

April 28, 2020

Greetings from Kitsap County Superior Court,

I am hoping to hear from Chief Justice Stephens soon regarding new timelines and procedures as we move forward. In the meantime, Kitsap County Superior Court has the following information for you:

ZOOM

I can report the following courtrooms are now licensed and equipped to handle hearings using the Zoom video conferencing platform: 206, 212, 270, 271 and 272. Our goal is to have courtroom 269 licensed and equipped during the week of May 11th. Courtroom 268 is too small to accommodate safe social distancing so it will remain closed for the time being. Also, both courtrooms at our Juvenile and Family Court Services facility are licensed and equipped to handle remote hearings. This expansion of video conference capability will allow us to begin to return to the regular calendars that you are familiar with beginning on Tuesday, May 5th (while still operating within the directives and guidelines set forth by Chief Justice Stephens and Governor Inslee). Each courtroom will be assigned a Zoom log-in link. The log-in links will be provided to you on the ListServ and will be posted on our website and in the Courthouse.

I HAVE CONCERNS ABOUT INTERNET SECURITY. DO I HAVE TO USE ZOOM?

No. We are not requiring that you use Zoom. Security issues regarding Zoom have been publicized. If you share those security concerns you do not have to appear using Zoom. You may appear by phone using the phone system that our courtrooms have regularly been equipped with. If you choose to appear by phone, please make sure Jennifer Kluver (JKluver@co.kitsap.wa.us) has a good phone number to reach you. You will be called from the courtroom. Please remember that you may not be called right at the outset of the calendar.

Our courtrooms continue to be open to the public. Please understand that social distancing will be strictly enforced. Everyone in the courtroom (and hallways) must maintain proper social distancing. The benches and seats in our courtrooms have been marked with fluorescent tape indicating appropriate spacing. You may be asked to wait outside the courtroom until your case is called to ensure proper social distancing. Also, just like anywhere else outside of your home, if you come to the Courthouse you may be in the vicinity of someone who is not practicing the safe social distancing habits you are. You are strongly encouraged to wear protective clothing such as masks and gloves in the Courthouse and courtrooms.

Please do not interpret our transition to scheduling matters on regular calendars as a return to business as usual. It is not. So long as social distancing standards remain with us, we ask that you and your clients continue to appear electronically (by Zoom or telephone), unless impossible to do so.

BENCH COPIES

We will continue to receive bench copies via email, unless those submissions exceed 100 pages. Bench Copies can be emailed to Superior Court at: SuperiorCourt@co.kitsap.wa.us. Please remember that what you email to the Court as bench copies is not the same as filing. You must file your original submissions with the Kitsap County Superior Court Clerk's Office pursuant to their procedures. Bench copies that exceed 100 pages must not be emailed; rather, they must be provided to the Court as hard copies and should be mailed or delivered to Court Administration so that they are received per local court rules.

EX PARTE CALENDAR

Beginning on May 5th, we will be conducting one *ex parte* calendar per day at 8:30 a.m. Like all other civil matters, this calendar will be heard remotely. The Kitsap County Clerk's Office will have more information about how to access this calendar as they continue to diligently work through this process.

SETTLEMENT CONFERENCES

We have purchased additional Zoom licenses in order to engage in settlement conferences remotely. We anticipate being able to handle settlement conferences remotely beginning on Tuesday, May 5th.

CIVIL BENCH TRIALS

If we have a judge and courtroom available, we will accommodate bench trials. We believe that we can engage in safe social distancing during a typical bench trial. That said, in order to have a bench trial, the parties must agree on how it will be conducted.

The parties may agree to conduct the trial via Zoom. The parties may agree to appear in person. The parties may agree that one party appear by Zoom and the other appear in person. We will do our best to accommodate you. However, if you do not want to conduct your trial via Zoom and also do not want to appear in person at the Courthouse at this time, the trial will be continued.

It is recognized that there are perils and disadvantages conducting bench trials remotely. It is also recognized that at the present time, the Court is not in a position to require anyone involved in a civil matter to physically appear at the Courthouse. We will not do so. If you do not want to conduct your trial via Zoom and also do not want to physically appear at the Courthouse, that position will be accommodated at this time. [It is recognized that a party may be disagreeable to some of your suggestions for conducting a trial for the purpose seeking a continuance. To the extent a party is prejudiced by delay, temporary relief may be sought.]

Hard copies of your exhibits must be provided to opposing counsel (or party if self-represented) no later than 72 hours before trial, excluding weekends and holidays.

Exhibits should be physically mailed to the Clerk's Office to be received no later than 72 hours prior to the trial, excluding weekends and holidays. Please use the following address:

Kitsap County Clerk's Office

Attn: Kara Barnes

614 Division St, MS-34

Port Orchard, WA 98366

If bench copies of exhibits are included, the Clerk's Office will ensure that they are delivered to Superior Court.

If possible, please send an electronic exhibit list to Kara at kbarnes@co.kitsap.wa.us. A fillable form can be found [here](#), for your convenience.

The Court will not conduct trials telephonically. Whilst CR 43 contemplates remote testimony under certain circumstances, conducting an entire trial by phone is not feasible.

JURY TRIALS

Considerable thought has been given to how *voir dire* might look once we have the green light for jury trials. In the past we have been able to engage in *voir dire* in three courtrooms at the same time. But that creates very crowded courtrooms and hallways, not to mention the orientation and staging area downstairs is jam-packed. While we have a backlog of jury trials to get to, because of safe social distancing standards it will not be feasible to conduct *voir dire* in more than one courtroom at a time.

Typically we are able to conduct *voir dire* with panels of up to 60 people, but that is shoulder-to-shoulder. Frank Maiocco and I have calculated that using the six-foot social distancing standards, the maximum number of jurors we can have in a courtroom for *voir dire* is 20. This means that in order to work through a panel of 60 jurors, we may have to use 3 or 4 smaller batches of 15 to 20 people at a time.

I think it also fair to assume that it may be more difficult to get to the numbers we need for *voir dire* in the immediate future. Financial hardships are always a concern, but perhaps even more so under the present circumstances insofar as people may need to get back to work as soon as possible to catch up on unpaid bills, rent, etc. Also, jurors are entitled to be safe and feel safe whilst in the Courthouse. We may have individuals who object to immediately transitioning from self-isolation to a room of twenty people they don't know. These concerns will be honored. All of this is my way of saying that the process of *voir dire* will likely be much more laborious and time consuming (at least in the near future). Working together, I'm confident we can make it happen when the time comes.

Recognizing the space limitations, the mechanics of how you pick your jury may also have to change. Many questions arise. When dealing with small groups, what are the time limits for *voir dire* of each group? If we can't have more than 20 jurors in a courtroom, how do we get to our typical jury of 12, plus one or two alternates and accommodate all of the entitled to peremptory challenges? There are ways to make this happen and judges have broad discretion with regard to the *voir dire* process. That said, to the extent you have conversations with opposing counsel as to how you would like to conduct *voir dire* (with these stated limitations) that would be helpful.

Also, once we do get a jury picked, they will not all be able to sit in the jury box. We will need to use the additional bench seating in the courtroom. Please keep all of this in mind as you think about how you are going to present your case.

The collaboration I've observed between members of the Bar and the staff at Superior Court has been outstanding. We sincerely appreciate it. Your work at Kitsap County Superior Court is essential. The Kitsap County Courthouse remains open.

More anon, Kevin

Kevin Hull, Judge
Kitsap County Superior Court
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