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| In the Matter of Permitting Remote | ) | CHIEF JUSTICE ORDER        |
| Proceedings and Continuing         | ) | No. 22-012                 |
| Protective Measures                | ) |                            |
|                                    | ) | ORDER PERMITTING REMOTE    |
|                                    | ) | PROCEEDINGS AND CONTINUING |
|                                    | ) | PROTECTIVE MEASURES        |

I HEREBY FIND THAT,

1. ORS 1.002 provides that:
  - (a) The Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law; and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice;
  - (b) The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court; and
  - (c) As described further in paragraph 7 of these findings, the Chief Justice may direct or permit any court or magistrate appearance to be by remote means, notwithstanding any other statute or rule to the contrary.
2. ORS 1.171(2) provides that a Presiding Judge, to facilitate the exercise of administrative authority and supervision over the circuit court, may regulate the disposition of the judicial business of the court and make rules, issue orders, and take other action appropriate to that exercise. ORS 1.171(4) provides that a Presiding Judge may delegate the exercise of any of the administrative powers of the Presiding Judge to another judge of the court or to the Trial Court Administrator.
3. On March 8, 2020, Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency because of the threat that the COVID-19 coronavirus posed to public health and safety (hereafter, "COVID-19 state of emergency"). After several extensions, on March 17, 2022, Governor Brown terminated the COVID-19 state of emergency effective April 1, 2022, through issuance of Executive Order 22-03.
4. Since March 16, 2020, I have issued many Chief Justice Orders (CJOs) relating to the COVID-19 state of emergency and the risks posed to the state court system by COVID-19, including:
  - a. CJO 20-027 (Order Extending Statutory Time Periods and Time Requirements in Certain Tax Appeals) (July 21, 2020);
  - b. CJO 21-025 (Order Establishing Updated Directives Relating to Court Operations) (June 28, 2021);

- c. CJO 21-031 (Order Extending Statutory Time Periods and Time Requirements in Forcible Entry and Detainer (FED) Proceedings) (also providing for remote appearances by counsel) (August 19, 2021);
  - d. CJO 21-056 (Order Further Extending Statutory Time Periods and Time Requirements in Driving Under the Influence of Intoxicants (DUII) Diversions) (December 15, 2021);
  - e. CJO 21-058 (Order Extending Presiding Judge Authority to Impose Social Distancing Requirement) (December 22, 2021); and
  - f. CJO 22-002 (Order Revising and Generally Lifting Requirement for Use of Protective Face Coverings in the Oregon State Courts) (March 9, 2022).
5. During the COVID-19 state of emergency, the state court system rapidly expanded its capacity for, and its use of, remote hearing technology in court proceedings, including in conducting arraignments in criminal cases and, in all manner of cases, in conducting status conferences, hearings, trials, and appellate oral arguments, as well as Citizen Review Board review proceedings. Throughout the pandemic, the ability to conduct remote proceedings protected public health, by minimizing the number of people coming into our courthouses each day.
  6. Since May 2020, our courts have gained significant experience and expertise in conducting remote proceedings. More importantly, we have learned that remote proceedings are a key element in providing access to justice. The flexibility provided by remote hearings has enabled court proceeding participants and other members of our communities across the state to participate in and engage with our courts, notwithstanding work and childcare schedules that conflict with courthouse hours; limited access to public transit in some communities; disabilities that make travel to the courthouse difficult; safety concerns in certain cases; and health vulnerabilities that require limited contact with others. The flexibility that we have gained from conducting remote proceedings has increased court participation and furthered fairness and equity.
  7. The Oregon Legislative Assembly has enacted Oregon Laws 2022, chapter 68, section 8, which became effective on March 23, 2022. That legislation, now codified as ORS 1.002(5), authorizes the Chief Justice to direct or permit any court or magistrate appearance to be by remote means, notwithstanding any other statute or rule to the contrary. ORS 1.002 relatedly provides:
    - a. In subsection (11), that the Chief Justice may delegate the exercise of any power specified in ORS 1.002 to the Presiding Judge of a court; and
    - b. In subsection (5)(c), that the Presiding Judge may delegate the authority described in subsection (5) to another judge of the court.
  8. On February 25, 2022, the Centers for Disease Control and Prevention (CDC) announced a new tool for monitoring the impact of COVID-19 across the country, using Community Levels that analyze data about weekly COVID-19 figures, relating to hospitalization admissions, hospital bed occupancy, and new case counts. On March 11, 2022, the Oregon Health Authority (OHA) issued Public Health Order (PHO) 4141, which rescinded general indoor masking requirements that had been in place in

Oregon during the COVID-19 pandemic, with limited exceptions. Also through PHO 4141, OHA continues to recommend that people at high risk of severe disease and hospitalization – especially in communities with medium or high levels of transmission pursuant to the CDC’s COVID-19 Community Levels – continue to wear masks in indoor settings, including people who:

- a. Are unvaccinated;
- b. Have compromised immune systems or underlying health conditions;
- c. Are 65 and older; or
- d. Live with others at high risk of severe disease.

