

Chapter 45

2017 EDITION

Testimony Generally

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EVIDENCE AND WITNESSES

MODES OF TAKING TESTIMONY

45.010 Modes of testimony. The testimony of a witness is taken by six modes:

- (1) Affidavit.
- (2) Deposition.
- (3) Oral examination.
- (4) Remote location examination under ORS 45.400.
- (5) Examination before a grand jury by means of simultaneous television transmission under ORS 132.320.

(6) Declaration under penalty of perjury, as described in ORCP 1 E, or unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States. [Amended by 1993 c.425 §2; 1995 c.126 §3; 2003 c.194 §2; 2013 c.218 §11; 2017 c.240 §2]

45.020 Affidavit described. An affidavit is a written declaration under oath, made without notice to the adverse party.

45.030 [Repealed by 1979 c.284 §199]

45.040 Oral examination described. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact, or act upon it, the testimony being heard by the jury or tribunal from the mouth of the witness.

45.050 [Amended by 1961 c.461 §1; 1979 c.284 §82; repealed by 1981 c.898 §53]

45.110 [Repealed by 1979 c.284 §199]

45.120 [Repealed by 1979 c.284 §199]

45.125 [Formerly 45.180; repealed by 1977 c.404 §2 (194.500 to 194.580 enacted in lieu of 45.125)]

**AFFIDAVITS AND DECLARATIONS
IN SUPPORT OF
PROVISIONAL REMEDIES**

45.130 Production of affiant or declarant for cross-examination. Whenever a provisional remedy has been allowed upon affidavit, a declaration under penalty of perjury as described in ORCP 1 E or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States, the party against whom it is allowed may serve upon the party by whom it was obtained a notice, requiring the affiant or declarant to be produced for cross-examination before a named officer authorized to administer oaths. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit or declaration and all proceedings founded thereon, unless within eight days, or such other time as the court or judge may direct, upon a previous notice to the adversary of at least three days, the party produces the affiant or declarant for examination before the officer mentioned in the notice, or some other of like authority, pro-

vided for in the order of the court or judge. Upon production, the affiant or declarant may be examined by either party, but a party is not obliged to make this production of an affiant or a declarant except within the county where the provisional remedy was allowed. [Amended by 2003 c.194 §3; 2013 c.218 §12]

DEPOSITIONS**(Taking of Deposition)**

45.132 Definition for ORS 45.135, 45.138 and 45.142. As used in ORS 45.135, 45.138 and 45.142, “deposition” means the taking of testimony for discovery, the taking of testimony for perpetuation of the testimony and the taking of testimony in arbitration proceedings. [1999 c.942 §5]

45.135 Who may not report deposition in civil action. (1) A deposition in a civil action may not be stenographically reported by:

- (a) A party in the action;
- (b) A person with a financial interest in the outcome of the action;
- (c) An attorney for a party in the action;
- (d) An attorney for a person with a financial interest in the outcome of the action;
- (e) An employee of a party in the action;
- (f) An employee of an attorney for a party in the action;
- (g) An employee of a person with a financial interest in the outcome of the action;
- (h) An employee of an attorney for a person with a financial interest in the outcome of the action; or

(i) A person related, by affinity or consanguinity within the third degree, to a party in the action or to a person with a financial interest in the outcome of the action.

(2) Any deposition recorded or reported by a person in violation of this section may not be introduced in evidence or used for any other purpose in a civil action. [1999 c.942 §1]

45.138 Duties of person recording or reporting deposition. (1) A person recording or reporting a deposition is personally responsible for the accurate and complete recording or reporting of the deposition. No person who employs or otherwise engages a person to record or report a deposition may modify or attempt to modify the record or report of the deposition, except to the extent allowed for the correction of errors in the record or report.

(2) Any person employed or otherwise engaged to record or report a deposition must provide equal services, and charge equal fee rates, to all parties and attorneys in the proceeding. A person employed or

otherwise engaged to record or report a deposition must distribute copies of the record or report at the same time to all parties and attorneys who are entitled to receive a copy. In addition, a person employed or otherwise engaged to record or report a deposition must:

(a) Disclose the fee rates of the person for services, transcripts and copies to the attorneys identified in the proceeding and to any party who is not represented by an attorney and who is identified in the proceeding; or

(b) Provide a complete, individual accounting of all appearance fees, transcript fees and any other fees charged for services rendered in the proceeding. [1999 c.942 §2]

45.140 [Repealed by 1979 c.284 §199]

45.142 Recording or reporting services provided under contract; required disclosures; objection to reporter. (1) Before recording or reporting a deposition, the person recording or reporting the deposition must disclose if the person has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the following persons:

(a) A party in the action;

(b) A person with a financial interest in the outcome of the action;

(c) An attorney for a party in the action; or

(d) An attorney for a person with a financial interest in the outcome of the action.

