

1 **45.400 Remote location testimony; when authorized; notice; payment of costs.** (1) A
2 party to any civil proceeding or any proceeding under ORS chapter 419B may move that the
3 party or any witness for the moving party may give remote location testimony.

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

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

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

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

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

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

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

26 (E) Any other circumstances that constitute good cause.

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

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

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

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

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

12 (E) [*Whether facilities that would permit the taking of remote location testimony are*
13 *readily available.*] **Whether reliable facilities and technology that would permit the taking of**
14 **remote location testimony are readily available to the court, counsel, parties and the witness.**

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

17 (4) In exercising its discretion to allow remote location testimony under this section, a
18 court may authorize telephone or other nonvisual transmission only upon finding that video
19 transmission is not readily available.

20 (5) The court may not allow use of remote location testimony in a jury trial unless good
21 cause is shown and there is a compelling need for the use of remote location testimony.

22 (6) A party filing a motion for remote location testimony under this section must pay all
23 costs of the remote location testimony, including the costs of alternative procedures or
24 technologies used for the taking of remote location testimony. No part of those costs may be
25 recovered by the party filing the [*motions*] **motion** as costs and disbursements in the
26 proceeding.

1 (7) This section does not apply to a workers' compensation hearing or to any other
2 administrative proceeding.

3 (8) As used in this section:

4 (a) "Remote location testimony" means live testimony given by a witness or party from a
5 physical location outside of the courtroom of record via simultaneous electronic transmission.

6 (b) "Simultaneous electronic transmission" means television, telephone or any other
7 form of electronic communication transmission if the form of transmission allows:

8 (A) The court, the attorneys and the person testifying from a remote location to
9 communicate with each other during the proceeding;

10 (B) A witness or party who is represented by counsel at the hearing to be able to consult
11 privately with counsel during the proceeding; and

12 (C) The public to hear and, if the transmission includes a visual image, to see the witness
13 or party if the public would otherwise have the right to hear and see the witness or party
14 testifying in the courtroom of record.

1 **136.600 Certain civil procedures applicable in criminal context.** The provisions of ORS
2 44.150 and [*ORCP 39 B and 55 E and G*] **ORCP 39 B, 55 A(6)(d), and B(4)** apply in criminal
3 actions, examinations and proceedings.
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