

In the Matter of Updated Directives	)	CHIEF JUSTICE ORDER
Relating to Court Operations	)	No. 21-025
	)	
	)	ORDER ESTABLISHING UPDATED
	)	DIRECTIVES RELATING TO COURT
	)	OPERATIONS

I HEREBY FIND AS FOLLOWS:

1. On March 8, 2020, Governor Kate Brown issued 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"). Related to that declaration, among other restrictions, the Governor imposed protective face covering and social distancing requirements on Oregonians, as well as facility capacity limits. On November 25, 2020, the Governor announced a statewide health and safety framework, with four different county risk levels based on each county's level of COVID-19 spread: Extreme Risk, High Risk, Moderate Risk, and Lower Risk.
  
2. On June 25, 2021, Governor Brown issued Executive Order 21-15, which extended the COVID-19 state of emergency to December 31, 2021, but otherwise rescinded earlier Executive Orders that had imposed statewide restrictions relating to protective face coverings, social distancing, capacity limits, and the county risk level framework. Executive Order 21-15 becomes effective not later than June 30, 2021.
  
3. Since March 16, 2020, I have issued many Chief Justice Orders (CJOs) restricting court operations and imposing other requirements relating to the COVID-19 state of emergency, including:
  - a. Amended CJO 20-006 (March 27, 2020), Imposing Level 3 Restrictions (later superseded);
  - b. CJO 20-016 (May 15, 2020), Imposing Level 2 and Level 3 Restrictions and Superseding Amended CJO 20-006 (later superseded);
  - c. CJO 20-027 (July 21, 2020), Extending Statutory Time Periods and Time Requirements in Certain Tax Appeals;
  - d. CJO 20-028 (July 21, 2020), Directing or Permitting Appearances at Arraignment by Remote Means (later superseded);
  - e. CJO 20-041 (October 16, 2020), Extending Statutory Time Periods and Time Requirements in DUII Diversions;
  - f. CJO 20-045 (October 28, 2020), Regarding the Use of Protective Face Coverings in the Oregon State Courts;
  - g. CJO 20-047 (November 18, 2020), Imposing In-Person Restrictions on Court Operations During Statewide "Freeze," as amended (February 17, 2021) (later superseded);

- h. CJO 21-009 (March 11, 2021), Imposing Updated Restrictions on Court Operations (including imposing some restrictions based on county risk levels; providing for remote arraignments; extending statutory time periods and time requirements in Forcible Entry and Detainer (FED) proceedings; providing that order in effect until the time when social distancing is no longer required and until further Chief Justice Order; and superseding CJO 20-016, CJO 20-028, and CJO 20-047 (Amended)); and
- i. CJO 21-016 (May 25, 2021), Providing Exception to the Required Use of Protective Face Coverings in the Oregon State Courts.

My goal in issuing those orders has been to meet our courts' 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 our courthouses and offices.

- 4. I have based prior orders on one or more of the following grants of statutory authority:
  - a. ORS 1.002 provides that:
    - (1) 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; and
    - (2) The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.
  - b. 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 for the judicial district.
  - c. Section 6(1)(a) of Oregon Laws 2020, chapter 12, provides that, during a declared COVID-19 state of emergency and continuing for 60 days after the declaration or any extension is no longer in effect, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule that applies:
    - (1) In any case, action, or proceeding after its initiation in any circuit court or the Oregon Tax Court; or
    - (2) To the initiation of an appeal to the Magistrate Division of the Tax Court or an appeal from the Magistrate Division to the Regular Division.

- d. Section 6(4) of Oregon Laws 2020, chapter 12, provides that, during a declared COVID-19 state of emergency and continuing for 90 days after the declaration or any extension is no longer in effect,
  - (1) Notwithstanding any other statute or rule to the contrary, the Chief Justice may direct or permit any appearance before a court or magistrate to be by telephone, other two-way electronic communication device, or simultaneous electronic transmission; and
  - (2) If an appearance is set to occur as just described, a Presiding Judge instead may order that the appearance be in person if, upon the request of a party, the judge determines that there is a particular need for an in-person hearing or that a party has a constitutional right to an in-person hearing.
- e. Section 6(5) of Oregon Laws 2020, chapter 12, provides that the Chief Justice may delegate the exercise of any powers described in subparagraphs 4.c. and 4.d. of these findings to the Presiding Judge of a court.
- 5. In Executive Order 21-15, Governor Brown stated that her most recent extension of the COVID-19 state of emergency was essential for continuing flexibility for statewide recovery, including as to statutes drafted to end once the state of emergency ends, such as those providing for extension of certain court deadlines. Executive Order 21-15 states that that continued flexibility during the recovery period will help Oregon manage the transition back to “normal order” in a manner that is smooth and less disruptive.
- 6. For the reasons given by Governor Brown declaring and extending the COVID-19 state of emergency, I find that good cause, as that term is used in Oregon Laws, chapter 12, section 6(1)(a) and described in subparagraph 4.c. of these findings, exists to:
  - a. Extend statutory time periods and time requirements in Forcible Entry and Detainer (FED) proceedings, as set out in paragraph 5 of this order; and
  - b. Extend statutory time periods and time requirements in Driving Under the Influence (DUII) Diversions, as set out in paragraph 6 of this order.
- 7. ORS 1.171(2) provides that, to facilitate exercise of administration and supervision over the circuit court of the district consistent with applicable provisions of law, the Presiding Judge may apportion and otherwise regulate the disposition of the judicial business of the circuit court of the judicial district, and make rules, issue orders, and take other appropriate action to that exercise; and ORS 1.171(3) provides that the Presiding Judge may assign actions and proceedings pending before a court to other judges of the judicial district for hearing and disposition.
- 8. ORS 8.225 provides that a Trial Court Administrator for a judicial district has the duties, powers, and functions prescribed by law or by rules of the circuit courts in the district, and that the Trial Court Administrator may delegate the powers of the office to employees of the Trial Court Administrator.

