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Chief Justice



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OREGON SUPREME COURT

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(SENT BY EMAIL)

Members of the Oregon State Bar

Dear Bar Members:

We are nearing the end of what seems like the longest year ever, and I want to update you on our efforts to keep court users safe while providing or planning to provide a full range of justice services. I also want to thank you for your participation in that endeavor and ask for your continued collaboration. As you are well aware, the COVID pandemic has not subsided, but instead has surged, and we anticipate that we will need to continue to restrict in-person proceedings as set out in Chief Justice Order 20-047 for a number of weeks and, even when those restrictions are lifted, to emphasize remote proceedings and require social distancing for many additional months. Let me summarize where we have been and where things stand:

Protective Face Coverings

Chief Justice Order 20-045, issued on October 28, 2020, follows guidance from the Oregon Health Authority. It requires that everyone in our courthouses, including judges and staff, wear protective face coverings (fabric masks, not face shields) at all times with narrow exceptions. In the courtroom, that generally means that everyone must wear a mask unless a particular person is having difficulty understanding a particular communication. The consistent wearing of masks is our primary protective measure against the virus and is supplemented by social distancing, ongoing attention to cleaning, and asking people who are feeling sick to stay at home.

Pivot to Remote Proceedings

When the pandemic began, we had to quickly restrict the number of judges and staff in our courthouses, and therefore also had to restrict our proceedings to those that were “essential.” We knew that such restrictions were not sustainable—the need for court services is too great—so we focused on determining how to provide more services while still keeping the number of litigants in our courthouses to a minimum. I consulted with many advisory committees and workgroups that include OSB members, and, with their help, we have made progress in pivoting to remote proceedings, repurposing our courtrooms, and experimenting with the use of outside facilities.

In May, I issued CJO 20-016, permitting courts to conduct the full range of court services (with the exception of the landlord/tenant cases prohibited by moratorium) including jury trials in criminal and civil cases – if they could be conducted in-person safely or by remote means.

However, on November 18, 2020, Governor Brown issued new restrictions on gatherings and other activities, reflecting the increase in COVID cases, and, as a result, I issued a new order, CJO 20-047, that again restricts in-person proceedings. **That order still permits courts to provide the full range of services** (again with the landlord/tenant exception), **as long as they can do so by remote means**. That order also permits limited in-person proceedings, with necessary safety precautions.

We are now better able to provide remote services than we were when the pandemic arose. Using WebEx, we have gone from holding about 600 video proceedings per month in April to almost 5,000 video proceedings in November; many more proceedings are being held by phone. The effort it took to make that pivot was immense, and I am very proud of the resiliency of our courts.

Review and Implementation of Suggestions

By August we had made great strides in our ability to conduct remote proceedings, but we knew we still had work to do. We asked our advisory committees and workgroups to answer a series of questions about what else we could do to enable us to provide the full range of court services during COVID and to eliminate remaining obstacles to the use of remote proceedings. We received more than 400 suggestions and have compiled them for analysis. We also have surveyed our courts to determine how closely their current practices match with suggested practices.

A small group made up of presiding judges (PJs), trial court administrators (TCAs), and lead staff is working through this data during regular meetings. The recommendations of that small group then go to regular meetings of the full group of PJs, TCAs, and other lead staff, and then to me. I know this is slow going, but operating our courts statewide is incredibly complex. The advice and commitment of those who do that daily work is critical.

As a result of collaboration between the bar and bench, we have taken and plan to take many actions, including the following:

- Each court's webpage now has user guides to help attorneys, litigants, witnesses, and the public participate in remote proceedings.
- We are continuing to develop trainings for participants about (1) the technology necessary to participate in remote proceedings; (2) how to assess whether their devices will enable them to participate in a remote proceeding; and (3) how to test their devices to ensure that they will work in a remote proceeding.
- We are surveying every sitting judge to identify any remaining individual technology barriers to holding remote proceedings.
- We are developing trainings on how to provide and present exhibits in a remote environment.
- We are organizing peer webinars for judges to demonstrate how to conduct remote proceedings in various case types.

