In the Matter of Imposing Updated Restrictions on Court Operations	))))))	CHIEF JUSTICE ORDER No. 21-009 ORDER IMPOSING UPDATED RESTRICTIONS ON COURT OPERATIONS

I HEREBY FIND AS FOLLOWS:

1. On March 8, 2020, Governor Kate Brown issued an emergency declaration relating to the spread of the COVID-19 virus ("COVID-19 state of emergency"), most recently extended until May 2, 2021, pursuant to Executive Order 21-05. On November 25, 2020, the Governor announced a statewide health and safety framework, with four different county risk levels based on each county's level of COVID-19 spread: Extreme Risk, High Risk, Moderate Risk, and Lower Risk.

2. Since March 16, 2020, I have issued many Chief Justice Orders (CJOs) restricting court operations and imposing other requirements relating to the COVID-19 state of emergency, including:

    a. Amended CJO 20-006 (March 27, 2020), Imposing Level 3 Restrictions;

    b. CJO 20-016 (May 15, 2020), Imposing Level 2 and Level 3 Restrictions and Superseding Amended CJO 20-006;

    c. CJO 20-028 (July 21, 2020), Directing or Permitting Appearances at Arraignment by Remote Means;

    d. CJO 20-045 (October 28, 2020), Regarding the Use of Protective Face Coverings in the Oregon State Courts; and

    e. CJO 20-047 (November 18, 2020), Imposing In-Person Restrictions on Court Operations During Statewide "Freeze," as amended (February 17, 2021).

3. The Centers for Disease Control and Prevention (CDC) and the Oregon Health Authority anticipate that, to continue to curtail the spread of COVID-19, preventative measures – such as social distancing, wearing protective face coverings, and reducing the number of persons from different households gathered indoors – will continue while the COVID-19 state of emergency continues and until associated restrictions are lifted. My goal in issuing this order is to continue to meet our courts' obligations to the public while also continuing to minimize health risks for judges, staff, litigants and case participants, interpreters, and members of the public who come into our courthouses and offices.

4. I have based prior orders on one or more of the following grants of statutory authority, and I base this order on the same authority:

    a. ORS 1.002 provides that:

        (1) 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, 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

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

b. 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 for the judicial district.

c. Section 6(1)(a)(A) of Oregon Laws 2020, chapter 12, provides that, during a declared COVID-19 state of emergency and continuing for 60 days after the declaration or any extension is no longer in effect, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule that applies in any case, action or proceeding after its initiation in any circuit court.

d. Section 6(4) of Oregon Laws 2020, chapter 12, provides that, during a declared COVID-19 state of emergency and continuing for 90 days after the declaration or any extension is no longer in effect,

(1) Notwithstanding any other statute or rule to the contrary, the Chief Justice may direct or permit any appearance before a court or magistrate to be by telephone, other two-way electronic communication device, or simultaneous electronic transmission; and

(2) If an appearance is set to occur as just described, a Presiding Judge instead may order that the appearance be in person if, upon the request of a party, the judge determines that there is a particular need for an in-person hearing or that a party has a constitutional right to an in-person hearing.

e. Section 6(5) of Oregon Laws 2020, chapter 12, provides that the Chief Justice may delegate the exercise of any powers described in subparagraphs 4.c. and 4.d. of these findings to the Presiding Judge of a court.

5. For the reasons given by Governor Brown in declaring a COVID-19 state of emergency and in extending that state of emergency, I find that good cause, as that term is used in Oregon Laws, chapter 12, section 6(1)(a) and described in subparagraph 4.c. of these findings, exists to extend statutory time periods and time requirements in Forcible Entry and Detainer (FED) proceedings, as set out in paragraph 4 of this order.

I HEREBY ORDER, pursuant to the foregoing authority, and as provided further below, that the following updated restrictions on court operations take effect on March 15, 2021. This order remains in effect during the time when social distancing is required and until further order of the Chief Justice.

