

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of )  
Procedural Changes in the )  
Court of Appeals )  
Due to COVID-19 )  
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CHIEF JUDGE ORDER  
No. 20-03 (Second Amended)  
  
PROCEDURAL CHANGES  
IN THE COURT OF APPEALS DUE  
TO COVID-19

Due to the emergency conditions that have resulted from the spread of the COVID-19 virus, I issued Chief Judge Order 20-03 on March 30, 2020, and Chief Judge Order 20-03 (Amended) on April 27, 2020. In those CJOs, I ordered several procedural changes at the Court of Appeals, including the use of video conferencing technology to conduct oral arguments by remote means. Due in large part to the professionalism and flexibility of the appellate bar that practices before the Court of Appeals, the court has been successfully conducting oral arguments by remote means since May 2020.

Having arrived at a decision to continue using video conferencing technology to conduct oral arguments by remote means at least through the end of 2020 and due to the continued emergency conditions that have resulted from the spread of COVID-19 and the currently available information about the risks and spread of the virus, I am ordering several additional procedural changes at the Court of Appeals, including the use of face coverings in court facilities. Because circumstances continue to rapidly evolve, I may issue additional orders with further changes, as required.

Consistently with Chief Justice Order 20-016, ORS 2.550(3) (providing that the Chief Judge, "to facilitate exercise of administrative authority and supervision over the court and consistent with applicable provisions of law, may make rules, issue orders and take other action appropriate to that exercise"), and ORAP 1.20(5) (providing that, "[f]or good cause, the court on its own motion \* \* \* may waive any rule"), I HEREBY ORDER the following changes to Court of Appeals procedure.

1. Motions
  - a. Except in the case of a filing governed by ORAP 7.35, motions requesting up to a 60-day extension of time due to circumstances related to COVID-19 will be liberally granted.
  - b. Motions requesting an extension of time due to circumstances related to COVID-19 must contain a statement addressing whether opposing counsel objects to, concurs in, or has no position regarding the motion. If the moving party has not been able to ascertain opposing counsel's position on the motion, then the motion must so state.

- c. Parties should prominently include "COVID-19" in the caption of their motions when circumstances related to COVID-19 have occasioned the motion.

## 2. Conducting Oral Arguments by Remote Means

- a. Until further order (and at least through December 2020), the Court of Appeals will conduct oral arguments by video conference.
- b. On court's own motion, or on motion of the parties and a demonstration of extraordinary circumstances, the Chief Judge may order that an oral argument proceed in the courtroom if the Chief Judge determines that such an argument may be conducted under the terms of the Chief Justice Order then in effect; that the proceeding should not be conducted by remote means; and that the Chief Judge can order other reasonable precautions to protect the health of the participants, including court staff. Due to the current emergency conditions resulting from COVID-19, the bar for demonstrating extraordinary circumstance is a high one.
- c. The Appellate Court Records Section of Appellate Court Services Division of the Office of the State Court Administrator will contact parties and provide the information necessary for participation in a video argument.
- d. If a video argument cannot occur due to technical difficulties, the court will reset the argument for a later date.
- e. Absent permission from the court or presiding judge of the panel to proceed otherwise, when remotely appearing in court for an oral argument conducted by video conference, all attorneys and court officials must wear appropriate attire, remain on camera, and conduct themselves as if they were in the courtroom.
- f. Except as otherwise provided in ORAP 8.35 (media coverage of appellate court proceedings), electronic recording of a Court of Appeals oral argument being conducted by video conference is not permitted without express prior approval of the court. "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.
- g. A copy of this order shall be posted on the Oregon Judicial Department website and notice of this order shall be provided in the Notification of Oral Argument sent to the parties by the Appellate Court Records Section.

3. Criteria and Procedures for Webcasting Oral Arguments Conducted by Video Conference

a. The court shall webcast oral arguments conducted by video conference subject to the following provisions.

