

Skagit County Superior Court

COVID-19 Jury Trial Protocol

As Skagit County Superior Court resumes jury trials, attorneys should be aware of significant changes to that process. Superior Court has consulted with the Health Department, which has approved these procedures. This is an overview of the changes. Specific questions can be addressed during motions in limine the Friday before trial.

Courtroom 5

The old hearing rooms in the administrative building have been joined and renovated to create a larger trial space, which is now Courtroom 5. This is directly to the west of the main courthouse. The courtroom can seat up to 39 prospective jurors. Each seat in the gallery is numbered.

Two counsel tables are provided. Each table is eight feet long so the attorneys and clients can be properly distanced during trial. The defense table is on the left side of the courtroom, by the clerk's station. The prosecutor's table is on the right side, by the witness stand. Hand sanitizer is provided at each table and at the entrance to the courtroom.

Restrooms are available off the courtroom space, as well as in the courthouse and across the covered walkway in the administrative building. Anyone wanting water in the courtroom must bring their own water bottle.

PPE

Everyone in the courtroom is required to wear a mask. Disposable surgical-style masks are required in the courtroom based upon guidance from the health department. The Court will provide those masks to all jurors, court staff, parties, and other participants in the trial.

We understand that attorneys may feel uncomfortable conducting trial in masks. If an attorney wishes for the jurors to see their face, the attorney may briefly remove their mask at the beginning of jury selection so jurors can see the face of the lawyer and the client. This must be brief, with no speaking taking place while the mask is off.

Since everyone in the courtroom will be wearing the same style mask, there should be no prejudice to the parties to conduct the trial in masks.

The only exception is for witnesses when they testify (see below) or for individuals requiring an ADA accommodation. Those individuals may wear face shields with a soft covering of the open spaces below the face shield. This will also be provided by the court.

Gloves are available to anyone who is handling exhibits.

Security Screening

Security screening is performed at the entrance to Courtroom 5. Bags will be hand-checked before individuals walk through the metal detector. To avoid delays with the screening process, clients and witnesses are discouraged from bringing excessive materials to trial.

Note for Defense Attorneys: While jury selection is underway, please enter the courtroom with your out-of-custody clients to avoid unnecessary contact with prospective jurors. You and your client can avoid the jurors' line by standing outside the main entrance and getting the attention of courtroom security to bypass the line, screen, and go directly to counsel table.

Health Screening

All participants in the trial are required to perform a self-check before coming to court each day. Jurors will also be asked these questions while they stand in line outside the courtroom before screening through security. The questions are attached at the end of this document.

Prospective jurors who affirmatively answer any of those questions will have their jury service deferred for several weeks. Should a seated juror answer yes to those questions, they would likely be excused. For this reason, all trials will involve at least two alternate jurors.

If you, your client, or witnesses develop any symptoms or have an exposure to COVID-19 during the trial, you must immediately inform the judicial assistant. If you become aware of this after hours, immediately email the judicial assistant, the trial judge, and opposing counsel so a plan can be developed to address these issues as soon as possible.

Jury Selection

Prospective jurors will be assigned their juror numbers at random when they come through security and check in for service. All seats in the gallery have been numbered to allow jurors to immediately find their seats and not have unnecessary additional contact with other individuals or surfaces.

There will likely not be space in the courtroom to accommodate members of the public during jury selection. The jury selection process will be available live over Zoom. Connection information will be posted on the court's daily calendar by 5:00 p.m. the evening before trial.

<http://skagitcounty.net/SuperiorCourt/documents/schedule/courtroomschedule.pdf>

As with before the pandemic, all jurors will have numbered juror cards and speak into a microphone when answering questions. The microphone will no longer be passed between jurors. There are two microphones on stands in the gallery for jurors to approach when answering questions for a no-touch process. Expect voir dire to take twice as long as normal.