1. Definitions. As used in this order:

   a. "In person" means that a court schedules a proceeding to be conducted with the parties appearing in person, in either the courtroom or an alternative physical location being used as a courtroom, or so notifies the parties, and so conducts the proceeding, even if the judge presiding in the proceeding permits one or more parties or participants to appear by remote means.

   b. "Presiding Judge" means the presiding judge of a judicial district or any person to whom that judge has delegated authority under this order.

   c. "Proceeding" means a trial, hearing, or other court proceeding.

   d. "Remote means" means the use of telephone, video, other two-way electronic communication device, or simultaneous electronic transmission.

   e. "Remotely" means that a court schedules a proceeding to be conducted with the parties appearing by remote means, or so notifies the parties, and so conducts the proceeding, even if the judge presiding in the proceeding permits one or more parties or participants to appear in person.

   f. "Social distancing" means the minimum amount of physical distance between each person or other means approved by the State Court Administrator. The distance shall be determined by the social distancing requirements specified in the applicable Executive Order issued by the Governor or guidance issued pursuant to such an order. As of the date of this order, the distance is 6 feet between each person. When this order imposes social distancing requirements,

      (1) A judge presiding over a proceeding may exempt members of the same household attending the proceeding; and

      (2) The Presiding Judge may permit other exemptions.

2. Mode of Proceedings

   a. During the period in which social distancing is required and this order is in effect, circuit court proceedings shall be conducted in the manner specified in this order and local Presiding Judge Orders.

   b. No in-person proceeding shall be held unless adequate facilities are available, social distancing requirements can be met, and staffing levels permit. In any in-person proceeding, all judges, staff, and participants must comply with social distancing requirements, protective face covering requirements, and all other safety requirements set out in paragraph 5.

   c. Jury trials in criminal cases shall be conducted in person, with the following exceptions:

      (1) 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.

(2) An entire jury trial may be conducted remotely by video if permitted by law, essential bandwidth and technology are available, the parties have agreed, and the Presiding Judge has so ordered.

d. Jury trials in civil cases shall be conducted in person, with the following exceptions:

(1) Aspects of a jury trial may be conducted remotely by video if permitted by law and the judge who is presiding in the case has so ordered.

(2) An entire jury trial may be conducted remotely by video if permitted by law, essential bandwidth and technology are available, and the Presiding Judge has so ordered.

e. Jury trials, Extreme Risk level category exception

(1) No jury trials may be held in the following circumstances, except for trials for criminal defendants who are subject to ORS 135.746, ORS 136.290, or ORS 136.295, or who have constitutional rights to a speedy trial, where the defendant's statutory or constitutional rights have not been voluntarily waived:

(A) In single-county judicial districts, the Governor has designated the county as in the Extreme Risk level category, and the designation remains in effect; and

(B) In multiple-county judicial districts, the Governor has designated all counties in the district as in the Extreme Risk level category, and those designations remain in effect.

(2) A Presiding Judge has discretion, on a case-by-case basis, to permit holding a jury trial not described in subparagraph 2.e.(1) upon a determination, after consulting with the parties and other affected persons, that the trial cannot feasibly be held entirely remotely, that it is important that the trial not be postponed, that the trial can be held without significant risk to health, and that the requirements set out in subparagraph 2.b. can be met.

f. All other types of proceedings, including bench trials and all Forcible Entry and Detainer (FED) proceedings described in paragraph 4, shall be conducted remotely, by video and/or audio, unless:

(1) The Presiding Judge issues an order, approved by the Chief Justice, that provides that a type of proceeding may be conducted in person; or

(2) The Presiding Judge permits a particular proceeding to be conducted in person, for reasons particular to that proceeding.

g. In a particular proceeding conducted in accordance with subparagraph 2.f. and any Presiding Judge order or permission described in that subparagraph, the

judge presiding over the proceeding may allow a party or participant to appear by any type of remote means, either audio or video, or in person.

h. Relationship to other law and additional Presiding Judge authority

(1) Notwithstanding ORS 131.045(2) and (3), ORS 135.030(3), and ORS 135.360(3), any category of arraignment may be conducted remotely, without agreement of the parties.

(2) Notwithstanding any other statute or rule requiring that a person "personally appear," "appear personally," "appear in person," make a "personal appearance," or be "present in court," the proceeding may be held remotely, and any appearance may be made by remote means.

(3) Notwithstanding any other provision of this order, if the constitution requires an in-person appearance or proceeding, then the appearance or proceeding must be conducted in person. If a party contends that a remote appearance or proceeding conducted remotely results in violation of the party's rights, then the party may file a motion seeking an order that the appearance or proceeding be conducted in person. This subparagraph applies to any crime victim who contends that an order results in a violation of the victim's constitutional rights.

