

Silver Linings of the Virtual Courthouse:

ACCESS TO JUSTICE AND SUSTAINABILITY IN A POST-PANDEMIC OREGON

The Honorable Stephen K. Bushong
Presiding Judge, Multnomah County Circuit Court
&
The Honorable Morgan W. Long
Judge, Multnomah County Circuit Court

CLE Outline

- Contact Information
- Current Multnomah County Courthouse Operations
- Trial Options & Lessons Learned
- Looking to the Future
- New Courthouse



Current Courthouse Operations

HOW
MULTNOMAH
COUNTY
CIRCUIT COURT
IS HANDLING
THE COVID-19
VIRUS



Contact Information

Mul.TrafficDept@ojd.state.or.us

Mul.Evictions@ojd.state.or.us

Mul.ParkingDept@ojd.state.or.us

Mul.Juvenile@ojd.state.or.us

Mul.Familylaw@ojd.state.or.us

Mul.Criminal@ojd.state.or.us

Mul.Probate@ojd.state.or.us

Mul.Arraignments@ojd.state.or.us

Mul.Civil@ojd.state.or.us

Mul.FinancialDept@ojd.state.or.us

Mul.SmallClaims@ojd.state.or.us

Mul.Records@ojd.state.or.us

Email to get specific information from the appropriate department rather than call. Most Court staff are working remotely rather than at the courthouse. We are experiencing a high volume of emails and phone calls with limited staffing.

Civil Cases: Call Dockets and Remote Court Proceedings

- The Presiding Call Docket is by phone starting at 9:00 AM. The Presiding Conference Line is **1-503-388-9555 with an access code of 146 700 8974**.
- Civil Motion Hearings are taking place over WebEx video conferencing. Parties should reach out to the assigned judge's judicial assistant to coordinate appearances and judge's preference for receiving exhibits.
- All other court proceedings should occur remotely in accordance with the Oregon Judicial Department Remote Hearings Attorney Guide
 - https://www.courts.oregon.gov/services/online/Documents/Livestream/RH_Attorney_Guide.pdf

Civil Cases: Ex Parte

- Uncontested and stipulated motions may be presented to the Presiding Judge *ex parte* by telephone. The conference line is **1-503-388-9555 with an access code of 146 700 8974.**
- Civil *ex parte* will be held in the morning at 10:30 AM and in the afternoon at 1:30 PM. Parties are to email the Presiding clerks their documents at least by 9:00 AM the day they would like to appear, keeping in mind the required SLR notices.
- Please also include the time that parties would like to appear when emailing the clerks.

Criminal Cases

- The court will continue to hold in-custody arraignments, in-custody probation violation hearings, in-custody pleas, in-custody probable cause hearings, in-custody release hearings, and in-custody substitution hearings.
- Grand jury proceedings and preliminary hearings for felony indictments will continue.
- Trial assignment and short matters dockets (Presiding and CPC) will be conducted via phone for the purposes of setting new call and trial dates.
 - The conference line for Presiding is **1-503-388-9555 with an access code of 146 700 8974.**
 - The conference line for CPC is **1-503-388-9555 with an access code of 146 596 9700.**
- Justice Center appearances: Phone number: **1-503-388-9555**
 - JC2: 146 308 6154
 - JC3: 146 485 2595
 - JC4: 146 696 4571

Landlord Tenant, Juvenile, & Probate

■ LANDLORD TENANT:

- Landlord Tenant first appearances and hearings are being scheduled.

■ JUVENILE:

- The Juvenile Court is open for both delinquency and dependency cases.

■ PROBATE:

- Temporary guardianships and temporary conservatorships will be heard if scheduled through the Probate Department.
- Motions for Expedited Hearing on Indefinite Guardianship and conservatorship to be filed electronically, with notice to all parties. These motions will be decided by the Chief Probate Judge or his designee.
- The Probate Department is closed for in-person matters.

