

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

In the Matter of: )  
 )  
**Updated Pandemic Response** ) PRESIDING JUDGE ORDER  
 ) 2021-19  
\_\_\_\_\_ )

I HEREBY FIND AS FOLLOWS:

1. ORS 1.002 provides that the Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.
2. On March 8, 2020, Governor Kate Brown issued an emergency declaration relating to the spread of the COVID-19 virus (“COVID-19 state of emergency”). On June 25, 2021, Governor Brown issued Executive Order 21-15, which extended the COVID-19 state of emergency to December 31, 2021.
3. Since March 16, 2020, many Chief Justice Orders (CJOs) and Presiding Judge Orders (PJOs) relating to the COVID-19 state of emergency have been issued, including:
  - a. CJO 21-025 (June 28, 2021), Establishing Updated Directives Relating to Court Operations (including, in paragraph 2.a., a lifting of social distancing requirements generally) and superseding CJO 21-009 (March 11, 2021) (Order Imposing Updated Restrictions on Court Operations, including social distancing in all parts of any court facility);
  - b. PJO 2021-11 (June 29, 2021), Updated Directives Relating to Court Operations (including, in paragraph 2.a., a lifting of social distancing requirements generally) and superseding conflicting PJOs;
  - c. CJO 21-030 (August 13, 2021), Requiring Use of Protective Face Coverings in the Oregon State Courts and superseding conflicting sections of CJO 21-025; and
  - d. PJO 2021-18, regarding Protective Face Coverings in the Clackamas County Circuit Court and superseding conflicting sections of PJO 2021-11.
4. On July 30, 2021, the Centers for Disease Control and Prevention (CDC) issued Guidance to the effect that local decision-makers should assess certain factors to inform the need for prevention strategies to minimize preventable morbidity and mortality related to COVID-19, including the level of COVID-19 transmission, health system capacity, vaccination coverage, capacity for early detection of increases in COVID-19 cases, and populations at risk for severe outcomes from COVID-19. While emphasizing that vaccines are the most effective tool to prevent transmission of COVID-19, the CDC also has stated that multiple interventions should be used concurrently to reduce transmission and recommends social distancing as one such mitigating measure.

5. Beginning on August 13, 2021, as a result of the rapid and extensive spread of the highly contagious Delta variant of the COVID-19 virus, Governor Brown has announced a series of measures designed to prevent the spread of the virus and to mitigate the risk to and impacts on public health and statewide hospital capacity. Those measures have included statewide requirements to wear protective face coverings both indoors and outdoors, with exceptions, and a vaccination requirement for state executive branch employees. Governor Brown has cited new modeling from the Oregon Health Authority (OHA) and the Oregon Health and Science University is projecting that, without new health and safety interventions in place, COVID-19 hospitalizations would far exceed Oregon's health system capacity within the next several weeks.
6. The Court's goal in issuing this order is to continue to meet its obligations to the public while also continuing to minimize health risks for judges, staff, litigants and case participants, interpreters, and members of the public who come into the courthouse. Judges, staff, litigants and case participants shall aspire to stay out of or leave the building as soon as possible, if their personal appearance is required.

This Order is based on the foregoing and on currently available information concerning the risks and spread of the COVID-19 virus, and new orders may be issued as further information becomes available or as directives from the Governor or the Chief Justice or guidance from health authorities changes.

IT IS HEREBY ORDERED, pursuant to the foregoing authority, and as provided further below, that the social distancing requirements and updated pandemic responses take effect on September 13, 2021. This order remains in effect until further order of the Presiding Judge.

1. Definitions. As used in this order:
  - a. "Court Facility" means the courthouse or any alternative physical location being used by this court.
  - b. "Social Distancing" means the minimum amount of physical distance between each person. As of the date of this order, pursuant to CDC recommendations, the distance is 6 feet between each person.
2. Social Distancing Requirement, Public Areas of a Court Facility
  - a. Social distancing in the courtrooms and through all other court-controlled, public areas of this court facility shall be required, subject to the following exceptions:
    - i. Areas of the courthouse where the public is contained and kept separate from staff by barriers (e.g., docketing and records).
  - b. Notwithstanding the social distancing requirement described above, a judge presiding over a proceeding may grant an exception to members of the same household attending a proceeding or to permit a lawyer and client to confer.

