

**OREGON STATE BAR  
LEGISLATIVE PROPOSAL  
Part I – Legislative Summary**

**Re: Remote Location Testimony**

**Submitted by: Council on Court Procedures Legislative**

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**1. Does this amend current law or program? Yes, ORS 45.400**

**2. PROBLEM PRESENTED** (including level of severity):

ORS 45.400 currently requires 30 days written notice if a party is seeking to present remote location testimony. Although the statute provides for shortening the 30 day advance notice, 30 days is generally excessive in light of changes in court practice implemented since 2020, and necessitates motion practice that adds to litigation costs and burdens the court without any discernible benefit. The proposed statutory amendment would very likely result in parties reaching agreement on remote testimony without resort to motion practice.

The Council on Court Procedures is statutorily charged with reviewing the Oregon Rules of Civil Procedure, and promulgating updates on a two year cycle. The Council on Court Procedures identified the need for this change while reviewing other rules that were updated during the 2022-2023 update cycle, in particular in light of changes in court procedure made in response to the COVID-19 pandemic.

However, as this statute is not a part of the Oregon Rules of Civil Procedure, the Council does not have statutory authority to promulgate a change to it directly.

**3. SOLUTION:**

Amend ORS 45.400(2) as described below to give the court greater flexibility to consider motions for remote location testimony filed less than 30 days in advance of the appearance.

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Part II – Legislative Language**

Amend ORS 45.400(2) and ORS 45.400(3)(c)(E) as follows:

(1) A party to any civil proceeding or any proceeding under ORS chapter 419B may move that the party or any witness for the moving party may give remote location testimony.

(2) A party filing a motion under this section must give written notice to all other parties to the proceeding *[at least 30 days before the trial or hearing at which the remote location testimony will be offered. The court may allow written notice less than 30 days before the trial or hearing for good cause shown]* **sufficiently in advance of the trial or hearing at which the remote location testimony will be offered to allow for the non-movant to challenge those factors specified in (3)(b) and to advance those factors specified in (3)(c).**

(3)(a) Except as provided under subsection (5) of this section, the court may allow remote location testimony under this section upon a showing of good cause by the moving party, unless the court determines that the use of remote location testimony would result in prejudice to the nonmoving party and that prejudice outweighs the good cause for allowing the remote location testimony.

(b) Factors that a court may consider that would support a finding of good cause for the purpose of a motion under this subsection include:

(A) Whether the witness or party might be unavailable because of age, infirmity or mental or physical illness.

(B) Whether the party filing the motion seeks to take the remote location testimony of a witness whose attendance the party has been unable to secure by process or other reasonable means.

(C) Whether a personal appearance by the witness or party would be an undue hardship on the witness or party.

(D) Whether a perpetuation deposition under ORCP 39 I, or another alternative, provides a more practical means of presenting the testimony.

(E) Any other circumstances that constitute good cause.

(c) Factors that a court may consider that would support a finding of prejudice under this subsection include:

(A) Whether the ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding.

(B) Whether the nonmoving party demonstrates that face-to-face cross-examination is necessary because the issue or issues the witness or party will testify about may be determinative of the outcome.

(C) Whether the exhibits or documents the witness or party will testify about are too voluminous to make remote location testimony practical.

(D) The nature of the proceeding, with due consideration for a person's liberty or parental interests.

(E) *[Whether facilities that would permit the taking of remote location testimony are readily available.]*

**Whether reliable facilities and technology that would permit the taking of remote location testimony are readily available to the court, counsel, parties and the witness.**

(F) Whether the nonmoving party demonstrates that other circumstances exist that require the personal appearance of a witness or party.