JUDGE DONOHUE'S
COURTROOM PROCEDURES

I. INTRODUCTION

A. Phone / Fax

The office phone number is 541-766-6843. During trials, your office, witnesses and family may leave messages with the judge's judicial assistant. Those messages will be given to you by the courtroom clerk.

Please call before sending faxes. The fax number is 541-766-6028. You must first contact the judge's judicial assistant before sending a fax transmission. Neither the judge nor his judicial assistant has a fax machine in their office. Faxes sent without first contacting the judicial assistant may not be delivered timely to the judge. There is a 10 page limit to the length of documents that can be sent by fax.

We do not provide a fax service. We will not send an outgoing fax for you.

B. Delivery of Documents

Deliver all copies of documents to the office of the judicial assistant, Room 109. Please do not deliver originals, unless otherwise specified in UTCR or SLR. You must file the original document with the clerk on the first floor and hand deliver or mail separately the copy to the judge's judicial assistant in Room 109.

II. COURTROOM

A. General

Judge Donohue's assigned courtroom is Courtroom #4 located on the first floor of the courthouse.

B. Cell Phones / PDA's

Cell phones, personal digital assistant devices (PDA's) and other types of personal electronic equipment may not be used in the courtroom without permission from the judge. If you bring them into the courtroom, you must turn them off or silence the ringer.

C. Food, Drinks, Chewing Gum, Hats

No food, drinks or chewing gum are permitted in the courtroom. Hats may not be worn in the courtroom. Ask the courtroom clerk if you need to seek an exception.

D. Keep Quiet

Acoustics in the courtroom are poor. Even muted conversations in the back of the courtroom project toward the bench and are disruptive to court proceedings. When court is in session, keep all conversations in the seating area whispered and brief. If you must speak at length, go out into the hallway.

E. Microphones

Courtroom #4 is equipped with a sound system that feeds directly into the court's digital recording system. When the microphone is turned on, the light is green. If the green light is not illuminated, the microphone is turned off. Please remember to turn the microphone off when discussing matters privately with your client at counsel table and to turn the microphone back on when you have finished. You should also be careful not to place books, notebooks, etc. on the base of the microphone as that may accidently turn the microphone off.

F. Wi-Fi

Wireless internet access is available in Courtroom #4. Ask the courtroom clerk for directions on how to access it.

G. Audio/Video Technology

Courtroom #4 is equipped with a Polycom Audio/Visual Conferencing System, ELMO-electronic overhead projection equipment, 52" Samsung monitor, VHS player, DVD player, telephone conferencing equipment, and the ability to project a presentation or play an audio CD directly from an attorney's laptop computer at the counsel table. Some of this equipment is shared with other courtrooms so you must call ahead to check for availability.

Telephone conferencing is used frequently, but there is a limit to the number of parties that may participate in any one conference call. If there are more than 3 parties that need to participate in the conference call, arrangements can be made in advance with the court to connect to services such as Free Conference Call.com.

The Polycom conferencing system may be used to facilitate the video conference appearance or testimony of parties or witnesses from remote locations. Video conferencing requires connection to compatible audio/video equipment at the remote location. Several days' advance notice and prior testing of the equipment and connections between the courtroom and the other facility is required.

ELMO-electronic overhead projection equipment is provided for display of photographs, maps, other documents and 3-dimensional items of evidence. This is a user friendly device that requires a brief orientation for the user prior to presentation of evidence and is often used in lieu of publishing directly to a jury while evidence and testimony presentation is continuing.

The VHS player in the courtroom is used for display of materials presented in that format and is operated by the courtroom clerk. A DVD player is available, however, it is preferred that any DVD be played from an attorney's laptop computer at counsel table so that the attorney is in control of the stopping and starting of the DVD.

An attorney's laptop computer can be connected to the courtroom audio/video equipment to allow almost anything on the computer to be played on the Court's speaker system or displayed on the court's 52" monitor, including photographs, Power Point presentations, audio CDs, DVD's, etc.

If you need to use any of the Court's equipment, you must contact the courtroom clerk (Cassandra.R. Swanson@ojd.state.or.us) **at least 48 hours prior to the intended use date**. Please tell her which day you will need the equipment and for how long. She will respond promptly to set up an appointment to test the equipment, cable connectivity and media and provide any necessary training for use of the equipment. Prior testing insures that the media functions properly and that those intending to make a presentation have an understanding of the function and use of this equipment. Prior testing also insures that the proceedings in the courtroom flow smoothly and professionally. If more than one party requests to use the equipment, the parties must confer before the hearing date and work out a shared use agreement.

If court-supplied equipment is not available, you will be responsible for bringing in your own. The same notification and testing requirements may apply.

H. Accommodation for People with Disabilities

If any of the lawyers, parties or witnesses requires accommodation because of a disability, please let us know as early as possible. See UTCR 7.060.

I. Assistive Listening Devices (ALDs)

ALDs are available for all parties, including witnesses, jurors, and attorneys. It is necessary to advise the courtroom clerk prior to the need to use assistive listening equipment so that it can be properly set up. This equipment is shared between courtrooms. The user will be able to adjust the volume to the desired level and all of the courtroom microphones will be accessed for that purpose.