(4) Each Presiding Judge shall have authority to suspend any Supplementary Local Rule that may be an impediment to the updated restrictions on operations set out in this order, as applicable, including any requirement that an *ex parte* submission be made in person.

3. Exhibits

a. Notwithstanding UTCR 6.050(3) and UTCR 21.070(3)(p), when a proceeding is to be conducted remotely, any exhibit that can be converted to PDF may be submitted through the court's electronic filing (eFiling) system.

b. When submitting exhibits through the eFiling system, the filer shall designate the exhibits as described in UTCR 21.070(6).

c. The submission of exhibits through the eFiling system must comply with UTCR 21.040(1), (2), and (4), to the extent applicable, except that the court may direct that multiple exhibits in a particular proceeding be submitted as separate eFiled documents.

d. Exhibits submitted as a unified single PDF file under this paragraph must:

(1) Be accompanied by an index that identifies each exhibit, located at the beginning of the submission, and each identified exhibit must be electronically linked to the index; and

(2) Include an electronic bookmark for each exhibit.

e. The court may reject submissions that do not comply with this paragraph.

f. A Presiding Judge shall determine how nondocumentary exhibits, such as audio or video exhibits, are to be submitted for a proceeding.

4. Forcible Entry and Detainer (FED) Proceedings

a. Notwithstanding ORS 105.135(2), a first appearance may be scheduled within 14 days after the judicial day next following payment of filing fees.

b. Notwithstanding ORS 105.137(6), a trial may be scheduled within 30 days from the date of first appearance.

c. Notwithstanding subparagraphs 4.a. and 4.b., courts shall schedule first appearances and hold trials as soon as practicable, taking into consideration the availability of staff, the adequacy of the facilities or bandwidth and technology, and the needs of the parties. First appearances and trials are subject to paragraphs 2 and 3 of this order, as applicable.

5. Requirements for Proceedings and Court Services in the Courthouse

For all proceedings and any other court services that take place, whether in whole or in part, in either the courthouse or an alternative physical location being used as a courtroom, all judges and court staff shall take the following precautions:

a. Require and maintain social distancing in the courtroom and throughout all court-controlled areas of the courthouse;

b. Comply with all protective face-covering requirements set out in CJO 20-045;

c. Maintain vigilance about cleaning in accordance with other Oregon Judicial Department (OJD) guidelines; and

d. Require any other reasonable precautions to protect the health of all participants, including victims, interpreters, and court staff.

6. Expectations for Attorneys

a. When proceedings are conducted in person, attorneys shall appear in person, unless the attorney is excused or the Presiding Judge has adopted a procedure that allows attorneys to appear by remote means.

b. An attorney who has concerns about appearing at an in-person proceeding should seek to be excused; seek permission to appear by remote means, or take steps to help the client find suitable counsel.

7. Fines, Fees, and Costs

As permitted by law, courts are strongly encouraged to waive or suspend fines, fees, and costs for persons with limited financial resources.

8. Remote Work Assignments

a. As directed by the Administrative Authority, judges and staff shall be assigned to work either at the courthouse or a non-home workplace, or from home, for the purpose of providing court or other services in accordance with the updated restrictions set out in this order.

b. The Administrative Authority should avoid directing persons in high-risk categories, or those with good cause, to work in the courthouse or a non-home workplace.

c. In this paragraph:

(1) "Administrative Authority" means a Presiding Judge, a Trial Court Administrator, the State Court Administrator, a Division Director, or, in the Appellate Courts, any other judge or employee so designated in writing by the Chief Justice or Chief Judge.

(2) "High risk" means the category of persons whom the CDC has identified as being at increased risk of severe illness from COVID-19, as set out at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html and https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html. As of the date of this order, and as applicable to this paragraph, that category includes the following persons:

(A) Persons 65 and older;

(B) Persons with Down Syndrome or high-risk conditions including serious heart conditions, cancer, and chronic obstructive pulmonary disease (COPD);

(C) Persons with certain underlying medical conditions, particularly if not well controlled, such as Type 2 diabetes, renal failure, chronic kidney disease, sickle-cell disease, and metabolic disorders;

(D) Persons with weakened immune systems, including from cancer treatment, smoking, and organ transplant;

(E) Persons who are pregnant; and

(F) Persons with obesity (body mass index (BMI) of 30 kg/m^2 or higher but <40 kg/m^2) or severe obesity (BMI ≥40 kg/m^2).

