

# Skagit County Superior Court

## COVID-19 Jury Trial Protocol

As Skagit County Superior Court continues its jury trial operations during the pandemic, attorneys should be aware of significant changes to that process. In addition to these procedures, attorneys should consult with the [local court rules](#) and [Skagit County Superior Court's In Person/Hybrid Trial Protocol and Procedures](#). Specific questions can be addressed during the pre-trial conference or motions in limine.

### **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 33 prospective jurors (or 31 if not using the side area).

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 may bring their own water bottle or use the bottled water provided in the courtroom.

### **PPE**

*Everyone in the courtroom is required to wear a mask.* Disposable KN95 masks or equivalents (such as N95 or KF94) are required to be worn at all times by anyone in the courtroom. The Court will provide KN95 masks to all jurors, court staff, parties, and other participants in the trial, although people are welcome to wear their own masks that meet the above standards.

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.

The only exception is for witnesses when they testify (see below). Anyone requiring and ADA accommodation by way of a face shield will have their jury service deferred until after the public health emergency has resolved.

Gloves are available to anyone who wishes to use them while 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 accompany your out-of-custody clients as they enter the courtroom 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. You and your client will screen through security and then proceed directly to the 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://skaqitcounty.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 up to twice as long as before pandemic procedures were in place.

### **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 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 re-seated according to their juror numbers in the first half of the gallery, which will serve as the jury “box.”

There is no formal jury box due to space limitations and distancing requirements. The empaneled jury will sit in what would normally be the front of 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.

Courtroom 3 will serve as a jury room during recesses and deliberations.

### **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 for witnesses who wish to use them when handling exhibits. Hand sanitizer is also available for witnesses. Attorneys may approach the clerk's station and witness stand to hand up and retrieve 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 speaking on the record.

This courtroom does not have a screen for projecting. Instead, there is a large monitor mounted behind the bench to display images. Two options are available depending on whether Zoom is in use at the time of displaying images.

If Zoom is in operation, attorneys may screen share from their computers to the monitor after court approval. If Zoom is not in operation, a connection is available to the monitor through an HDMI port at counsel tables. 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 monitor.

Due to COVID-19 distancing requirements, most jurors are seated farther from witnesses than they would if in the regular jury trial courtrooms. The witness stand camera will project a larger image of the witness on the main courtroom monitor to improve jurors' view of witnesses.

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 rest periods.

### **Stacking Trials**

Superior Court will stack jury trials if multiple cases confirm for trial. This is to address a backlog in trials during this time when we can only physically accommodate one jury trial at a time.

The stacking order will be determined by 9:00 a.m. the Friday before trial. For criminal cases, all parties are expected to appear in the main courthouse the morning of trial to determine which case will proceed to trial and address motions in limine or other issues outside the presence of the prospective jurors. At that time, parties of the case moving to trial must provide their exhibits and proposed jury instructions to the court and opposing counsel.

### **Motions in Limine/Pre-Trial Conference**

Until further notice, all cases proceeding to jury trial shall have a brief pre-trial conference at the time of trial confirmation. Motions in limine for the first and second set criminal jury trials shall take place the Friday afternoon before trial. For all other criminal cases stacked behind the first two criminal cases, motions in limine will be heard at 9:00 a.m. the morning of trial in the main courthouse while prospective jurors are checking into the jury trial courtroom.

### **Expectations from the Bench**

The judges understand that this process will not be as seamless as our pre-pandemic procedure

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, everyone 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).

*If you are unvaccinated or only partially vaccinated against COVID-19:*

You must reach out to the judicial assistant and await further instructions.

*If you are fully vaccinated against COVID-19:*

You may still come to court as long as you are not experiencing any of the symptoms listed in #1. If you experience any of those symptoms, reach out to the judicial assistant and await further instructions.

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?

*If your answers to any of the questions in #1, #3, or #4 are “yes,” call the judicial assistant for further instructions.*

*Do not physically come into the courthouse. If you are in the courthouse when symptoms arise, please take measures to avoid having as much contact with others as possible while notifying the judicial assistant.*