

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of)
Procedural Changes in the)
Court of Appeals)
Due to COVID-19)
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CHIEF JUDGE ORDER
No. 20-03 (Amended)

PROCEDURAL CHANGES IN THE
COURT OF APPEALS DUE TO
COVID-19

On March 30, 2020, I issued original Chief Judge Order 20-03. Due to the emergency conditions that have resulted from the spread of the COVID-19 virus, I ordered several procedural changes at the Court of Appeals. Since the issuance of that order, the court continued to explore the use of remote means to conduct oral arguments.

Having arrived at a decision regarding the use of video conferencing technology to conduct oral arguments by remote means and due to the continued emergency conditions that have resulted from the spread of the COVID-19 virus, I am ordering several additional procedural changes at the Court of Appeals. Because circumstances continue to rapidly evolve, I may issue additional orders with further changes, as required.

Consistently with Chief Justice Order 20-006 (Amended), ORS 2.550(3) (providing that the Chief Judge, "to facilitate exercise of administrative authority and supervision over the court and consistent with applicable provisions of law, may make rules, issue orders and take other action appropriate to that exercise"), and ORAP 1.20(5) (providing that, "[f]or good cause, the court on its own motion * * * may waive any rule"), I HEREBY ORDER the following changes to Court of Appeals procedure.

1. Motions
 - a. Except in the case of a filing governed by ORAP 7.35, motions requesting up to a 60-day extension of time due to circumstances related to COVID-19 will be liberally granted.
 - b. Motions requesting an extension of time due to circumstances related to COVID-19 must contain a statement addressing whether opposing counsel objects to, concurs in, or has no position regarding the motion. If the moving party has not been able to ascertain opposing counsel's position on the motion, then the motion must so state.
 - c. Parties should prominently include "COVID-19" in the caption of their motions when circumstances related to COVID-19 have occasioned the motion.

2. Conducting Oral Arguments by Remote Means
 - a. Beginning in May 2020 and until further order (and at least through August 2020), the Court of Appeals will conduct oral arguments by video conference.
 - b. The Appellate Court Records Section of Appellate Court Services Division of the Office of the State Court Administrator will contact parties and provide the information necessary for participation in a video argument.
 - c. If a video argument cannot occur due to technical difficulties, the court will reset the argument for a date no earlier than July 1, 2020, subject to the provisions of this paragraph.
 - d. When appearing in court for an oral argument conducted by video conference, all attorneys and court officials must wear appropriate attire.
 - e. Except as otherwise provided in ORAP 8.35 (media coverage of appellate court proceedings), electronic recording of a Court of Appeals oral argument being conducted by video conference is not permitted without express prior approval of the court. "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.
 - f. A copy of this order shall be posted on the Oregon Judicial Department website and notice of this order shall be provided in the Notification of Oral Argument sent to the parties by the Appellate Court Records Section.
3. Criteria and Procedures for Webcasting Oral Arguments Conducted by Video Conference
 - a. The court shall webcast oral arguments conducted by video conference subject to the following provisions.
 - (1) Barring any technical difficulties, the court will stream live broadcasts of oral arguments conducted by video conference and will provide internet access to archived versions of those arguments via a link on the Oregon Judicial Department website. The live streaming of the argument will begin approximately five minutes before the scheduled argument time. A limited number of simultaneous sessions (*i.e.*, approximately 50) may be connected to the following link, which is also available on the Oregon Judicial Department website:

<http://oregoncourts.mediasite.com>

- (2) Consistently with Chief Justice Order 11-008, which governs webcasting in the Supreme Court, oral argument before the Court of Appeals will not be webcast in the following types of cases:
- (A) Adoption;
 - (B) Juvenile;
 - (C) Civil Commitment;
 - (D) Family Abuse Prevention Act (FAPA);
 - (E) Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA);
 - (F) Stalking Protective Order, including Violation of Stalking Protective Order; and
 - (G) Cases in which the trial court has entered a protective order within the meaning of the Violence Against Women Act (VAWA), if the issues in the case relate to the protective order or the person protected by the order.
- (3) Consistently with Chief Justice Order 11-008, which governs webcasting in the Supreme Court, in addition to the types of cases set out above, the court may determine on its own motion, or the motion of a party or other interested person, that a particular oral argument should be exempt from webcasting. The following procedures apply to a motion for exemption from webcasting:
- (A) A party or other interested person may move the court for an order that an oral argument should be exempt from webcasting. The motion must be filed at least 14 days before the scheduled date of the oral argument and served on all parties. The motion must state the scheduled date and time of the oral argument, explain the circumstances that support the request for exemption, and must contain a statement addressing whether opposing counsel objects to, concurs in, or has no position regarding the motion. If the moving party has not been able to ascertain opposing counsel's position on the motion, then the motion must so state.
 - (B) Any party or other interested person may file a response to

