In the Matter of Protective Face Coverings in the Oregon State Courts	)	CHIEF JUSTICE ORDER No. 20-045
	)	ORDER REGARDING THE USE OF PROTECTIVE FACE COVERINGS IN THE OREGON STATE COURTS

I HEREBY FIND THAT:

1. ORS 1.002 provides that:

   a. The Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure (ORCP); and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice; and

   b. The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.

2. ORS 1.171(4) provides that a Presiding Judge may delegate the exercise of any of the administrative powers of the Presiding Judge to another judge of the court or to the trial court administrator.

3. On March 8, 2020, Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency because of the threat that the COVID-19 coronavirus posed to public health and safety (hereafter, "COVID-19 state of emergency"). On October 27, 2020, Governor Brown signed Executive Order 20-59, which extended Executive Order 20-03 and the declaration of the COVID-19 state of emergency.

4. On March 23, 2020, Governor Brown signed Executive Order 20-12, which ordered Oregonians to "Stay Home, Save Lives," including, to the maximum extent possible, staying at home or at their place of residence and otherwise observing social distancing that provides a distance of at least 6 feet between individuals. On May 14, 2020, Governor Brown signed Executive Order 20-25, which directed a phased reopening of the State of Oregon.

5. On March 27, 2020, I issued Amended Chief Justice Order (CJO) 20-006, which imposed amended Level 3 restrictions on operations due to the spread of the COVID-19 virus and Governor Brown's March 8, 2020, declaration of an emergency and her issuance of Executive Order 20-12. On May 15, 2020, I issued CJO 20-016, which imposed updated Level 3 restrictions, as well as Level 2 restrictions, on court operations in light of the Governor's Executive Order 20-25 and Oregon's phased reopening. Among other provisions, paragraph 10 of CJO 20-016 granted a Presiding Judge authority to require that specified persons in a courtroom wear masks and, in other proceedings where court operations are conducted, to recommend that people wear masks as appropriate.

6. On August 13, 2020, and again on October 19, 2020, under the direction of Governor Brown, the Oregon Health Authority (OHA) issued Guidance that sets out several requirements and recommendations regarding the wearing of protective face coverings.

This Order is based on the foregoing and on information concerning the continuing risks and spread of the COVID-19 virus that is currently available, and may be revised as further information becomes available.

I hereby ORDER as follows:

1. Definitions. As used in this order:

    a. "Administrative authority" means, for any judge seeking an exemption under paragraph 5, the Presiding Judge. For any staff seeking an exemption, "administrative authority" has the meaning set out in Judicial Department Personnel Rule 2.01.

    b. "Court facility" means the courthouse or any alternative physical location being used by the court or the Office of the State Court Administrator, but not any part of a building or location that is not under the court's control.

    c. "Enclosed office or workstation" means an office or workstation that is enclosed from floor to ceiling on all sides, including a courtroom.

    d. "Open work area" means a work area consisting of one or more temporary or permanent workstations that either have no barriers or are partially separated by barriers that do not enclose the workstation from floor to ceiling on all sides, such as cubicles.

    e. "Protective face covering" means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended by the Centers for Disease Control and Prevention (CDC) and the Oregon Health Authority.

    f. "Remote means" means making a court appearance or conducting a trial, proceeding, hearing, or other gathering by telephone, video, other two-way electronic communication device, or simultaneous electronic transmission.

    g. "Social distancing" means the minimum amount of physical distance between each person. The distance shall be determined by the social distancing requirements specified in the applicable Executive Order issued by the Governor, Guidance issued pursuant to such an order, or Guidance from the CDC. As of the date of this order, the distance is 6 feet between each person. When this order imposes social distancing requirements, members of the same household, and others if permitted by the Presiding Judge, are excepted from those requirements.

    h. "Staff" means all Oregon Judicial Department staff working in a court facility, including any volunteers.

    i. "Temporarily remove a protective face covering" means removal for a short period of time, necessary to fulfill the purpose of an exception, as described in paragraph 3.

2. Except for children under 5 years of age, and as provided in paragraphs 3, 4, and 5, all persons entering or working in the court facility, including judges and staff, are required to wear a protective face covering while in the court facility.

3. Trials, proceedings, or hearings held in a courtroom

a. The judge who is presiding over the trial or proceeding may

(1) Temporarily remove the judge's protective face covering to ensure that a particular participating person understands a particular communication from the judge;

(2) Require or permit a juror to temporarily remove a protective face covering when the juror is answering a question during *voir dire*;

(3) Require or permit a witness to remove a protective face covering when the witness is testifying, provided that a minimum of 6 feet of social distance is consistently maintained between the witness and any other person; and

(4) Require or permit any other participating person to temporarily remove a protective face covering to ensure that a particular communication is understood.

b. When the judge who is presiding removes the judge's own protective face covering or requires or permits a juror, a witness, or any other participating person to do so under subparagraph 3.a.:

(1) If the removal is for less than 15 minutes, the judge may use or require other protective measures, such as the use of a face shield or protective physical barrier, additional social distancing, or the use of remote means;

(2) If the removal is for more than 15 minutes, the judge shall use or require other protective measures, such as the use of a face shield or protective physical barrier, additional social distancing, or the use of remote means.

4. Enclosed offices and workstations

a. Judges and staff may remove their face coverings when they are alone in enclosed offices or workstations. When judges or staff leave their enclosed offices or workstations, or when another person enters their enclosed offices or workstations, they must wear a protective face covering.

b. Subparagraph 4.a. applies to a workstation located within an open work area of any size, including any workstation partially separated by barriers from that open area, such as a cubicle, but only if

(1) Only 1 person is working in that open work area; and

(2) That open work area is separated from the public by a floor to ceiling divider.

5. Exemptions

a. A Presiding Judge or that judge's designee(s) may grant an exemption from paragraph 2 to any person who seeks to enter, but who does not work in, the court facility, due to disability, respiratory or other health-related issues, or other legally required cause. The Presiding Judge shall grant such an exemption when required by law.

b. An Administrative Authority may grant an exemption from paragraph 2 to a judge or a staff person who works in the court facility only when the law requires an exemption due to disability or other legally required cause. The Administrative Authority may grant a temporary exemption from this rule for the time necessary to determine whether the law requires an exemption.

c. If an exemption is granted under this paragraph, the Presiding Judge or that judge's designee(s) may require other protective measures, such as the use of a face shield or protective physical barrier, additional social distancing, or the use of remote means.

6. The court will provide protective face coverings and information about how to use them.

7. A Presiding Judge, the Chief Judge of the Court of Appeals, or the Tax Court Judge may issue a Presiding Judge Order, Chief Judge Order, or Tax Court Judge Order that imposes additional requirements regarding the wearing of protective face coverings, provided that such an order does not conflict with the provisions of this order and is not less protective or restrictive than the provisions set out in this order.

8. This order supersedes subparagraphs 10.b. and 10.c. of CJO 20-016 (imposing Level 2 and Level 3 restrictions on court operations).

9. This order supersedes any existing Presiding Judge Order, Chief Judge Order, or Tax Court Judge Order, or part of any such an order, that conflicts with the provisions of this order. This order also supersedes CJO 20-025 (protective face coverings in the Supreme Court Building) and CJO 20-026 (protective face coverings in the Office of the State Court Administrator).

10. This order is effective on November 1, 2020, and will remain in effect until amended, superseded, or vacated by further Chief Justice Order.

Dated this 28th day of October, 2020.

Martha L. Walters
Chief Justice