

IN THE CIRCUIT COURTS OF THE STATE OF OREGON
FOR GRANT AND HARNEY COUNTIES

In the Matter of the Adoption of
the Judicial Availability Model) PRESIDING JUDGE ORDER NO. 26-016
) Case: D24PJO1
) ORDER REGARDING JUDICIAL AVAILABILITY
)
)

COMES NOW the 24th Judicial District and adopts the Oregon Judicial Availability Model as recommended. A copy of the availability model along with the Chief Justice's Pro Tem Policies for Trial Courts is attached and incorporated herein.

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Robert S. Raschio, Circuit Court Judge

OREGON JUDICIAL AVAILABILITY MODEL

Preamble

This document proposes a model on judicial availability in Oregon state courts. It is a working draft to assist courts that choose to adopt a local policy on judicial availability. It acknowledges courts' differing needs and anticipates variations that courts may consider to meet those needs. It also anticipates that local policies will serve as pilots, allowing the Judicial Department to gain experience and assess which components contribute to the sound and efficient administration of the department while preserving local control, responsibility, and flexibility.

The model seeks to provide reasonable time each year for continuing education, professional service, vacation, and personal business. The model comports with the American Bar Association (ABA) proposed criteria for leave standards "to establish minimum requirements for an educated and efficiently functioning judiciary" and are consonant with policies accorded professional and long-term employees in state service.

Purposes

- Ensure reasonable judicial availability on all "court days" to maintain appropriate level of public access.
- Acknowledge that judges are on call and perform many functions outside the normal "court day."
- Support opportunities for judges to maintain mental and physical health throughout their careers by providing annual leave days for personal and family needs and providing for professional education and service.
- Encourage education and professional service to improve administration of the Oregon Judicial Department (OJD) and Oregon's justice system.
- Acknowledge that judges have individual and collective responsibility to provide appropriate levels of access to courts.
- Address the need for established norms on judicial availability to evaluate resource and fiscal needs in response to proposed legislation, requests for new judgeships, and caseload projections.
- Preserve judicial branch independence and judicial discretion.
- Preserve local control, responsibility, and flexibility for administering judicial availability to meet the district's needs consistent with sound and efficient administration of the department, ORS 1.002(2).

Components

Each judicial district, appellate court, and the Tax Court has the responsibility to ensure that judges are available for a reasonable number of "court days" per year to maintain appropriate levels of public access to the courts. A "court day" is a day on which the court is by statute open for business. In the calculations below, "court day" does not include the evenings, nights,

and weekends that, by law, judges are on call routinely for search warrant affidavits, probable cause hearings, and in exceptional or emergency situations are available for other matters.

The model recognizes that judges:

- (1) are required to be on call 24 hours a day;
- (2) bear a collective responsibility to their district or court and to the department to provide coverage for in-court functions and to conduct other judicial business that requires judges' presence outside the courtroom, including office and case management; research and writing opinions; court and judicial department administration and planning; continuing education of self, other judges, and the bar; public education; and legislative review and testimony;
- (3) regularly work additional hours at court and at home on nights and weekends researching issues, writing opinions, drafting orders, and completing other paperwork; those nights and weekends are not included in "court days" or in "judge availability days," described below.

The model seeks to ensure reasonable availability and flexibility within a district as required by ORS 1.002(2) for both in-court and out-of-court judicial responsibilities.

The model also recognizes that judges are entitled to other leave by statute and should have leave in reasonable conformity with leave available for employees to attend to their own or family members' medical needs or death in the family. The model recognizes absences to the extent allowed by statute or required to attend to illness, medical condition, or injury of short duration (judge's long-term illness or disability is subject to ORS 1.303).

The model establishes two banks of days for continuing education, professional service, and annual leave in each judicial district, appellate court, and the Tax Court. Each presiding judge administers the banks locally to ensure that courts have judicial resources available on site for a minimum average of 208 "judge availability days" per filled judicial position.

JUDGE AVAILABILITY DAYS CALCULATION

365	days
<u>(104)</u>	weekend days
261	
<u>(9)</u>	state holidays
252	court days
(14)	Other Judicial Business (continuing education and OJD professional service in state)
<u>(30)</u>	Annual and Outside Professional Leave
208	"Judge Availability Days" on average per filled judicial position

CATEGORIES OF CONTINUING EDUCATION, PROFESSIONAL SERVICE, AND LEAVE

The model recognizes three categories of days during which a judge may be unavailable to preside in the courtroom:

- (1) Other Judicial Business, including Continuing Education and OJD Professional Service;
- (2) Annual and Outside Professional Leave; and
- (3) Extraordinary and Statutory Leave.