Peremptory Challenges

On June 18, 2020, Chief Justice Stephens issued an Order re: Modification of Jury Trial Proceedings, No. 25700-B-631. That order includes information pertinent to conducting jury trials during the pandemic and can be found at:

<http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.scorders>

Of particular interest to most attorneys will be its modification of CrR 6.4(e)(1). This creates a presumption of three peremptory challenges in all criminal cases. If a party so moves, the court only has discretion to increase those to up to six peremptory challenges in cases where good cause is shown and when the defendant is on trial for a charges that could result in a DOC sentence. There are no additional peremptory challenges for alternate jurors.

The Seated Jury

Once a jury is selected, the seated jurors will be sworn in and escorted to Courtroom 3 in the main courthouse. A recess will then be taken to allow for facilities staff to sanitize the seats in the gallery. The jurors will then return to Courtroom 5 and sit in the seats that correspond with their juror numbers. Courtroom 3 will serve as a jury room during recesses and deliberations.

There is no formal jury box due to space limitations and distancing requirements. The empaneled jury will sit in what would normally be the gallery. Counsel tables have been positioned so the seated jury cannot see the attorneys' notes. A barrier and spacing will be created between the seated jury and what will be the gallery.

Witnesses

Witnesses are the only people in the courtroom who are allowed to remove their masks when speaking. Witnesses may remove their masks while testifying since the witness stand is enclosed in plexiglass. Witnesses must still wear masks as they walk through the courtroom on their way to and from the stand.

Witnesses must come through security within the courtroom before walking to the witness stand. They must be staged outside the courtroom, either in the prosecutor's office, the main courthouse, or possibly in a small vestibule across from the courtroom. Time will be allowed between witnesses for the next witness to be sent to the courtroom and to screen through security.

The judicial assistant will disinfect the witness stand between witnesses. Gloves are provided on the witness stand so witnesses do not have to touch exhibits.

Recesses

Recesses during jury selection will be longer than before, likely closer to 30 minutes than 15 minutes. This is to allow enough time for the jury pool to use the restrooms without crowding, to step outside for an unmasked breath of fresh air, and for everyone to re-screen through security in time to resume the trial.

A room directly off the courtroom has been converted to a confidential meeting space for the defense attorney and client. This room will be opened for defense counsel upon request during regular recesses. Additionally, the meeting room is available during the trial, such as if the defense attorney and client need to confer between direct examination and cross-examination of a witness. Attorneys should discuss this in advance with the trial judge during motions in limine so court staff knows how the attorney plans to request these recesses.

Technology

All attorneys will be assigned a lapel mic to wear during jury selection. Attorneys must have their microphones on at all times when they are conducting voir dire.

This courtroom does not have a screen for projecting. Instead, there is a large-screen television that can display images. A connection is available via HDMI cables. If an attorney does not have a device with an HDMI port, they should inform the judicial assistant and bring a thumb drive containing the information they wish to display at trial. Judicial assistants can assist attorneys with connecting their devices for display on the television screen.

One-way transmitters are available for individuals needing interpreters. If a defendant requires an interpreter, the interpreter will sit behind defense counsel table and interpreter via the headset. The interpreter may accompany the defense attorney and client to the confidential meeting room during recesses, however the interpreter must also have an adequate amount of time for their own recess.

Stacking Trials

Superior Court will stack jury trials if multiple cases confirm for trial. This is to be as efficient with our space as possible since we can only physically accommodate one jury trial at a time.

Motions in Limine/Pre-Trial Conference

Until further notice, all cases proceeding to jury trial shall have a pre-trial conference the Friday afternoon before the trial. In addition to hearing motions in limine, this will give the parties and the trial judge an opportunity to address specific procedures related to the trial process.

Expectations from the Bench

The judges understand that this process will not be as seamless as our pre-pandemic procedure. It will feel slow and clunky, but this is the only way we can safely conduct jury trials given the current public health crisis.

We expect attorneys to be mindful of the exposure jurors face in performing this public service. Further, any frustration with this process should not be placed on court staff. Like you, they are also doing their jobs in a new and challenging environment.

Even when court is not in session, all attorneys must wear masks when inside the courtroom to protect the health of all participants.

Please be flexible, open-minded, and address any concerns to the judge presiding over your trial or, in general, to the presiding judge so the bench can properly address the issues presented.

Attachment: 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?