



## OREGON SUPREME COURT

March 12, 2021  
**(SENT BY EMAIL)**

Members of the Oregon State Bar

Dear Bar Members:

We're a year into the pandemic, and it's high time for a report from the Chief Justice. Happily, there is good news to share:

1. Our courts are now scheduling and conducting every type of court proceeding. Some courts may not be prioritizing some types of proceedings, such as small claims or traffic violation cases, but we are making a concerted effort to provide the full range of court services.
2. We have learned how to conduct many of our proceedings by remote means and have taken many steps to reduce obstacles to the use of those means.
3. We have devised ways to conduct in-person jury trials using additional courtrooms or other spaces in our communities. We also are experimenting with conducting jury trials by remote means – in whole or in part.
4. Although we are seeing some increases in the number of pending cases, we have plans to resolve those cases without substantial increases in the time to disposition.
5. We have asked for your help and understanding. You have responded, and we are the better for it.

Here are more specifics:

1. **New CJO 21-009.** Conditions are different than they were a year ago, and, for two reasons, several Chief Justice Orders (CJO) that I adopted last year are out of date. First, as noted, we are no longer restricting the types of proceedings we conduct or the services we provide. Second, we are now conducting many proceedings by remote means. We may be approaching a time when a majority of Oregonians are vaccinated and social distancing is no longer required, but we are not there yet. To more accurately reflect current circumstances, I have just adopted a new CJO governing proceedings during the pandemic. It replaces CJO 20-016 (restrictions on court operations) and CJO 20-047 (Amended) (additional restrictions during "freeze"). New [CJO 21-009](#) is intended to keep safety requirements in place and to set out, as clearly and transparently as possible, how we intend to conduct proceedings until we can lift social distancing requirements. CJO 21-009 assumes that trial court proceedings will be regularly

scheduled and conducted and, with exceptions, that proceedings other than jury trials will be conducted by remote means. However, because circumstances are different in different counties, new CJO 21-009 authorizes Presiding Judges (PJs) to adopt local Presiding Judge Orders (PJOs) that provide that certain types of proceedings will be conducted in person in their jurisdictions. New CJO 21-009 also authorizes PJs to permit a particular proceeding to be conducted in person for reasons particular to that proceeding. **Jury trials are addressed below, and you will want to read CJO 21-009 for specifics.** If you have questions or concerns about a PJO or the means used to conduct a particular proceeding, please contact your PJ directly. If you still have questions or concerns, you may also send me your thoughts at [CJOFeedback@ojd.state.or.us](mailto:CJOFeedback@ojd.state.or.us).

2. **How to Proceed Post-Pandemic.** Our courts now have substantial experience with remote proceedings and have learned how to make more extensive use of them than we would have imagined possible a year ago. That does not mean, however, that remote proceedings are always ideal. Going forward, we will need to think hard about whether there are proceedings that we want to continue to conduct remotely, even after social distancing is no longer required. Remote proceedings can have benefits in addition to keeping people safe: they can save time and money; they can give a voice to those who might be reticent to speak in person; and they can permit participation by those who live or work too far away to participate in person. Remote proceedings also can have detriments: they can take longer and be less efficient; the use of technology may be frustrating in circumstances that are already stressful; the use of interpreters may be more difficult; communication between clients and attorneys may be more difficult; the necessary technology may not be available; the eye-to-eye, face-to-face contact that often is key to real understanding can be lacking; and remote proceedings may not convey the gravity of the situation in which the parties find themselves. There also are instances in which in-person proceedings may be constitutionally required. When we consider how to conduct proceedings in a post-pandemic world, we will want to consider all those factors, as well as local circumstances and the views of judges, self-represented litigants, and attorneys. The courts have benefitted greatly from your suggestions, and we will continue to consult you.
3. **Restoring Jury Trials.** Because of social distancing requirements and the space that they require, jury trials have been the greatest challenge for us. I am very proud of the efforts our PJs have made to hold jury trials, while also keeping jurors and participants safe. Since March of last year, we have managed to conduct 356 in-person jury trials, and, to our knowledge, no participant in any of those trials contracted the virus as a result of their participation. In November 2020, the Governor imposed significant restrictions on gatherings in jurisdictions in the “Extreme Risk” level category, and the new CJO continues to restrict jury trials in those jurisdictions. However, for jurisdictions that are no longer in that category, the new CJO permits courts to regularly schedule jury trials in both criminal and civil cases, and I am encouraging them to do so. Some courts have insufficient space to conduct as many in-person jury trials as they would like, but, under the new CJO, they also may order that those trials be conducted by remote means, in whole or in part. So, for instance, courts may order the use of remote means

to conduct *voir dire*, thereby eliminating the need for courthouse appearance by those who have not yet been selected as jurors. And, in civil cases, PJs may order that a jury trial be conducted remotely in its entirety. I know that scheduling and conducting jury trials has been a high priority for the Bar, and I hope that you will continue to work with each other and with your PJs, so that we keep cases moving and resolve them expeditiously.

