

DURING TRIAL

Use of Courtroom & “Well”

- Please stay within your designated socially distanced space. Do not approach within 3 feet of any juror or witness without first obtaining the Court’s approval.
- Counsel and assistants should respect and not encroach on the lower bench working areas of the Bailiff or Court Clerk.
- Do not expect Court staff to make copies for you.
- When court recesses please exit the courtroom. (Court staff cannot leave the courtroom unattended and have other non-trial responsibilities outside the courtroom).
- Do not take marked exhibits with you when you leave.

Equipment

The Court has a video projection and conferencing system that the parties may use. Court policy does not allow parties to add additional systems (other than connecting their laptop through the HDMI port).

The parties must supply their own laptops and webcams. Other than the systems in place, Counsel should expect they will have to bring their own projectors, document cameras, or make arrangements with an outside vendor to provide any equipment needs. Please arrange with the Bailiff when to setup equipment in the Courtroom.

Although our staff tries to be very accommodating, please do not expect that Court staff will set up or work your trial equipment or the courtroom lights.

If you need special assistance, please contact the Bailiff for equipment questions or needs at least 2 days prior to your trial date.

Remote Observation of Court Proceedings

The Courtroom normally has ample seating for observers who may desire to watch the proceedings in the courtroom. However, there may be times when the physical size of the courtroom may limit the number of observers who may be

physically present. The Court finds that these space limitations do not constitute a court closure. See, *State v. Njonge*, 181 Wn.2d 546, 334 P.3d 1068 (Div. III, 2014). Additionally, the Court is aware that interested parties may not be able to travel to the courthouse or observe physically in the courtroom.

In the interests of transparency and public access, the Court has established a closed circuit Zoom Observation Room at the link below. This Observation room is generally open whenever Department 41 is in session.

Parties may access the Zoom Observation Room subject to the following limitations:

- 1) Observers will not be admitted into the Zoom Observation Room until they have identified themselves to the court through a recognizable screen name.
- 2) Witnesses may not access the Zoom Observation Room.
- 3) By entering the Zoom Observation Room participants acknowledge that they are **prohibited from recording this hearing by any means** without prior authorization from the Court. See GR 16.
- 4) Violation of this order (**NO RECORDING OF ANY KIND**) may result in civil and/or criminal penalties.
- 5) Observers must join before the jury enters the courtroom.
- 6) When joining, observers are required to remain on mute with video off unless otherwise directed by the Court.

<https://kingcounty.zoom.us/j/4030190763>

Audio ONLY – (253)215-8782 - Meeting ID: 403 019 0763

Additionally, the Court has the capability to live stream via live feed on YouTube. The Court will only live stream proceedings at the request and/or with the agreement of the parties. In addition to the live stream feed, instructional videos concerning Court practices and expectations may be accessed on the Court's YouTube channel.

The Court's YouTube channel may be found at:

https://www.youtube.com/channel/UCQHIIJMUKfWS6WV_bOYyLxA?app=desktop.

Jury Selection & Voir Dire

Jury Questionnaires: The Court sends an electronic questionnaire prior to trial. You should have been provided with a copy of the basic template. You may contact the bailiff for a copy of that template (in MS Forms format). Please submit an agreed questionnaire or any proposed questions to the Court via email in WORD format either according to the schedule set in the Pre-Trial Order, or as soon as possible upon assignment.

Time: Unless otherwise ordered by the Court, each party has a total of 2 minutes per juror. Counsel are free to use their time as they wish.

Questioning:

You may question any member of the venire panel in any order that you wish.

Please do not attempt to argue facts or burden of proof during *voir dire*. The primary purpose of voir dire is to allow counsel to elicit information that touches upon the qualifications of the jurors.

- We understand that counsel may want to find out what knowledge members of the venire panel may have of the various burdens of proof. However, counsel MAY NOT ARGUE or lecture the jury on the burden of proof or any other legal issue.
- We also understand that that Counsel may have to provide a general description of some types of evidence or facts expected to be presented to provide jurors the context for exploring juror's life experiences or identifying/exploring possible bias or prejudice of potential jurors. However, counsel MAY NOT ARGUE the facts of the case to the jury during *voir dire*.

