



# COURT OF APPEALS

## Media Release

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**Message from the Chief Judge: Changes to Oral Argument Opt-In Process**



As we enter November, the Justice Building remains scaffolded, shrouded and sometimes quite loud due to the window replacement project. (For those who may have wondered about the current view from inside the tent, a few photos offer insight). The Supreme Court Building, in contrast, is on the verge of reopening following the completion of its three-year-long seismic upgrade. With the reopening of the Supreme Court Building, the Court of Appeals will offer the opportunity for in-person argument beginning in January. This is to explain what to expect.

I will soon issue a Chief Judge Order adopting temporary amendments to the Rules of Appellate Procedure governing oral argument in the Court of Appeals, ORAP 6.05, ORAP 6.20, and ORAP 6.30. The amended rules make remote argument the default for oral arguments in the Court of Appeals. They will, however, allow parties to request in-person oral argument. If all parties to an appeal confer and agree to

in-person oral argument, or if each party independently requests that oral argument be held in person, then, argument will be held in person unless the needs of the Court require otherwise, such as in the case of inclement weather or a resurgence of COVID. In situations in which all parties do not agree to in-person argument, the rules authorize a party seeking in-person oral argument to file a motion demonstrating good cause for in-person oral argument. Good cause does not include a mere preference for in-person oral argument.

To help the Court administer a system offering both in-person and remote oral argument, the amended rules make two changes to the current process for opting into oral argument:

(1) The first change is that litigants must file their notices of intent to opt into oral argument within 14 days of receiving notice of the case's submission.

(2) The second change is that litigants must use a form provided by the Court to opt into oral argument; the Court will provide that form with the Notice of Submission. The form will direct litigants to provide the Court with the specific information it needs to determine the manner in which it will conduct the argument.

Finally, because we are exploring this process for the first time, we don't know yet what the balance between in-person and remote arguments is likely to be. Depending on how many people request in-person argument, I anticipate that there will be times when the Appellate Court Services Division contacts the lawyers on an appeal to see whether they would be amenable to switching from the afternoon session to the morning session on an oral argument day, or *vice versa*, so as to enable all the remote arguments to be held in one session and all the in-person arguments to be held in another.

Why make remote arguments the default? Although remote arguments offer a number of advantages, the primary reason is simple: equity. The Court of Appeals is a statewide court, and the parties to appeals and their lawyers hail from all parts of Oregon. That means that, the farther a lawyer is from Salem, the more costly it is to argue an appeal if the argument is held in person. The disparate costs can be significant to the litigants, and they can extend well beyond financial costs. For a lawyer located in Medford or Pendleton, for example, geography means that the cost of arguing an appeal might include missing a child's school program or sporting event, or dinner with family simply because of the time it takes to travel to and from Salem. Relatedly, there are communities across Oregon that are underserved in terms of legal services, and that could benefit from lawyers setting up practices in them. Although many--or perhaps most-- lawyers may not aim to cultivate appellate practices, to the extent that they do, it is important to ensure that geography is not a deterrent to practicing in communities in our state where there is need for legal services.

Before the pandemic, we did not have experience with some of the tools to eliminate inequities resulting from geography. Now we do. We've seen that offering remote oral arguments means that no one has to travel any farther than they would in an ordinary workday to argue a case in the Court of Appeals. That puts people on equal footing regardless of where they live and work, when it comes to oral argument in the Court of Appeals. And ensuring equal access to appellate justice is central to the mission of the Court of Appeals. When we have opportunities to eliminate inequities in access to appellate justice, like the opportunity we have now, the right thing to do is to figure out how to make the most of them.

It's worth noting that the Court of Appeals is not alone in its efforts to use technology to reduce geographic impediments to equal access to justice. Chief Justice Walters has been steadfast in encouraging the courts across our state to think deeply about how we can use all tools available to us to eliminate barriers to accessing our court system, and court leaders across the state have responded. For example, the Lake County Circuit Court offers a computer connection in Christmas Valley so that county residents in that area can attend certain court proceedings without making the nearly four-hour round trip to Lakeview. The Marion County Circuit Court has placed computer stations in libraries so that people can attend certain court hearings remotely. The Deschutes County Circuit Court has placed computer stations in libraries to allow residents to view court records without having to make a trip into the courthouse.

These steps in the Oregon courts are just first steps. As the Court of Appeals moves forward under the temporary rules, we will learn as a legal community what works well and what does not, and we will recalibrate based on what we learn. As is the case with our nonprecedential opinions, before making any permanent changes, we will seek feedback from the bar once we've all gained experience with the process laid out in the temporary rules.

I recognize that this will require the members of the bar to operate in somewhat unfamiliar territory, as we work through how best to use the tools we have to provide appellate justice statewide in a state as large as ours. Despite this, having observed the agility and quickness with which the Oregon bar adapted to the new working environment we found ourselves in after March 2020, and the proficiency with which lawyers have argued cases remotely, I am confident that we will be able to work together to build a Court of Appeals argument process that best ensures equal access to justice for all Oregonians.

Erin C. Lagesen  
Chief Judge

The Court of Appeals issued these precedential opinions:

Angela Winamaki v. Umpqua Bank  
(A175148 - Multnomah County Circuit Court)

The Court of Appeals issued these nonprecedential memorandum opinions:

Richard Francis Weaver, Jr.  
(A174180 - Marion County Circuit Court)  
State of Oregon v. Steven Colby Davis  
(A175028 - Josephine County Circuit Court)  
State of Oregon v. Manuel Ramirez, Jr.  
(A175981 - Umatilla County Circuit Court)  
S. N. G. v. I. D. W.\*  
(A176368 - Linn County Circuit Court)  
Department of Human Services v. K. L. W.  
(A178508 - Washington County Circuit Court)  
Annunziata Gould v. Deschutes County  
(A179306 - Land Use Board of Appeals)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Palla Sum  
(A174956 - Polk County Circuit Court)  
State of Oregon v. Devin Kekoa Meyers  
(A175474 - Umatilla County Circuit Court)  
Benjamin Barber v. State of Oregon  
(A175670 - Washington County Circuit Court)  
State of Oregon v. Jimmy Lee Bridges  
(A175783 - Marion County Circuit Court)  
State of Oregon v. Elijah Holten Gomez  
(A175917 - Douglas County Circuit Court)  
De Lage Landen Financial Services, Inc., v. Oculus, Inc.  
(A177368 - Clackamas County Circuit Court)  
Donna M. Easom and Warren E. Easom  
(A178413 - Curry County Circuit Court)

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**Angela Winamaki v. Umpqua Bank**  
(Tookey, P. J.)

Plaintiff appeals from a judgment for defendant Umpqua Bank after the trial court granted Umpqua Bank's motion to dismiss plaintiff's claims, brought on her own behalf and on behalf of a proposed class of plaintiffs,

\*This case title has been redacted in this media release and in the online version of the opinion, in compliance with 18 USC section 2265(d)(3).

for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of the Unlawful Trade Practices Act, challenging Umpqua Bank's practice of assessing multiple non-sufficient funds or overdraft fees on the same, small-dollar electronic payments or checks each time they are resubmitted by the merchant. Held: The trial court did not err in granting Umpqua Bank's motion to dismiss plaintiff's claims under ORCP 21 for failure to state a claim, because plaintiff's checking-account agreement with Umpqua Bank unambiguously authorized the challenged fees. Affirmed.

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