



Judge Claudia M. Burton

Marion County Circuit Court

Salem, Oregon

Practice Tips and “How To”

Judge Claudia M. Burton
Marion County Circuit Court
PO Box 12869
Salem, OR 97309
503-584-7713
Fax: 503-584-7718
<http://www.judgeburton.info>
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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:

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

Conservatorships -- Bonding Primary Residence:

ORS 125.430 provides that a protected person's primary residence cannot be sold without motion and court approval. Often people argue that this means the value of the primary residence does not need to be bonded. My position 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(4); SLR 8.015) in electronic format (you can bring disk or USB jump drive day of trial). 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:

Yes, I know SLR 5.061 says ex parte matters can be presented at 8:30 before the assigned judge. As a practical matter if you show up unannounced at 8:30 I may be in a status conference, taking a change of plea, or out of the office on that particular day. Please call my judicial assistant ahead of time and she can assist you in arranging a time to see me.

Filings:

My office can accept filings that do not require a filing fee, and they will get to me faster. You can bring filings to the my chambers on the third floor of the courthouse. Anything requiring a filing fee needs to go to accounting, which is on the first floor. There is often a delay of several days for documents filed in with the accounting department to reach me. If it is something that is time-sensitive (IE, a motion to continue, a trial brief) please file it with my office if you can. If it needs to be filed with accounting or you already have filed it there, please fax or deliver a bench copy to my chambers.

Setovers:

I do not allow setovers by phone. For a status conference or non-evidentiary hearing, I do not require a formal motion -- a brief letter by fax will suffice for a request. Please indicate whether the opposing party objects. For trials or evidentiary hearings I require a formal motion, affidavit and order.

Trials:

- Equipment

If you require audio-visual equipment, an easel, a projector, etc, please speak to my judicial assistant at least a few days before the trial. Some equipment we can provide if we know it will be needed; some you may need to bring. Even if you are planning to bring your own equipment, it is still very helpful for us to know ahead of time so we can arrange for setup and avoid problems such as the time that use of a projector resulted in unplugging the speaker phone in the courtroom.

The courthouse now has some very exciting new technology that will enhance your ability to present evidence. We have a system that will not only play videotapes and DVDs, but incorporate those into the electronic record so that they will be available to anyone viewing the electronic recording of the court proceeding. In addition, the system includes an ELMO projector, which can magnify and project documents, photographs, and physical objects. By touching the screen, you can highlight or circle items without marking up the original exhibit. The same projector can also be hooked up to display content on your laptop -- anything from a Powerpoint presentation to scanned documents or digital images. Finally, remote witnesses with internet access can appear via webcam and also be projected so they are visible to everyone in the courtroom. If you wish to use this equipment, please make arrangements with my assistant ahead of time.

- Exhibits

To the extent you can, please pre-mark your exhibits. Multi-page exhibits should have each page marked (IE, Exhibit 5, page 2). It is extremely helpful if you bring, in addition to the original exhibits, a bench copy, copy for opposing counsel, and 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

Jurors are now required to receive written instructions.

Criminal cases: I have a wonderful program that will allow me to assemble instructions. I need your list of uniform instructions that you are requesting; morning of trial is fine. Please bring any special (non-uniform) instructions that you are requesting in both hard copy and electronic format (disk or USB flash drive). 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. I can open Word or WordPerfect documents, if you do not use either of those formats please check with my staff. I also welcome documents in Open Office format; this is a free open source office suite including word processing and spreadsheet programs. It is available at <http://www.openoffice.org>.

Civil cases: Nobody has yet written the easy jury instruction assembly program. Please provide me with the following:

- 1) For the file, list of uniform instructions you are requesting plus full text of any specials, on your pleading paper.

- 2) In electronic format, 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 me if your disc or filename shows who submitted them). Please combine all your requested instructions into one document. See the section immediately above under criminal jury instructions as to what file formats I can work with.

I typically give an introductory instruction modeled on Uniform Criminal Instruction number 1001. It is helpful to me in preparing this if you provide me with a brief summary of your allegations in the pleadings; EG, "Plaintiff alleges that defendant negligently caused an auto accident and that plaintiff suffered injuries in the accident which will make him unable to work; defendant denies that her negligence caused the accident and alleges that plaintiff's back problems are the result of normal disc degeneration due to age." Again, I would like to receive this in electronic format in addition to paper for the file.

Usually parties request instruction 13.02, "Summary of Pleadings Not Evidence." That instruction presupposes that the jury has just been read a summary of

pleadings. Please provide me that summary for your pleadings, again in electronic as well as paper format. I believe at least in a negligence action this needs to be more detailed than the general summary described above with regard to the introduction; the jury must determine if the defendant was negligent in one of the ways alleged in plaintiff's complaint; therefore I think the specifications of negligence need to be included.

- Transcripts

I have reached the age of bifocals! If you want me to read a deposition or other transcript please submit a full-page transcript. I really cannot read those four-pages-to-a-page ones. If that is prohibitive as far as cost, please make arrangements with my assistant to get me an electronic copy (EG PDF). If you plan to rely on transcripts in lieu of live testimony in a bench trial, please get them to me ahead of time (at least a few days). Some indication of which particular parts you want me to read is also very helpful.

- Trial Memos

If I get these in time to look at them, I will certainly read them. Unless I give you a specific deadline that differs, I usually ask for them no later than noon the day before trial.