- c. All other safety requirements, including protective face covering requirements, continue for judges, staff and participants everywhere in the courthouse.
3. Court proceedings that were previously ordered to occur in person shall remain in person except the following which shall occur remotely (WebEx or telephone if WebEx is not possible):
  - a. Criminal Matters:
    - i. Non-evidentiary motions,
    - ii. SED hearings,
    - iii. Specialty court as required by the assigned judge.
  - b. Civil matters:
    - i. Protective Order Petitions filed at the Family Justice Center,
    - ii. FED bench trials,
    - iii. Family law matters and trials.
4. All civil trials are suspended until November 1, 2021.
5. Because of social distancing and the inadequate sizes of juror assembly and deliberation rooms, only one jury trial may proceed or begin each day or each one-half day until a change in social distancing space recommendations by the CDC.
  - a. Felony criminal or civil jury trials may take one or more than one day to pick a jury.
  - b. Misdemeanor criminal jury trials may take one half day to pick a jury.
  - c. Judges will consider allowing a jury to remain or deliberate in the assigned courtroom if possible, given the custodial status of the defendant, availability of surrounding courtrooms, technological and constitutional legal requirements.
6. Criminal Case Procedures under 6' social distancing:
  - a. Case Manager Appearances (CMA docket) must still be in person but assigned to larger courtrooms as available.
    - i. Judges, staff and attorneys will call cases to reset or stipulated agreements at the top of each docket, before pleas, sentencings or probation violation hearings longer than 5-10 minutes.
    - ii. Judges shall require longer than 5-10 minute appearances:
      1. Be reset to the 1:30 PM complex plea docket another day
      2. Held at the "end" of the CMA docket that day or
      3. Send to another available judge whose docket has cleared and is available per docketing to handle the matter
    - iii. Attorneys who notify the criminal department the day before the CMA by 11 AM may move a case to the complex plea docket within the week.

- iv. Diversion cases set on the CMA docket shall be considered as requiring longer than 5-10 minutes.
  - v. Case managers will only be reset administratively or in the courtroom. Any requests to reset beyond that will require a Motion, Affidavit/Declaration showing good cause and Proposed Order to the Presiding Judge.
  - vi. Attorneys should avoid “double booking” trials.
- b. Criminal trials and appearances require defendants, witnesses, victims and family members to wait outside the courthouse until summoned by the defense or prosecuting attorney for trial, hearing or CMA appearance if the defendant has an attorney.
- c. Jury trials may be “stacked” up to four in and out-of-custody trials per day per courtroom. If a trial is going to be continued because of social distancing requirements, the case shall be called on a CMA docket and the record shall reflect that the case was reset because of current social distancing requirements.
- i. If the court is unable to provide a jury pool for jury trials the next day because of continuing jury trials, the prosecutor and defense attorneys will be notified by email the afternoon preceding the trial date. Defendants and necessary witnesses, to continue their subpoenas, will be required to attend as indicated in paragraph 6.b above.
- d. Defendants without attorneys must appear personally unless appearing remotely from the jail for arraignment. Judges will direct a defendant appearing unrepresented at arraignment to immediately apply for court appointed counsel. Judges will direct a defendant appearing unrepresented at all other hearings to immediately apply for court appointed counsel and then return to the courtroom that or the next judicial day.
7. This order supersedes paragraph 2.a. of PJO 2021-11 (social distancing, generally) and any provision of any Presiding Judge Order currently in effect that conflicts with this order.
8. This order is effective on September 13, 2021, and will remain in effect until amended, superseded, or vacated by further Presiding Judge Order.

DATED this 10 day of September, 2021.



Kathie F. Steele  
Clackamas County Circuit Court  
Presiding Judge