Although the Oregon Judicial Branch has achieved an exceptionally high vaccination rate against COVID-19, case participants and other members of the public who enter our courthouses have varying rates of vaccination, with rates in some of our communities much lower than the statewide average.

This order is based on the foregoing and may be revised as further information becomes available.

I hereby ORDER as follows:

1. Definitions. As used in this order:
  - a. “Administrative Authority” means, as to any judge, the Presiding Judge; as to any staff, “Administrative Authority” has the meaning set out in Judicial Department Personnel Rule 2.01.
  - b. “Court facility” means the courthouse or any alternative physical location being used by the court or the Office of the State Court Administrator, but not any part of a building or location that is not under the court’s control.
  - c. “In person” means that a court proceeding is being conducted in the court facility, including at least one in-person participant who is neither the judge nor court staff.
  - d. “Participant” means any individual who is participating in a proceeding, other than the judge and staff, including lawyers, parties, witnesses, jurors, interpreters, and courtroom security personnel.
  - e. “Presiding Judge” means the presiding judge of a judicial district or any person to whom that judge has delegated authority under this order. For purposes of this order, as applicable and pursuant to other statutory authority, the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, and the Tax Court Judge have the same authority in their respective courts as that described for a Presiding Judge.
  - f. “Proceeding” means a trial, hearing, or other court proceeding. When this order grants authority to a judge presiding over a proceeding, that same authority

extends to a mediator conducting an in-person mediation, a facilitator providing in-person facilitation services, a magistrate presiding over a Tax Court proceeding, or the Citizen Review Board conducting a review of cases involving children in foster care.

- g. “Protective face covering” means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended by the CDC and OHA.
- h. “Remote means” means the use of telephone, video, other two-way electronic communication device, or simultaneous electronic transmission.
- i. “Social distancing” means an identified minimum amount of physical distance between each person, such as three feet or six feet.
- j. “Staff” means Oregon Judicial Department employees.

## 2. Mode of Proceedings

### a. Circuit courts

- (1) Circuit court proceedings may be conducted in person or by remote means, as determined by the Presiding Judge.
- (2) Regardless of the mode of proceeding and following notice filed with the court, an attorney representing a party in a Forcible Entry and Detainer (FED) proceeding filed under ORS 105.110, at either a first appearance or trial, may appear by remote means, with no need to file a motion requiring court approval.
- (3) Relationship to other law
  - (A) Notwithstanding ORS 131.045(2) and (3), ORS 135.030(3), and ORS 135.360(3), any category of arraignment may be conducted remotely, without agreement of the parties.
  - (B) Notwithstanding any other statute or rule requiring that a person “personally appear,” “appear personally,” “appear in person,” make a “personal appearance,” or be “present in court,” the proceeding may be conducted remotely, and any appearance may be made by remote means.
  - (C) Notwithstanding any other provision of this order, if the constitution requires an in-person appearance or proceeding, then the appearance or proceeding must be conducted in person. If a party contends that a remote appearance or proceeding conducted remotely results in violation of the party’s rights, then the party may file a motion seeking an order that the appearance or proceeding be conducted in person. This subparagraph applies to any crime victim who contends that an order results in a violation of the victim’s constitutional rights.

- (4) Review of Supplementary Local Rules (SLRs)
  - (A) Each Presiding Judge is directed to review the court's SLRs, prior to September 1, 2022, for rules that may be an impediment to conducting proceedings by remote means, including any requirement that an *ex parte* submission be made in person. The Presiding Judge shall incorporate any necessary amendment in the court's draft SLRs submitted to the UTCR Committee for the 2022-2023 rules cycle.
  - (B) UTCR 1.050(2)(a), which requires a Presiding Judge to provide written notice to local bar presidents of proposed SLR changes, is waived for any proposed SLR change that falls within the scope of subparagraph 2.a.(3)(D)(i).

b. Appellate Courts, Tax Court, and Citizen Review Board

- (1) Appellate oral arguments and Supreme Court public meetings may be conducted in person or remotely, by video, at the determination of the Chief Justice or the Chief Judge, or the Chief Justice's or Chief Judge's designee.
- (2) Tax Court proceedings may be conducted in person or remotely, by video or audio, at the determination of Tax Court Judge or that judge's designee.
- (3) The Citizen Review Board may conduct scheduled reviews of cases involving children in foster care in person or by remote means.

3. Exhibits in Circuit Court Proceedings

- a. When a circuit court proceeding is to be conducted remotely, the Presiding Judge shall determine the mode of submission of exhibits, which may include submission of exhibits that can be converted to PDF through the court's electronic filing (eFiling) system, as set out in subsection 3.b., notwithstanding UTCR 6.050(3) and UTCR 21.070(3)(p). The Presiding Judge also may establish timing requirements that apply to the submission of exhibits for proceedings being conducted remotely.
- b. Requirements for submission through the eFiling system:
  - (1) When submitting exhibits through the eFiling system, the filer shall designate the exhibits as described in UTCR 21.070(6).
  - (2) The submission of exhibits through the eFiling system must comply with UTCR 21.040(1), (2), and (3), to the extent applicable, except that the court may direct that multiple exhibits in a particular proceeding be submitted as separate eFiled documents.

