

Superior Court of Washington, County of Snohomish
PROTOCOL FOR REMOTE CIVIL BENCH TRIALS

Civil bench trials will be conducted remotely via Zoom until further Court order, due to the COVID-19 health crisis.

These additional rules will therefore apply:

- 1) **Non-Compliance with Remote Trial Protocol:** One party's failure to comply with the requirements set forth in this protocol, including failure to comply with the pretrial meeting requirement, 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, striking of pleadings, refusing to permit the non-complying party to participate in the remote trial or any other relief deemed appropriate by the Court.
- 2) **Exchange of Exhibits and Witness Lists:** Absent a court order to the contrary, the parties shall exchange exhibit and witness lists, copies of exhibits, and a [Remote Proceeding Pretrial Conference Summary](#) ***at least one week before trial.***
- 3) **Pre-Trial Meeting of Parties:** The parties must meet, either remotely or in person with proper social distancing, ***at least two days before trial.*** **Parties exempt from mediation due to the existence of a domestic violence no contact order or restraining order do not have to meet in person or remotely, but must still independently comply with all other provisions of this rule and provide to the Court all information required to be provided to the other party.** At this meeting, the parties shall:
 - a. Determine which documents each party intends to offer at trial. The parties are encouraged to offer only those documents necessary to prove or defend the claims/issues. Trial briefs, including motions in limine, and proposed final orders are not considered exhibits, but shall be provided to the Court separately (copy to all parties) ***on the day of trial in paper form for filing. Working copies may be provided electronically.***
 - b. Stipulate (agree) to the admissibility of exhibits whenever possible. The parties shall list exhibits and indicate in that list which exhibits are stipulated to be admissible. A list of stipulated exhibits shall be provided to the law clerk for the Judge assigned to trial ***before the trial beginning.*** While stipulations are encouraged, they are not required if there is a proper legal basis for objection to their admissibility.
 - c. Review the exhibits to ensure there are no duplicates. If each party is offering a portion of the same document, the parties should combine the portions into one exhibit, where feasible.
 - d. Create a master set of exhibits for both parties.
 - e. 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 the Judge's law clerk and the courtroom clerk if the numbering system was modified due to the number of exhibits being provided by the Plaintiff/Petitioner.

- f. Illustrative Exhibits: A party may offer an illustrative exhibit that emphasizes or highlights a portion of an already existing exhibit. Any such exhibits should be provided with the master exhibits and be numbered with an "A" or "B" that corresponds to the original exhibit such as Exh. 4A or Exh. 8B.
- 4) **Documents Provided to the Court by noon the day before trial:** The parties shall provide the following items and information to the Presiding Department, or Pre-Assigned Department:
- a. Two sets of all exhibits (one set of originals and one set of bench/working copies), in two separate notebooks or packets, including original sealed depositions. The exhibits should be numbered in the upper right hand corner and organized in numerical order, and comply with requirements listed in Paragraph 2 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.
 - b. A completed [Remote Proceeding 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. Only persons identified on this list will be admitted to the trial.
 - 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.
 - d. A signed [stipulation for return of exhibits](#) post the appeal timeframe.
- 5) **Zoom Process:** Each party shall follow the process as designated by the law clerk for each department. The law clerk will email those instructions along with a Zoom invite.
- a. After the case has been assigned to a judge, the trial will proceed in the following manner:
 - b. The assigned Judge will first conduct a **pre-trial conference**. At the pretrial conference, all parties will check their technology for full functionality. The assigned Judge will address any failure to comply with the protocol at the pre-trial conference.
 - c. The assigned Judge will confirm exhibits are in place, witnesses are scheduled and available, and items from Paragraph 2 and 3 will be reviewed by the Court to

ensure compliance. At the discretion of the trial judge, a Pre-Trial Conference Order may enter.

- d. The Court is invoking ER 615. Other than parties, no witness may view the live courtroom feed (<https://snohomishcountywa.gov/197/Superior-Court>) until after that person has testified. Attorneys are to instruct their witnesses on this prohibition. Attorneys are encouraged to make certain their witnesses are prepared to proceed at the scheduled time. No attorney, party, or witness may communicate with another witness about any previous testimony in the case until after both witnesses have testified.
 - e. Anyone wishing to view the trial, including witnesses who have testified and been given permissions by the court, can go to (<https://snohomishcountywa.gov/197/Superior-Court>), and click on the appropriate judicial department to watch the trial. **Video and audio taping of the live feed is strictly prohibited. The parties are to instruct all witnesses and family/friends of this prohibition.**
 - f. If an attorney needs to speak privately with a client, inform the Court and the Court will create a breakout room to allow private communications. Note that the timing of when a breakout room can be used, and for how long, is at the discretion of the Court.
 - g. During trial, the parties will refer to and use the exhibits as numbered in the exhibit notebooks.
 - h. Witness Access to Exhibits: Each witness 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 exhibit provided to the witness may not contain any notes, highlighting, post-its, or any other changes. 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.
 - i. Because the Court, attorneys, parties and witnesses will have their own copies of exhibits, the use of “screen sharing” in Zoom is largely unnecessary and will only be allowed with permission of the Court.
 - j. Publishing Depositions: Any original, unopened depositions that are intended to be used will be delivered to the Presiding Department **by noon the day before trial.** The courtroom clerk will unseal and publish depositions only upon the Court so ordering during trial.
 - k. The Court discourages the use of telephonic presence for trial, unless video is not otherwise available.
- 6) **Post-Trial Process:** Any exhibits that have not been offered for admission will be retrieved by the parties by 4:00 pm within three (3) days after closing arguments have concluded. Failure to do so will result in any not-offered exhibits being discarded. This also applies to any depositions that are not published.

7) **Zoom Trial Etiquette:**

- a. Either use an appropriate virtual background or be situated in a location with an appropriate background. Please avoid backgrounds/virtual backgrounds that are distracting. Also avoid backlighting, such as being in front of a window.
- b. If at home, please try to be in a place that is quiet and without distractions.
- c. Please dress and act in a way that is appropriate for court proceedings; do not eat, smoke, chew gum or drink anything other than water.
- d. Please 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. Please 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 you 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.

These procedures are binding on all parties, whether represented by an attorney or self-represented.