No minimum period of service or waiting period is required for a judge to be entitled to use these days. All time is maintained by calendar year.

1. Other Judicial Business, including Continuing Education and OJD Professional Service (14 days):

- Continuing education and professional development, including the OSB annual meeting, CJEs and CLEs sponsored by instate organizations (e.g., JEC, judge associations, OSB, OLI)
- Out-of-state education programs permitted pursuant to JEC policies
- Professional service on OJD, Judicial Conference, and OSB committees, sections, and task forces, and Chief Justice-approved appointments to Governor's task forces and committees.
- Annual Judicial Conference, not including travel time.
- Is in addition to days needed to attend and travel to and from:
 - JEC New Judge Seminar for participants or faculty or up to two weeks for new judges at alternative JEC-approved orientation program
 - Presiding judges meetings and workshops
 - Participation in local Criminal Justice Advisory Councils and Local Public Safety Coordinating Councils and similar councils established in the future
 - Meetings and appearances at OJD/Chief Justice request on legislative matters

2. Annual and Outside Professional Leave (30 days):

- Vacation
- Personal business
- Administrative leave
- Professional leave for service with national organizations or organizations other than the OJD, OSB, and Chief Justice-approved appointments to Governor's task forces or committees

3. Extraordinary and Statutory Leave:

"Extraordinary" leave means unplanned or unavoidable leave. "Statutory" leave means leave provided by federal or state law or rule. Both types fall in the following categories:

- a. Sick/Disability/Family Leave
 - Reasonable leave as needed to attend to own or family member's serious health conditions, subject to ORS 1.303 provisions governing handling of judges' prolonged illnesses/injuries/disabilities
- b. Sabbatical Leave under ORS 1.290
 - Requested unpaid leave of absence, with no break in PERS membership, up to one year under ORS 1.290, if leave would enhance administration of justice in Oregon
- c. Jury/Subpoenaed Witness Leave
 - Summoned jury service or subpoenaed witness other than as a party
 - No interruption of pay or benefits; judge turns in per diem/witness fee received and retains mileage reimbursement, as in OJD Personnel Rule 16.03
 - As needed to serve or testify as in OJD Personnel Rule 16.03
- d. Military Leave
 - Temporary active service in the armed forces for up to 15 training days per year under ORS 408.290 for state public officers and public employees, retaining pay and benefits in most circumstances
 - Other federal active service as required; pay and benefits retained when state or federal law so requires
- e. Family Bereavement Leave
 - For immediate family, as in OJD Personnel Rule 16.05 for employees
- f. State Holiday Leave (9 days)
 - All official holidays on which courts are closed for business under OJD Personnel Rules 17.01 and 17.07 and state statutes

ADMINISTRATION

To give the presiding judge as much notice as needed to enable the presiding judge to arrange appropriate coverage of caseload and other judicial assignments, provide best possible notice to parties if a matter must be reset, and ensure that the court can function efficiently on court days,

- (1) judges must notify and coordinate with the presiding judge on the amount and dates of absence for Other Judicial Business and for Annual and Outside Professional Leave;

- (2) scheduling an absence for Other Judicial Business is subject to the presiding judge's approval and to JEC policies on JEC-sponsored and approved programs; and
- (3) a judge absent for Extraordinary or Statutory Leave must notify the presiding judge as early as possible of the reasons for and anticipated dates of leave.

OPERATION OF MODEL

The model:

- (1) provides reasonable time for judges to maintain professional credentials and participate in administering and managing the courts and Judicial Department;
- (2) provides an amount of leave that reasonably conforms to policies for other professional service and long-term employees in state government;
- (3) allows flexibility to account for local conditions and individual circumstances; and
- (4) establishes guidelines for two "time" banks of education, service, and leave days in each district, appellate court, and the Tax Court. The presiding judge of the respective district or court administers each bank. The number of days in the banks is based on a reasonable average number of days per filled judicial position within the judicial district, appellate court, or Tax Court.

The model provides for two "time" banks to exist in each district, appellate court, and the Tax Court with an aggregate annual total of 44 days times the number of filled judicial positions:

Days x Filled Judicial Positions	=	Annual Education, Service, and Leave Banks
1. 14 days x _____ judges	=	_____ days Other Judicial Business
2. 30 days x _____ judges	=	_____ days Annual/Outside Professional Leave

A judge wishing to use bank days must notify and coordinate with the presiding judge on the amount and dates to ensure that the court can function effectively on scheduled court days.