- We are piloting a WebEx kiosk that could be located in the courthouse – but not in the courtroom – to allow litigants to participate in proceeding by a remote means, even if they don't have suitable technology at home.
- We are providing retired judges with the technology necessary to hold remote hearings so that they too can assist with resolving cases.

Trials

Since April, our courts have been able to safely conduct 264 in-person jury trials: 260 criminal jury trials and four civil jury trials. At the outset, trials occurred only when defendants in criminal cases were held in custody and had statutory or constitutional rights to speedy trial. Over time, we have been able to safely conduct jury trials in other circumstances as well.

We know that lawyers and litigants are concerned both that jury trials might expose them to the virus, and also that without jury trials their cases will not be timely resolved. We have kept those competing concerns in mind as we have struggled with the logistical challenges presented by new technology, space limitations, and staffing needs.

To address safety concerns, social distancing is critical. We have had to use multiple courtrooms for each trial. We also have worked with counties, who provide our court facilities, to redesign courtrooms or to find other facilities that would meet our needs for security, separation, access, *voir dire*, and jury deliberation. Now that the Multnomah County Circuit Court has moved to its new courthouse (Hooray!), that court has sufficient space to allow it to hold a limited number of jury trials, but many courthouses in other counties lack adequate space. Some counties have provided space at fairgrounds and other alternative, larger venues, and have used their CARES Act funding to help, but not all counties have the same resources. As we plan to resume jury trials, we will continue to have conversations with counties and other entities that may be able to provide the appropriate spaces that we need to hold them.

To set and hold jury trials, we must be confident that we also can set and hold other essential proceedings. Our pivot to remote proceedings and our effort to eliminate remaining obstacles to efficiently conducting those proceedings is helping, but we continue to face challenges, including the fact that conducting remote proceedings and jury trials during COVID is particularly staff-intensive. Our trial courts are short-staffed due to COVID vulnerability for those who are high-risk, COVID exposures and quarantines, and the need to care for children at home or elderly parents. We are not yet where we want to be in setting and holding jury trials, but we are determined to get there. As the Governor eases current restrictions on gatherings, we will step up our efforts to schedule and hold in-person jury trials, including civil jury trials, keenly aware that safety must continue to be at the fore.

There are, of course, other steps that our courts are taking to keep cases moving toward resolution. We are, for instance, increasing our use of case management and settlement conferences, developing plans to pilot civil jury trials by remote means, and continuing to offer the option of bench trials.

CONTINUED COLLABORATION – PLEASE AND THANK YOU

I thank you, sincerely, for your willingness to work together in these trying times. I recognize the challenges that you face representing your clients and want to continue to hear from you about how we can continue to safely provide access to justice throughout Oregon. I am working with State Bar leadership to schedule a virtual CLE, where I can take your questions and answer them in a 'live' environment. We will let you know when we have selected a date and time.

Please work with each presiding judge and trial court administrator in the circuit courts in which you practice. Every court has different circumstances – whether they are rooted in technology, judge and staffing resources, facilities, geography, COVID-19 transmission rates, or practitioner preferences – that can make change difficult and create impediments to statewide consistency. Know that we all share the same goal of providing safe, timely access to justice, in all types of cases.

If you have questions on how Chief Justice Orders are being applied or have suggestions for improvement that transcend local practices, please continue sending them to OJD.CJOFeedback@ojd.state.or.us. My staff and I review every comment and question sent to that address and use them in our improvement efforts.

Again, I deeply appreciate the flexibility, cooperation, and resilience that you have shown during the COVID pandemic. I am heartened, as I imagine you are, by the development of an effective vaccine, and I hope that, in the coming year, we will be able to gather and to share stories and lessons learned.

With my very best to you and yours,



Martha L. Walters
Chief Justice

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