

Revised Jury Trial Plan – Island County Superior Court –
Effective September 13, 2021

1. Overview

After suspending jury trials for several months in accordance with directives from the Washington Supreme Court, the Island County Superior Court resumed jury trials in August of 2020. This Jury Trial Plan provides information about changes in jury trial procedures that have been created in response to the pandemic.

In order to meet social distancing requirements, the Court conducts only one jury trial at a time. Trials will typically take place in Department One, which is the largest courtroom in the courthouse.

In civil cases, counsel shall meet prior to trial to consolidate all exhibits that will be offered or used by any party during the course of trial. Consolidation of exhibits is not an agreement that any exhibit will be admitted into evidence. Counsel are also asked to compile a combined binder(s) of the proposed exhibits, containing both the Plaintiff/Petitioner's and the Defendant/Respondent's exhibits. In order to allow sufficient time for the proposed exhibits to be marked, the combined binder(s) should be submitted to the Clerk of the Court no later than 12:00 p.m. the Friday before the start of trial.

Because potential jurors may need to be seated in the trial courtroom from the time that they arrive for jury service, **all pretrial motions, including motions *in limine*, must be completed no later than the Friday before the start of trial.** Such motions should be special-set through Court Administration. Parties should be prepared to discuss the timing requirements described above and below (as regards special juror questionnaires) at the first scheduled readiness hearing that precedes a jury trial.

2. Jury Summonses and Special Questionnaires

All Jury Summonses for the Court are mailed out two months in advance. The Court has continued to mail out summonses throughout the pandemic. Island County contracts with a third party to mail jury summonses. Court Administration is therefore not able to include a letter or special questionnaire along with the initial jury summons. A minimum of three weeks before an upcoming jury term, prospective jurors will be sent a letter informing them about Court procedures designed to safeguard juror health and safety, a health screening questionnaire intended to identify those at higher risk for COVID-19, and a reminder card. Jurors should complete the health screening questionnaires and return them to Court Administration not less than 10 days before their service begins. The "Jury" tab on the Superior Court website has been updated with this information.

In the event that a special questionnaire is requested for any case moving forward to trial, the questionnaire **must** therefore be approved by the assigned trial judge no later than three

weeks and one day before the start of trial, so that it can be mailed to all confirmed jurors by Court Administration with the COVID-19 health screening questionnaire.

3. Juror Arrival at Courthouse

Potential jurors will start arriving at the courthouse between 8:00 a.m. and 9:00 a.m. Signs have been placed at the entrance of the courthouse to caution those experiencing symptoms of possible COVID-19 infection not to enter. Potential jurors will check in with the bailiff(s) in the main lobby. Once they have signed in, they will be directed to one of the jury assembly areas.

Any documents the potential jurors are asked to complete should be provided to Court Administration a minimum of one day before the start of trial. All documents and supplies will be placed on each juror's seat prior to arrival. Adhesive juror number labels will be provided to potential jurors, rather than reusable juror numbers. Court Administration staff will ensure that every summoned citizen has a mask or face covering. Court Administration will provide masks for those who appear without one.

4. Jury Selection

In order to allow other essential court business to proceed during a jury trial, the Court is currently using as many as three rooms as assembly areas. As they arrive at the courthouse, potential jurors will be directed to a jury assembly area immediately, as described in Section 3 above. The Court has the ability to stream video and audio proceedings from the trial courtroom to the other jury assembly areas. This eliminates unnecessary repetition.

With the exception of those seated together at the same counsel table and, for a defendant in custody, his or her transport deputies, everyone in the trial courtroom and other jury assembly rooms will maintain a distance of four to six feet from one another. Trial participants who will be seated at the same table – for example, co-counsel and the defendant they represent at a criminal trial – who want to sit closer together to facilitate confidential communications should secure permission from the judge presiding over the trial to do so.

There will not be room in the trial courtroom for any members of the public or the press to attend during jury selection. However, a remote viewing area will be provided. Signs indicating either the specific location of the remote viewing area or the office from which to get directions to that location will be placed at the entrance to Department One. Four to six-foot physical/social distancing will be enforced in the remote viewing area, and all in attendance must wear a mask or facial covering at all times.

Once all potential jurors are checked in, the normal juror orientation will proceed. There will be a bailiff in each jury assembly area, and juror orientation will be conducted simultaneously. During jury orientation, bailiffs will explain that all summoned citizens must wear their masks whenever they are inside the courthouse and will discuss hygiene and physical distancing requirements. Potential jurors who refuse to wear a mask and those

who are unable to do so for medical reasons will be addressed by the trial judge and counsel in the trial courtroom.

From their tables, trial attorneys will conduct their questioning of the panel, using one of the stationary microphones. The bailiff will provide a hand-held microphone to the prospective juror to whom a question is addressed. So long as the questioning attorney remains seated at counsel table and all others at the table remain masked, the questioning attorney may choose to remove his or her mask during questioning. Attorneys who prefer to stand when addressing the Court or the jury may seek permission from the judge presiding over the trial to do so. Counsel shall remain standing in one location and shall not move around the courtroom. If requested in advance of trial, a podium can be made available for attorneys to use while standing to address the jury.

