

Information for Lawyers—Civil Trials
Judge Leslie G. Bottomly
Multnomah County Circuit Court

The goal of this information is for the Court and its staff to be able to serve the parties, counsel, and the public efficiently; and to reduce needless delays, expenses, and inconvenience. These procedures are generally followed; but at times, I may deviate from what is written here.

Contact Information

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Scheduling

Days available for trial: Court and staff rely heavily on your report regarding how many days the trial will take. You should assume we are not available past that time since we frequently have other matters set.

Have your witnesses here and ready: While I understand the difficulty in scheduling witnesses, considering that we have lawyers, litigants, jurors, and court staff available for your next witness to testify, I expect you to take every reasonable step to have your witnesses available.

Daily Schedule: We will generally start each morning at 9:00 a.m. and each afternoon at 1:30 p.m. I frequently schedule short civil motions and criminal matters at 8:30 a.m. each day. Occasionally other matters cause us to start later than 9:00 a.m and 1:30 p.m. each day. We take a mid-morning break and a mid-afternoon break of about 15 minutes each day, and we usually stop each day at approximately 5:00 p.m. You should assume your days in trial will **not** include Fridays, unless you have made special

arrangements with my office to use Fridays. I generally have other matters set for most of the day each Friday.

Settlement

To avoid needless work by staff and the Court, if your case settles at any time after it is assigned to us for trial, you need to notify us immediately. During regular office hours, call my office immediately. After regular hours, both call the office (leave a voice mail) *and* send me an email at the email address you will find for me in the Oregon State Bar's on-line member email directory. I will generally check my office email from home over a weekend or in the evening.

Equipment Set-Up

If you plan to use special equipment in trial, you need to coordinate with the courtroom clerk a time to set it up to avoid unnecessary delay. We may have certain equipment in our courtroom already.

Motions in Limine

Many Motions in Limine simply ask for an order that material not admissible not be "offered up." This is like asking me to order that you follow the law. Lawyers should talk to each other about these issues in advance of trial, and only submit and/or argue motions in limine about issues that are expected to come up as a result of these discussions.

Submissions

Please deliver or email to my office by not later than 12:00 noon the judicial day before trial the following documents:

- Trial Memorandum (if you are submitting one)
- Requested jury instructions
- Verdict forms
- Copy of your current pleading
- Any pre-trial motions that need my attention.

Jury Instructions and Verdict Forms

If you are requesting any special jury instructions in addition to Uniform Instructions, you should submit them electronically in addition to hard-copy form. Electronic submissions should be in MS Word format, **not PDF**. These may be delivered via email to my clerk and J.A. as file attachments.

You should expect I will review all requested jury instructions well before the end of your trial. I usually assemble all requested instructions submitted by all litigants into one draft composite document for review. If we have time, I will give you a copy of this draft and I will expect you to review it before we discuss together which requested instructions will be given.

If you request UCJI 13.01 “Pleadings and Issues” and/or UCJI 13.02 “Summary of Pleadings Not Evidence,” you should also submit a written proposed summary of the pleadings for me to read to the jury immediately before UCJI 13.02. Lawyers need to confer with each other in advance of trial to agree on the summary.

Subpoenaed Medical Records

If you have subpoenaed medical records to be delivered directly to the Court from a hospital, the earliest we can get the records to our courtroom is noon on the day after you call my office and tell us you need the records. We do not know you have subpoenaed records unless you tell us. They will not be here in the courtroom automatically just because you subpoenaed them. It is essential that you phone my office the day before trial so we can get them from the file room as soon as possible.

Trial Fees

Trial fees should be paid in advance. Please pay the cashier on the 2nd floor and show the receipt to my courtroom clerk.

Court Reporters

We operate a digital electronic recording system to create the record. If you wish to hire a private court reporter to appear, I am open to that possibility. ORS 8.340(7) permits me to allow a court reporter at the request of the litigants and with reasonable notice to the Court in advance.

Juror Questions

I permit jurors to ask questions of witnesses during trial. This is the procedure I use.

- I explain the procedure to the jurors after voir dire. I tell jurors that all their questions may not be answered because of the rules of evidence. If their question is not asked, there will be no mention of it. I tell jurors to limit their questions so as to not unduly prolong the trial.

- All questions from the jurors are to be in writing and signed by the juror.
- The juror writes the question on a full sheet from a spiral notebook and passes it to the clerk who passes it to me.
- Questions from jurors must be submitted before the witness is excused, and should be submitted as the witness is testifying, not upon the completion of the witness' testimony.
- I read the question (not aloud) and then the clerk passes it to the lawyers to read. This occurs while the witness is on the witness stand and the examination of the witness is taking place.
- Each of the lawyers note *in writing* on the question either "no objection" or "objection." If an objection is noted, the grounds are also noted.
- The sheet is returned to me. If there are no objections to the question, after completion of re-direct examination, I read the question to the witness. The lawyers are allowed brief follow-up questions to the witness within the scope of the written question.
- If there are objections from any of the lawyers, I will rule on the objection (usually without argument) by either asking the question or by declining to do so.
- As the lawyers will be seeing the question during their examination, the lawyers are not to incorporate the juror's question into their own examination of the witness, unless, in good faith, the lawyer had intended to ask that question as part of his/her examination.

Perpetuated Testimony by Video

If you have taken perpetuation depositions that have been videoed, I expect the lawyers to discuss any objections with each other and attempt to agree on which portions need to be redacted before it is played for the jury. If you are unable to agree, you should submit a transcript with the disputed issues clearly marked for me to rule upon in advance of trial. This needs to be done early enough so the video can be redacted to delete any inadmissible material.