Family Law

- The Family Law public counter is open for limited services.
- The court will conduct in-custody violation of restraining orders (VRO) and in-custody support enforcement (SED) matters.
- Restraining order applications and immediate danger motions will be heard at ex parte at 1:15 PM. If a hearing is requested, parties will be notified and sent notice with the date, time and location of the hearing. Specially assigned cases will be scheduled through the assigned judge.
- Contested restraining order hearings will be scheduled and parties will be sent notice with the date, time and location.
- The court will be accepting and setting Enforcement of Parenting time motions. Dates for hearings on these motions will be given at the counter, and a phone line will be set up for attorneys to obtain dates.
- Civil commitment hearings will be remotely, rather than occurring in hospitals.

Family Law Continued

- Family and juvenile law matters have different logistics and access to justice issues
- Approximately 87% of family law cases involve a self-represented litigant
- Nearly all juvenile law cases involve litigants that qualify for indigent defense
- Family law and juvenile workgroups are actively exploring how to provide better access to video technology
- Ex parte video appearances will soon begin as a trial run
- Looking at what hearings may be appropriate to continue remotely

Current Trial Options Available

HOW TO PLAN
FOR TRIAL
DURING THE
COVID-19
RESTRICTIONS



Priority of Trials During the Pandemic

- Criminal cases facing speedy trial deadlines take priority for in-person jury trials
 - Felony cases with a defendant in custody for one year or more
 - Other criminal and civil cases with urgent need for resolution through trial



Civil Trials: Options Available

The Court is currently only holding in-person civil jury trials where there is a substantial immediate concern or risk of harm if the trial does not occur during the Court Restrictions. Here are a few options available for alternative civil trials:

- **Bench Trial:** Parties may participate in our pilot program for bench trials where the attorneys confer and propose a list of three judges they feel comfortable trying the case before. The Presiding Judge will then pick one of those judges for the trial. This may be able to keep the original trial dates without needing a postponement or scheduling conference. Bench trials would likely occur remotely, with the details and final arrangements to be made with the assigned judge.
- **Remote Trial:** The Court held the first completely remote civil jury trial March 15-18. This option would need to be discussed with Presiding prior to the trial during a Scheduling Conference.
- **Postponed Trial:** If an in-person jury trial is still the preferred option, a Scheduling Conference is needed to discuss new dates. While we will do our best to accommodate requested trial dates for this summer and fall, dates in late fall and winter of this year have a better chance of occurring than dates set in spring and early summer.

Remote Jury Trials:

What we learned and what to avoid

- The first remote jury trial was largely the same for the attorneys as in-person trials. To assist with preparation and logistics, a pre-trial conference with the assigned judge is required.
- At least 6 weeks' advance notice required
- Jurors work well from home. Jury selection, deliberation, and trial conducted via WebEx
- Lawyers' work is similar to in-person trials: questioning witnesses, presenting and objecting to evidence, arguing facts and law
- Theatrics: Remember that remote appearances should be like a TV show, not a Broadway play.

Access to Justice Hurdles

- Substantial disparities in access to internet broadband and computers according to income and race
- People with disabilities may require special technology in order to engage in remote proceedings
- Translation can be even more difficult remotely than in person

Looking to the Future

WHAT CAN BE
DONE NOW TO
PROMOTE
ACCESS TO
JUSTICE



Do Remote Hearings Promote Equity?

- 2008 Cook County analysis
 - Average bond amount rose by 51 percent for felony bond proceedings held by video
 - No statistically significant change for live bond proceedings
- 2011-12 study on Immigration proceedings
 - Participants who appeared by video were less likely to engage in hearing or seek relief
 - Logistical hurdles require more advance preparation
 - Several respondents reported it was difficult to understand what was happening during video proceedings

Equity Benefits of Remote Appearances

- Remote appearances can greatly reduce travel costs, time off from work, and daycare costs for litigants
- Legal aid, pro bono services, and specialized attorneys can reach more remote parts of the state
- Anxiety or trauma issues surrounding the courtroom can be greatly reduced via remote appearances
- Other benefits include:
 - Less stress and increased productivity for attorneys
 - Increased participation by litigants
 - Domestic violence dynamics lessened
 - Less travel by all involved, including translators
 - Reduced paper wastes as more documents are shared electronically

