

ORAP COMMITTEE 2022
February 17 Meeting

AMENDING RULE(S): Proposal # 8.5 -- ORAP 6.30 -- Mandate In-Person or Remote Viewing of All Oral Arguments

PROPOSER: Tiffany Keast

EXPLANATION:

None provided.

RULE AS AMENDED:

Rule 6.30

SPECIAL RULES FOR ORAL ARGUMENTS:

MODE OF ARGUMENT AND ARGUMENTS CONDUCTED BY REMOTE MEANS

(1) For purposes of this rule,

(a) "In person" refers to an oral argument to be conducted with all parties appearing in person, in either a courtroom or an alternative physical location being used as a courtroom; and

(b) "Remote means" refers to an oral argument conducted by video conference with all parties and justices or judges appearing remotely.

(2) Proceedings in the Supreme Court and the Court of Appeals will be accessible for observation by parties to the appeal personally, as well as to interested members of the bench, bar, and public, whether the argument is conducted in person or by remote means.

(a) When argument is in person, the parties to the appeal personally, as well as interested members of the bench, bar, and public, may observe the argument by attending in-person.

(b) When argument is conducted by remote means and is webcast, the parties to the appeal personally, as well as interested members of the bench, bar, and public, may observe the argument by accessing the webcast.

(c) When argument is conducted by remote means and is not webcast, the parties to the appeal personally, as well as interested members of the bench, bar, and public,

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shall be provided remote access to observe the argument. In confidential cases, the court and the attorneys presenting argument shall not refer to the parties by name.

(32) This subsection applies to proceedings in the Court of Appeals.

(a) Except for cases designated as expedited under ORAP 4.60 and ORAP 10.15, within 21 days after the filing of an answering brief, the parties may file a joint notice that they are amenable to oral argument by remote means. Unless the court directs otherwise, when a joint notice under this rule has been filed and a party files a timely request for oral argument under ORAP 6.05(2), the case will be scheduled for argument by remote means.

(b) Notwithstanding paragraph (a) of this subsection the court may direct that oral argument in a case or set of cases occur by remote means, which includes setting remote oral argument sessions in the ordinary course or directing that oral arguments occur remotely in response to inclement weather or other unforeseen circumstances. If the court directs that an oral argument occur by remote means, a party may request an in-person argument as follows:

(i) A party may move the court for an order that an oral argument should proceed in person. The motion must be filed at least 14 days before the scheduled date of the oral argument. The motion must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

(ii) Any party may file a response to the motion. The response must be filed within seven days after the filing of the motion.

(iii) The court may, for good cause shown, shorten the time for filing a motion or response.

(c) If an argument scheduled to proceed by remote means cannot occur due to technical difficulties, the court will reset the argument for a later date.

(d) A live audio and video feed of oral arguments that are being conducted by remote means will be available in the principal location for the sitting of the Court of Appeals.¹ Seating in the courtroom at the principal location to view a live audio and video feed of oral arguments that are being conducted by remote means will be limited to the number of persons that is posted at the Marshal's Station at the building entrance.

(34) This subsection applies to proceedings in the Supreme Court.

(a) The court will ordinarily schedule oral argument to be conducted in person.

(b) (i) A party may file a motion requesting that an argument scheduled to be conducted in person be conducted by remote means. Such a motion must be filed at least 21 days before the scheduled date of the oral argument and must state the scheduled date and time of the oral argument and explain the circumstances that support the request.

(ii) Any party may file a response to the motion. The response must be filed within seven days after the filing of the motion.

(54) Except as otherwise provided in ORAP 8.35, electronic recording of an appellate oral argument being conducted by remote means 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.

(65) Absent permission from the court or, in the Court of Appeals, the presiding judge of the panel to proceed otherwise, when appearing for an oral argument to be conducted by remote means, all attorneys and court officials must wear appropriate attire, remain on camera, and conduct themselves as if they were appearing in person in the courtroom.

¹ See Chief Justice Order 19-053 (providing that the principal location for the sitting of the Court of Appeals is currently 1162 Court Street NE, Salem, OR 97301) or any subsequent order of the Chief Justice that amends or supersedes that order.