(2) If the person recording or reporting a deposition has a contract to provide reporting services for depositions on a full-time or part-time basis for any of the persons specified in subsection (1) of this section, any party to the action may object to the person employed for the purpose of recording or reporting the deposition. Upon objection, the parties shall attempt to agree upon a different person who shall record or report the deposition. If the parties cannot reach agreement, any of the parties may move the court to appoint an independent person who shall record or report the deposition.

(3) A party that objects to a person employed for the purpose of recording or reporting a deposition in the manner provided by this section is not subject to any penalty or sanction for making the objection and is not required to pay any fee of the person objected to.

(4) This section does not apply to contracts for reporting services for a single deposition, case or incident.

(5) This section does not apply to a person who records or reports depositions for a

public body, as defined in ORS 30.260, or for a federal agency or any instrumentality of the federal government. [1999 c.942 §4]

45.150 [Repealed by 1955 c.611 §13]

45.151 [1955 c.611 §1; repealed by 1979 c.284 §199]

45.160 [Repealed by 1955 c.611 §13]

45.161 [1955 c.611 §2; repealed by 1979 c.284 §199]

45.170 [Repealed by 1955 c.611 §13]

45.171 [1955 c.611 §3; repealed by 1979 c.284 §199]

45.180 [Renumbered 45.125]

45.181 [1955 c.611 §5; repealed by 1977 c.358 §12]

45.185 [1959 c.354 §1; 1977 c.358 §6; repealed by 1979 c.284 §199]

45.190 [1955 c.611 §6; 1977 c.358 §7; repealed by 1979 c.284 §199]

45.200 [1955 c.611 §7; repealed by 1979 c.284 §199]

45.210 [Repealed by 1955 c.611 §13]

45.220 [Repealed by 1955 c.611 §13]

45.230 [Repealed by 1979 c.284 §199]

45.240 [Repealed by 1979 c.284 §199]

(Use of Deposition)

45.250 Use of deposition. (1) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions of this subsection:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(b) The deposition of a party, or of anyone who at the time of taking the deposition was an officer, director or managing agent of a public or private corporation, partnership or association that is a party, may be used by an adverse party for any purpose.

(2) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party for any purpose, if the party was present or represented at the taking of the deposition or had due notice thereof, and if the court finds that:

(a) The witness is dead;

(b) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment;

(c) The party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(d) Upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting

the testimony of witnesses orally in open court, to allow the deposition to be used; or

(e) The deposition was taken in the same proceeding pursuant to ORCP 39 I.

(3) For the purpose of subsection (2)(c) of this section, the failure of a party to serve a witness at the time of deposition with a subpoena that requires the appearance of the witness at trial or other hearing does not constitute sufficient grounds to deny the use of the deposition of that witness at the trial or other hearing without further showing of a lack of diligence on the part of the party offering the deposition. [1955 c.611 §§8,9; 1979 c.284 §§3; 1987 c.275 §1; 1989 c.980 §4; 2001 c.234 §1; 2007 c.71 §12]

45.260 Introduction, or exclusion, of part of deposition. If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce all of it which is relevant to the part introduced and any party may introduce any other parts, so far as admissible under the rules of evidence. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also. [1955 c.611 §10]

45.270 Use of deposition in same or other proceedings. Substitution of parties shall not affect the right to use the depositions previously taken; and when an action, suit or proceeding has been dismissed and another action, suit or proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, any deposition lawfully taken and duly filed in the former action, suit or proceeding may be used in the latter as if originally taken therefor, and is then to be deemed the evidence of the party reading it. [1955 c.611 §11]

INTERPRETERS

45.272 Definitions for ORS 45.272 to 45.297. As used in ORS 45.272 to 45.297:

(1) “Adjudicatory proceeding” means:

(a) Any contested case hearing conducted under ORS chapter 183; or

(b) Any hearing conducted by an agency in which the individual legal rights, duties or privileges of specific parties are determined if that determination is subject to judicial review by a circuit court or by the Court of Appeals.