The following types of questions are generally improper:

1. Questions that ask a jury to speculate or commit to a verdict if certain facts are proved.
2. Questions that are irrelevant to a juror's qualifications.

Do not attempt to use exhibits or visual aids during *voir dire* without advance permission of the Court.

Challenges for Cause: Motions to excuse for Cause should be made during *voir dire*, **while the jury panel is still present.**

Peremptory Challenges: When *voir dire* has been completed, the last venire panel will be excused. Counsel will take turns exercising peremptory strikes on the record.

For Criminal cases, the parties will be allowed 6 peremptory strikes and one additional strike for each alternate juror. See CrR 6.5. In Civil cases, the parties will be allowed 3 peremptory strikes and such additional strikes as authorized by court rule. See CR 47.

The Court respects that there are many ways to handle the logistics of peremptory challenges and will be seeking input from Counsel as to their preferred method consistent with the requirements of *Batson*, GR 37, CR 47, and CrR 6.4 & 6.5.

In civil cases, it is the Court's general practice (subject to waiver of any limitations within CR 47) to allow counsel to exercise a challenge to any juror in the venire. The Court generally does not require counsel to limit themselves to "the box" nor exercise additional peremptory strikes only on designated seats.

In criminal cases counsel will not be limited to exercise those jurors that are "in the box", and may exercise any peremptory strike on any member of the venire subject to *Batson* and GR 37.

Selection of Alternate Jurors: At the first break, when the jury is not in the room, alternate juror(s) will be selected in open court through random drawing. Counsel will be made aware of the identity of the alternate(s). The identity of the alternate(s) will not be disclosed to the alternate(s) until the end of closing arguments.

Interaction with the Jury during Trial

1. Do not physically interact with jurors or encroach the jury box. Do not directly interact with or speak to the jury outside of *voir dire*, openings and closings. Advise your witnesses of this instruction.
2. Please avoid interacting with any juror or potential juror when entering or exiting the Courthouse.

Witnesses

1. Plan for your witnesses to fill the entire court day.
2. Advise your witnesses of orders in limine.
3. Witness examination is limited (absent extraordinary events) to direct, cross, and redirect. Please ASK the Court before proceeding beyond re-direct.

Exhibits

MARKING: Unless otherwise ordered by the Court, exhibits are to be marked and numbered sequentially (1, 2, 3, etc.) regardless of the offering party. Our clerk's tracking technology will not accept deviation from this system, so please plan accordingly. Do not ask to mark "sub" exhibits or to use "a", "b" as exhibit designators.

You may mark "Packets" of exhibits. Each page must be pre-numbered so that the record is clear as to what page(s) are being referenced. However, any bulk exhibit may only have one "type" of exhibit. (e.g. photographs, but not photographs and emails). Do not "mix and match" exhibits in an attempt to cram all of the exhibits related to a witness into one packet.

The Court cannot partially or selectively admit portions of exhibits. If any portion of a bulk exhibit is excluded, the entire exhibit will be denied. Counsel may take those portions that are admissible and have them marked as a separate exhibit, but then must formally offer the new exhibit before proceeding.

Anything given to or used by a witness must be marked as an exhibit. When you hand an exhibit to the clerk for marking, please wait until the clerk has said ON THE RECORD that the exhibit has been marked before handing it to the witness.

Exhibits must be marked before they are shown to a witness or used for illustrative/demonstrative purposes. Do not allow your witnesses to take unmarked demonstrative aids, files, or documents to the witness stand.

When refreshing a witness' present recollection please do not request the witness to read from the document into the record. Please simply confirm that their recollection has been refreshed, ask them to turn the document/exhibit over, and then testify from their refreshed recollection. Please also consider whether ER 803(a)(5) (Past Recollection Recorded) is a more appropriate vehicle for the testimony. (see Appendix A)

Once an exhibit is marked it belongs to the clerk. Do NOT take it from the courtroom!