I HEREBY ORDER, pursuant to the foregoing authority, and as provided further below, that the following updated directives relating to court operations shall take effect on June 30, 2021. This order remains in effect until further order of the Chief Justice.

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. “Fully vaccinated” means that at least 14 days have passed since a person received the full number of injections required by the specific COVID-19 vaccine maker.
- d. “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.
- e. “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.
- f. “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.
- g. “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, or the Citizen Review Board conducting a review of cases involving children in foster care.
- h. “Protective face covering” means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended or described as a means of protection by the Centers for Disease Control and Prevention (CDC) and the Oregon Health Authority (OHA).
- i. “Remote means” means the use of telephone, video, other two-way electronic communication device, or simultaneous electronic transmission.
- j. “Social distancing” means an identified minimum amount of physical distance between each person, such as three feet or six feet.
- k. “Staff” means Oregon Judicial Department staff.

## 2. Social Distancing and Protective Face Coverings

### a. Social distancing, generally

As a general matter, and unless provided otherwise in this paragraph, social distancing is no longer required and need not be maintained in any court facility.

### b. Protective face coverings, generally

- (1) As a general matter, and unless provided otherwise in this paragraph, protective face coverings are no longer required in any court facility.
- (2) Protective face coverings must be worn by judges and staff when working in an adult jail or correctional facility, or in or a youth detention or correctional facility, as determined by the Administrative Authority, unless the Presiding Judge permits otherwise.
- (3) The Presiding Judge may exercise authority to:
  - (A) Order that protective face coverings be worn in the court facility in a manner that is consistent with more restrictive county requirements; or
  - (B) Order that protective face coverings be worn by members of the public entering the court facility to protect public health and safety.
- (4) Any individual, including judges, staff, participants in proceedings, or members of the public, may choose to wear a protective face covering while in a court facility. However, if an individual chooses to do so, a judge who is presiding over a proceeding may:
  - (A) Require a juror to temporarily remove a protective face covering when the juror is answering a question during *voir dire*;
  - (B) Require a witness to remove a protective face covering when the witness is testifying; and
  - (C) Require any participant to temporarily remove a protective face covering to ensure that a particular communication is understood.
- (5) The court will provide protective face coverings and information about how to use them.

### c. 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; or
  - (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.

d. 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.

3. Mode of Proceedings

- a. Circuit court proceedings may be conducted in person or by remote means as determined by the Presiding Judge.
- b. Relationship to other law and additional Presiding Judge authority
  - (1) 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.
  - (2) 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.
  - (3) 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) Each Presiding Judge shall have authority to suspend any Supplementary Local Rule that may be an impediment to conducting proceedings by remote means, including any requirement that an *ex parte* submission be made in person.

#### 4. Exhibits

- a. Notwithstanding UTCR 6.050(3) and UTCR 21.070(3)(p), when a proceeding is to be conducted remotely, any exhibit that can be converted to PDF may be submitted through the court's electronic filing (eFiling) system.
- b. When submitting exhibits through the eFiling system, the filer shall designate the exhibits as described in UTCR 21.070(6).
- c. The submission of exhibits through the eFiling system must comply with UTCR 21.040(1), (2), and current (4) (to be renumbered to (3) effective August 1, 2021) to the extent applicable, except that the court may direct that multiple exhibits in a particular proceeding be submitted as separate eFiled documents.
- d. Exhibits submitted as a unified single PDF file under this paragraph must:
  - (1) Be accompanied by an index that identifies each exhibit, located at the beginning of the submission, and each identified exhibit must be electronically linked to the index; and
  - (2) Include an electronic bookmark for each exhibit.
- e. The court may reject submissions that do not comply with this paragraph.
- f. A Presiding Judge shall determine how nondocumentary exhibits, such as audio or video exhibits, are to be submitted for a proceeding.