the motion. The response must be filed at least seven days before the scheduled date of the oral argument and served on the movant and all parties.

- (C) The court may, for good cause shown, shorten the time for filing a motion or response.
 - b. A live audio and video feed of oral arguments that are being conducted remotely by video conference will be available in the Justice Building courtroom at 1162 Court Street NE, Salem, OR 97301, the principal location for the sitting of the Court of Appeals designated in Chief Justice Order 19-053. Due to the need for social distancing occasioned by COVID-19, seating at the Justice Building location to view a live audio and video feed of oral arguments that are being conducted remotely by video conference will be limited to the number of persons that is posted at the Marshal's Station at the entrance to the Justice Building.
4. Scheduling Oral Arguments Previously Postponed from March 20, 2020 to May 31, 2020
- a. Parties with arguments scheduled from March 20, 2020 through May 31, 2020, were contacted by the Appellate Court Records Section and offered two options: (i) postpone argument in the case, with the court resetting it to a later date no earlier than July 1, 2020; or (ii) opt to have the case submitted on briefs on the originally scheduled argument date.
 - b. The court will schedule oral argument in those cases in which the parties requested that their arguments be postponed, with the court resetting it to a later date no earlier than July 1, 2020, as follows:
 - (1) The court has scheduled, in consultation with the Department of Justice and the Office of Public Defense Services, several arguments that will be held on May 4 to 6, 2020, using the court's new video argument functionality. Those arguments will permit the court to identify issues that may arise when using this new functionality and refine its process in ways that will benefit the court, litigants, and public.
 - (2) Parties who previously requested that the court reset an argument that had been originally scheduled from May 26 to 29, 2020, will be contacted by the Appellate Court Records Section and offered two options:
 - (A) Continue to postpone argument in the case, with the court resetting it to a later date no earlier than July 1, 2020, subject to paragraph 2 of this order; or

- (B) Opt for a video argument on the originally scheduled date; however, if all parties do not agree to a video argument on the originally scheduled date, the court will reset oral argument for a date no earlier than July 1, 2020, subject to paragraph 2 of this order.
 - c. The court will reset arguments in all other cases to a date no earlier than July 1, 2020, subject to paragraph 2 of this order.
 - d. On its own motion, or on motion of the parties and a demonstration of extraordinary circumstances, the Chief Judge may order that an oral argument proceed if the Chief Judge determines that the oral argument must occur before July 1, 2020; that the proceeding can be conducted by remote means or that sufficient social distancing can be maintained if not conducted by remote means; and that the Chief Judge can order other reasonable precautions to protect the health of the participants, including court staff. Due to the current emergency conditions resulting from COVID-19, the bar for demonstrating extraordinary circumstance is a high one.
6. Oral Arguments Scheduled for June 2020
- a. Except as provided in subparagraph (b), oral arguments previously scheduled for June 2020 will be conducted by video conference on the originally scheduled dates at the originally scheduled times.
 - b. Some arguments on a set date in June will need to be moved from the morning to the afternoon session or from the afternoon to the morning session. Parties in those cases will be contacted by the Appellate Court Records Section by May 1, 2020, about moving the argument to a different session on the originally scheduled date. If all parties do not agree to the change in session, the court will reset oral argument for a date no earlier than July 1, 2020, subject to paragraph 2 of this order.

This order amends and supersedes original Chief Judge Order 20-03, issued on March 30, 2020. This amended order takes effect immediately and will continue until further order.

Dated this 27th day of April 2020.



James C. Egan
Chief Judge, Court of Appeals