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**FILED**  
KING COUNTY WASHINGTON

DEC 03 2020

SEA  
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

IN THE MATTER OF THE RESPONSE BY  
KING COUNTY SUPERIOR COURT TO THE  
PUBLIC HEALTH EMERGENCY IN  
WASHINGTON STATE

No. 20-0-12050-5

**AMENDED EMERGENCY ORDER # 22  
RE: CIVIL JURY TRIALS AND  
CRIMINAL CASES**

This matter comes before the Court on the public health emergency in Washington State.

The King County Superior Court incorporates Emergency Orders 1 through 21 and now enters a revised order regarding procedures governing civil jury trials and pending criminal cases during the public health emergency. **This Order is effective nunc pro tunc to November 20, 2020. This Order supersedes all prior Emergency Orders governing jury trials.** This Order is in effect until January 11, 2021.

### I. FINDINGS

1. The novel coronavirus disease has had an unprecedented impact on our society and court operations. On February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington. On March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States.

1           2.       On March 20, 2020, the Washington Supreme Court suspended civil and criminal  
2 jury trials due to the pandemic.

3           3.       Three months later, on June 18, 2020, the Washington Supreme Court ordered jury  
4 trials to resume on July 6, 2020. In this order, the Court provided, “Whether jury trial proceedings  
5 take place in courthouse facilities or offsite facilities, courts must conduct all such proceedings  
6 consistent with the most protective applicable public health guidance in their jurisdiction....” The  
7 Court encouraged the use of remote technology in jury selection. The Court’s order further stated,  
8 “Nothing in this Order limits the authority of courts to adopt measures to protect health and safety  
9 that are more restrictive than this Order, as circumstances warrant.”

10          4.       The King County Superior Court then implemented measures to conduct jury trials  
11 in accordance with public health guidance. Since August 2020, the King County Superior Court  
12 has successfully conducted numerous jury trials, while implementing significant safeguards to  
13 protect against the spread of COVID-19. In most cases, the court arranged for jury selection to  
14 occur virtually via the Zoom platform. During trial, lawyers, witnesses and jurors have been kept  
15 a significant distance apart, and all participants have been required to wear masks. King County  
16 Facilities and Management altered ventilation in courthouses, increasing air exchanges and  
17 changing filtration.

18          5.       This Fall, the spread of COVID-19 began to accelerate. As of November 18, 2020,  
19 the rise in infections is not projected to ease until February 2021.  
20 [https://covid19.healthdata.org/united-states-of-america/washington?view=infections-](https://covid19.healthdata.org/united-states-of-america/washington?view=infections-testing&tab=trend&test=infections)  
22 [testing&tab=trend&test=infections.](https://covid19.healthdata.org/united-states-of-america/washington?view=infections-testing&tab=trend&test=infections)

22          6.       On November 15, 2020, Governor Inslee issued a new proclamation, imposing new  
232 restrictions on social gatherings and other behavior. In doing so, he explained, “[P]ositive COVID-

1 19-related cases and hospitalizations have been on a steady rise since early September; and, most  
2 alarmingly, from the latter part of October through the first two weeks of November, 2020,  
3 COVID-19 cases have doubled in Washington, and COVID-19-related hospitalizations have risen  
4 sharply, putting our people, our health system, and our economy in as dangerous a position as we  
5 faced in March 2020.” State of Wash. Office of the Governor, Proclamation 20-25.8 “Stay Safe –  
6 Stay” Healthy Rollback of City.-by-City. Phased Reopening Responding to a COVID-19 Outbreak  
7 Surge (Nov. 15, 2020). King County has been significantly impacted by the COVID-19 outbreak,  
8 and numbers have risen significantly in the last two weeks.

9 7. The Governor noted in the Proclamation that “a significant risk factor for spreading  
10 the virus is prolonged, close contact with an infected person indoors,” and that “several factors  
11 increase the risk for person-to-person COVID-19 transmission,” including: (1) “the more that  
12 people and groups interact”; (2) “the longer those interactions last”; (3) “the closer the contact  
13 between individuals”; and (4) “the denser the occupancy for indoor facilities.”

14 8. On November 20, 2020, Washington Supreme Court Chief Justice Debra Stephens  
15 issued a message to all Washington courts, acknowledging the dramatic rise of COVID-19 activity  
16 in the State and requesting that all courts reassess “the risk of in-person proceedings and the present  
17 ability to mitigate those risks consistent with public health guidance.”

18 9. King County Superior Court leadership is actively consulting with faculty members  
19 of the University of Washington School of Public Health on a regular basis.

