



Judge Claudia M. Burton

Marion County Circuit Court

Salem, Oregon

Practice Tips and “How To”

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This is a general collection of how I like to do things. There are many procedural gray areas where the statutes or rules do not clearly outline what steps to follow. Every judge in Marion County, and for that matter, probably every other trial judge everywhere, has his or her own preferences. You should not assume that other judges will want things handled the way I do.

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Accommodation/interpreters:

Please contact my staff with any requested accommodations or requests for interpreter services for any trials or hearings. Please note that some accommodations such as sign language interpreters may require a couple of weeks' notice.

Briefing Schedules:

Generally for any motion for which we schedule a hearing, you will be given a briefing schedule at the time the motion is scheduled. Counsel may not stipulate between themselves to extend these deadlines without consulting the court. Since I actually read the memoranda for the hearing, the briefing schedule is designed to allow me time to do so. Failure to comply with the briefing schedule may result in your hearing being delayed or canceled. If no hearing is scheduled, counsel should still consult with the court regarding any requested changes in the briefing schedule. If the motion is one which must be decided by a particular date (for example, before a trial), a delay in the briefing schedule may result in the court's inability to decide the motion in a timely manner.

Conservatorships -- Bonding Primary Residence:

ORS 125.430 provides that a protected person's primary residence cannot be sold without motion and court approval. Some lawyers therefore believe that the value of the primary residence does not need to be bonded. My view, however, is that the statute does not prevent

the conservator from giving away the property or mortgaging it. Therefore, I require the value of the primary residence to be bonded unless there is a restriction in place via court order providing that the conservator may not sell, convey, or encumber the residence without court approval.

Divorce Cases:

Please give me the asset and liability spreadsheet (UTCR 8.010(3); SLR 8.015) in electronic format (Excel). You may email¹ to my staff. If the parties are in agreement on distribution of some assets it would help me tremendously if you would copy the agreed distribution and value into the "judge's distribution" column of the spreadsheet.

Ex Parte:

Per SLR 5.061 ex parte matters in cases assigned to me should be brought to my office. If you are wanting an immediate review, please call my staff ahead of time. Often if my schedule is unpredictable on a particular day (EG, I am in trial), I will ask that you leave it for review and I will look at it when I have a break and call you if I have questions.

Filings:

Attorneys are required to file electronically through Odyssey. For non-attorneys, paper filings can be made with the accounting office; or if a filing fee is not required they may be brought to my chambers. For e-filed documents, please note that there can be a delay of up to a couple of days before the document is routed to my office electronic inbox. Therefore, if you are requesting immediate review please call or email my staff. For paper documents, there is often a delay of several days for documents filed in with the accounting department to reach me. Again if it is time-sensitive please call or email my staff.

Foreclosures:

I do not allow substitute service on "all other persons claiming a right title or interest" in the property to be foreclosed. They must be served by publication. See ORCP 7D(6)(e).

For requests to serve by publication (other than the unknown parties described above), please provide a detailed affidavit describing your search efforts. Conclusory affidavits stating that you performed an "adequate" search effort or that you checked the Accurint database will result in denial of your motion. If the defendants are unknown heirs (also e4ORCP 7D(6)(e)), your affidavit should substantiate that you have checked OJIN and Odyssey for a probate or small estate and have searched for an obituary.

Following a court notice of intent to dismiss due to failure to serve all parties or due to failure to proceed to judgment, a first continuance will be granted for no longer than 60 days. A second continuance will be granted for no longer than 30 days. Further continuances may be granted, with the length of such further continuances depending on the specific circumstances of the case. Odyssey has made it more difficult to interlineate orders. Therefore, orders submitted on a first motion for continuance which provide for a continuance of longer than 60 days, or on a second motion for continuance which provide for a continuance of longer than 30 days, **will be denied by the court rather than interlined**. If you are requesting a third or later continuance, leave the length of the continuance in your proposed order blank or the order **will be denied by the court rather than interlined**.

¹ Please see <http://judgeburton.info/contact/email-information/> for information about contacting my staff by email

Motions to Strike in Summary Judgment Motions

I am not a fan of the “motion within a motion” whereby a party in a motion for summary judgment files a motion to strike all or portions of the declarations submitted by the opposing party on the basis that the statements are not admissible into evidence. It is true that evidence submitted to support or oppose a motion for summary judgment must be admissible. ORCP 47D. However, the filing of a motion to strike creates a number of procedural problems – the time for response and reply to that motion will be separate from the briefing deadlines for the summary judgment motion; and depending on the court’s schedule there may not be time to address a motion to strike at the time scheduled for the summary judgment motion. It is sufficient if, in your response or reply, you simply state your evidentiary objections and include your argument as to why parts of the opponent’s evidence are not admissible in your response or reply brief.