(1) Barring any technical difficulties, the court will stream live broadcasts of oral arguments conducted by video conference and will provide internet access to archived versions of those arguments via a link on the Oregon Judicial Department website. The live streaming of the argument will begin approximately five minutes before the scheduled argument time. A limited number of simultaneous sessions (*i.e.*, approximately 50) may be connected to the following link, which is also available on the Oregon Judicial Department website:

**<http://oregoncourts.mediasite.com>**

(2) Consistently with Chief Justice Order 11-008, which governs webcasting in the Supreme Court, oral argument before the Court of Appeals will not be webcast in the following types of cases:

- (A) Adoption;
- (B) Juvenile;
- (C) Civil Commitment;
- (D) Family Abuse Prevention Act (FAPA);
- (E) Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA);
- (F) Stalking Protective Order, including Violation of Stalking Protective Order; and
- (G) Cases in which the trial court has entered a protective order within the meaning of the Violence Against Women Act (VAWA), if the issues in the case relate to the protective order or the person protected by the order.

(3) Consistently with Chief Justice Order 11-008, which governs webcasting in the Supreme Court, in addition to the types of cases set out above, the court may determine on its own motion, or the motion of a party or other interested person, that a particular oral

argument should be exempt from webcasting. The following procedures apply to a motion for exemption from webcasting:

- (A) A party or other interested person may move the court for an order that an oral argument should be exempt from webcasting. The motion must be filed at least 14 days before the scheduled date of the oral argument and served on all parties. The motion must state the scheduled date and time of the oral argument, explain the circumstances that support the request for exemption, and must contain a statement addressing whether opposing counsel objects to, concurs in, or has no position regarding the motion. If the moving party has not been able to ascertain opposing counsel's position on the motion, then the motion must so state.
  - (B) Any party or other interested person may file a response to the motion. The response must be filed at least seven days before the scheduled date of the oral argument and served on the movant and all parties.
  - (C) The court may, for good cause shown, shorten the time for filing a motion or response.
- b. A live audio and video feed of oral arguments that are being conducted remotely by video conference will be available in the Justice Building courtroom at 1162 Court Street NE, Salem, OR 97301, the principal location for the sitting of the Court of Appeals designated in Chief Justice Order 19-053. Due to the need for social distancing occasioned by COVID-19, seating at the Justice Building location to view a live audio and video feed of oral arguments that are being conducted remotely by video conference will be limited to the number of persons that is posted at the Marshal's Station at the entrance to the Justice Building.

#### 4. Use of Face Coverings in Court Facilities

##### a. Definitions

- (1) "Court facility" means those parts of the Justice Building located at 1162 Court Street NE, Salem, OR 97301, that are used and occupied by the Oregon Court of Appeals, including the courtroom, the Marshal's Station at the entrance to the building, the Appellate Settlement Conference Program offices, and the judges' chambers, court conference rooms, offices, work areas, and any other public areas.

- (2) "Protective face covering" means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended by the Centers for Disease Control and Prevention.
  - (3) "Six feet of social distancing" means maintaining six or more feet of physical distance between individuals, except for members of the same household.
- b. Except for children under two (2) years of age, and as provided in subparagraphs c, d, and e below, all persons entering the court facility are required to wear a protective face covering while in the court facility.
  - c. A judge presiding over a proceeding in the courtroom may waive the face covering requirement in the courtroom, provided that a minimum six feet is maintained between each person in the courtroom. The presiding judge otherwise may authorize any participating person to temporarily remove a protective face covering to facilitate communication as the judge deems appropriate.
  - d. Judges and judicial employees are not required to wear masks when working in their assigned offices or workstations. Judges and employees must wear protective face coverings whenever six feet of social distancing is not possible to maintain, when more than four others are present in the same open area, or when accessing other parts of the court facility when others are in the facility.
  - e. Any person seeking to enter the court facility without using a protective face covering because of disability, respiratory or other health-related issues, or otherwise for good cause can request an exemption from the Chief Judge or designee(s).
  - f. The court will provide protective face coverings and information about how to use them as needed and as available resources allow.

This order amends and supersedes original Chief Judge Order 20-03, issued on March 30, 2020, and Chief Judge Order 20-03 (Amended), issued on April 27, 2020. This second amended order takes effect immediately and will continue until further order.



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JAMES C. EGAN  
CHIEF JUDGE, COURT OF APPEALS

Dated this 9<sup>th</sup> day of July 2020.