20 10. Based upon all of the foregoing sources of information, the dramatic increase in  
22 positive COVID-19 rates in King County, and the predictions that these increases will continue,  
22 this Court finds that at this time it is not reasonably feasible or safe to expect jurors, litigants and  
232 other participants to travel to the court and congregate in indoor facilities. At this time, these

1 gatherings pose an unreasonable risk to the health of all of the participants in the court proceedings.  
2 Due to these circumstances and the serious danger posed by COVID-19, a continuance of criminal  
3 cases and all jury trials are supported by good cause, required in the administration of justice, and  
4 an unavoidable circumstance.

5 11. With respect to civil jury trials, a virtual trial, where the parties and jurors attend  
6 remotely, is a reasonable alternative. Over the last six months, the superior court has regularly  
7 conducted motion hearings and bench trials virtually using the Zoom platform. With respect to  
8 jury trials, the court has regularly used the Zoom platform during jury selection and for the  
9 presentation of remote witnesses' testimony. This technology has worked relatively smoothly and  
10 evens offers some advantages to in-person trials. During jury selection via Zoom, all of the juror's  
11 faces are readily visible and their reactions can be easily seen. During virtual jury trials, the  
12 lawyers and witnesses are not required to wear masks, allowing them to be more clearly heard and  
13 their expressions seen.

14 12. The King County Superior Court has recently conducted several virtual civil jury  
15 trials with all parties, witnesses, and jurors attending remotely via Zoom. The trials have  
16 proceeded smoothly. Jurors appear attentive and engaged. At this time, it is uncertain when it will  
17 be safe and appropriate to begin conducting trials with jurors present in the courtroom. Even when  
18 such trials resume, there will be a substantial backlog of criminal and civil cases, and criminal  
19 trials will receive priority in assignments for trial. Accordingly, the allowance of virtual civil jury  
20 trials will further the parties' right to a civil jury trial by allowing cases to proceed to trial in a  
22 timely manner.

1 **II. ORDER**

2 1. All in-person criminal and civil jury trials shall be suspended until after January  
3 11, 2021. Jury trials already in session where a jury has been sworn and social distancing and  
4 other public health measures are strictly observed may, at the discretion of the trial court or by  
5 agreement of the parties, proceed or recess to be continued to a later date.

6 2. A continuance of criminal jury trials is required in the administration of justice.  
7 Based upon the court's finding that the serious danger posed by COVID-19 is good cause to  
8 continue criminal cases, and constitutes an unavoidable circumstance under CrR 3.3(e)(8), the time  
9 between the date of this order and the date of the next scheduled hearing or trial date are  
10 EXCLUDED when calculating time for trial. CrR 3.3(e)(3).

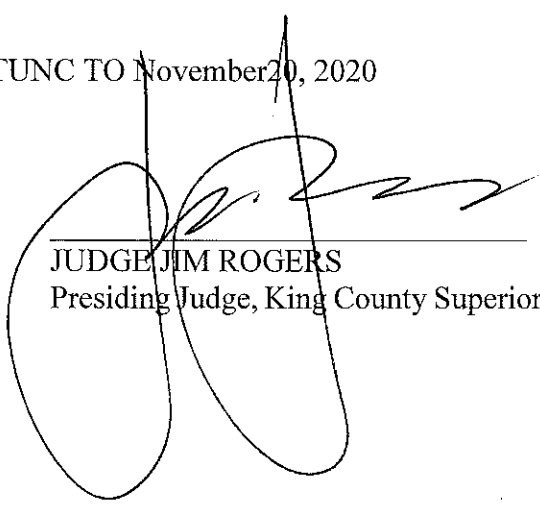
11 3. All criminal cases have excluded time as a result of this Order. This Court  
12 concludes that public health information shall be reviewed, and new findings entered, every  
13 fourteen days beginning December 9, 2020, on the issue of speedy trial and the issue of  
14 unavoidable circumstance, to determine if the coronavirus pandemic has changed sufficiently to  
15 modify this order (and begin trials sooner).

16 4. This Court finds that there is good cause and compelling circumstances to allow all  
17 pending civil jury trials proceed virtually via video using Zoom or an equivalent platform. In  
18 virtual civil jury trials, the parties, counsel, witnesses, and jurors will not be physically present in  
19 the courtroom and will appear and participate entirely by Zoom including during deliberations.  
20 The assigned judge will be physically present in the courtroom and provide a means for public  
22 access to observe the proceedings. In all cases where a virtual civil jury trial may be appropriate,  
22 the assigned judge will hold a pretrial conference in order to discuss the procedures for the trial  
232 and hear the positions of the parties to proceeding in that manner. The assigned judge will decide

1 whether to conduct a virtual jury trial based upon the particulars of the case, the positions of the  
2 parties, and any legal issues raised. Pretrial orders and protocols of how to conduct a virtual civil  
3 jury trial in King County are forthcoming.

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5 **IT IS SO ORDERED.**

6 Dated: December 3, 2020 NUNC PRO TUNC TO November 20, 2020

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11 JUDGE JIM ROGERS  
12 Presiding Judge, King County Superior Court  
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