(2) “Agency” has that meaning given in ORS 183.310.

(3) “Critical stage of the proceeding” has the meaning given that term in ORS 147.500.

(4) “Victim” has the meaning given that term in ORS 147.500. [1999 c.1041 §3; 2015 c.155 §1]

45.273 Policy. (1) It is declared to be the policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English-speaking cultural background or a disability, and who as a result cannot be fully protected in administrative and court proceedings unless qualified interpreters are available to provide assistance.

(2) It is the intent of the Legislative Assembly in passing ORS 45.272 to 45.297 to provide a procedure for the qualification and use of court interpreters. Nothing in ORS 45.272 to 45.297 abridges the rights or obligations of parties under other laws or court rules. [1993 c.687 §1; 1999 c.1041 §1]

45.275 Appointment of interpreter for non-English-speaking party, witness or victim; substitution; payment of costs.

(1)(a) The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary:

(A) To interpret the proceedings to a non-English-speaking party;

(B) To interpret the testimony of a non-English-speaking party or witness; or

(C) To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.

(b) The court shall appoint a qualified interpreter in a criminal proceeding whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.

(2) A fee may not be charged to any person for the appointment of an interpreter to interpret testimony of a non-English-speaking party or witness, to interpret the proceedings to a non-English-speaking party or victim or to assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer. A fee may not be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is non-English-speaking for the purposes of this section.

(3) Fair compensation for the services of an interpreter appointed under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing

body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state are not payable from the Public Defense Services Account established by ORS 151.225 or from moneys appropriated to the Public Defense Services Commission. Fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case are payable from the Public Defense Services Account or from moneys appropriated to the Public Defense Services Commission.

(d) By the agency in an adjudicatory proceeding.

(4) If a party, victim or witness is dissatisfied with the interpreter appointed by the court, the hearing officer or the designee of the hearing officer, the party, victim or witness may request the appointment of a different interpreter. A request under this subsection must be made in a manner consistent with the policies and notice requirements of the court or agency relating to the appointment and scheduling of interpreters. If the substitution of another interpreter will delay the proceeding, the person making the request must show good cause for the substitution. Any party may object to use of any interpreter for good cause. Unless the court, hearing officer or the designee of the hearing officer has appointed a different interpreter for cause, the party using any interpreter other than the interpreter originally appointed by the court, hearing officer or the designee of the hearing officer shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) A judge or hearing officer, on the judge's or hearing officer's own motion, may substitute a different interpreter for the interpreter initially appointed in a proceeding. A judge or hearing officer may make a substitution under this subsection at any time and for any reason.

(6) A court may allow as costs reasonable expenses incurred by a party in employing the services of an interpreter in civil proceedings in the manner provided by ORCP 68.

(7) A court, a hearing officer or the designee of a hearing officer shall require any person serving as an interpreter for the court or agency to state the person's name on the record and whether the person is certified under ORS 45.291. If the person is certified under ORS 45.291, the interpreter need not

make the oath or affirmation required by ORS 40.325 or submit the interpreter's qualifications on the record. If the person is not certified under ORS 45.291, the interpreter must make the oath or affirmation required by ORS 40.325 and submit the interpreter's qualifications on the record.

(8) For the purposes of this section:

(a) "Hearing officer" includes an administrative law judge.

(b) "Non-English-speaking person" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.

(c) "Qualified interpreter" means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party, victim or witness. [1991 c.750 §2; 1993 c.687 §8; 1995 c.273 §16; 1997 c.872 §18; 1999 c.1041 §4; 2001 c.242 §1; 2001 c.962 §§65,66; 2003 c.75 §§77,78; 2005 c.385 §2; 2012 c.107 §39; 2015 c.155 §2]

45.280 [1955 c.611 §12; repealed by 1979 c.284 §199]

45.285 Appointment of interpreter for party, witness or victim with disability; provision of assistive communication device. (1) For the purposes of this section:

(a) "Assistive communication device" means any equipment designed to facilitate communication by a person with a disability.

(b) "Hearing officer" includes an administrative law judge.

(c) "Person with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(d) "Qualified interpreter" means a person who is readily able to communicate with the person with a disability, interpret the proceedings and accurately repeat and interpret the statements of the person with a disability to the court.

