

### Proposed Changes to the UTCR

The Uniform Trial Court Rules (UTCR) committee met on October 14, 2011, to review proposals to amend the UTCR and to make preliminary recommendations to the chief justice of the Oregon Supreme Court. A description of the proposals and action taken by the committee is posted at <http://courts.oregon.gov/OJD/programs/utcr/utcrrules.page>.

Proposals of special note include new and amended rules addressing Oregon eCourt remote electronic access and electronic service; amended rules regarding termination of attorney-client relationship, custody of biological evidence, and certain family law procedures; and revised small claim forms.

The committee encourages all interested parties to submit comments on these proposals. Comments can be posted at the Web address mentioned above; mailed to the UTCR Reporter at the Office of the State Court Administrator, Supreme Court Building, 1163 State Street, Salem, Oregon 97301-2563; or e-mailed to [utcr@ojd.state.or.us](mailto:utcr@ojd.state.or.us).

The committee will make final recommendations on these proposals at the next UTCR meeting on April 20, 2012, 9:00 a.m., Office of the State Court Administrator, Salem, Oregon. Those proposals approved by the chief justice will become effective August 1, 2012.

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OFFICE OF THE STATE COURT ADMINISTRATOR

#### DISCLAIMER

*IN BRIEF* includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

## Tips, Traps, and Resources

**CONSTRUCTION LAW:** SB 382 (2011), which took effect January 1, 2012, required that any notice necessary to be given to a mortgagee or beneficiary under a trust deed is to be sent to the address located on the recorded mortgage or trust deed; however, if no such address was set forth on the recorded document, then notice is not required. In the amendment to the original bill, an inadvertent change was made to the general recording statute requiring the grantor's address on all documents recorded. The interpretation of this provision varied among the county clerks, leading to a rejection of a substantial number of documents. HB 4111 (2012) included a "fix," eliminating the requirement for the grantor's address on all documents and returning the general recording statute to the status quo. Caveat: The bill has not been signed by the Governor, although it is anticipated that he will do so. (*Thanks to Alan K. Brickley, First American Title Insurance, for his assistance with this tip.*)

**DOMESTIC RELATIONS:** The Child Support Guidelines Calculator on the Child Support Program Web site (<http://oregonchildsupport.gov/calculator/index.shtml>) was updated on January 3, 2012, to reflect legislative changes and an increase in the state minimum wage that became effective January 1, 2012. Calculations prepared before the January 3 update may not be valid for orders requiring amendment, modification, or hearing on or after January 1, 2012. The Child Support Benchbook was also updated in March 2012 to incorporate legislative changes effective January 1, 2012. You can find the Benchbook at <http://www.oregonchildsupport.gov> under the Child Support Professionals tab. (*Thanks to Jean Fogarty, Oregon Division of Child Support, for her assistance with this tip.*)

**TAX LAW:** The March issue of *Washington State Bar News* has an article on "IRS Form 1099: What Every Lawyer Should Know," by Robert W. Wood. More and more 1099 reporting is now required, and lawyers and law firms face not only the basic rules but also the special rules targeting payments to and from lawyers. The requirements have become more rigorous in recent years, and penalty enforcement has gotten tougher. Read this article for a discussion of 10 things every lawyer – whether in private practice or in-house counsel – needs to know. You can view the article at <http://tinyurl.com/Form1099article>. (*Thanks to Beverly Michaelis, PLF Practice Management Advisor, for her assistance with this tip.*)

**STATE COURT CLOSURES:** Due to budget shortfalls, all state courts and offices of the Oregon Judicial Department (appellate courts, Tax Court, circuit courts, and Office of the State Court Administrator) will be closed for public business on five Fridays in 2012: March 23, May 25, August 17, October 19, and November 23.

**CLARIFICATION OF FILING FEES:** HB 2710 (2011) did not contain a transitional provision for fees for certain new filings in cases previously pending on the effective date of the bill, October 1, 2011. Chief Justice Order 11-059 clarifies that the fee for a filing received on or after October 1, 2011 (that is, an amended complaint, an answer, a response, or other first appearance in a matter commenced before October 1, 2011), will be the same as the fees established in Oregon Laws 2011, Chapter 595 (HB 2710). The Oregon Judicial Department stated that it has updated the Oregon Circuit Court Fee Schedule accordingly. In addition, HB 4168A (2012) makes technical changes to HB 2710, clarifying what fees are applicable when, payable by whom, and for what amount. You can view the bill at [www.leg.state.or.us](http://www.leg.state.or.us).

**2011 OREGON ETHICS OPINIONS:** The Oregon State Bar approved several ethics opinions in 2011: Formal Opinion No. 2011-188, Information Relating to Representation of a Client: Third-Party Electronic Storage of Client Materials ("cloud computing"); Formal Opinion No. 2011-187, Competency: Disclosure of Metadata; Formal Opinion No. 186, Receipt of Documents Sent Without Authority; Formal Opinion No. 185, Withdrawal from Litigation: Client Confidences; Formal Opinion No. 184, Confidentiality, Conflicts of Interest: Consulting Between Lawyers Not in the Same Firm; and Formal Opinion No. 183, Scope of Representation; Limiting the Scope ("ethics of unbundling"). You can read the opinions at <http://www.osbar.org/ethics/toc.html>.

