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Chief Justice



OREGON SUPREME COURT

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(SENT BY EMAIL ONLY)

The Honorable Floyd Prozanski, Chair
Senate Interim Committee on Judiciary

Dear Chair Prozanski:

We at the Oregon Judicial Department (OJD) thank you, Chair Bynum, committee members and your staff for providing us the time to address court operations on December 10, 2020. I write in response to your question regarding the availability of civil jury trials in our courts and the opportunities presented by alternative venues.

I want to start by emphasizing how truly amazing it is that our courts have been able to conduct any jury trials during this pandemic. I am not sure anyone who has not been in our courthouses can understand the Herculean effort it has taken to keep our courts open to protect Oregonians in need.

When we asked the legislature earlier this year for some flexibility in scheduling jury trials for those held in custody awaiting trial, it was because we had real concerns about compelling jurors to come into our courthouses and whether we could keep them safe. That we have managed to meet the strict statutory timelines and Constitutional requirements that apply in those circumstances and not have participants contract the virus as a result of their participation is exceptional. That some of our courts have been able to safely conduct additional trials nothing short of phenomenal.

Since April 2020, courts have held four civil and 260 criminal jury trials, compared to 152 civil and 1,499 criminal jury trials during the same period in 2019. Before the Governor's latest restrictions on gatherings, we were working hard to increase those numbers statewide. As a result of the Governor's latest order, I ordered a pause on non-essential in-person hearings, including trials, but we can use that pause to plan, so that when the current restrictions are lifted, we are ready to again move forward. And even during the pause, a judge may hold a trial in a particular case if there is a real need and trial can be held without significant risk to health. **We will resume our efforts to provide full court services, including jury trials in civil as well as criminal cases, as soon as the pandemic permits.**

We recognize that the need for the full range of court services, including civil jury trials, is great. Those impacted by personal injury, family law, housing, employment and other civil cases often face incredible challenges to their well-being, livelihood, and family cohesion and those cases

need resolution. Although most of those cases are resolved short of trial, it is well known that a firm trial date is one of the primary tools to settlement.

Here is what we are doing to ensure that we are using all available tools to move cases to resolution and to ensure that we are ready to hold civil jury trials in courthouses or alternative spaces when current restrictions are eased.

1. Courts are holding many preliminary proceedings and bench trials remotely.

It is important that parties move their cases toward trial. Our courts are hearing motions and discovery matters remotely. Courts have held more than 5,000 hearings in civil cases since April, including evidentiary, early resolution, settlement conferences, and summary judgment. In addition, courts have held 136 bench trials in civil cases since April.

2. Courts are holding case management and settlement conferences.

Courts are proactively requiring parties to report on their case status and to participate in settlement conferences. These conferences are taking place both remotely and in person. We are engaging the help of retired judges in that effort. For example, in Lane County Circuit Court, retired Judge Karsten Rasmussen has agreed to offer a full week of settlement conferences each month from January to June to resolve the civil caseloads in that county. Statewide, courts have held more than 800 case management, early resolution, and settlement hearings since April and have closed more than 29,000 civil cases in that time.

3. Courts are engaging with local partners and counties to identify alternative spaces to hold jury trials.

Multnomah County Circuit Court's new facilities have sufficient space to allow that court to hold jury trials, but given social distancing requirements, many courthouses in other counties lack adequate space; it can take up to three courtrooms for just one trial. Not every courthouse has that many courtrooms or can make that many courtrooms available, particularly given the fact that demands in other cases continue unabated – emergency protective orders, release hearings, etc. That is the situation in which the Lane County Circuit Court finds itself.

Counties are responsible for providing court facilities and courts, including the Lane County court, have been working with their counties to find space at fairgrounds and other alternative, larger venues. Some counties have been able to do so and have used their CARES Act funding to help, but not all counties have the same resources.

We will continue to have conversations with counties and other entities that may be able to provide the appropriate spaces that we need to hold jury trials. OJD is committed to identifying and moving forward with solutions on a local and statewide level.

4. Courts are convening conversations with bar leaders and community advocates to explore mutually agreeable solutions.

Since the beginning of the pandemic we have been working with the Oregon State Bar to determine how best to prioritize and provide court services. That effort is ongoing. For example, as mentioned during the hearing, Presiding Judges are using their lunch hours to

Chair Prozanski
Page 3
December 14, 2020

analyze and implement over 400 suggestions from the many workgroups that have provided suggestions about the types of proceedings that can be held remotely and how to eliminate obstacles to remote proceedings.

Multnomah County Circuit Court Presiding Judge Bushong has invited attorneys and judges to participate in a work group to make recommendations on procedures for both in-person civil jury trials, as well as remote options.

I have been in continual contact with the Oregon State Bar and we are in the process of scheduling another virtual session so that I can better understand what Bar members are experiencing and explain what we are planning. Communication is crucial.

We also have established a special email address -- OJD.CJOFeedback@ojd.state.or.us -- so lawyers can provide information, criticism, and suggestions.

5. Courts are setting dates for civil jury trials and will hold trials on those dates unless COVID-19 restrictions or resource limitations preclude their plans.

Many courts have been setting civil cases for trial, but find that lawyers are asking for postponement. Uncertainty is difficult for all of us and sometimes lawyers and their clients seek to postpone their trials until a time when they can be more certain that the health risk of appearing in the courthouse is reduced. Even during times of restricted in-person services and trials, the Chief Justice Orders have permitted in-person proceedings, including trials, where there is a real need. To our knowledge, lawyers have not made regular use of this option, but we will make continued efforts to ensure that they are aware of it.

The most important thing we plan to do, however, is to schedule and hold civil jury trials beginning this spring when we anticipate that restrictions will ease. We must always state that our ability to achieve this goal is dependent on COVID and resource limitations, but we will do everything we can to anticipate those obstacles. As you know, our rallying cry is "Courts Can!"

We appreciate your support for a full range of court services and your understanding of how important those services are for Oregonians. Please let me know if you or your colleagues have any additional questions or if I can provide additional detail.

Sincerely,

Martha L. Walters
Chief Justice

MLW:jm/20eMLW054jm
cc: Chair Bynum
House Interim Committee on Judiciary
Senate Interim Committee on Judiciary