount and date of debtor's last payment before debtor's default or before debt became charged-off debt:

The debtor made no payment

Balance Information:

The balance due on the debt, on the date it became charged-off debt: _____

Other Information (check all that apply):

The amount and rate of interest, any fees, and any charges that the original creditor imposed, if known to plaintiff:

The amount and rate of interest, any fees, and any charges, that the debt buyer imposed, or any previous owner imposed, if known to plaintiff:

The attorney fees that plaintiff seeks, if expected to recover fees:

Any other fee, cost, or charge that the debt buyer seeks to recover: _____

(Continued on next page)

Or:

- ii. See the attached detailed and itemized statement that shows the information described in section 2.E.i.

- F. If this action is subject to UTCR 5.180(4), the following information applies:

Payment Information:

The debtor made at least one payment:

Amount debtor last paid: _____

Date of last payment: _____

Amount and date of debtor's last payment before debt became delinquent:

- The debtor made no payment

Balance Information:

The balance due on the debt, on the date it became delinquent:

Other Information (check all that apply):

- The amount and rate of interest, any fees, and any charges that the original creditor imposed, if known to plaintiff:

The attorney fees that plaintiff seeks, if expected to recover fees:

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND ARE SUBJECT TO PENALTY FOR PERJURY.

DATED this _____ day of _____, 20 _____.

My (printed) Name Is _____, Plaintiff.

SIGNATURE

APPENDIX Q

CURRENT UTCR 5.050 -- ARGUMENT ON MOTIONS AND APPEARANCE BY TELECOMMUNICATION

5.050 ORAL ARGUMENT ON MOTIONS IN CIVIL CASES; APPEARANCE AT NONEVIDENTIARY HEARINGS AND MOTIONS BY TELECOMMUNICATION

- (1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.
- (2) A party may request that a nonevidentiary hearing or a motion not requiring testimony be heard by telecommunication.
 - (a) A request for a nonevidentiary hearing or oral argument by telecommunication must be in the caption of the pleading, motion, response, or other initiating document.
 - (b) If appearance or argument by telecommunication is requested, the first paragraph of the pleading, motion, response, or other initiating document must include the names and telephone numbers of all parties served with the request. The request must be granted.
 - (c) The first party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.
- (3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other and permits official court reporting when requested. When recording is requested, telecommunications hearings must be recorded by the court if suitable equipment is available; otherwise, it will be provided at the expense of the party requesting recording.