

2009 LEGISLATION ALERTS

CIVIL PROCEDURE / APPEALS

SCRA ACTIONS ORS 36.405

2009 OR LAWS CH 83 (HB 2303)

HB 2303 supplements the federal Servicemember's Civil Relief Act, 50 USC App. §§ 501–596 (SCRA), which protects servicemembers on active duty in any judicial or administrative proceeding. State actions brought under its provisions are not subject to court-ordered arbitration unless the parties stipulate to it in writing after the action is commenced. If the servicemember resides in or is a resident of Oregon, forum selection clauses designating a forum other than Oregon are voidable. Servicemembers in Oregon may be entitled to attorney fees. Additional damages are available if the opposing party was properly notified of and failed to remedy the violation of SCRA within the time allotted prior to the commencement of the action; if the opposing party's conduct was willful, treble damages are available (including damages for emotional distress).

Effective date: May 8, 2009

The new provisions apply only to conduct that violates SCRA that occurs on or after the effective date.

SERVICE OF SUBPOENAS ORS 136.595, 163.741; ORCP 55D 2009 OR LAWS CH 364 (HB 2394)

HB 2394 (1) allows persons under the age of 14 to be served with a subpoena by service on a parent or guardian; (2) clarifies

the timing requirements for subpoenaing a law enforcement officer; and (3) clarifies that an order under the stalking statute, ORS 163.741, must be personally served on the respondent, except where a court order indicates that the respondent appeared in person before the court.

Effective date: January 1, 2010

ATTORNEY-CLIENT PRIVILEGE ORS 40.225

2009 OR LAWS CH 516 (HB 2453)

HB 2453 modifies the attorney-client privilege described in ORS 40.225 with respect to corporations and other business entities. It expands the definition of a representative of the client to include, in addition to a principal, an officer, and a director of the client, "a person who has authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client, or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the person's scope of employment for the client."

Effective date: January 1, 2010

*The amendments apply to all communications, whether made **before**, on, or after the effective date.*

DISCLAIMER

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CLASS ACTIONS
ORS 646.638; ORCP 32 K, L, M, N, O
2009 OR LAWS CH 552 (HB 2585)

HB 2585 repeals ORCP 32 K, which prohibited class actions for the recovery of statutory minimum penalties under the unlawful trade practices act, the Truth in Lending Act, “or any other similar statute.”

Effective date: June 25, 2009

*The amendments apply to all causes of action, whether arising **before**, on, or after the effective date, except for causes of action for which a judgment was entered before the effective date.*

DE NOVO REVIEW
ORS 2.570, 19.360, 19.415, 183.650,
419A200, 421.628, 545.579
2009 OR LAWS CH 231 (SB 262)

SB 262 provides that de novo review in equity cases (other than parental rights termination proceedings) is now discretionary, rather than automatic.

Effective date: June 4, 2009

The amendments to ORS 19.415 apply only to appeals for which a notice of appeal is filed with the court of appeals under ORS 19.240(3) on or after the effective date.

UNIFORM ACT ON FOREIGN JUDGMENTS
ORS 24.200 – 24.255, 24.290
2009 OR LAWS CH 48 (SB 286)

In 1977, the legislature adopted the Uniform Foreign Money-Judgments Recognition Act, codified at ORS 24.200 to 24.255. SB 286 repeals that Act and enacts the Uniform Foreign-Country Money Judgments Recognition Act to correct certain problems that had arisen under judicial interpretations of the earlier Act.

Under the new Act, the party seeking to enforce a foreign-country judgment has the burden of proving that the statute applies, but the party resisting recognition of the judgment has the burden of establishing the existence of certain specified grounds for nonrecognition. The Act provides that an action to register a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the judgment became effective in the foreign country.

Effective date: January 1, 2010

The new provisions apply only to actions commenced on or after the effective date in which the issue or recognition of a foreign-country judgment is raised. Any action

commenced before the effective date in which the issue of recognition of a foreign-country judgment is raised will continue to be governed by the provisions of ORS 24.200 to 24.255, as in effect immediately before the effective date.

APPEALS IN SLAPP CASES
ORS 31.150, 31.152
2009 OR LAWS CH 449 (SB 543)

The anti-SLAPP statute, ORS 31.150 to 31.155, authorizes a “special motion to strike” a complaint that asserts a claim based on a defendant’s free speech or petition activity on a matter of public interest. The purpose of the statute is to nip such lawsuits in the bud, but as enacted, it contained no provision for appealing the denial of a “special motion to strike.” Moreover, the denial of such a motion is not reviewable in an appeal from a final judgment. *Staten v. Steel*, 222 Or App 17, 29, 191 P3d 778 (2008), rev den 345 Or 618 (2009). As a result, the denial of an anti-SLAPP motion was not subject to appellate review, either before or after trial. *See Englert v. MacDonell*, 551 F3d 1099 (9th Cir 2009) (denial of anti-SLAPP motion not subject to prejudgment interlocutory appeal).