- (3) The Presiding Judge may require that exhibits be submitted as a unified single PDF file under this subparagraph:
  - (A) Be accompanied by an index that identifies each exhibit, located at the beginning of the submission, with each identified exhibit electronically linked to the index; and
  - (B) Include an electronic bookmark for each exhibit.
- (4) The court may reject submissions that do not comply with this paragraph.
- (5) A Presiding Judge shall determine how nondocumentary exhibits, such as audio or video exhibits, are to be submitted for a proceeding for which exhibits otherwise are being submitted through the eFiling system.

#### 4. Protective Face Coverings

- a. Except as provided otherwise in subparagraphs 4.b, 4.c., and 4.d., protective face coverings are not required to be worn in any court facility.
- b. So long as any executive branch statewide requirement, or any applicable facility requirement, is in effect that requires protective face coverings to be worn in any correctional facility, judges and staff must wear protective face coverings when working in either an adult jail or correctional facility, or in a youth detention or correctional facility, as determined by the Administrative Authority.
- c. A Presiding Judge may order that protective face coverings be worn in all courtrooms, in all public areas of a court facility, or in all areas of a court facility, including by all judges and court staff, if the Presiding Judge determines that such an order is appropriate to:
  - (1) Align with a local government mandate that requires protective face coverings to be worn indoors; or
  - (2) Protect judges, staff, participants, and other court users against a risk of COVID-19 spread or increased hospitalizations.
- d. As provided in paragraph 6, the wearing of protective face coverings may be directed or required as a reasonable protective measure taken in proceedings or in other particular circumstances.
- e. Any judge, staff, participant, or member of the public may wear a protective face covering while in a court facility, if desired, subject to subparagraph 4.f.
- f. If one or more participants in an in-person proceeding wears a protective face covering as provided under subparagraph 4.b., 4.c., 4.d., or 4.e., the judge presiding over the proceeding may:
  - (1) Require any juror to temporarily remove a protective face covering when the juror is answering a question during *voir dire*;

- (2) Require any witness to remove a protective face covering when the witness is testifying; and
- (3) Require any participant to temporarily remove a protective face covering to ensure that a particular communication is understood.

5. Social Distancing

- a. A Presiding Judge may issue a Presiding Judge Order that requires social distancing in the public areas of a court facility.
- b. As provided in paragraph 6, social distancing may be directed or required as a reasonable protective measure taken in proceedings or in other particular circumstances.

6. Protective Measures

a. Protective measures in proceedings

- (1) A participant who seeks to mitigate the risk of exposure to COVID-19 may request that reasonable protective measures be taken during any court proceeding.
- (2) On such a request or on the initiative of a judge presiding in a proceeding, the judge may exercise authority to direct that reasonable protective measures be taken, including, but not limited to:
  - (A) Requiring the requesting individual to wear a protective face covering or, in addition to or in lieu of doing so, requiring a face shield or use a protective physical barrier;
  - (B) Requiring that particular individuals wear protective face coverings;
  - (C) Requiring or maintaining social distancing;
  - (D) Rescheduling a proceeding to a date or time when the risk of exposure to COVID-19 may be reduced; and
  - (E) Permitting or requiring that certain appearances be made or testimony given, or the proceeding be conducted, by remote means.
- (3) This subparagraph does not apply to judges and court staff.

b. Protective measures in other particular circumstances

If appropriate to the particular circumstances, the Presiding Judge or designee, the Trial Court Administrator or designee, or the Administrative Authority may exercise authority to require an individual in a court facility, including judges and

staff, to take reasonable protective measures, including requiring the wearing of a protective face covering or requiring social distancing.

7. This order supersedes the following Chief Justice Orders:
  - a. CJO 21-025 (Order Establishing Updated Directives Relating to Court Operations) (June 28, 2021);
  - b. CJO 21-031 (Order Extending Statutory Time Periods and Time Requirements in Forcible Entry and Detainer (FED) Proceedings) (also providing for remote appearances by counsel) (August 19, 2021);
  - c. CJO 21-058 (Order Extending Presiding Judge Authority to Impose Social Distancing Requirement) (December 22, 2021); and
  - d. CJO 22-002 (Order Revising and Generally Lifting Requirement for Use of Protective Face Coverings in the Oregon State Courts) (March 9, 2022).
8. The following Chief Justice Orders are no longer in effect, because the Chief Justice's authority to extend the statutory time periods or time requirements identified in each order expired 60 days after the COVID-19 state of emergency ended:
  - a. CJO 20-027 (Order Extending Statutory Time Periods and Time Requirements in Certain Tax Appeals) (July 21, 2020); and
  - b. CJO 21-056 (Order Further Extending Statutory Time Periods and Time Requirements in Driving Under the Influence of Intoxicants (DUII) Diversions) (December 15, 2021).
9. This order becomes effective on June 30, 2022, and will remain in effect until amended, superseded, or vacated by further Chief Justice Order.

Dated this 23rd day of June, 2022.

  
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Martha L. Walters  
Chief Justice