#### 5. Forcible Entry and Detainer (FED) Proceedings

- a. Notwithstanding ORS 105.135(2), a first appearance may be scheduled within 14 days after the judicial day next following payment of filing fees.
- b. Notwithstanding ORS 105.137(6), a trial may be scheduled within 30 days from the date of first appearance.
- c. Notwithstanding subparagraphs 5.a. and 5.b., courts shall schedule first appearances and hold trials in FED proceedings as soon as practicable, taking into consideration the availability of staff, the adequacy of the facilities or bandwidth and technology, and the needs of the parties.

6. Driving Under the Influence of Intoxicants (DUII) Diversions

a. Eligibility for diversion agreement

- (1) Notwithstanding ORS 813.210(1), and except as provided in subparagraph 6.a.(2), a defendant who was eligible for diversion on March 8, 2020, is eligible for diversion during the COVID-19 state of emergency, provided that the defendant is otherwise eligible under ORS 813.215. The COVID-19 state of emergency constitutes existence of good cause for extension of the period of eligibility, and a defendant need not file a motion for extension of the period of eligibility.
- (2) On or after September 7, 2021, the time for a defendant to file a petition for a DUII diversion agreement shall be governed by ORS 813.210(1).

b. Application for extension of diversion period

- (1) Notwithstanding ORS 813.225(1), and except as provided in subparagraph 6.b.(2), a defendant who has executed a DUII diversion agreement may apply for an order extending the diversion period by filing an application for diversion at any time prior to the end of the diversion period. The Presiding Judge also may consider an application filed after the end of the diversion period for good cause.
- (2) On or after September 7, 2021, the time for a defendant who has executed a DUII diversion agreement to apply for an order extending the diversion period shall be governed by ORS 813.225(1).

c. Extension of diversion period

Notwithstanding ORS 813.225(5), the Presiding Judge may extend the diversion period as necessary to allow the defendant sufficient time to complete the conditions of the diversion agreement.

7. Appellate Courts, Tax Court, and Office of the State Court Administrator

a. Appellate Courts

- (1) 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) The requirements described in paragraphs 2 and 3 apply, to the extent practicable, to the Supreme Court and the Court of Appeals.

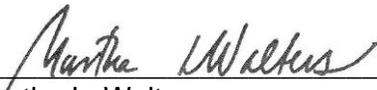
b. Tax Court

- (1) 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.

- (2) The requirements described in paragraphs 2, 3, and 4 apply, to the extent practicable, to the Tax Court.
  - c. Office of the State Court Administrator
    - (1) The Citizen Review Board may conduct scheduled reviews of cases involving children in foster care in person or by remote means.
    - (2) The requirements described in paragraphs 2 and 3 apply, to the extent practicable, to the Office of the State Court Administrator and the Divisions within that office.
8. Effect on Other Chief Justice Orders
- a. This order supersedes CJO 21-009 (Imposing Updated Restrictions on Court Operations) (March 11, 2021) in its entirety, which has the following effect:
    - (1) The following operative provisions of CJO 21-009 are superseded, but have been updated in this order or have been ordered to continue by virtue of certain provisions of this order:
      - (A) Paragraph 2 (Mode of Proceedings) (updated);
      - (B) Paragraph 3 (Exhibits) (ordered to continue);
      - (C) Paragraph 4 (Forcible Entry and Detainer (FED) Proceedings, extension of statutory time periods and time requirements for first appearances and trials) (ordered to continue); and
      - (D) Paragraph 10 (Appellate Courts, Tax Court, and Office of the State Court Administrator) (updated).
    - (2) The following operative provisions of CJO 21-009 are superseded and are no longer in effect:
      - (A) Paragraph 5 (Requirements for Proceedings and Court Services in the Courthouse);
      - (B) Paragraph 6 (Expectations for Attorneys);
      - (C) Paragraph 7 (Fines, Fees, and Costs);
      - (D) Paragraph 8 (Remote Work Assignments); and
      - (E) Paragraph 9 (Meetings, Conferences, and Travel).
  - b. This order also supersedes the following orders, which are no longer in effect:
    - (1) CJO 21-041 (Extending Statutory Time Periods and Time Requirements in DUII Diversions) (October 16, 2020) (ordered to continue as updated in this order);

- (2) CJO 20-045 (Regarding the Use of Protective Face Coverings in the Oregon State Courts) (October 28, 2020); and
  - (3) CJO 21-016 (Providing Exception to the Required Use of Protective Face Coverings in the Oregon State Courts) (May 25, 2021).
- c. CJO 20-027 (Extending Statutory Time Periods and Time Requirements in Certain Tax Appeals) (July 21, 2020) remains in effect.
9. All provisions of this order shall continue until further order, and they may be amended by further order.
10. This order takes effect on June 30, 2021.

Dated this 28<sup>th</sup> day of June, 2021.

  
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Martha L. Walters  
Chief Justice