

COURTROOM PROCEDURES

JUDGE STEPHEN K. BUSHONG

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Introduction

Preliminary statement. This document attempts to summarize the practices and procedures currently followed in my courtroom and answer some of the questions frequently asked by attorneys before appearing for trial in my courtroom. This document is not intended to replace or summarize the requirements set forth in the Oregon Rules of Civil Procedure, the Uniform Trial Court Rules, and the Supplemental Local Rules of this court. In general, I attempt to follow the “Recommended Practices for Civil Jury Trials in Multnomah County” adopted in 2008 by the Multnomah County Presiding Court Task Force on Civil Jury Trial Practices. However, I do not rigidly adhere to any practices other than those required by law. Attorneys who would like me to take a different approach in a particular case should request a pretrial conference; I try to be flexible in my approach to trial practice.

Finding me. I’m assigned to courtroom 450; my chambers and judicial assistant are in room 402. The courtroom and chambers are on the 4th floor of the Multnomah County Courthouse, on the east side of the building. All deliveries should be made to chambers, room 402.

Courtroom Practices—In General

Cell phones should be turned off upon entering the courtroom.

Please be professional at all times. Treat everyone in the courtroom—judge, jury, staff, opposing counsel, witnesses—with respect.

Please be prepared to start on time.

Stand when the judge/jury enters the courtroom.

Attorneys may either stand or remain seated at counsel table when addressing the court.

Attorneys may remain seated at counsel table while questioning witnesses.

Attorneys do not need to ask for permission to approach the witness, or to hand an exhibit to the clerk.

Attorneys are not required to remain at counsel table when questioning a witness or during *voir dire*, but they should not stray very far from a microphone.

The clerk operates the audio recording system that serves to create the official record. The court does not provide court reporters. If you want a court reporter, you should make arrangements in advance of the court proceeding.

Assisted listening devices are available upon request.

Motion Practice

A judge's copy of all motions, memorandums, affidavits and other supporting materials should be sent to my attention or delivered to to my chambers. The originals should be filed with the clerk's office.

When a hearing is scheduled on one motion, please do not ask me to address additional motions without prior approval of the court. Ordinarily, if multiple motions are to be addressed in a single hearing, the hearing will be scheduled 5 weeks after the last-filed motion to give all parties sufficient time to brief the issues.

Copies of cases do not need to be attached to the original and filed with the clerk's office. I appreciate receiving copies of key cases—not every case cited in your memo—with the judge's copy of a motion or memorandum. It is not necessary to give me copies of published opinions of the Oregon appellate courts.

At oral argument, attorneys should not repeat what they said in their motion or memorandum. Argument should be used to emphasize, clarify, or expand on the points made in writing, and to respond to the opposing party's arguments if you have not already done so in writing.

Pretrial Practices

Pretrial conference. I do not automatically schedule a pretrial conference when a case is assigned to me for trial, but I encourage attorneys to request a pretrial conference if they have questions or believe a conference will help the parties and the court use trial time more efficiently. Pretrial conferences with the court may be scheduled by contacting my judicial assistant.

Equipment. Attorneys should confer about any special audio/visual or other equipment needed for trial. If possible, equipment should be shared by counsel to avoid unnecessary duplication of efforts. Contact my judicial clerk or judicial assistant to discuss any special needs for equipment or to make advance arrangements to set up equipment in the courtroom. The court has some limited AV equipment available on a "first come, first served" basis; contact Larry Jessen in room 210A (503-988-3187) for availability and other information about this equipment.

Exhibits. Trial exhibits should be marked before trial in accordance with UTCR 6.080. Attorneys should confer before trial regarding exhibits; attorneys should stipulate to authenticity/admissibility of exhibits to the extent possible. Disputes over admissibility of exhibits should be brought to the attention of the court before trial whenever possible. I prefer to resolve disputes over the admissibility of exhibits before trial if possible.

Pretrial motions. Motions in limine and any other pretrial motions should be filed with the clerk's office—with a judge's copy delivered to my chambers—no later than 12:00 noon on the day before the first day of trial.