4. **The Need to Address Increases in our Pending Cases.** During the pandemic, court filings have been down. But, because our trial courts have had to postpone proceedings, because remote proceedings often take more time than do in-person proceedings, and because we anticipate filings to increase this year, we are facing and anticipate that we will continue to face, larger numbers of pending cases. Again, different courts will face different challenges, based on local circumstances. Our plans to address pending caseloads will therefore vary across courts, but will include the following elements: (1) We will no longer hold proceedings in abeyance due to COVID-19; (2) We will schedule and conduct trials, including jury trials; (3) We will resolve discovery issues and conduct case management conferences; (4) We will provide and encourage settlement conferences and other means for alternative dispute resolution; and (5) We will employ the services of retired, senior judges.
5. **Your Participation has been Critical!** Over the past year, the Oregon State Bar, other statewide legal organizations, local bar associations, and individual lawyers have been incredibly responsive to my requests for information, resources, understanding, and assistance. We asked for masks; you made them. We asked for suggestions; you provided them. You joined workgroups, and, working on very short timelines, those workgroups answered questions about what is working, what is not, how we could improve access to justice, and how we could think outside the box. Attached as Appendix A to this message is a list of some of the steps we have taken in response to workgroup suggestions about how to reduce obstacles to effectively conducting proceedings by remote means. **Thank you!**

## **Our Legislative Efforts**

One way to learn about the Oregon Judicial Department's (OJD's) legislative efforts is to look at our presentation to the House Judiciary Committee on January 21, 2021. We discussed our efforts to keep courts open and people safe during the pandemic, how we are managing our new filings and pending cases, our bills, and our budget. Those materials are available here: <https://olis.oregonlegislature.gov/liz/2021R1/Committees/HJUD/2021-01-21-13-00/MeetingMaterials>.

On the budget front, the most important thing we must convey to the legislature is that our ability to provide court services, keep cases moving, and make the changes necessary to create a court system that aligns with our mission depends, in large measure, on our having the human resources that power us. Last year, we anticipated that our state could face budget shortfalls, and, because we had restricted our services to keep people safe, we were able to help by voluntarily making some cuts in our budget. In the coming biennium, we can and must provide

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full court services, and we cannot take budget cuts. If we are to fulfill our statutory and constitutional responsibilities and meet your needs and your clients' needs, we must be funded at our current service level (CSL). In addition, we must have funding for our policy option packages (POPs). These POPs permit us to operate our Oregon eCourt system, to meet our technology needs, to gather the data we need to assess the extent to which there are groups that are disproportionately affected by our system, to ensure that those with behavioral and mental health challenges receive the local treatment they need to aid and assist in their criminal cases, and to make other short-term investments for long-term gain.

Our substantive bills are also now before the legislature, and we will take our plea for full and fair funding to the Ways and Means Committee next month. As we have in the past, we may need your help. You are valued partners in all our efforts.

### **Our Strategic Campaign**

Although the pandemic has forced us to concentrate on how to keep our courts open and safe, we have not lost sight of the goals of our Strategic Campaign—a campaign that you assisted in creating and that I hope inspires you, as it does me, to improve our system of justice. This message to you is already long, but I will soon supplement it with good news about the status of our Strategic Campaign. When I speak with you on Monday, March 15, and when I report next in writing, I will share a few of the initiatives that we have been able to advance during the past year to create a more just court system. You are important partners in those efforts.

### **In Closing**

We strive to keep you informed and to be responsive to your needs. Please continue to give us your thoughts at [CJOFeedback@ojd.state.or.us](mailto:CJOFeedback@ojd.state.or.us), and we always appreciate your grace. Thank you.

Sincerely,



Martha L. Walters  
Chief Justice

MLW:jm/21eMLW011jm

## APPENDIX A

### OREGON JUDICIAL DEPARTMENT STEPS TAKEN TO REDUCE OBSTACLES TO EFFECTIVELY CONDUCT PROCEEDINGS BY REMOTE MEANS

- Identified Cisco's WebEx as the single platform solution for all remote hearings and court proceedings, including settlement conferences.
- Procured and deployed a significant number of laptops, web cameras, iPads, and audio/video equipment to facilitate remote hearings.
- Deployed remote hearing capable equipment to senior judges to assist courts with remote proceedings and settlement conferences.
- Provided for online availability of court hearings, which facilitates the remote observation of court proceedings.
- Enhanced OJD's state and local court websites to include a remote hearings page to promote engagement, offer better navigation, and provide a single online location for instructions, forms, training, and basic troubleshooting.
- Developed educational materials for attorneys and litigants, including written guidelines and instructions for participating in a remote hearing, short video "how to" instructions accessible through our website, with translatable captions; identified a single technical and process contact for each local court (with contact information) on each court's remote hearings page; and developed best practices for parties on interpreter interaction and involvement in remote hearings.
- Provided a WebEx test site that can be used by attorneys and litigants to check connectivity, set up audio/video connections, and familiarize themselves with the technology prior to the remote hearing at their convenience.  
<https://www.webex.com/test-meeting.html>
- Increased access by identifying a means to provide closed captioning for remote hearings through WebEx Events, when accommodations are requested by the parties.
- Configured and are actively implementing text hearing reminders for obligations or court appearances (in progress).
- Conducted topic specific remote hearings training to judges and court staff (ongoing).
- Engaged external state holders, including the Department of Corrections and local jails, regarding the court technology and expectations for participating in remote hearings (ongoing).
- Identified on-premise remote hearings video conferencing station technology to allow more litigants to participate; stations are being piloted regionally.
- Expanded the functionality of File and Serve (circuit court and Tax Court eFiling) and Guide and File (interactive forms), for those who access the court electronically.