Further Steps to Take Towards Equity

- Start all hearings with guidelines for remote appearances
 - Establish how attorneys and parties should notify the court of issues
 - Prepare clients for remote appearance logistics
 - Ensure that all litigants know that they can ask to have a private conversation with their attorney at any time
 - Make an advanced plan to share electronic exhibits with the court, other parties, and your client
 - Maintain professionalism and dignity of the court
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Getting to Post-COVID Restrictions

- Continue remote hearings to reduce in-person court appearances.
- Delay most civil trials and in-person hearings to after court restrictions are lifted.
- Use ADR and other processes to resolve cases.
- Have patience with large Call Dockets by phone.
- Lessons learned from COVID-19:
 - Mute microphones and audio to reduce background noise and do not use speaker phones
 - Allow additional time for electronically filed documents to be reviewed and entered
 - Most proceedings can be conducted remotely, Submit exhibits, paperwork in advance

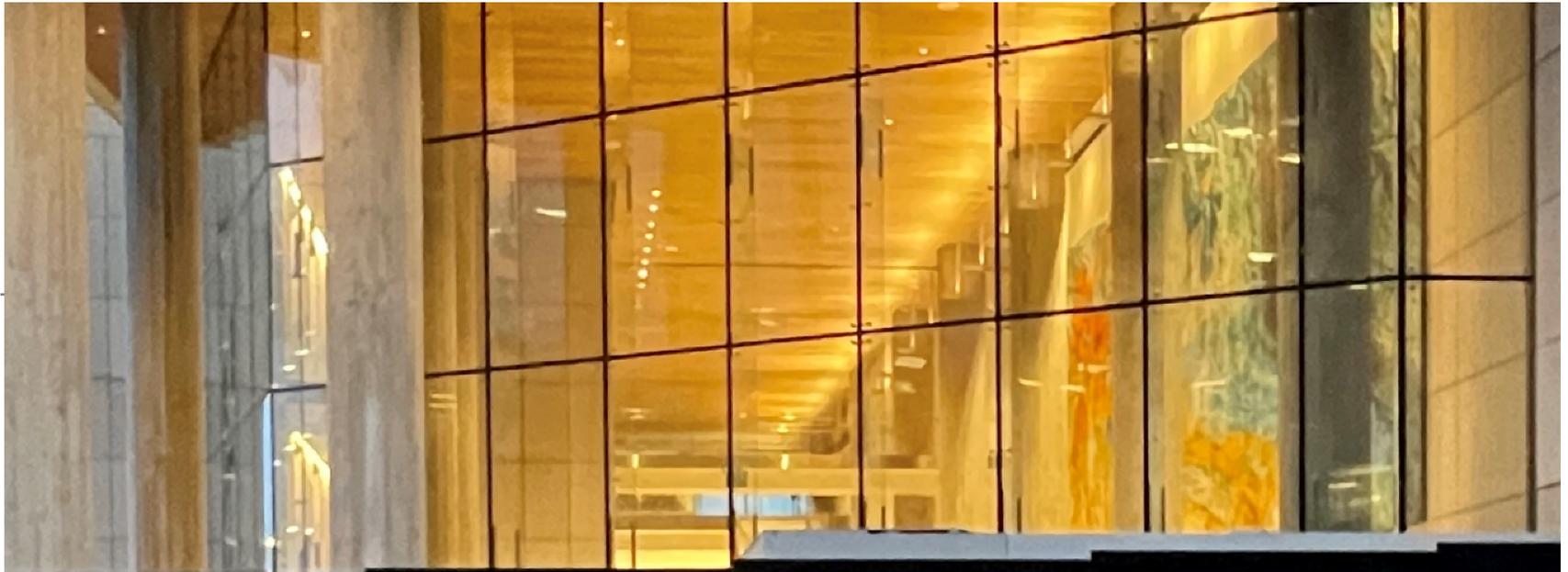
The New Courthouse

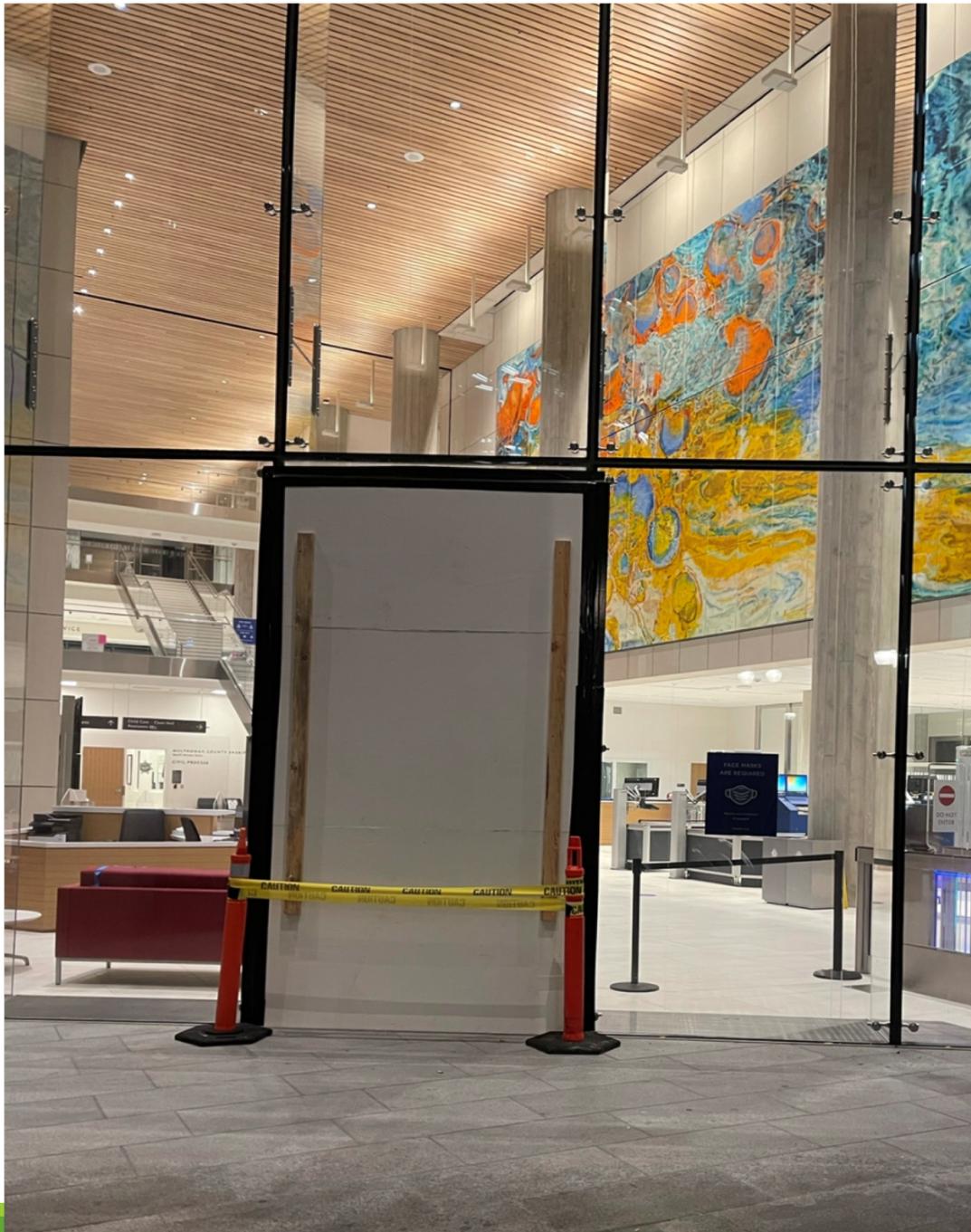
HOW THE
FIRST YEAR IN
THE NEW
COURTHOUSE
IS GOING















Jury Assembly on 3rd Floor

Court Facilities

- Utilizing All Four Courthouses
- Justice Center Repairs Underway; Out of Custody Appearances at Central Courthouse
- Distance Requirements Continue
- 3-5 Courtrooms for Each Felony Jury Trial
- District Attorney's Office Using 3 Courtrooms for Grand Jury Proceedings
- Bring On Herd Immunity!