ACCRUAL

1. Annual Education, Service, and Leave Banks

The annual banks do not accrue unused days from a previous year. A district may adopt a local option to allow individual judges to accrue a limited amount of unused time in one or both banks, as suggested by the ABA standards, but total days used in any one year

for the court should not exceed the total annual bank days absent extraordinary circumstances.

Present statutes do not permit credit or payoff for unused leave.

2. Extraordinary and Statutory Leave

There is no accrual of or credit for unused Extraordinary or Statutory Leave.

LOCAL POLICIES

Each judicial district, appellate court, and the Tax Court that adopt a judicial availability policy should establish local procedures for:

- (1) handling requests for and notices of absence;
- (2) keeping current statistics on average days of judicial availability and absence, by type of absence, per filled judicial position in the district or court; and
- (3) obtaining pro tem support when necessary to cover judges' absences for continuing education, OJD professional service, and annual/outside professional leave.

Smaller sized districts may choose to pool their banks and establish procedures to allocate and coordinate pooled bank days with neighboring districts for regional coverage. This permits smaller districts some of the judicial flexibility already available to larger districts. Before implementing a local judicial availability policy, the presiding judge should submit the policy to the Chief Justice for final review and comment.

Pro tem funds and "Plan B" judicial resources may be used to cover absences in accordance with Chief Justice policies established for courts with local judicial availability policies in place.

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CHIEF JUSTICE PRO TEM POLICIES FOR TRIAL COURTS

1. All requests for pro tem judge assistance or judge exchanges must be approved by the presiding judge. If the presiding judge approves the request for assistance, a judge **must first** attempt to obtain assistance from a judge in the same court or any other trial court within that judicial district.
2. If it is not possible to obtain assistance by arranging an exchange with another judge within your district, the presiding judge may either contact presiding judges in other districts and make the arrangements directly, or contact Kim Blanding, pro tem assignments manager, to make the necessary arrangements. Absent a true emergency, courts need to give at least two weeks' notice when requesting coverage dates

If you make your own exchange arrangements, even if by video), **you must promptly contact or e-mail Kim Blanding and inform her of those arrangements. This is necessary for budget and data purposes and for ETSD help ticket submissions for use of Odyssey.**

- 3 Senior judge, Plan B judge or attorney pro tem coverage will be arranged if the services of an active sitting judge are not available and under the following circumstances:
 - a. Illness, extended medical treatment, or death of a judge (or of judge's immediate family member).
 - b. Affidavit of prejudice or other disqualification of a judge for a case.
 - c. Annual military training leave or military deployment of a judge
 - d. Vacation, judges/committee meetings, or OJD approved education coverage for a judge in a one-judge judicial district.
 - e. Coverage for a presiding judge to attend the Chief Justice's presiding judges meetings.
 - f. Avoiding "Speedy Trial" criminal case deadline or "set over" issues
 - g. Specific assistance with case settlement matters.
 - h. Other circumstances approved on a case-by-case basis.

Requests under this section should be made as soon in advance as the need is known. Except for exigent circumstances, requests made less than a week in advance may not be able to be covered. A senior judge, Plan B judge, or attorney must have a signed Chief Justice order to serve as a pro tem judge for any assignment (in and be on the approved pro tem list).

- 4 Subject to the continuing availability of funding and resources: Each judicial district having two or more judges is provided up to ten (10) days per fiscal year (July 1-June 30) to cover judicial vacations and other scheduled absences. Judicial districts that have adopted a formal "leave" or "judicial availability" policy approved by the Chief Justice are provided up to thirty (30) days total per fiscal year to cover judicial vacations and other scheduled absences. All arrangements for vacation pro tem coverage under this section must be requested at least two weeks or ten (10) working days in advance. One judge judicial districts are covered under 3(d) above.
5. Any need for pro tem assistance set out above, or that is not covered by the policies, should be directed to the pro tem assignments manager (currently Kim Blanding), in the Office of the State Court Administrator. The telephone number is 503/986-5512 or 1-800-551-8510 (kim.l.blanding@ojd.state.or.us). Please contact Kim for all arrangements (and not the Chief Justice's office directly). "Appeals" will go to the Chief Justice as necessary.