SB 543 changes that. It requires a trial court, when denying an anti-SLAPP motion, to enter a “limited judgment” to that effect. Limited judgments are immediately appealable under ORS 19.205(1). SB 543 also adds a new subsection (4) to ORS 31.152, clarifying that the purpose of the statute “is to provide a defendant with the right to not proceed to trial,” and that the statute is “to be liberally construed in favor of the exercise of the rights of expression described [therein].”

Effective date: January 1, 2010

The amendments to ORS 31.150 apply only to special motions to strike filed under that statute on or after the effective date.

ATTORNEY FEES IN CONDEMNATION CASES
ORS 35.346, 35.348
2009 OR LAWS CH 530 (SB 794)

Ballot Measure 39 (2006) required a condemning governmental authority to pay the attorney fees and costs of a property owner if the judgment awarded compensation to the owner higher than the government’s initial offer. SB 794 changes that provision by amending ORS chapter 35 to require the government to pay attorney fees if the judgment exceeds the authority’s *highest* offer, rather than its initial offer.

Effective date: January 1, 2010

The amendments apply only to condemnation actions filed on or after the effective date.

**OREGON RULES OF CIVIL PROCEDURE (ORCP)
PROMULGATED BY THE COUNCIL ON COURT
PROCEDURES ON DECEMBER 13, 2008**

Rule 1 contains a new subsection F that allows for electronic filing of any document except a summons. The subsection was added as part of the move to E-Court and e-filing.

Rule 7 D(3) is revised with respect to service on limited liability companies, limited partnerships, and limited liability partnerships.

Rule 54 E is clarified to provide that an “offer to allow judgment” (a new term, replacing “compromise”) that is not accepted may not be filed with the court until after adjudication on the merits.

Rule 59 is amended to require that jury instructions be in writing. Under previous rule, a trial judge had discretion to give recorded jury instructions if written instructions were not feasible.

Rule 69 is amended to require that a notice of intent to apply for a default order must look like a pleading, must be served on the opposing party, and must be filed with the court. It prescribes new form UTCR 2.010.

Effective date: January 1, 2010

**UNIFORM TRIAL COURT RULES (UTCR)
ADOPTED BY THE CHIEF JUSTICE ON JUNE 8, 2009**

The major change to the UTCR is the creation of a confidential information form for use in family law cases.

The UTCR Committee created a new rule UTCR 2.130 to establish “the required procedure for segregating certain confidential personal information” in family law cases. The rule creates a Confidential Information Form (CIF) that includes personal information such as Social Security number and date of birth. The rule mandates use of the form when a statute or rule requires disclosure of personal information and requires the court to segregate and prohibit public inspection of the CIF. Various exceptions to this prohibition are allowed, including access by the parties to the proceeding and relevant state agencies. The rules allow an ex parte order to prohibit disclosure of the CIF information to the other party. In addition, the rules require notice of filing of the CIF to all parties.

The new forms for the CIF are numbered 2.130.1, 2.130.2, and 2.130.3. Minor changes were made to UTCR 2.100 and UTCR 2.110 to be consistent with the CIF, and former Forms 2.100.4c and Form 2.100.4d were deleted.

Changes to other sections of the UTCR are as follows:

UTCR 1.050(2)(e) amends the requirements for

adoption of changes to Supplemental Local Rules (SLR). The 2009 amendment changes the word “language” to the word “wording.” Former UTCR 1.050(2)(e) required that proposed new wording of SLRs be underlined and in boldface; the new amendment requires that, in addition, the new wording be placed in braces.

UTCR 1.110(4) is amended to change “person” to “party” in the definition of “Defendant” and “Respondent.”

In the “official” version of the UTCR, the 1993 Commentary to subsection (12)(b) (orders, judgments, or writs) of UTCR 2.010 (form of documents) appeared immediately following that subsection, instead of at the end of the entire rule. The Council moved that Commentary to the end of the rule, so that it now appears after subsection (15).

UTCR 4.090 (e-citations) is amended to delete the reference to a 2005 session law and to replace it with the codified version of that statute: ORS 133.073.

UTCR 5.070 (motion for leave to amend pleading) is amended to clarify that a motion to amend to assert a claim for punitive damages must comply with this rule.

UTCR 8.070 (standard parenting plans) is amended to allow a court’s standardized parenting plan to be placed on the court’s Web site, in lieu of or in addition to the appendix of its supplemental local rules (SLR).

UTCR Form 8.090 (relating to child support) is amended to remove requirement that copies of orders and judgments submitted with the form must be certified.

UTCR 10.020(2) (preparation and delivery of the record on review) and Form 10.010a (petition for judicial review) is amended to replace the words “hearings officer” with “Administrative Law Judge.”

UTCR Forms 15.010.1b, 1c, and 1d are amended to replace the words “A money award of” with “Money awarded in the amount of” in a request for default judgment and a request for judgment.

Effective date: August 1, 2009

*The Professional Liability Fund sincerely thanks
Charles F. Hinkle for assistance with this section of
the 2009 Legislation Alerts.*