J. Transcripts and Audio Records

The courtroom is equipped with For The Record (FTR) digital recording system which preserves the official record of court proceedings. Proceedings in most civil cases are not recorded unless a hearing/trial fee has been paid. For information on how to order a transcript or audio record of a court proceeding, click here.

K. Access to the Courtroom

For purposes of security, the doors to the courtroom will be locked during the noon hour and when court is not in session. If you wish to access the courtroom during the lunch hour, please check with the courtroom clerk to see if someone will be available to assist you.

III. PROFESSIONALISM

- Be on time.
- Be courteous.
- Be brief.
- Confer either through a face-to-face meeting or telephonic conversation. Judge Donohue does not consider email exchanges to be adequate conferral for the purpose of UTCR 5.010 conferral requirements.
- Follow through on your commitments.
- Empathize with the position of opposing counsel, the court and other players in system.
- Introduce yourself to the court staff and treat them with the utmost respect. This includes:
    - File clerks
    - Courtroom clerks
    - Judicial Assistants
    - Corrections deputies
- Advise the court immediately if you have resolved your case.
- Strike from your written and oral arguments all disparaging remarks.
- Never interrupt. Stand up instead. Make your arguments to the judge, never to opposing counsel.
- Make all of your arguments before the judge rules, not afterward. (Do not make comments "for the record" after the judge rules.)

IV. PREPAREDNESS

- Serve your opponent <u>and the judge</u> with copies of all court documents.
- Have a notebook or something else that will keep you organized.
- Bring your calendar with you to court.
- Cite to best case, no string cites. Use Oregon cases if possible.
- Have your witnesses present and ready to go. Go over their testimony beforehand.
- Bring a clean set of printed jury instructions to court, along with a CD containing the instructions you are requesting.

V. PRESENTATION

- State your name for the record.
- Speak slowly, loudly, clearly. Courtrooms have poor acoustics.
- Stand up, sit up. Be mindful of your facial expressions.
- Tell me what you want me to do before you give background of your case.

- State “objection” and cite the ground on which you rely. NO speaking objections. Use objections infrequently.
- Do not give an expression of your personal opinion.
- Use exhibits effectively, but do not show them to jury before they have been received.
- Watch the jurors and their nonverbal communication. They often convey important clues regarding the effectiveness of your presentation.

VI. PRE-TRIAL ISSUES

A. Confer with Opposing Counsel

Prior to trial you should confer with opposing counsel on the following:

- Whether witnesses are to be excluded. Note: You are responsible for notifying witnesses that they are excluded; the clerk and the judge cannot always identify all of the people in the courtroom.
- Stipulations as to evidence and exhibits.
- Motions in limine.
- Prior convictions of witnesses (if applicable).

As much as possible, objections and other legal issues should be dealt with prior to jury selection. If the parties believe that there will be evidentiary or procedural issues requiring resolution, they should inform the court of this at the trial readiness conference in order to allow for the scheduling of a pre-trial hearing to address the issues. Absent good cause (e.g. the discovery of additional evidence or information after the trial readiness conference), the judge will not allow motions in limine on the day of trial.

Regarding issues arising at trial, the judge is very protective of the jurors’ time. If a matter needs the court’s attention, bring it up at the earliest possible moment. It may be scheduled for a time before the jurors are to return from a break or after they are excused for the day.

B. Exhibits

Mark all exhibits before trial. The courtroom clerk can provide you with extra exhibit stickers if necessary. Exhibits are to be marked as required in UTCR 6.080. Have a notebook with your exhibits marked and ready to go and give a copy to the judge, the courtroom clerk and opposing counsel. You may also provide copies of exhibits to the judge in an electronic format sent by email or on a CD, DVD or flash drive if appropriate.

The handling of hazardous substances, controlled substances, and weapons and dangerous instruments in the courtroom and courthouse facilities must be in accordance with UTCR 6.140-6.180. You must provide the courtroom clerk with 24 hours notice if you intend to offer these types of exhibits into evidence.

Confer with opposing counsel and stipulate to as many exhibits as possible.

You must provide the courtroom clerk with an exhibit list as required by UTCR 6.080(3) at the beginning of the trial. The exhibit list is not only a requirement in the rules, but essential for record keeping when there are large numbers of exhibits and for the purpose of assisting the courtroom clerk. We understand not all exhibits on the list may be offered and, rarely, additional exhibits may need to be presented.

Once exhibits have been received, they are in the custody of the courtroom clerk and are not to go back to counsel table.

C. Witness List

Lawyers must provide a witness list to the courtroom clerk. This helps her get correct spellings and helps the judge keep track of the case presentation.

D. Jury Instructions

Preliminary jury instructions are given before opening statements and final instructions are given before closing arguments. The judge requires attorneys and self-representing litigants in both criminal and civil trials to deliver their requested jury instructions to his judicial assistant at least 24 hours before trial is set to begin. This allows the judge and his court staff time to prepare a draft of the preliminary instructions before voir dire begins. The judge prefers the requested instructions be delivered by email. The judge understands that the appropriateness of requested final instructions may change during the course of the trial and adjustments can be made, but the preliminary instructions are very similar in most cases.