Jury Selection

Summary of the case prior to voir dire: In my opening remarks to the group of potential jurors, I try to give them a brief summary of the case. The lawyers need to agree in advance and submit to me in advance an appropriate summary.

Identifying your witnesses: To assist with the voir dire process, I prefer to have the lawyers tell the potential jurors who the witnesses will be in

advance of voir dire. If you have any objection to this, you must bring it to my attention in advance. I am willing to consider your objections to disclosing your expert witnesses during voir dire. If you do not want to disclose your experts, you need to tell me in advance of voir dire.

Alternate jurors: If your trial is expected to last more than a few days, or if it will span over a weekend, you should discuss with the other lawyers whether or not you think it advisable to empanel one or more alternate jurors. When I have alternate jurors, I generally do not tell the jurors which of them is an alternate. I think it best that all jurors pay attention during the trial, as though they were all going to be deciding the case. For example, in advance of receiving our potential jurors from the first floor main jury room, my clerk will draw 2 random numbers from numbers 1-14, if we are going to have 2 alternates. The jurors who end up in those seats will be our alternate jurors. Alternates will become regular jurors in numerical order if we lose a regular juror.

Courtroom seating chart for potential jurors: When we call for a panel of potential jurors, the clerk will give you a list of their names in the order in which they are randomly assigned to us. The clerk will seat the potential jurors, 12 in the jury box and the rest in the back of the courtroom in the order they are assigned.

Challenges for cause: If you believe you need to make a challenge for cause, you must do so in the courtroom on the record when you believe grounds are established for the challenge. If you “save” the challenge for cause until we are out of the presence of the jury doing peremptory challenges, I will not have an opportunity to follow-up with the juror to help me determine whether the challenge for cause is appropriate. During voir dire, I will intervene with a juror if I think I need to ask questions touching on whether a challenge for cause might be appropriate.

Peremptory Challenges: I generally take peremptory challenges orally in chambers. ORCP 57D(2) gives plaintiff and defendant each 3 peremptory challenges to the 12 regular jurors. If we have 2 alternates, ORCP 57F says plaintiff gets one peremptory challenge for the alternates as does defendant. The 12 regular jurors are subject to the peremptory challenges first, and then the alternates are subject to peremptory challenges. Of course, you will know which seats are occupied with alternates.

If you “pass” before you exhaust your number of peremptory challenges, you are noting you are satisfied with the jurors. If you do this, you retain your opportunity to exercise any remaining peremptory challenges as to any new juror coming “into the box” as a result of challenges exercised by the other lawyer but you may not challenge any juror who was “in the box” when you passed.

Opening Statements

The opening statement is your opportunity to outline for the jurors what you expect the evidence to be. I do not permit argument during opening statements. If you plan to use demonstrative materials during opening statement; e.g., Power Point materials, photos, diagrams, printer materials, you need to show these materials to opposing counsel in advance so any objections can be resolved without delay.

Qualifying your Expert Witness

Whether a witness is qualified as an expert is a preliminary question of fact for the trial judge to decide under OEC 104(1) "Preliminary questions concerning the qualification of a person to be a witness...shall be determined by the court...." Most of the time there is no question about the expert witness's qualifications.

To avoid wasting time, the lawyer calling the witness can, after the witness is sworn and before asking any questions, simply recite to the jury in an organized and concise manner the witness's qualification, followed by asking the witness if the recitation was correct. For instance, it might go as follows: "*Dr. Jones is a medical doctor specializing in orthopedics. She got her bachelor's degree in Pre-Med at Portland State University in 1973 and graduated from medical school at Oregon Health Sciences University in 1977. She completed an orthopedic residency at OHSU in 1982, and since then has been in the private practice of orthopedics in Portland. She is Board Certified in orthopedics, and is a member of (list whatever she belongs to).* You can then ask the doctor, "Is that correct, doctor?" The witness can confirm you got it right, and can add or correct anything necessary.

Yes, this is a classic leading question. But the trial judge has broad discretion about whether to allow leading questions. OEC 611(3), ORS 40.370. "Courts are likely to allow leading questions when the testimony relates only to undisputed preliminary or background matters...." Kirkpatrick, Oregon Evidence, Fifth Edition, at p.538. In my view the uncontroversial qualifications of most expert witnesses are such "undisputed preliminary or background matters...."

Review of Expert Witness's File before Cross-Examination

Too often after direct examination of an expert witness we endure much delay while opposing counsel reviews the expert witness's file before cross examination. To avoid this delay, I expect you to have the expert's file available for review by opposing counsel during the break before the expert's direct examination; e.g., if you expect to call your expert at 11:00 a.m., the expert's

file needs to be available to review by the other lawyer by 10:00 a.m. when we are likely to take a mid-morning break. Likewise, if you expect to call your witness first thing after lunch, the file needs to be available for review by 12:00 noon. This likely means your expert witness must get her/his file to you in advance of arriving at the courthouse to testify. If you have any special need for relief from this requirement, we can discuss it in my office.

Conduct in Courtroom

Lawyers are free to move about the courtroom as they please during trial. Don't ask for permission to approach the witness. UTCR 3.050(3) has allowed this for years. As required by UTCR 3.050(1), lawyers should stand when addressing the Court.

I permit jurors, lawyers, and clients at counsel table to bring coffee, tea, or soft drinks into the courtroom during trial.

Exhibits

Pre-mark your exhibits as noted in UTCR 6.080. If you expect to have more than a few exhibits, you need to prepare an exhibit list for the clerk that identifies each exhibit by number and description. The lawyers need to confer in advance of trial about the exhibits and identify those exhibits that have no objections. These exhibits can then be received into evidence on stipulation before we start trial. This saves time in trial.