

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) Video/In-Person Appearance: It is presumed that all trials starting on or after March 6, 2023, shall take place in-person. Trials may take place remotely or in a hybrid format (with one or more witnesses appearing over Zoom) with:

a) written agreement of the parties, and/or

b) a pre-trial ruling from the court permitting a remote trial. A party requesting a remote trial shall note such motion to be heard at least two weeks before the trial date to allow the litigants and witnesses sufficient time to prepare for trial to be conducted remotely.

Any request for a remote trial must provide assurances that the parties will strictly comply with requirements related to the pre-trial meeting and exchange of exhibits. The parties must also be able to assure the court that all participants, including witnesses, have access to stable and clear audio-video connections over the Zoom platform.

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. Those trials shall only take place fully remotely after a pre-trial ruling permitting remote trial. Some witness testimony may be permitted, with court approval, to appear remotely.

Bench trials that already began remotely prior to March 6, 2023 that have not concluded by that date are exempt from this presumption. Those trials may continue to proceed remotely without written agreement or court approval.

Jury trials shall take place physically in person with limited use of remote testimony absent specific court order.

3) Face Masks: Masking may be required depending on current emergency orders or a specific order from the trial judge.

At this time, masking is not required except for people who are experiencing symptoms related to COVID-19 but who have tested negative for the virus, or for people who had COVID-19 and are within five-to-ten days after their first symptoms and/or positive test for the virus. The current emergency order contains more information about when masking is required.

In most situations, whether to wear a face mask is a personal decision that will not be questioned. When a witness in a jury trial requests to wear a face mask during testimony, the party presenting that witness's testimony is required to notify the opposing party and the court of this request so it can be addressed prior to the witness's testimony outside the presence of the jury.

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.

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 do the same. The current daily health screening questions are below in Attachment A, however the attachment may change between now and the trial date. Current health screening information is available on the court's website and/or at the pre-trial conference or motions in limine.

If an attorney, party, or witness is unable to physically attend court due to any health conditions that develop during trial, the attorney or unrepresented litigant must immediately inform the judicial assistant. If this situation develops outside normal court hours, this can be done by immediately emailing the judicial assistant, Court Administration, and opposing counsel so a plan can be developed to expediently address these issues on the record. Parties who do not have at-home tests for COVID-19 may inquire about how to receive them at the pre-trial conference.

5) Civil Trials: 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 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 *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.

6) 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.

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 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.
- 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

At this time, 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.
- b) 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 that are different from the original exhibit. 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. The party requesting a deviation from the presumption of in-person appearance must have that motion heard and granted at least two weeks before trial begins.

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 2 and 3. Parties expecting to use the courtroom whiteboard during trial shall notify Court Administration of this intention 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) Breakout Rooms:

Breakout rooms are available to enable confidential conversations between an attorney and their client when appropriate. In trials that are conducted with the attorney and their client in different locations, breakout rooms may be enabled upon request from the attorneys and/or client.

The presumption is that the attorney and client will both appear for court over the same method: either in-person or remotely. Exceptions may be made due to health or other extraordinary reasons and must be addressed with the court at the earliest opportunity.

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.

12) Remote Witnesses and Observers:

All trials are conducted in open courtrooms. Because most courtrooms have sufficient space for observers during trial, all trials will not have a publicly available Zoom link for viewing. Jury selection will be conducted with a Zoom link available, however jury trials will often not have a Zoom link available for observers after the jury has been selected.

Where witnesses and/or observers 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) 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.

- d) Because the courtroom is publicly available in the physical courtrooms, observers may occasionally have to spend time in the Zoom waiting room before they are admitted into the courtroom over Zoom.
- e) **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.**

13) 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.

14) 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." 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 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 a communication 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)

**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?

If you answer “yes” to any of these questions, refer to the current *Skagit County Superior Court COVID-19 Screening and Illness Flowchart*.

If you have questions about next steps, please contact your attorney or, if unrepresented, call Superior Court Administration at (360) 416-1200.

Skagit County Superior Court COVID-19 Screening and Illness Flowchart (1/23/22)

Definitions	Symptoms
<p>Close Contact: Being within 6 feet of a person with COVID-19 for a cumulative total of 15 minutes or longer over a 24-hour period up to 48 hours prior to the infected person showing symptoms.</p> <p>Symptom onset or test date: represents day zero when calculating quarantine/isolation time.</p>	<p>Chills Cough sore throat Headache Fatigue Muscle pain/body aches Nausea or vomiting</p> <p>Congested or runny nose Loss of sense of taste and/or smell Diarrhea (2 or more loose stools within 24 hours) Fever (subjective or 100.4° F or higher)</p>

