



MULTNOMAH COUNTY CIRCUIT COURT FAQ ON PHYSICALLY-DISTANCED JURY TRIALS IN CRIMINAL CASES¹

What is the court doing to comply with CDC guidelines?

The court has taken extra measures to protect the safety of people coming to the courthouses and to reduce the number of people who are physically present in our facilities. Face coverings are required in all our courthouses, and court staff will provide one if you do not bring one with you. We have increased cleaning in jury rooms, courtrooms and other areas of the court, and have hand sanitizer stations available for the public. The court is complying with social distancing recommendations by restricting courtroom capacities, limiting elevator capacities, limiting seating options so that six feet of distance can be maintained, and changing our format for trials including offering the opportunity for jury trials to be conducted fully remotely when agreed to by the parties.

How is the court assigning trials in felony cases?

Currently, most felony cases are set on the call docket at 9:15 a.m. on a given day for the parties to select trial dates. Once the parties select a call and trial date, the court will set the date on a 9:01 call docket, which designates the case as a highly likely trial. The court will also assign the case to a Wednesday short matter docket about 10 days prior to trial for a Thursday pre-trial conference. At the pre-trial conference, parties confirm whether the trial dates still work, discuss trial logistics, and set a plan to make the most efficient use of court resources. If the case will not go to trial on the chosen day, the parties must obtain a setover prior to the call date to allow other cases to move forward. Once parties appear at the 9:01 call date, they should expect to be sent out for trial the following business day. The court is attempting to avoid conflicts, but parties should be aware their case could get put on standby or could be delayed if another case has priority. For that reason, parties should select backup trial dates. For a case that will be longer than two weeks, parties should contact Presiding Court to set a scheduling conference with Judge Bushong.

How is the court assigning trials in misdemeanor cases?

Parties who wish to schedule trial in a misdemeanor case that is on Trial Readiness or on the CPC docket can request that a case be placed on "Covid Call" on the CPC docket at 8:45 a.m on a Tuesday, Wednesday or Thursday. The CPC judge will inquire regarding the status of settlement discussions and whether the parties have stipulated to a speedy trial deadline pursuant to ORS 135.745 *et seq.* If the parties have not stipulated, the CPC judge will send the case to another judge for a judicial finding regarding the speedy trial deadline. Once that date is determined, the CPC judge may set the case over or may set the case on the Presiding call docket to be sent out for trial. Misdemeanor cases are easier

¹ Procedures described in this document are subject to change if needed to adjust to caseload and docket needs.

to conduct with physical distancing but may still get delayed if other cases have priority. Cases designated for trial at the East County Courthouse will follow procedures set up for those dockets.

How is the court deciding which cases have priority for trial?

Judge Bushong is following a policy set up in November 2020. In criminal cases, priority trials are those approaching their speedy trial deadline and people who have been in custody awaiting trial for one year or longer. He will assign out most cases based on the custody status, the age of the case, witness availability, or other circumstances that suggest it is a priority trial.

How are jurors being summoned during the pandemic?

The court continues to summon jurors for “two-day or one-trial” terms on Mondays and Wednesdays, with special panels as needed on Fridays. Jurors are also summoned to the East County Courthouse. Jurors receive with their summons a notification about the safety measures the court has put in place during COVID. They are provided a link to the website to obtain additional information.

What is the intake process for jurors?

Jury room staff members instruct jurors to maintain physical distance as they line up to enter the court. Staff check jurors in and seat them in designated seats measured to be at least six feet away from any other seat. Jurors watch a general information video and an implicit bias video produced by the Oregon Supreme Court. They receive another information sheet describing safety precautions in place.

How many jurors will be available for trial?

The jury assembly room seats a maximum of 74 people total with physical distancing. Each courtroom can fit 16 jurors with physical distancing. Depending on the courtroom needs of the day, two or three courtrooms can be used to hold additional jurors, for a total of up to 106 or 122 total potential jurors on Mondays and Wednesdays. The number varies for special panels.

How are jury panels set up for a trial?

When a judge calls for a jury, the jury room will select a panel of 16, the maximum number of jurors that can fit in a courtroom along with defendants and attorneys. As always, the panel is a random selection from the total number of jurors present. The jurors will go up to the courtroom, two at a time per elevator. Most felony trials will need to conduct voir dire in segments of two or three panels. Jurors from the first panel return to their seats to await further instructions from the court.

Wouldn't it be more efficient to conduct voir dire where the jurors are seated?

The court is unable to conduct full, in-person voir dire in the jury assembly room for any case in which a defendant is in custody. During the pre-trial conference, parties can discuss options for virtual selection or hardship considerations with the jurors appearing by video. Note that this process requires advance arrangements.

Will I have enough jurors for my trial?