SHOW: Please show opposing counsel any exhibit before it is handed to the witness or published to the jury.

OFFER: Please make sure you formally offer your exhibits. Please remember that the Joint Statement of Evidence and an ER 904 disclosure are not formal offers. Please make your record, because the court will not make it for you.

ADMIT: Exhibits shown to the jury must first be admitted into evidence. Please do not show or ask your witness to show anything to the jury, whether a document, demonstrative piece of evidence, or other object, unless it has been both marked and admitted as an exhibit. It has not been admitted until the COURT says... **ON THE RECORD...** that the exhibit has been admitted.

PUBLISH: Please ask permission before publishing any exhibit to the jury.

If you wish to publish a physical exhibit, please do NOT hand it to the jury for them to pass among themselves. This tends to delay the trial and cause the jury to be distracted during testimony. If possible, please publish to the entire jury simultaneously.

Counsel are encouraged to employ the Courtroom display technologies to publish exhibits to the jury. If you are publishing to the jury using your laptop and the

Court's video system, you may pull it up on your computer, and ask the Court to publish it to the large monitors.

Trial Time and Court Schedule

Generally, trial will be in session during the following days/hours: Monday – Thursday. 9:00 a.m. – noon; and 1:30 - 4:00 p.m. We generally take a morning recess of 15 minutes at 10:30, and an afternoon break at 2:30. This schedule may be modified depending on the needs of the case, the availability of counsel, and the availability of the Court.

Objections & Court Rulings

Counsel may not make speaking objections during trial. Counsel should stand, state “objection!” and briefly state the basis by title of the rule, heading, or rule number. If counsel wishes to make additional argument, they may ask to be heard or for a sidebar. If counsel needs to supplement the record, the Court will provide an opportunity to do so at a later time.

Wait for a ruling on an objection. Do not speak over opposing counsel, witnesses or the Court. The record needs to be clear. The Court Reporter or FTR needs to be able to clearly hear you, the Court, and the witness.

Sidebars during in person trials are disfavored. Do not expect the court to freely grant them.

If you believe that the “**door has been opened**” on a subject that has previously been ruled upon, please raise the issue with the Court outside the presence of the jury.

Counsel's statement “**let the record reflect**” does not require a judicial endorsement. Do not expect one.

With respect to Expert Witnesses, the Court is precluded from commenting upon the evidence. **Do not tender** expert witnesses or ask the Court to “accept” them as experts within their field. Washington is not a “profer” state.

Closing Argument

Do not allude to any motions, exhibits, testimony, etc., that were not admitted into evidence or which are not properly before the jury.

Please provide opposing counsel an opportunity to view any materials. (e.g. power point slides, charts, photos) you intend to use or publish during opening/closing.

Please be familiar with RPC 3.4(e)

“A lawyer shall not: (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or **state personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.**

Jury Instructions

Please file hard copies (cited and uncited) of any proposed jury instructions with the Court Clerk when the case is called for trial.

The Court works on the jury instructions through out the entire trial. It is important that as soon as possible after the case is called for trial, that counsel e-mail WORD versions of proposed cited and uncited jury instructions to opposing counsel and to the Court. (williams.court@kingcounty.gov). If you do not timely submit a proposed instruction, it is likely that the Court will not consider it. See CrR 6.15(a) & CR 51.

Generally it is expected that Plaintiff/Prosecution will submit a full set of proposed instructions. Defendant may submit a full or partial set of instructions that replaces, supplements, or alters the plaintiff's instructions. The balance of the instructions will be considered as 'agreed' instructions. Where applicable please use the most recent versions of the **Washington Pattern Jury Instructions**.

Prior to closing arguments, the Court will provide the parties with a draft set of instructions. The jury instruction conference will take place on the record, and the Court and parties will go through the entire instruction packet. Counsel will be provided an opportunity to agree, object, and make a record as to any proposed instructions that are not given.

Ordered this _____ day of _____, 20____.

MATTHEW WILLIAMS
King County Superior Court Judge

APPENDIX A

Impeachment / Refreshment