(2) In any civil action, adjudicatory proceeding or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a person with a disability is a party or witness, the court, hearing officer or the designee of the hearing officer shall appoint

a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the person with a disability, or to interpret the testimony of the person with a disability.

(3) In any criminal proceeding, the court shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to a victim who is a person with a disability and who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.

(4) A fee may not be charged to the person with a disability for the appointment of an interpreter or use of an assistive communication device under this section. A fee may not be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is a person with a disability for the purposes of this section.

(5) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state are not payable from the Public Defense Services Account established by ORS 151.225 or from moneys appropriated to the Public Defense Services Commission. Fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case are payable from the Public Defense Services Account or from moneys appropriated to the Public Defense Services Commission.

(d) By the agency in an adjudicatory proceeding. [1991 c.750 §1; 1993 c.687 §6; 1999 c.1041 §5; 2001 c.962 §§67,68; 2003 c.75 §§79,80; 2007 c.70 §13; 2012 c.107 §40; 2015 c.155 §3]

45.288 Appointment of certified interpreter required; exceptions; disqualifications; code of professional responsibility.

(1) For the purposes of this section:

(a) "Hearing officer" includes an administrative law judge.

(b) "Non-English-speaking person" has the meaning given that term in ORS 45.275.

(c) "Person with a disability" has the meaning given that term in ORS 45.285.

(d) "Qualified interpreter" means a person who meets the requirements of ORS 45.285 for an interpreter for a person with a disability, or a person who meets the requirements of ORS 45.275 for an interpreter for a non-English-speaking person.

(2) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, or whenever a hearing officer is required to appoint an interpreter in an adjudicatory proceeding, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter. Upon request of a party, victim or witness, the court, hearing officer or designee of the hearing officer, in the discretion of the court, hearing officer or the designee of the hearing officer, may appoint a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case or adjudicatory proceeding.

(3) The requirements of this section apply to appointments of interpreters for persons with disabilities and for non-English-speaking persons.

(4) The court, hearing officer or the designee of the hearing officer may not appoint any person under ORS 45.272 to 45.297, 132.090 or 419C.285 if:

(a) The person has a conflict of interest with any of the parties, victims or witnesses in the proceeding;

(b) The person is unable to understand the judge, hearing officer, party, victim or witness, or cannot be understood by the judge, hearing officer, party, victim or witness; or

(c) The person is unable to work cooperatively with the judge of the court, the hearing officer, the person in need of an interpreter or the counsel for that person.

(5) The Supreme Court shall adopt a code of professional responsibility for interpreters. The code is binding on all interpreters who provide interpreter services in the courts or in adjudicatory proceedings before agencies. [1993 c.687 §2; 1999 c.1041 §6; 2001 c.242 §2; 2001 c.243 §2; 2003 c.75 §81; 2007 c.70 §14; 2015 c.155 §4]

45.291 Certification program; establishment by State Court Administrator; rules. (1) Subject to the availability of funding, the State Court Administrator shall establish a program for the certification of court interpreters. The program shall be es-

tablished by rules adopted pursuant to ORS 1.002 and shall include, but not be limited to, provisions for:

(a) Prescribing the form and content of applications for certification;

(b) Prescribing and collecting reasonable fees for the application, examination, certification and renewal of certification for court interpreters;

(c) Establishing categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for persons with disabilities, as defined in ORS 45.285, and for interpreters for non-English-speaking persons, as defined in ORS 45.275;

(d) Establishing minimum competency requirements for court interpreters in the various categories of certification;

(e) Establishing teaching programs designed to educate court interpreters in ethical, substantive and procedural legal issues;

(f) Prescribing the form of and administering examinations for the purpose of testing court interpreters for competency and ethics;

(g) Establishing grounds for renewal, suspension or cancellation of certificates;

(h) Establishing a process for receiving comments and input into the policy and procedures of the certification program;

(i) Establishing a process for receiving comments and input on compliance with ORS 45.272 to 45.297;

(j) Establishing a process for receiving comments and input on compliance with the code of professional responsibility adopted under ORS 45.288; and

(k) Establishing a process by which an adversely affected interpreter may seek review of any decision made by the State Court Administrator on renewal, suspension or cancellation of a certificate.