Requested jury instructions in civil cases should include a proposed summary of the pleadings.

UTCR 6.060(1) and UTCR 6.060(2) requires the original requested jury instructions and verdict form be delivered to the court on the morning of the trial. You may hand these documents to the courtroom clerk. Note: The jury instructions are the only original pleadings that may be filed with the courtroom clerk, originals of all other pleadings should be filed with the court clerk in the normal course.

If you are requesting specially-drafted instructions, please submit them via email or on a CD, DVD or flash drive (in Word format) together with the hard copy.

E. Check in with the Clerk

Please provide the courtroom clerk with the following information:

- Your name and your bar number; and
- A receipt showing that the appropriate hearing/trial fee has been paid.

F. Civil Trials

SLR 6.051 requires trial memoranda, witness lists, motions in limine and exhibit lists be delivered to the court and opposing counsel or party at least 24 hours prior to the commencement of the trial.

G. Criminal Trials

If the defendant is in custody, the courtroom clerk will call for the defendant only after the attorneys are ready to go and the jurors are in the jury room. Please do not ask the clerk to call for the defendant earlier than necessary; the judge does not like to unnecessarily tie up the resources of the Sheriff's office.

VII. JURY SELECTION

A. Juror Seating

The courtroom clerk will provide you with a seating chart for the jury prior to voir dire.

B. Juror Pre-Draw

Unless objected to by a party, Judge Donohue prefers to "pre-draw" jurors in order to allow the parties an opportunity to review the questionnaires of those jurors who will be initially selected for voir dire prior to any jurors being brought into the courtroom.

C. Questioning Jurors

You are not permitted to ask questions that:

- Condition a response or make a "witness" out of a potential juror.
  Ex: Would you have difficulty walking a straight line if you were tired and nervous?
- Exact a promise from the jurors.
  Ex: Can you promise me that you will return a guilty verdict if the state proves its case?
- Argue the facts of the case.
  Ex: Would it surprise you to learn that the police did not collect fingerprints when they learned the car was stolen?
- Suggest facts not in evidence.
  Ex: Can you think of why my client would not want to testify?

When in doubt, ask the judge if a question is appropriate. He is happy to discuss what questions are permitted and give you guidance. Keep in mind that the judge prefers questions be posed to the entire panel and discourages going down the row from juror to juror asking questions, especially if it appears that repetitive individual questioning is merely for the purpose of having individual conversations with each prospective juror.

D. Peremptory Challenges

Peremptory challenges are usually taken outside the courtroom and outside the presence of the jurors. If you prefer to have the jurors present during the challenges, the paper-slip method as

described in ORCP 57 will be used. Challenges for cause during voir dire need to be made before the jurors leave the courtroom. You need not expressly challenge a juror to his or her face, but you may choose to signal the judge by saying, "Does the court want to inquire?" or by asking for a conference outside the presence of the jury.

VIII. TRIAL

A. General Rules

- Stand each time an impaneled jury enters or exits the courtroom.
- Use the proper names of the parties. Do not use first names unless the witness or party is a child. *See* UTCR 3.030 (**check this)**
- Do not be solicitous about the welfare of the jurors and witness.
- You may hand exhibits to the witness.
- You may hand exhibits that have been received in evidence to the jury.
- Do not grab for exhibits from the courtroom clerk's desk.
- Do not take exhibits that have been received into evidence back to counsel table.
- You may move freely about the courtroom. You have permission to approach the witness. You may stand during the examination of the witness.
- Speak quietly during bench conferences to prevent the jury from overhearing what is said.
- Speaking objections are not permitted in front of the jury.
- The judge allows direct, cross, and re-direct examinations. There is no re-cross unless the judge finds good cause. You must make an objection if you believe that re-direct is exceeding the scope of cross.
- Unless you feel it is necessary in a particular case, witnesses need not be automatically excluded in all cases. If a party requests the exclusion of witnesses, **before trial** the request will be granted. If witnesses have been excluded, attorneys will be responsible for calling their witnesses into the courtroom.
- The court breaks for lunch at noon. The courtroom will be locked and inaccessible until 1:00 p.m. If you wish to access the courtroom during the lunch hour, please check with the courtroom clerk to see if someone will be available to assist you.

B. Questions from the Jury

With the consent of the court, at the conclusion of the testimony of each witness, jurors may be given the opportunity to submit questions to the witness, in writing. If the parties stipulate before trial to allowing jury questions, the courtroom clerk will collect any questions that the jury has written down after the re-direct examination of a witness. The judge will review these questions with the attorneys for objections. You will be permitted to ask follow-up questions to the witness if a question from the jury is asked.

C. Making Your Record

The judge will provide you an opportunity to put on the record any matters discussed at sidebar (or in chambers). This will usually occur at a normal break time for the jury. It is your responsibility to ask to have matters put on the record.

IX. POST TRIAL MATTERS

The clerk will require that you sign out your exhibits at the conclusion of trial. See UTCR 6.120(1). It would be appreciated if you pick up larger poster boards and other cumbersome exhibits as soon as possible after the end of a trial.