Probate Policies and Procedures

The court has adopted written policies regarding various aspects of probate cases, including interstate proceedings, corporate fiduciaries, and special needs trusts. The court has also posted a probate practice tips guide. Please refer to

<http://courts.oregon.gov/Marion/Services/pages/probateindex.aspx>

Setovers:

I do not allow setovers by phone. For a status conference or non-evidentiary hearing, I do not require a formal motion -- an email² will suffice for a request; provided that all counsel or parties respond stating that there is no objection. For trials or evidentiary hearings I require a formal motion, affidavit and order. Please indicate whether the opposing party objects.

Transcripts:

I have reached the age of bifocals! If you want me to read a deposition or other transcript (for example, in a summary judgment motion) please submit a full-page transcript. I really cannot read those four-pages-to-a-page ones. If you plan to rely on transcripts in lieu of live testimony in a bench trial, please get them to me at least one week before trial. Some indication of which particular parts you want me to read is also very helpful.

Trials:

- Trial Scheduling Orders

For some but not all trials, I will issue a trial scheduling order at the time the trial is set. If you receive a trial scheduling order, please review it carefully and comply with all time deadlines. If you have not received a trial scheduling order, and you have questions about when something needs to be filed, please feel free to contact my staff.

- Audiovisual Equipment

My courtroom has audiovisual equipment which will permit a laptop to be connected to a projector to display documents, photographs, and videos. If you wish to use the equipment, please contact my staff. They will assist you in working with our technical staff

² Please see <http://judgeburton.info/contact/email-information/> for information about contacting my staff by email

to review the use of the equipment with you and ensure that it is working properly before your trial or hearing.

- Exhibits

Please pre-mark your exhibits. Multi-page exhibits should have each page marked (IE, Exhibit 5, page 2). In addition to the original exhibits, bring a bench copy, a copy for opposing counsel, and a witness copy (plus a copy for you). Please speak to opposing counsel or the opposing party and stipulate in whatever exhibits you can; this will speed things up. I then prefer to hear any objections to those exhibits which have not been stipulated at the time a foundation is laid and the exhibit is offered. In jury trials it is very helpful to have an enlarged copy of photos or documents; or means to project them; otherwise either the jurors have no idea what you are talking about, or the trial stops while 12 jurors pass around a 4 x 6 photo. However note that no exhibit should be displayed to the jury until it has been admitted into evidence.

- Jury Instructions

Criminal cases: I need the list of uniform instructions that you are requesting; morning of trial is fine. If you are requesting any special (non-uniform) instructions, please bring a hard copy and email³ the special instruction in Microsoft Word format to my staff. The electronic format of any non-uniform instructions should be jury-ready -- with all variables (EG he/she, date of incident etc) filled out; no citations of authority; no commentary to the instructions; and nothing identifying which party submitted them.

Civil cases: Please provide the following:

1) For the file, list of uniform instructions you are requesting plus full text of any specials, on your pleading paper. For attorneys, this now needs to be efiled through Odyssey.

2) In electronic format (Microsoft Word), full jury ready text of all your requested instructions. This means, include full text of both uniform and special instructions, with all variables (EG he/she, date of incident etc) filled out. There should be no citations of authority, no commentary to the instructions, and nothing identifying which party submitted them (although it helps us if your filename shows who submitted them). Please combine all your requested instructions into one document and email them to my staff.

For the uniform introductory instruction (5.00), I would prefer that counsel agree on the summary of each side's claims and the summary of the pleadings. If you cannot agree, I would like each side to e-mail theirs by noon the day before trial and I will make the final decision on the summary. The summary in the introductory instruction should be brief, describing the general nature of the case rather than all of the claims and defenses; EG: "This case involves an automobile accident in which plaintiff alleges that defendant negligently rear-ended her;

³ Please see <http://judgeburton.info/contact/email-information/> for information about contacting my staff by email

defendant alleges that plaintiff was partly at fault in the accident and that some of her medical treatment relates to a prior injury rather than this accident.”

The uniform instructions assume that in between 13.01 and 13.02, (“Summary of Pleadings Not Evidence”) the jury has just been given a summary of pleadings. Please provide me that summary for your pleadings, again in electronic as well as paper format. This needs to be more detailed than the general summary described above with regard to the introduction; the issues the jury is required to determine are framed by the scope of the pleadings (for example, in a negligence claim the jury must determine if the defendant was negligent in a manner alleged in the plaintiff’s complaint; therefore, the jury must know what the allegations of negligence were).

- Trial Memos

I usually do not require trial memoranda, but I am always happy to get them. However, if you want me to read them you need to get them to me in advance of the trial. Unless you have been given a different deadline or there is a different deadline in your trial scheduling order, please submit them to my chambers no later than noon the day before trial. Again, note that e-filing the document through Odyssey will not necessarily ensure that it reaches my chambers. Please email or hand-deliver a bench copy.