**BEST OF PMA 2011 BLOGS:** Blog posts from the second half of 2011 by PLF Practice Management Advisors Beverly Michaelis and Sheila Blackford include a wide array of topics: phishing scams, Microsoft Word 2010, collections and getting paid, reporting unclaimed funds, fee agreements, metadata, setting up a practice, social media, e-filing errors, technology security, and much more! Check out their blogs at <http://oregonlawpracticemanagement.com> and <http://justoregonlawyers.com>.

## IN BRIEF

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## Cases of Note

**CIVIL PROCEDURE:** In *Dreith v. Nu Image, Inc.* (Jul. 19, 2011), the Ninth Circuit Court of Appeals held that a court may impose a default judgment as a sanction when a party has engaged in egregious conduct, such as disobeying court orders, delaying the court docket, failing to produce discovery so the opposing party is unable to adequately prepare for trial, and delaying trial. ([www.ca9.uscourts.gov/datastore/opinions/2011/07/19/10-55172.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2011/07/19/10-55172.pdf))

**ATTORNEY FEES:** In *Ingram v. Oroudjian* (Jul. 27, 2011), the Ninth Circuit Court of Appeals held that a district court may consider settlement negotiations in measuring the litigants' success for the purpose of deciding a reasonable attorney fee award. ([www.ca9.uscourts.gov/datastore/opinions/2011/07/27/09-57022.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2011/07/27/09-57022.pdf))

**CONSUMER LAW:** In *Lyon v. Chase Bank USA* (Aug. 30, 2011), the Ninth Circuit Court of Appeals held that the ultimate validity of a disputed charge does not relieve a creditor of the obligations and restrictions imposed under the federal Fair Credit Billing Act (FCBA). The creditor's failure to provide the required clarification of the charge therefore prohibited the creditor from attempting to collect it or report it as delinquent. This conduct violated the FCBA whether or not the debt was owed. Accordingly, the appellants stated a claim for violation of the Oregon Unlawful Debt Collection Practices Act. ([www.ca9.uscourts.gov/datastore/opinions/2011/08/30/10-35230.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2011/08/30/10-35230.pdf))

**REAL PROPERTY/FORECLOSURE:** In *Cervantes v. Countrywide Home Loans, Inc.* (Sept. 7, 2011), the Ninth Circuit Court of Appeals held that plaintiffs' claims that focused on the operation of the Mortgage Electronic Registration Systems (MERS) system failed because plaintiffs did not show that the "alleged illegalities associated with the MERS system" injured them or violated state law. The court also held that plaintiffs' fraud claim failed because they didn't show detrimental reliance on any misrepresentations about MERS's role in their loans. The court said that even if it were to accept plaintiffs' contention that "MERS is a sham beneficiary and the note is split from the deed in the MERS system, it does not follow that any attempt to foreclose after the plaintiffs defaulted on their loans is necessarily 'wrongful.'" ([www.ca9.uscourts.gov/datastore/opinions/2011/09/07/09-17364.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2011/09/07/09-17364.pdf))

**TORTS/STATUTE OF LIMITATIONS:** In *Adams v. United States* (Sept. 8, 2011), the Ninth Circuit Court of Appeals held that a federal agency can use either USPS Form 3877 or Form 3800 to meet the certified (or registered) mailing requirement in denying a Federal Tort Claims Act claim, thus triggering the six-month statute of limitations for a claimant to file a lawsuit in federal court or have the claim forever barred. ([www.ca9.uscourts.gov/datastore/opinions/2011/09/08/10-35458.pdf](http://www.ca9.uscourts.gov/datastore/opinions/2011/09/08/10-35458.pdf))

**INSURANCE LAW:** In *Farmers Ins. Co. v. Mowry* (Sept. 9, 2011), the Oregon Supreme Court applied the principle of stare decisis and held that *Collins v. Farmers Ins. Co.*, 312 Or 337, 822 P2d 1146 (1991) was still good law. *Collins* held that an exclusion in a motor vehicle liability insurance policy that purported to eliminate all coverage for a claim by one insured against another insured under the same policy was unenforceable to the extent that it failed to provide the minimum coverage required by the Financial Responsibility Law (FRL), ORS 806.060 and ORS 806.070; however, the exclusion was enforceable as to any coverage beyond that statutory minimum. ([www.publications.ojd.state.or.us/S058706.pdf](http://www.publications.ojd.state.or.us/S058706.pdf))

**TORTS:** In *Lasley v. Combined Transp., Inc.* (Sept. 22, 2011), the Oregon Court of Appeals held that in a comparative negligence case, a defendant who seeks to rely on a specification of negligence not alleged by the plaintiff to establish a codefendant's greater proportional share of fault must affirmatively plead that specification of negligence and do so in its answer as an affirmative defense and not in a cross-claim for contribution. ([www.publications.ojd.state.or.us/S058762.pdf](http://www.publications.ojd.state.or.us/S058762.pdf))