

Martha L. Walters
Chief Justice



OREGON SUPREME COURT

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July 31, 2020
(SENT BY EMAIL)

Members of the Oregon State Bar

Dear Bar Members:

Thank you so much for your understanding and flexibility, cooperation and resilience during the ongoing pandemic. It is now obvious that the conditions COVID-19 has brought will be with us for some time, and I write to tell you what that will mean for your courts and their operation.

First, the orders that we have put in place to protect those who must enter our courts, either for work or to participate in its operations, will remain in place. The current Chief Justice Order (CJO) requires that everyone maintain at least six feet of distance at all times and that courts be vigilant in their cleaning of public spaces. All local courts have entered orders requiring that those who enter our courts and appear in our courtrooms wear masks, with a few exceptions for children, those needing ADA accommodations, and witnesses when testifying. Bar members have been incredibly generous in providing our courts with masks that we make available to those who arrive without them.

If you have concerns about your safety or the safety of your clients, please communicate with the Presiding Judge of that judicial district and feel free to send your concerns to CJOFeedback@ojd.state.or.us. As discussed in more detail below, each of our Presiding Judges will be reaching out to their local bar associations or members to talk about the policies that they have put in place and to encourage you to communicate directly with your local courts, expressing both your accolades and your criticisms.

Second, our efforts to conduct court proceedings remotely, so that fewer people are required come into our courts, will continue. I am very proud of how quickly courts around our state were able to institute remote proceedings, either telephonically or by video, and, although technical difficulties may still arise, I hope these proceedings are now more routine and manageable. Both because the conditions that caused us to institute remote proceedings remain and because we have learned that, even if not needed, such proceedings often are advantageous for participants, we plan to work even more diligently to eliminate any remaining barriers to their effective use.

Presiding Judges will be discussing the remote proceedings conducted in their jurisdictions when they reach out to you, and we have formed workgroups based on case type and asked

them to recommend additional steps we can take. We are aware that the use of remote proceedings is not uniform across the state. It may be that that makes sense. Lake County is different from Lane. But we are asking workgroups to take a hard look at whether there are reasons to seek more consistency and how we can improve transparency.

Most importantly, though, we are asking the workgroups to make recommendations about how we can best serve the people of Oregon while protecting their health and safety. I have attached a copy of the specific questions I asked them to answer by September 1. If you have suggestions for any of the workgroups you may send them to CJOFeedback@ojd.state.or.us.

Finally, and relatedly, our courts are gearing up to provide the full range of judicial services, and, if they are not already doing so, they intend to do so in the near future. (As I am sure you are aware, Multnomah court operations have been curtailed because of that court's need to plan for and move to its new courthouse; that court is affected by local events that do not impact other courts.) Providing a full range of judicial services does not mean, however, that court operations will return to pre-pandemic conditions. As noted above, we will continue to provide many services remotely, and we are quite cognizant that remote proceedings often take longer than in-person proceedings. There may be ways that we can improve in that regard, but we hope you will continue to bear with us, have patience, and understand that our courts simply cannot conduct the same volume of work in the same amount of time as they did previously.

There are two other consequences of the postponements that we have had to order during this pandemic of which you should be aware. The first is that, like courts throughout the country, we are now facing huge backlogs. We anticipate that those backlogs will only increase as new cases, such as evictions, foreclosures, and business disputes are filed. Our workgroups will be looking at innovative ways to tackle those backlogs, and we again will appreciate your ideas, but we also, again, will appreciate your patience and understanding.

The second consequence of the postponements that have been required is that there are many cases awaiting jury trial. As you may know, Oregon statutes include strict timelines for courts to conduct criminal trials for defendants who are in custody. To comply with those timelines, our courts have conducted some jury trials in criminal cases, and we have found that obligation to be challenging. Protecting the health of jurors and others who participate in those trials has proved daunting and has required an extraordinary commitment of court space and staff. The right to jury trial is a significant right and we are proud to guarantee it, but, when permitted to do so by statute, some courts may have to continue to postpone jury trials, particularly those in civil cases. That said, it is essential that all cases, both criminal and civil, move to resolution, and we are exploring ways to make sure that that happens. Our workgroups will appreciate your ideas about how to safely conduct jury trials and achieve timely resolution of cases, and our workgroups will be providing us with recommendations about those matters as well.

Thank you for voicing the challenges and concerns that you and your clients face. I hope that you will continue to do so, and, as I mentioned above, you can expect that Presiding Judges will be reaching out to request that you provide them with direct feedback. I firmly believe that problems are best solved where they occur and that we must learn to talk with and listen to

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each other if we are to make necessary change. Crisis presents opportunity and, working together, we can seize this moment to really make our courts a place of justice for all.

Sincerely,

A handwritten signature in black ink that reads "Martha Walters". The signature is written in a cursive style with a large initial 'M'.

Martha L. Walters
Chief Justice

MLW:jm/20eMLW0jm
Attachment

cc: Appellate/Trial Courts Presiding Judges
Trial Court Administrators

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July 20, 2020

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