Voir dire will be conducted in accordance with the direction of the judge presiding over the trial, and *voir dire* protocols may vary depending on the type of case and size of potential juror panel. Counsel must make any challenges for cause or for hardship promptly, but should inquire with the judge presiding over the trial about whether such challenges are to be made when the basis for the challenge first becomes apparent or whether they may be deferred until the first occasion outside the presence of potential jurors. After all questioning has ended and all “for cause” challenges have been ruled on, the court will hear requests regarding the number of preemptory challenges that will be available to the state and to the defendant in criminal cases, in accordance with the current directives of the Washington Supreme Court. The parties will exercise their preemptory challenges in the trial courtroom, outside the presence of potential jurors. The number of alternate jurors will be determined on a case-by-case basis.

5. Trial

When jury selection is complete, Court Administration staff will provide each juror with a surgical mask or KN95 mask for use during the course of the trial and deliberations, if one is requested. Jurors may use their own masks instead, so long as they are equivalent to or better than surgical masks. Scarves are not an adequate substitute for face masks. Jurors will be asked to self-screen each day for symptoms of COVID-19 infection and to promptly alert the bailiff if any symptoms are observed.

The jury will remain seated and spread throughout the spectator gallery to ensure six-foot physical distancing. Seats will be marked throughout the courtroom identifying where jurors will sit. Jurors will be provided with a brand new notepad along with a pen. At the end of each day, each juror will use a pair of disposable gloves to place his or her notebook into a labeled Ziploc bag. Using gloves, the bailiff will collect the notebooks for safekeeping until the next court day.

Witnesses will wear a mask except when actually testifying: as, for example, when the witness is entering or exiting the courtroom. The witness stand has been equipped with Plexiglas on the front of the stand. The witness will not wear a mask while testifying, unless the court directs otherwise. In the event that a witness is required to wear a face mask at

all times for medical reasons, Court Administration will supply a clear mask for the witness to wear.

Before each witness testifies, the bailiff will sanitize the witness stand, including the microphone base and neck, and will replace the foam microphone cover.

Questioning of the witness will typically occur only by an attorney who is seated at counsel table, and the questioning attorney shall request leave of court before approaching the witness to present an exhibit. So long as the questioning attorney remains seated at counsel table and all others at the table remain masked, the questioning attorney may choose to remove his or her mask during questioning, but the mask must be replaced each time that the attorney moves from the counsel table. (For example, when the questioning attorney approaches the witness with an exhibit.) Attorneys who prefer to stand when putting questions to a witness may seek permission from the judge presiding over the trial to do so, but both physical distancing requirements and the need to ensure that those using the remote viewing area can hear all proceedings preclude anyone from moving around the courtroom.

Any item of evidence, whether admitted or not, shall only be handled to a person who is wearing disposable gloves. If possible, evidence shall be placed in a plastic covering that can be sanitized between handlings.

Jurors shall remain at least four to six feet apart from one another at all times, including when going to and from the courtroom and when in the jury assembly room.

Attorneys will typically give their opening and closing arguments while seated at counsel table. So long as the questioning attorney remains seated at counsel table and all others at the table remain masked, the attorney who is giving the argument may choose to remove his or her mask during questioning. As described above, an attorney who prefers to stand when giving opening and closing argument may seek permission from the judge presiding over the trial to do so.

During trial, there should be limited seating available in the trial courtroom for members of the press and public. It is unlikely that there will be room in the trial courtroom for many members of the public, but a remote viewing area will be provided. Signs indicating either the specific location of the remote viewing area or the office from which to get directions to that location will be placed at the entrance of Department One. Any individual in the remote viewing area will be required to maintain physical distancing and to wear a mask.

6. Jury Deliberations

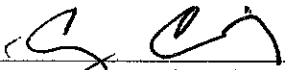
The jury will deliberate in the jury assembly room. The bailiff will cover the jury assembly door window in the entry door so that no one in the interior court hall can see the jury deliberating. Portable air purifiers have been placed in the jury assembly area that will be running whenever jurors or potential jurors are present. Each juror will receive his or her own packet of jury instructions. Jurors will be reminded of physical distancing and masking

requirements. Jurors will also be advised that no piece of evidence should be touched unless the person doing so is wearing gloves. A box of disposable gloves will be available during deliberations.


Lunch provided to the jury during deliberations will be individually packed for each juror. Jurors will be cautioned to replace their masks promptly after removing them to eat or drink.

Participating lawyers and *pro se* litigants who do not wish to remain in the courthouse while the jury is deliberating must provide Court Administration with a cell phone number or other means to reach them promptly during daytime deliberation hours (typically, 9:00 a.m. to 4:15 p.m.)

Dated this 9th day of September, 2021.



CAROLYN CLIFF, Judge



CHRISTON SKINNER, Judge