



District Court of the State of Washington
for Snohomish County

JUDGES
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PRESIDING JUDGE
JENNIFER J. RANCOURT
COURT COMMISSIONER
RICK S. LEO
ADMINISTRATOR
KATHRYN F. KOEHLER

Administrative Order 22 – 05B (Amending Administrative Order 22-05A)

**Snohomish County District Court
Presence of Hearing Participants**

Pursuant to the authority granted to the Presiding Judge of the Snohomish County District Court in GR 29, the following rules regarding the presence of hearing participants are effective immediately, and supersede the previous rules for presence under prior Administrative orders and the following Snohomish County District Court Local Rules:

- SCLCRLJ 1
- SCLIRLJ 3.5(b)
- SCLCrRLJ 3.4

This Administrative Order shall remain in effect until September 1, 2022, when new local rules will become effective unless renewed, modified, or rescinded by the Snohomish County District Court Presiding Judge.

1. Civil Proceedings

- (a) Attorneys, parties, witnesses, and interpreters shall be physically present for all civil proceedings, unless Order of the Court permits them to be remotely present.
- (b) Attorneys, parties, and interpreters may be remotely present for the following civil proceedings:
 - (1) Petition for a change of name;
 - (2) Ex-parte protection order hearing;
 - (3) Small Claim Court mediation hearings;
 - (4) Civil motions without testimony;
- (c) Interpreters shall be physically present if the hearing participant needing interpreter services is required to be physically present.
- (d) Requirements to be physically or remotely present may be modified at the discretion of the Judicial Officer assigned to the hearing.

2. Infraction Proceedings

- (a) Attorneys, parties, and witnesses may be remotely present for mitigation and contested infraction proceedings.

- (b) Interpreters shall be physically present if the hearing participant needing interpreter services is required to be physically present.
- (c) Requirements to be physically or remotely present may be modified at the discretion of the Judicial Officer assigned to the hearing.

3. Criminal Proceedings

(a) Necessary Hearings Where Defendant Must be Physically or Remotely Present.

Pursuant to CrRLJ 3.4(d), the court finds good cause to require the defendant to be physically or remotely present for the necessary hearings listed in Section (a) of this Order.

(1) Compliance hearings pursuant to RCW 10.21.055 and RCW 9.41.800. Compliance with these statutes is a condition of release set by the Court and verification of timely compliance with these statutes has public safety implications. Non-compliance will result in review of release conditions. A defendant failing to comply with release conditions is subject to modification of release conditions and revocation of release on personal recognizance. Defendants have a due process right to notice and a hearing before any revision of release conditions. CrRLJ 3.2(j). The Court cannot properly conduct a hearing pursuant to CrRLJ 3.2(j) if the defendant is not present.

(2) Modification of Release Conditions Pursuant to CrRLJ 3.2(j). A defendant has a due process right to be advised of the allegations of non-compliance with release conditions, the right to a hearing regarding those allegations, and the right to present evidence and testify on their own behalf. The Court cannot properly conduct a hearing pursuant to CrRLJ 3.2(j) if the defendant is not present.

(3) Trial Confirmation Hearings. The Court must manage the jury trial caseload and Trial Confirmation calendars. Leaving continuances and confirmation of cases to the assigned trial date would unreasonably congest the Trial Call calendar, preclude the Court from determining the need for jurors, impede the timely commencement of trials for that term, and prevent the Court from fulfilling the responsibility to protect the time for trial rights of the parties.

(A) Continuances. Defendants represented by counsel may waive their presence at Trial Confirmation, upon a form approved by the Court, if a continuance of the trial date is requested by either party. Unrepresented defendants must be physically present at Trial Confirmation if a continuance of the trial date is requested by either party. A continuance is a critical stage of the proceedings, implicating constitutional and court rule rights, and the defendant has the right to appear. A motion to continue cannot be heard in the absence of an unrepresented defendant.

(B) Trial Confirmation. Cases confirmed for the assigned trial date at Trial Confirmation require the parties to submit a Trial Confirmation Order. The order affirms that discovery has been completed, necessary pre-trial motions have been resolved, witness interviews have been completed, the defendant confirms availability for the trial term, and the matter is ready to proceed to trial. The Court cannot properly assess the readiness of the parties to proceed to trial if the defendant is not present.

(4) Probation Review Hearings. A defendant has a due process right to be advised of the allegations of non-compliance with probation conditions, to have a hearing regarding the allegation, and to require the prosecutor to prove the allegations of non-compliance. The Court cannot properly conduct a probation review hearing if the defendant is not present.

(b) Necessary Hearings Where Defendant and Other Hearing Participants Must be Physically Present. Pursuant to CrRLJ 3.4(d), the Court finds good cause to require the defendant to be physically present for the necessary hearings set forth in Section (b) of this rule. For all hearings listed in Section (b), deficiencies in technology available to the Court and hearing participants, and not known to the Court until the time of the hearing, result in actual prejudice to the defendant by interfering with access to counsel and interfering with the ability to meaningfully participate in the hearing. Technology deficiencies result in longer hearings and prevent the Court from completing the balance of the cases assigned for that calendar. Technology limitations preclude the remote presentation of evidentiary exhibits in a manner that permits the exhibits to be retained by the Court as required and preclude the exchange of any other necessary documents. Additional good cause findings supporting the requirement to be physically present are set forth below.

- (1) Those hearings specifically enumerated in CrRLJ 3.4(b).
 - (2) Evidentiary Motions. Pre-trial hearings to admit or exclude evidence require testimony. Evidentiary motions are a critical stage of the proceedings, and the defendant has the right to be present and may testify. The Court is often not aware whether the defendant will testify at the hearing until the hearing has commenced. The Court cannot properly assess witness testimony when the witness appears remotely.
 - (3) Guilty Plea, Entry of Deferred Prosecution, or Entry of Stipulated Order of Continuance. Entering a guilty plea, deferred prosecution, or stipulated order of continuance requires the waiver of constitutional rights. The Court cannot properly assess whether that decision is made knowingly, voluntarily, and intentionally if the defendant is not physically present.
 - (4) Probation Review Fact Finding Hearings. A defendant has the right to present evidence at a probation review fact finding hearing. The Court is often not aware whether the defendant will testify at the hearing until the hearing has commenced. The Court cannot properly assess witness testimony when the witness appears remotely.
- (c) The defendant's attorney shall be physically present if the defendant is required to be physically present.
- (d) The prosecutor shall be physically present for all appearances.
- (e) Interpreters shall be physically present if the hearing participant needing interpreter services is required to be physically present.
- (f) Requirements to be physically or remotely present may be modified at the discretion of the Judicial Officer assigned to the hearing.

Dated this 13th day of June, 2022.



Judge Jennifer J. Rancourt
Presiding Judge
Snohomish County District Court