9. Meetings, Conferences, and Travel

a. Maximum size of meetings or conferences and related restrictions

(1) In-person meetings and conferences (not proceedings) shall follow the Governor's guidelines for the maximum number of people who may gather in one room for in-person social gatherings based on county risk-level, unless otherwise authorized by the Presiding Judge, State Court

Administrator, or designee. As of the date of this order, the Governor's guidelines for the number of people who may gather in one room are: Extreme Risk and High Risk level categories, 6; Moderate Risk level category, 8, Lower Risk level category, 10.

(A) In single-county judicial districts, the maximum size of meetings or conferences is based on the designated risk level for that county.

(B) In multicounty judicial districts, the maximum size of meetings or conferences is based on the lowest designated risk level for a county in that district.

(2) Judges and staff should hold or attend in-person meetings only after weighing the benefits and risks, and considering the available alternatives.

(3) In-person meeting and conference participants shall maintain social distancing and observe other precautionary measures as set out in paragraph 5.

b. Travel restrictions

All in-state and out-of-state work-related travel is prohibited, except for travel within a judicial district by judge or staff working within that district, or as otherwise authorized by the State Court Administrator or designee.

10. Appellate Courts, Tax Court, and Office of the State Court Administrator

a. Appellate Courts

(1) No in-person proceeding shall be held unless adequate facilities are available, social distancing requirements can be met, and staffing levels permit. In any in-person proceeding, all justices, judges, staff, and participants must comply with social distancing requirements, protective face covering requirements, and all other safety requirements set out in paragraph 5.

(2) Oral arguments and Supreme Court public meetings shall be conducted remotely, by video, unless the Chief Justice or the Chief Judge, as applicable, permits a particular proceeding or public meeting to be conducted in person.

(3) The Chief Justice and the Chief Judge may delegate authority to take actions under this order.

(4) The restrictions and other requirements described in paragraphs 5, 7, 8, and 9 apply, to the extent practicable, to the Supreme Court and the Court of Appeals. Application of subparagraph 9.a.(1), regarding maximum size of meetings or conferences (not proceedings), depends on the Governor's approved risk level category designation for Marion County.

b. Tax Court

(1) No in-person proceeding shall be held unless adequate facilities are available, social distancing requirements can be met, and staffing levels permit. In any in-person proceeding, all judges, magistrates, staff, and participants must comply with social distancing requirements, protective face covering requirements, and all other safety requirements set out in paragraph 5.

(2) Tax court proceedings shall be conducted remotely, by video or audio, unless the Tax Court Judge permits a particular proceeding to be conducted in person.

(3) The Tax Court Judge may delegate authority to take actions under this order.

(4) The restrictions and other requirements described in paragraphs 5, 7, 8, and 9 apply, to the extent practicable, to the Tax Court. Application of subparagraph 9.a.(1), regarding maximum size of meetings or conferences (not proceedings), depends on the Governor's approved risk level category designation for Marion County.

c. Office of the State Court Administrator

(1) The Citizen Review Board shall schedule and conduct periodic reviews of cases involving children in foster care, using only remote means.

(2) The restrictions described in paragraphs 5, 8, and 9 apply, to the extent practicable, to the Office of the State Court Administrator and the Divisions within that Office. Application of subparagraph 9.a.(1), regarding maximum size of meetings or conferences, depends on the Governor's approved risk level category designation for Marion County.

11. Once in effect, all restrictions imposed in this order continue until further order, and they may be extended or amended by further order.

12. This order supersedes Amended CJO 20-016 (Imposing Level 2 and Level 3 Operations, March 27, 2020), to the extent that order is still in effect; CJO 20-028 (Directing or Permitting Appearances at Arraignment by Remote Means, July 21, 2020); and CJO 20-047 (Imposing In-Person Restrictions on Court Operations During Statewide "Freeze," November 18, 2020, as amended February 17, 2021).

13. This order takes effect on March 15, 2021.

Dated this 11th day of March, 2021.

Martha L. Walters
Chief Justice