

Superior Court of Washington, County of Skagit
IN-PERSON AND HYBRID TRIAL PROTOCOL AND PROCEDURES

During the COVID-19 public health emergency, the Court is requiring all parties at trials that will be conducted fully or partially in person to abide by the following protocol and procedures. These procedures apply to jury and bench trials to limit the amount of contact the parties are having between each other, with witnesses, clerks, court staff, and marked exhibits.

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 Trial Protocol: One party's failure to comply with the requirements set forth in this protocol 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 or any other relief deemed appropriate by the Court.

2) Video/In-Person Appearance: For adult criminal, juvenile offender, Involuntary Treatment Act, termination of parental rights, and Title 13 guardianship trials, it is presumed that the parties and witnesses will appear in person absent prior court approval. For all other trials, it is presumed that the parties and witnesses shall appear at trial over video unless a motion to waive video appearance has been made and approved in advance of trial. For those remote trials, the *Remote Bench Trial Protocol and Procedures* shall be followed. That document is located on the Superior Court's website.

3) Courtroom Protocol: Anyone in the courthouse is required to wear a mask that adequately covers the nose and mouth. Six-foot distancing requirements must be respected during the trial unless absolutely necessary at brief and infrequent intervals. Masking and distancing requirements also apply during recesses and in any common areas of the courthouse.

More information with respect to handling of exhibits is detailed below.

4) Daily Health Screening: Prior to coming to court each day, all parties are expected to engage in health self-screening and to ensure that their clients and witnesses to do the same. The daily health screening questions are below in Attachment A.

If an attorney, party, or witness develops any symptoms or has an exposure to COVID-19 during the trial, the attorney or unrepresented litigant must immediately inform the judicial assistant. If this situation develops after normal court hours, this can be done by immediately emailing the judicial assistant, the trial judge, and opposing counsel so a plan can be developed to expediently address these issues on the record.

5) Civil Trials: For all civil trials, 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.

The parties will be notified of the date and time of this meeting by Superior Court Administration. Failure of both parties to attend this pre-trial meeting will result in the trial date being stricken. One party's failure to attend 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.

Refer to the *Remote Bench Trial Protocols and Procedures* for expectations regarding the pre-trial meeting and documents to submit prior to the pre-trial conference.

6) Adult Criminal/Juvenile Offender Trials: A brief pre-trial conference will be held at the regularly scheduled trial confirmation hearing.

7) 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. In adult criminal and juvenile offender trials, the sets of exhibits and jury instructions shall be provided to the Judicial Assistant in the courtroom the morning of 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 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.

8) Exhibits - Numbering

- a) 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.
- b) If there are more than two parties to the case, the additional parties will be numbered beginning with 300, 400, etc. according to their order on the official case caption beginning with petitioners/plaintiffs and moving to respondents/defendants.
- c) 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.
- d) 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.

9) Exhibits – Handling During Trial

Once exhibits are marked by the Clerk, they shall be transmitted between the Clerk and witnesses by the Judicial Assistant. To reduce cross-contamination, the parties will have limited access to the exhibits during trial. To such end, it is essential that the parties follow the numbering protocol listed above, including maintaining their own copies of exhibits being offered and providing copies to counsel.

- a) During trial, the parties will refer to and use the exhibits as numbered in the exhibit notebooks.

- b) 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.
- c) Witness Access to Exhibits: Each witness appearing remotely 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 any 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.

10) Hybrid Trials: Some trials may have a combination of witnesses and parties present physically in the courtroom and others appearing over video. Depending on the presumption of in-person or remote appearances for the case type, a party requesting a deviation from the presumption must have that motion granted *prior* to the trial confirmation hearing or pre-trial conference.

All courtrooms are equipped with cameras with angles of the witness stand, gallery/counsel tables, and the judge. For trials involving in-person witnesses and use of the courtroom whiteboard, a camera view of the whiteboard is also available in Courtrooms 1, 2, and 3. Parties expecting to use the courtroom whiteboard during trial shall notify Court Administration of this intent when confirming for trial.

Each courtroom has a large-screen monitor mounted in a prominent position so people at counsel tables and in the gallery can observe the video participants. Smaller monitors are located at the bench and witness stand, allowing all participants to be seen by and to see all other participants.

When a remote witness testifies, the Court will make every effort to enlarge that person’s video feed so their Zoom thumbnail is enlarged on the main courtroom monitors. People appearing over video are encouraged to view the proceedings in “Speaker View” when observing testimony.

11) Witnesses and Observers:

- a) Attorneys/unrepresented litigants are encouraged to make certain their witnesses are prepared to proceed at the scheduled time. Witnesses appearing remotely will be left in the Zoom waiting room until it is time for them to testify. 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) 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.

- c) 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.**

12) 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.

13) 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 your name and click on "more" and "rename." Observers may identify themselves as "Observer" and are not required to have their video enabled.
- 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](https://www.skagitcounty.net/Departments/SuperiorCourt)

**Attachment A:
Daily Health Screening Questions**

1. Do you have any of these symptoms that are not caused by another condition?
 - Fever or chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - Recent loss of taste or smell
 - Sore throat
 - Congestion
 - Nausea or vomiting
 - Diarrhea

2. Within the past 14 days, have you had contact with anyone that you know had COVID-19 or COVID-like symptoms not attributable to another condition? Contact is being 6 feet (2 meters) or closer for more than 15 minutes with a person, or having direct contact with fluids from a person with COVID-19 (for example, being coughed or sneezed on).

3. Have you had a positive COVID-19 test for active virus in the past 10 days?

4. Within the past 14 days, has a public health or medical professional told you to self-monitor, self-isolate, or self-quarantine because of concerns about COVID-19 infection?