

Notes about Courtroom 450

It is strongly urged that lawyers who do not frequently litigate in Multnomah County review carefully the current versions of Local Rules, Uniform Trial Court Rules, and (of course) the Oregon Rules of Civil Procedure and relevant statutes governing criminal procedure. All lawyers are presumed to be familiar with them. Nothing said in these notes is intended to contradict any generally applicable rule of court, or suggest that generally applicable rules need not be followed.

Special concerns with juror contact

Courtroom 450 was originally a district court courtroom, and therefore the jury box, as built, contains only six seats. For twelve person juries, we place additional chairs in a line in front of the built in jury box. In cases in which one or two alternates are seated, they also must be placed in added chairs at the end of the box. This arrangement places the jury at exceedingly close quarters to counsel tables and to the witnesses as they come in and go out of the courtroom.

It is very natural, and easy, under these circumstances to have personal contact with jurors. This must be avoided.

It is for the bailiff and not for legal counsel (or a party) to (for instance) help a juror with a water pitcher or retrieve a dropped piece of paper. Do not speak to individual jurors as they come in or go out, much less move into the personal space of the jurors or invite witnesses to do so. Lawyers will be held accountable for the actions of their clients or witnesses contrary to this instruction.

It is particularly important, given the physical arrangement, to be sure to clear with the court in advance any request that a witness come down from the box to demonstrate something or show the jurors some characteristic. A close approach could be experienced by jurors as intimidating and allow for communication not visible or intelligible to opposing counsel and the court.

Except during voir dire, opening statement or argument, do not leave counsel table to approach the jury and do not approach the witness unless leave is given by the court.

Technology, visual aids

The court has access to devices to assist the hearing impaired and to a white board/paper tablet for jury argument. Other devices that may be available in the courthouse or from private vendors should be arranged for in advance by legal counsel.

Courtroom 450 is small and space is limited. We have some experience with what may work best for the placement of the easel and writing pad that is in the courtroom and to handle other technologies used by counsel to present or project exhibits. Before the beginning of trial please confer with Michael Gibson, in-court clerk, regarding the placement of your visual aids and to

make any special request for equipment that may be available within the courthouse.

Opposing counsel will be permitted to move about in order to see material that is displayed for the jury on the easel. It is virtually impossible to position the easel so that the jurors, the court, and opposition counsel can all see it from their respective normal places.

Please confer in advance of use regarding illustrative exhibits to avoid objections in the presence of the jury.

Written Materials for the Court

In accordance with local rules, provide a bench copy of any memo, motion, affidavit, or other document for the court's consideration, in addition to the original to be filed in the court file.

1. Original: is to be filed with the clerk of the court (do not hand to judge with bench copy)
AND
2. Bench hard copy: is to be provided directly to the judge's staff or judge – do not file with clerk on second floor.

If the bench copy is placed in the mail, do not mail it to the court clerk. Assume that it will require additional time after delivery to the court to be sorted in the mail room for the judge. Therefore, if you mail the bench copy it may not reach the judge by the time that it is needed to allow the judge to prepare for argument. Many firms assure that the court has had the opportunity to consider their positions in advance by arranging for hand delivery of bench copies directly to chambers.

For Judge Roberts' clerk, Michael Gibson, provide at the beginning of trial a written list of witnesses and exhibits, pre-marked. (You need not disclose impeachment witnesses or impeachment exhibits.)

Any material drafted for the court's use, including draft special jury instructions, or draft judgments, findings, and orders supplied to the court which the court may choose to modify should be provided to the court in digital form in addition to the hard copy original for filing with the clerk and the bench copy (as hard copy) for the judge's use.

3. Digital copy (preferably in Word) of specially drafted material for the court's use should be emailed to ling.lee@ojd.state.or.us (referencing the case name).

Jury Instructions

In accordance with local rules, requested jury instructions and verdict form are due with the trial court by noon of the day the case is assigned, if assigned at call.

Although Uniform Instructions can be requested by number, please note that many of these instructions contain blanks and alternatives set off by brackets. (Please be sure to use the up-to-

date numbers and forms of the Uniform Instructions.) Such instructions should never be requested with blanks and alternatives not appropriately filled in or selected by the requesting attorney. In requesting an Uniform Instruction (for instance) for “Summary of Pleadings” the requesting attorney must suggest specific language to summarize the pleadings in that case. The court does not draft the blank section. In requesting an Uniform Instruction with alternative language in the form, the preferred alternative must be selected and indicated. Blanks for amounts of various types of damages should be filled in.

In this court room, jury instructions will be given after argument. Jurors will be provided with the instructions in written form, a copy for each juror, just before the court instructs the jury.

Appropriate decorum

Legal counsel are expected to instruct the friends, relatives, and supporters of a party, as well as the party represented, as to appropriate courthouse behavior, including but not limited to the following:

no contact with jurors, or prospective jurors,

no loud or argumentative speech or behavior in the court room or in the corridors,

no cell-phones or communication devices that are turned on, in the courtroom,

appropriate dress,

no displays of approval or disapproval of witnesses testimony, attorney statements, or judicial statements or rulings during the pendency of any part of the proceedings,

no disruptive entrance or exit to the courtroom,

no unnecessary communications (including waving and signaling or passing notes) from the gallery, to a party, during the proceedings,

no food or beverages at counsel table or in the gallery, other than the water in the court’s water pitchers and cups.