There will be enough jurors for trials, though selection will take longer. If a trial has not completed voir dire by the afternoon of the second day of the jury term, the trial can give call-back instructions for the

jurors who have already gone through voir dire and can call on additional jurors if needed from the next reporting panel.

Where will the court hold trials?

Trials cannot fit within their usual spaces with physical-distancing measures in place. The Central Courthouse is able to dedicate 13 courtrooms for jury trials, including using courtrooms for jurors waiting to be called for voir dire; trial courtrooms; observation rooms; and juror deliberation rooms. Felony trials generally need at least three courtrooms while misdemeanor trials can use one courtroom. The Central Courthouse has three larger courtrooms available for a trial involving up to two co-defendants. The court is unable to hold any cases of three co-defendants or more on the courthouse premises at this time due to space limitations. The East County Courthouse can hold one misdemeanor trial at a time, but cannot be used for felonies.

How many trials can be held at one time?

The number of trials held each day changes based on a variety of factors. Generally, the court will be able to conduct jury selection for two felony jury trials and one to two misdemeanor trials at a time, and can hold a third ongoing felony trial that has either completed jury selection or is following a different voir dire schedule after summoning a special panel. The court should be able to get most bench trials out on the requested day of trial.

If you can't fit all the jurors in the jury box, where do they sit?

Following a detailed and extensive process to maximize safety, sight lines, and the number of trial participants who can be present, the court mapped out trial courtrooms to comply with CDC guidelines and to sit participants at least six feet away from each other. Jurors are seated in the gallery as well as the jury box, and some jurors are seated behind where attorneys normally sit. The layout is very different from a usual trial format. Advanced planning and adjustments will be essential in preparing and conducting trials. Courtroom seating charts for standard courtrooms and larger courtrooms are attached. The court has also mapped out courtrooms used for jury deliberations and jury assembly. Note that the court has expended significant resources in mapping out all areas of the courthouse to comply with CDC guidelines. We are unable to make changes to the format without significant advance notice and an order of the court.

Where do jurors go during breaks and for deliberations?

Jurors in felony trials are sent to a separate courtroom for breaks and deliberations. Jurors in misdemeanor trials (or any trial in which six jurors are stipulated) are able to use a standard jury deliberation room. If there are alternates, the misdemeanor jury will be divided into two jury deliberation rooms for breaks.

What about victims, client's family members, media representatives and other interested parties?

In felony trials as needed, the court will use a separate courtroom or other observation room for spectators who can view the trial by video. In misdemeanor trials, there should be enough room in the courtroom for up to six additional observers.

What about co-counsel, investigators, and staff?

People connected to a case can move in and out of the courtroom for quick exchanges or discussions; however, unless there is an extra space as designated in the seating chart, those persons are not allowed to remain in the courtroom if they cannot at all times be at least six feet away from any other person.

Will jurors be required to wear masks at all times? What about witnesses? Will the judge allow them to remove their masks?

A request for jurors to remove masks during voir dire or for witnesses to remove masks during testimony will need to be addressed with the trial judge. Parties should consult with clients, witnesses and opposing counsel prior to making the request to the trial judge. If the request is made, parties should check with the court prior to trial regarding the option of using face shields. The court also has available a mask with a clear portion that allows for a more revealing view of a person's face. These masks are also more protective than the face shields. See attached photographs. Parties can also utilize video testimony, which allows a witness to be seen on a large courtroom monitor without a mask.

Will I be able to speak confidentially with my client?

If both attorney and client are vaccinated, the judge may ask that the attorney and client communicate in the normal fashion and to sit next to each other. If one is unvaccinated, parties should consult with the judge regarding what anticipated needs are for confidential communication, including whether the courtroom will need to be cleared and what needs to be done to ensure safe exchange of notebooks or documents. Addressing these issues with clients prior to trial will help things go more smoothly during trial.

Is the court providing food and beverages for jurors during the pandemic?

The court is not providing food and beverages for jurors (unless an individual judge brings in treats). A coffee bar on the third floor is now open on selected days of the week. The court will also provide information on lunch options in the vicinity. As always, parties should take precautions to avoid communicating with jurors or within earshot of jurors regarding the case.

Can the court conduct a remote trial?

Chief Justice Order 21-009 permits criminal jury trials to be conducted entirely by video if permitted by law, essential bandwidth and technology are available, the parties have agreed, and the Presiding Judge has so ordered. The order also provides that aspects of a jury trial may be conducted remotely by video if permitted by law and the judge who is presiding in a case has so ordered.

How do I request a remote trial?

The court needs at least six weeks' notice before an entirely remote trial to make all the necessary arrangements. If the parties are stipulating to an all remote trial, they should contact Presiding Court to set a scheduling conference with Judge Bushong. Parties should consult with the trial judge regarding particular aspects of a trial that will be conducted remotely.