

Martha L. Walters  
Chief Justice



## OREGON SUPREME COURT

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Dear Committee/Workgroup Leaders,

Thank you for your willingness to provide the Oregon Judicial Department (OJD) with your recommendations for operations in the time of COVID-19. Your past work has been immensely helpful, and you can again be helpful as we move forward.

When we issued the first COVID-related Chief Justice Order (CJO) on March 16, 2020, we had no idea how long COVID-19 would plague us. We restricted the number of judges and staff working in our courthouses, as well as the number of lawyers and participants entering our courthouses, to do our part to halt the pandemic. As a result, we also needed to limit court services, proceedings, and trials. When we issued CJO 20-016 on May 15, we eased restrictions and permitted increased operations, but we face a backlog of unmet needs.

One way that we have tried to close the gap has been to make greater use of technology, so that we can provide services and conduct proceedings and trials by remote means. We have made huge leaps in our technology tools, resources, and abilities; crisis truly has equaled opportunity. Providing court services, proceedings, and trials by remote means has kept judges, staff, lawyers and participants safe. But, in addition, the use of technology has provided efficiencies and cost-savings for courts and litigants, and, in some instances, has increased access to justice.

We still do not know how long COVID-19 will threaten us, but we do know that we will have to continue to take precautions to protect the health of those who use and work in our courthouses in the immediate future. And that means that we also will have to continue to rely on remote technology. Given what we have learned about the benefits of that technology, we may want to continue to conduct various operations by remote means even when physical distancing requirements are eased at some time in the future.

We want to take this opportunity to consider how best to conduct the work of our courts, and you can help. We cannot simply advise courts to use remote means whenever reasonable and feasible. We need to analyze what type of technology works for what types of proceedings and eliminate obstacles to its use. We need to consider not only what we know and what is easiest for our courts and lawyers, but also what is best for our justice system and those who use it.

You can help us determine how best to meet our responsibilities in your subject matter area by making recommendations about the following:

1. What services, proceedings or trials can or should be provided or conducted by remote means? What are the benefits and detriments?
2. What remote means (telephone/video/other) can and should be used for each type of service, proceeding, or trial? What are the benefits and detriments? Are there obstacles to the use of particular technology? How can they be addressed?
3. If you are recommending in-person appearances in a particular proceeding, why are you making that recommendation? Are there obstacles to the use of remote technology? How can they be addressed?
4. What training is necessary to make full use of remote technology?
5. What is necessary to ensure that unrepresented litigants can use the recommended technology?
6. What is necessary to ensure fairness in the use of the recommended technology? Can some participants be remote while others are in the courtroom? What are the benefits and detriments?
7. As to each type of proceeding, is it necessary that it be conducted by the same means statewide (e.g., fully remote, partially remote, telephone vs. video, or in-person)? If so, why? If not, why not?
8. How should a court adopt a procedure for utilizing remote means for designated types of proceedings? By Presiding Judge Order (PJO) or by another type of determination? Are case-by-case determinations appropriate?
9. How can a court most effectively notify litigants about the manner of hearing in certain types of proceedings or in certain particular proceedings (e.g., PJO, general website notice, notices to parties, etc.)? Are there instances in which a motion should be required or permitted to seek or object to the manner of hearing?
10. Can or should trials, particularly jury trials, be postponed? If conducted, are there ways in which the trial can take place remotely in whole or in part? If postponed, are there ways to keep the case moving and to encourage resolution without the impetus of a pending trial date?

In making your recommendations, please consider and be aware of the following:

1. Please consider CJO 20-016 and the memorandum we are providing with this letter about statutes that relate to the use of remote means.

2. Please consider the PJOs that courts throughout the state have adopted with respect to the use of remote means in your subject matter area.
3. We are providing with this letter several “virtual proceedings user guides” that OJD has developed for lawyers, litigants, witnesses, and public access. (See also <https://www.courts.oregon.gov/services/online/Pages/live-stream.aspx>.) Please make recommendations in accord.
4. Please be as specific as possible as to both the types of services, proceedings, and trials, and also as to the types of remote technology (e.g., phone vs. video, not which specific video conferencing tool do you prefer).
5. Please respond for all services, proceedings, and trials within your subject area, even if courts are not currently providing or conducting them. Specifically consider facilitation and mediation.
6. When deciding whether to recommend providing particular remote services, such as facilitation, or remote proceedings or trials, please consider the need to view, use or admit documents and exhibits. Our remote technology guide for lawyers provides information about how to view and admit documents and exhibits in remote hearings.
7. Please investigate and consult widely. These issues are being considered nationally, and there may be resources that will be of help to you.

PLEASE COMPLETE YOUR WORK NO LATER THAN SEPTEMBER 1, 2020.

THANK YOU!

Sincerely,

Martha L. Walters  
Chief Justice