

**Superior Court of Washington, County of Skagit**  
**REMOTE BENCH TRIAL PROTOCOL AND PROCEDURES**

Civil bench trials will be conducted remotely via Zoom until further Court order due to the COVID-19 health crisis.

These additional rules will therefore apply:

**These protocols and procedures are binding on all parties,  
whether represented by an attorney or self-represented.**

**1) Non-Compliance with Remote Trial Protocol:** One party's failure to comply with the requirements set forth in this protocol, including failure to comply with the pretrial meeting requirement, does not relieve the other party from providing the information required herein to the Court within the time limits set herein. Failure to comply may result in imposition of sanctions, striking of pleadings, refusing to permit the non-complying party to participate in the remote trial or any other relief deemed appropriate by the Court.

**2) Video Appearance:** All parties and witnesses shall appear at trial by video absent prior court approval. Motions to waive the video appearance must be made and heard before trial confirmation. Pursuant to the current emergency order, trial confirmation is five (5) court days before trial.

**3) Exchange of Exhibits and Witness Lists:** Absent a court order to the contrary, the parties shall exchange exhibit and witness lists, copies of exhibits, and a *Remote Proceeding Pretrial Conference Summary* **at least two days before the pre-trial conference.**

**4) Pre-Trial Meeting of Parties:** The parties must meet, either remotely or in person with proper social distancing, **at least two days before the pre-trial conference.** Where mediation is not required under local court rule SCLSPR 94.04.2, this pre-trial meeting shall only take place between the attorneys or the attorney(s) and the unrepresented litigant. *In no such case is a protected party required to meet outside the courtroom setting with the restrained party.* Where both parties are unrepresented, the Court will oversee the pre-trial meeting at the pre-trial conference. At this meeting, the parties shall:

- a) Determine which documents each party intends to offer at trial. The parties are encouraged to offer only those documents necessary to prove or defend the claims/issues.

- b) Stipulate (agree) to the admissibility of exhibits whenever possible. The parties shall list exhibits and indicate in that list which exhibits are stipulated to be admissible. A list of stipulated exhibits shall be provided to Superior Court Administration **by noon one court day before trial**. While stipulations are encouraged, they are not required if there is a proper legal basis for objection to their admissibility.
- c) Review the exhibits to ensure there are no duplicates. If each party is offering a portion of the same document, the parties should combine the portions into one exhibit, where feasible.
- d) Create a master set of exhibits for both parties.
- e) Consecutively number the exhibits. Petitioner/Plaintiff's exhibits will start at 1. Respondent/Defendant's exhibits will start at 101 (if Petitioner/Plaintiff's more than 100 exhibits the parties shall agree on the appropriate series of numbers with which Plaintiff/Petitioner's exhibits should end. Respondent/Defendant's exhibits will start with the 01 of the next hundred numbers. (For example, if Plaintiff has 250 exhibits, Plaintiff/Petitioner should have 1-300 and Respondent/Defendant's exhibits will begin with 301 etc.) There should be an indication in the exhibit list provided to Superior Court Administration and the courtroom clerk if the numbering system was modified due to the number of exhibits being provided by the Plaintiff/Petitioner.
- f) Illustrative Exhibits: A party may offer an illustrative exhibit that emphasizes or highlights a portion of an already existing exhibit. Illustrative exhibits shall be numbered in the same manner as indicated above. The *Exhibit Notebook Certification* shall indicate which exhibits are submitted for illustrative purposes.
- g) Exhibits related to impeachment or rebuttal are not required to be a part of the master set of exhibits and may be provided by the presenting party at the time of trial only if the offering party can provide accurate and complete copies to the opposing party, the witness, and the Court at the time they are offered.

**5) Pre-Trial Conference:** The Court will conduct a 30-minute pre-trial conference by video on the Wednesday morning the week before trial. Cases with attorneys representing at least one party will be heard at 9:00 a.m. Cases where both parties are unrepresented will be heard at 10:30 a.m. At the pre-trial conference, all parties will check their technology for full functionality. The judge will confirm that exhibits will be in place, witnesses are scheduled and available, and address any failure to comply with the protocol at this conference.

The parties will be notified of the date and time of this meeting by Superior Court Administration. Failure to attend this pre-trial meeting will result in the trial date being stricken. Failure to appear may result in imposition of sanctions or any other relief deemed appropriate by the Court.

At least one court day before the pre-trial conference, the parties must complete and submit a *Remote Proceeding Pretrial Conference Summary*. This form must contain

each party's witness list, or a master list, containing the name, telephone number, and e-mail address of each witness, party, and attorney who will be appearing at trial.