Trial memorandum. A trial memorandum is optional in civil cases. Trial memos are most helpful to me when they (1) alert me to any unusual evidentiary issues that may come up during trial; (2) include argument with supporting authority on any anticipated motions for directed verdict; and/or (3) include argument with supporting authority on requested jury instructions (other than Uniform Civil Jury Instructions). Trial memos should be filed with the clerk's office—with a judge's copy delivered to my chambers—no later than 12:00 noon on the day before the first day of trial.

Jury Instructions and verdict form. Requested jury instructions and proposed verdict form should be delivered to my chambers no later than 12:00 noon on the day before the first day of trial. If possible, please attach requested jury instructions and verdict form to an email to me and to my judicial clerk. WORD format is preferred. Be sure to fill in the blanks on uniform instructions. Don't forget to include a Summary of the Pleadings in civil cases.

Juror questionnaire. Juror questionnaires may be allowed, but I do not ask prospective jurors to complete a written questionnaire unless requested by the parties. If you believe that using a juror questionnaire will be helpful and will allow the jury selection process to proceed more efficiently, please confer with opposing counsel and attempt to reach agreement on the form of the questionnaire. Proposed juror questionnaires should be submitted to the court no later than 12:00 noon on the day before the first day of trial. The court does not provide copies of completed juror questionnaire forms; the parties are responsible for making their own copying arrangements.

Trial

Trial schedule. The normal trial day is from 9 a.m. until 5 p.m., with a lunch break from 12:00 noon until 1:30 p.m. There will also be a 15 minute break in the morning and a 15 minute break in the afternoon. Trials are ordinarily held Monday through Thursday. Witnesses should be scheduled to minimize any delays or gaps in the trial proceedings. Attorneys wishing to deviate from the normal schedule should contact my judicial assistant in advance of trial or notify me at the earliest possible time during trial.

Jury selection. Prospective jurors are seated in order of the list provided by the jury room, starting in the front row of the jury box closest to the bench, then in the back row of the jury box, then in the courtroom observer seats (starting in the front row closest to the window) until all jurors are seated. Unless a juror questionnaire is used, I ask each prospective juror to answer a set of general questions (these questions can be tailored to fit the case, and can be obtained from the clerk at the start of trial). I may ask follow up questions and inquire about any particular hardship a prospective juror thinks will make it difficult for him or her to serve as a juror. I then allow the attorneys to question prospective jurors as a group and individually, if appropriate. Attorneys should not argue the facts of the case, suggest facts not in evidence, exact a promise, or attempt to condition a response from prospective jurors.

Challenges for cause are made in open court in front of the prospective jurors. Peremptory challenges are ordinarily handled in the courtroom after the prospective jurors are excused. Depending on the anticipated length of the trial, I may seat one or more alternate jurors.

Juror questions. Ordinarily, in civil cases, I will ask jurors if they have any questions before excusing a witness. Juror questions must be submitted in writing. I will review each juror question with the attorneys in a sidebar conference, and have the attorneys note whether they have any objection to the question. I will then decide whether the question will be asked. I may decide to modify the question. If I decide that a juror question (or modified juror question) is appropriate, I will ask the question of the witness. I will then allow the attorneys to ask follow-up questions, if any.

Trial objections. “Speaking” objections are not allowed in the presence of the jury. If attorneys object while the jury is present, they should briefly state the evidentiary basis for the objection. If the attorney wishes to argue or make a record, they should inform me that they have a matter for the court. Unless the matter can wait until the next break, I will send the jury back to the jury room and hear the matter outside the presence of the jury immediately.

Expert witnesses. I do not like making the jury wait (or having to take an extra break) to give opposing counsel an opportunity to review an expert’s file immediately before cross-examination. In order to reduce this delay, the expert’s file should be made available to opposing counsel at the break immediately before the expert is called to testify on direct examination whenever possible.

Written set of jury instructions. Ordinarily, I will give the jury one set of written instructions to use during deliberations.