(2) An interpreter may be certified in Oregon by the State Court Administrator upon satisfactory proof that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section. [1993 c.687 §3; 2001 c.242 §3; 2007 c.70 §15]

45.292 Certification required for use of title or designation “certified court interpreter” or “court certified interpreter.” (1) Except as provided in this section, a person may not assume or use the title or designation “certified court inter-

preter” or “court certified interpreter,” or any other title, designation, words, letters, abbreviation, sign or device tending to indicate that the person is certified for the purposes of providing interpreter services under ORS 45.272 to 45.297.

(2) Subsection (1) of this section does not apply to any person who:

(a) Is certified under the program established under ORS 45.291;

(b) Is certified as an interpreter by the federal courts; or

(c) Is certified as an interpreter in another state that has a certification program that is equivalent to the program established under ORS 45.291. [1999 c.1041 §8]

45.294 Court Interpreter and Shorthand Reporter Certification Account; sources; uses. (1) The Court Interpreter and Shorthand Reporter Certification Account is established as an account in the General Fund of the State Treasury. All moneys received by the State Court Administrator from fees imposed under ORS 8.445 and 45.291 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the State Court Administrator to carry out the provisions of ORS 8.415 to 8.455 and 45.291.

(2) The State Court Administrator may apply for and receive funds or grants from federal, state and private sources to be credited to the Court Interpreter and Shorthand Reporter Certification Account and used for the purposes specified in ORS 8.415 to 8.455 and 45.291. [1993 c.687 §4; 1995 c.386 §7]

45.297 Authority to enter into service contracts. The State Court Administrator may enter into service contracts and may establish uniform policies and procedures, subject to the approval of the Chief Justice of the Supreme Court, governing the appointment, provision and payment of interpreters in proceedings before the circuit courts of the state, including the provision of interpreter services utilizing telecommunications methods. [1993 c.687 §5]

45.310 [Repealed by 1955 c.611 §13]

45.320 [Repealed by 1979 c.284 §199]

45.325 [1955 c.611 §4; repealed by 1979 c.284 §199]

45.330 [Repealed by 1979 c.284 §199]

45.340 [Amended by 1959 c.96 §1; repealed by 1979 c.284 §199]

45.350 [Repealed by 1979 c.284 §199]

45.360 [Repealed by 1979 c.284 §199]

45.370 [Repealed by 1979 c.284 §199]

45.380 [Repealed by 1955 c.611 §13]

REMOTE LOCATION TESTIMONY

45.400 Remote location testimony; when authorized; notice; payment of costs. (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.

(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.

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

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

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

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

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

(8) As used in this section:

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

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

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

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

(C) The public to hear and, if the transmission includes a visual image, to see the witness or party if the public would otherwise have the right to hear and see the witness or party testifying in the courtroom of record. [1993 c.425 §1; 2001 c.398 §1; 2003 c.262 §1; 2017 c.240 §1]

- 45.410 [Repealed by 1979 c.284 §199]
- 45.420 [Repealed by 1979 c.284 §199]
- 45.430 [Repealed by 1979 c.284 §199]
- 45.440 [Repealed by 1979 c.284 §199]
- 45.450 [Repealed by 1979 c.284 §199]
- 45.460 [Repealed by 1979 c.284 §199]
- 45.470 [Repealed by 1979 c.284 §199]
- 45.510 [Repealed by 1981 c.892 §98]
- 45.520 [Repealed by 1981 c.892 §98]
- 45.530 [Repealed by 1981 c.892 §98]
- 45.540 [Repealed by 1981 c.892 §98]
- 45.550 [Repealed by 1981 c.892 §98]
- 45.560 [Repealed by 1981 c.892 §98]
- 45.570 [Repealed by 1981 c.892 §98]

- 45.580 [Repealed by 1981 c.892 §98]
- 45.590 [Repealed by 1981 c.892 §98]
- 45.600 [Repealed by 1981 c.892 §98]
- 45.610 [Repealed by 1981 c.892 §98]
- 45.620 [Repealed by 1981 c.892 §98]
- 45.630 [Repealed by 1981 c.892 §98]

PENALTIES

45.900 Penalty for violation of ORS 45.135 or 45.138. Violation of ORS 45.135 or 45.138 is a Class B violation. [1999 c.942 §3; 1999 c.1051 §322d; 2011 c.597 §152]

45.910 [1959 c.523 §§1,2,3; repealed by 1979 c.284 §199]