**6) Documents Provided to the Court by Noon One Court Day before Trial:** The parties shall provide the following items and information to Superior Court Administration by 12:00 p.m. on the court day before trial:

- a) Two sets of all exhibits (one set of originals and one set of bench/working copies), in two separate notebooks or packets. The exhibits should be numbered in the upper right hand corner and organized in numerical order, and comply with requirements listed in Paragraph 2 of this protocol.. Each party is responsible for the copying costs of their own exhibits and for making copies of their master set of exhibits for all attorneys and parties, including to guardians ad litem.
- b) Trial briefs, motions in limine, original sealed depositions, and proposed final orders are not considered exhibits, but shall also be physically provided to the Court. Working copies may but are not required to be provided electronically.
- c) Each party, or that party's attorney, will sign and file an *Exhibit Notebook Certification* certifying that the exhibit notebooks provided to the parties, and individual exhibits provided to witnesses, are identical to the master set of exhibits and do not contain any notes, highlighting, post-its, or any other changes or additions from the master. The original *Exhibit Notebook Certification* shall accompany the binder including original exhibits. A copy shall accompany the binders with copies for the judge and other parties.

**7) Video Trial Process:** The trial will proceed in the following manner:

- a) The Court invokes ER 615. Other than parties, no witness may observe the trial until after that person has testified and is excused by the Court. Attorneys/unrepresented litigants are to instruct their witnesses on this prohibition. Attorneys/unrepresented litigants are encouraged to make certain their witnesses are prepared to proceed at the scheduled time. No attorney, party, or witness may communicate with another witness about any previous testimony in the case until after both witnesses have testified and been excused by the Court.
- b) Anyone wishing to view the trial, including witnesses who have testified and been given permission by the Court, can use the publicly available trial link to observe but not participate in the trial. Observers must have their audio on mute. Observers who fail to mute themselves or otherwise cause disruptions during the trial may be removed from the proceedings. **Video and audio recording of the trial is strictly prohibited absent prior court approval. The parties are to instruct all witnesses and family/friends of this prohibition.**
- c) If an attorney needs to speak privately with a client, they must inform the Court and the Court will create a breakout room to allow private communications. The timing of when a breakout room can be used, and for how long, is at the Court's discretion.

- d) During trial, the parties will refer to and use the exhibits as numbered in the exhibit notebooks.
- e) Witness Access to Exhibits: Each witness must have physical access to a copy of those exhibits that a party expects to the witness to refer to in its case-in-chief. The copy of exhibit provided to the witness may not contain any notes, highlighting, post-its, or any other changes. If exhibits are subject to protective orders, a party must get permission from the Court to provide that exhibit to its witness. Witnesses are **HEREBY ORDERED** to destroy or return all copies of exhibits to the parties providing them for testimony.
- f) Because the Court, attorneys, parties and witnesses will have their own copies of exhibits, the use of “screen sharing” in Zoom is largely unnecessary and will only be allowed with permission of the Court.
- g) Publishing Depositions: Any original, unopened depositions that are intended to be used will be delivered to Superior Court Administration **by noon the day before trial**. The courtroom clerk will unseal and publish depositions only upon the Court so ordering during trial.

**8) Post-Trial Process:** Any sealed depositions that have not been published will be discarded if not retrieved by the parties from Superior Court by 4:00 pm within three (3) court days after closing arguments have concluded. Once exhibits have been marked and submitted, they will be held by the Clerk’s Office and either discarded or returned to the offering parties depending on the parties’ signed stipulation for return of exhibits.

**9) Zoom Trial Etiquette:**

- a) Either use an appropriate virtual background or be situated in a location with an appropriate background. Please avoid backgrounds/virtual backgrounds that are distracting. Also avoid backlighting, such as being in front of a window.
- b) If at home, please try to be in a place that is quiet and without distractions.
- c) Please dress and act in a way that is appropriate for court proceedings; do not eat, smoke, chew gum or drink anything distracting or inappropriate for court (water, coffee cups, and mugs are acceptable as long as they do not contain alcoholic beverages).
- d) Please speak clearly, and at a slightly slower pace than you would normally speak. Consider the use of a headset or earbuds if noise or hearing is a concern;
- e) If more than one device (computer, phone or tablet) is used in the same room, feedback can be a problem. Frequently this can be fixed by having the microphone and speaker of only one device active at a time. Headsets/earbuds can also solve this problem.
- f) Please identify yourself in Zoom with your actual name and role, rather than a “virtual” name. Click on “manage participants” and then, in the column on the far right, find you name and click on “more” and “rename.”
- g) Attorneys, parties and witnesses with video capability should have the video on, unless you have permission of the Court to proceed without video.

- h) The use of the chat function to communicate to the Court ex parte is prohibited. The use of chat function to communicate to all the participants is also prohibited, as such a communication cannot be made part of the record.
- i) Additional instructions on etiquette for remote hearings and technical information on connecting to Zoom are available at the Court's website:

[SkagitCounty.net/Departments/SuperiorCourt](http://SkagitCounty.net/Departments/SuperiorCourt)