Any person who disrupts or threatens to interfere with the business of the court may be removed and may be subject to discipline for contempt of court.

Jury Selection

Counsel will be provided a printed list of the jury panel. Prospective jurors will be asked to answer a few basic questions about themselves by way of introduction before counsel inquire.

During the court's introductory instruction, counsel will be required to introduce themselves, their clients, and list witnesses who may testify, in order to determine if any juror is familiar with any of these individuals.

The purpose of voir dire is not to seek to persuade prospective jurors of the virtue of a particular position in the trial. The legitimate purpose of voir dire is to inquire into the personality, background and qualifications of prospective jurors.

Do not use voir dire to make opening statements about the case, or philosophical argument supporting a party's position (for instance, a speech about the importance of innocence beyond reasonable doubt; or, conversely, the difference between reasonable and unreasonable doubt).

Do not seek to conduct a class for the prospective jurors through questions of a juror who may have some knowledge about a subject relevant to the trial. An example of misuse of voir dire would be asking a doctor on the jury about the scientific method in order to educate other jurors about this. Do not seek to instruct the jurors about legal principles by inquiring of an exemplar juror who happens to be an attorney or law student about a legal point in order to give emphasis to particular principles.

The use of the Socratic method as an instructional tool has a place in law school but not in voir dire.

While there is manifestly no objection to asking whether a juror can conform to his or her oath, be fair and listen to all the evidence, and follow the court's instructions – it is improper to seek a juror agreement to rule in a certain way on an issue. A frequent example of this (improper) use of voir dire is to ask a juror whether that juror would approve a certain amount of damages.

Do use voir dire to discuss juror background, prejudices (if any), and general personality, or personal associations, and similar factors that might bear on a juror's qualifications and receptiveness to the case.

Do use voir dire to determine if the particular circumstances of the juror would make the juror unable to be fair and objective and focused on the case (for instance, sensitive personal associations, juror time constraints, or the physical strain of reading many exhibits or understanding heavily accented testimony, etc.).

Challenges for cause can be made promptly when the basis for the challenge arises, and must be made in open court. The court and opposing counsel may inquire to determine whether the juror should be excused for cause. Please be familiar with statutory bases to excuse a juror for cause. These do not include a predisposition to be skeptical of certain types of testimony, such as testimony based on chiropractic theories. Preemptory challenges are your resource for these concerns.

After questioning is completed by a lawyer, that lawyer must make any remaining challenge for cause or pass the jury for cause.

After completion of voir dire, jury selection may be conducted by any of the statutory methods. In this court, our preferred method of selection is in chambers, and orally, out of the presence of the jury panel. However, in the case of criminal trials where the defendant is in custody, for security reasons, the court prefers to send the jurors out of the court room and complete jury selection in the court room, orally, out of the presence of the prospective jurors.

After the jury is selected the alternate or alternates, if any, will be selected in the same manner.

Jury selection is on the record in any case.

Witnesses

Witnesses are always ordered excluded. Any exceptions (such as for expert witnesses) will be made by the court, upon request by counsel. Each lawyer is responsible for assuring that all witnesses that lawyer will call are aware of this rule. Furthermore, each lawyer is responsible for assuring that the purpose of witness exclusion is not circumvented by any report to the waiting witnesses of what has transpired in the courtroom. This responsibility requires that the lawyer caution witnesses, litigants, and any other person associated with the client.

Opening and Closing

Please determine whether there will be any objection to evidence to be alluded to in opening so that, if necessary, an advance ruling can be made on admissibility. Do not refer in opening to evidence that will be subject to an objection that the court has not resolved.

Opening statement is an outline of evidence, rather than argument of how the jury should rule. It is not a speech about the history, reason, or proper construction of the applicable law. Counsel may briefly and without argument list the uncontroversial elements of the claim or crime alleged in order to identify the topics of testimony. That said, the court does not encourage objections during opening (or closing) except as to clear and prejudicial violations of the bounds of proper opening statement or closing argument.

Speaking Objections

Please take to heart the prohibition on ‘speaking objections’ in the presence of the jury. These are objections which contain arguments in the course of the trial. Confine objections before the jury to the generic basis for objection – e.g., “Objection, hearsay,” or “Objection, foundation,” etc. If the basis for the objection requires more, ask to approach the bench to explain out of the hearing of the jury. Expect a rebuke from the bench if you seek to argue further in the hearing of the jury.

Scheduling

Please be timely in appearing for court and returning after recess. If you or your client is delayed by emergency, call chambers.

Schedule witnesses to assure that there is no waste of jurors' time or avoidable loss of court time. Because of the difficulty of predicting the exigencies of trial this will require you to have witnesses waiting before you calculate you will call them, and to have the ability to contact and reschedule witnesses in the course of trial. Out-of-town witnesses and expert witnesses should be scheduled earlier in the trial, rather than later, and taken out of order if necessary. If you exhaust your available witnesses the court may require you to call another witness or rest your case, rather than subject the jury to a lengthy recess to await an out-of-pocket witness or one not available until a later day.