

Superior Court of Washington, County of Skagit
TRIAL PROTOCOL AND PROCEDURES

The Court requires all parties at trials to abide by the following protocol and procedures.

**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) In-Person Appearances: It is presumed that all trials shall take place with all parties, witnesses, and jurors appearing in-person.

Due to significant staff reductions, the court is unable to make video appearances available other than in exceptional circumstances. Any requests for a party or witness to appear remotely must be submitted as a motion to be heard at least two weeks prior to the trial date.

- a) Anyone appearing remotely is required to have a stable and clear audio connection over the Zoom platform.
- b) When a remote participant connects over Zoom, they are required to identify themselves by their first and last name(s) so they will be allowed to enter the platform. For example, identifying under the name of another person, a device (such as that of a phone or tablet), a workplace, or other facility may result in the witness being unable to enter the platform.
- c) Any requests that are granted for remote appearance require the requestor to collaborate with Superior Court Administration and, while in trial, the trial judge, as to timing of remote appearances to ensure that staff is able to make a Zoom line available when needed.

Any witnesses appearing remotely must be provided advance copies of exhibits to be referred to during their testimony. In non-jury trials, screen sharing may be used to show a remote witness an exhibit that consists of one or two pages.

3) Face Masks: The court's COVID-19 orders have been rescinded, however court participants are still free to wear face masks.

In jury and bench trials, once a party becomes aware of a witness's desire to testify while wearing a face mask, they must immediately notify the other party/parties so any concerns may be addressed promptly by the court.

When a witness in a jury trial requests to wear a face mask during testimony, the request must be raised outside the presence of the jury and on the record prior to the witness's testimony.

4) Civil Trials – Pre-Trial Conferences: For all civil bench trials, the Court will conduct a pre-trial conference at the time provided on the notice for trial. Parties may appear for these hearings in person or by video.

Failure of both parties to attend this pre-trial conference may 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 *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.

5) Adult Criminal/Juvenile Offender Trials: A brief pre-trial conference will be held at the regularly scheduled trial confirmation hearing. Additional hearings to address motions in limine or procedural issues related to trial may be scheduled through Superior Court Administration after the trial has confirmed. In cases where a judge had been pre-assigned or lengthy (more than 3 hours) motions in limine are anticipated, the parties shall communicate with Court Administration prior to confirmation to schedule the motions in limine.

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. 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 first 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 8 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. Exhibits include thumb drives.

- 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) 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.

8) Exhibits – Handling During Trial

Attorneys/litigants may handle exhibits and hand them directly to witnesses.

- a) During trial, the parties will refer to and use the exhibits as numbered in the exhibit notebooks/packets.
- b) Remote Witness Access to Exhibits:
 - a. Each witness appearing remotely must have physical access to a copy of those exhibits that a party expects 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 that are different from the original exhibit. Physical copies of exhibits are not required if the parties and the witness agree for the witness to receive exhibits electronically and those are sent in a format that the witness can refer to during testimony if needed.

- b. If an exhibit is subject to a protective order, a party must receive advance permission from the Court and seek additional orders prior to providing that exhibit to a witness appearing remotely.

9) Breakout Rooms:

Hybrid trials with a client and attorney appearing in different locations are disfavored, but may take place with advance court permission under exceptional circumstances.

When this occurs, breakout rooms are available to enable confidential conversations between the attorney and their client when appropriate and upon request from the attorneys and/or client.

If an attorney appears for court in-person while their client appears remotely, the attorney is responsible for their own technology through which the court may enable a breakout room for confidential conversations. The court, to the best of its ability, may make a private space available for those conversations.

10) Remote Witnesses:

All trials are conducted in open courtrooms with physical space for observers. Under Emergency Administrative Order 25-2, Zoom access has been discontinued and observers are no longer able to observe remotely. Trials will not have a publicly available Zoom link for viewing even when one or more witnesses or parties appear remotely.

Where witnesses connect to court over Zoom, the following apply:

- a) Attorneys/unrepresented litigants are encouraged to make certain their witnesses are prepared to proceed at the scheduled time. Witnesses are required to correctly label themselves prior to entering the Zoom waiting room so they can be identified as witnesses. Witnesses appearing remotely will be left in the 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 are excused by the Court.
- b) Due to staffing limitations and concerns over witnesses inappropriately viewing proceedings, no observers will be permitted to watch trial remotely without advance permission on that specific case. This will only be granted sparingly with a formal request having been made in the same manner in which remote testimony is requested and authorized.

- c) **Video and audio recording of the trial is strictly prohibited absent prior court approval. The parties are to instruct all remote witnesses of this prohibition.**

11) 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.

12) Zoom Trial Etiquette for Remote Litigants and Witnesses:

- a) Either use an appropriate virtual background or be situated in a location with an appropriate background. Avoid backgrounds/virtual backgrounds that are distracting. Also avoid backlighting, such as being in front of a window.
- b) If at home, try to be in a place that is quiet and without distractions.
- c) 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) 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) 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."
- g) Attorneys, parties and witnesses with video capability should have the video on, unless they 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 communications cannot be made part of the record. Due to these concerns, the chat function will be disabled on courtroom Zoom lines.
- 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)