

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SAN JUAN

IN THE MATTER OF THE RESPONSE BY) No. 20-2-05001-28
SAN JUAN COUNTY SUPERIOR COURT TO THE) FIFTH AMENDED
PUBLIC HEALTH EMERGENCY IN) EMERGENCY ORDER
WASHINGTON STATE AND SAN JUAN COUNTY) No. 2020 – 8
_____) COURT OPERATIONS

This matter comes before the Court on the public health emergency in Washington State and San Juan County.

The Court reiterates its findings entered in its Emergency Order entered March 16, 2020 and corrected March 18, 2020, its First Amended Emergency Order entered March 20, 2020, its Second Amended Emergency Order entered April 23, 2020, and its Third Amended Emergency Order entered July 2, 2020. In addition, the Court finds:

On September 10, 2020, the Washington Supreme Court entered Order Extending Excluded Period in Calculating Time for Trial, No. 25700-B-642, extending the time for trial through the next hearing scheduled after October 15 in all criminal matters.

San Juan County Superior Court has been available to hold jury trials since September. However, no case currently is scheduled for a jury trial prior to January 19, 2021.

San Juan County experienced a decline in COVID-19 transmission over the summer and had no cases between August 20, 2020 and October 14, 2020. Between October 14, 2020 and November 18, 2020, San Juan County reported 25 of a total of 57 COVID-19 cases to-date, with 24 of those cases being reported between October 26 and November 18. Further, San Juan County Department of Health and Community Services recently reported that as of November 16, 2020, the initial transmission for recent cases on Orcas Island and San Juan Island

is unknown; community spread is assumed. Community spread had not previously been found or presumed in San Juan County.

The increase in transmission reflects the rising increase of transmission of COVID-19 seen in other Washington counties; according to the State Department of Health, the 7-day average of daily reported cases doubled between the last weeks of October and the beginning of November. Public health officials fear that transmission rates will continue to rise as a result of in-person gatherings over the Thanksgiving and December holidays.

On November 15, 2020, Governor Inslee entered Proclamation 20-25.8, which: prohibits indoor social gatherings with persons from outside one's household unless certain strict quarantine and/or testing protocols are followed; limits outside gatherings to five or fewer people from outside one's household; closes indoor bar and restaurant service; and either closes or significantly restricts other discretionary functions and operations. While court operations and judicial proceedings constitute essential functions that are not governed by the Governor's proclamations, the Court carefully considers the Governor's proclamations and state and local public health guidance in determining what in-person proceedings are appropriate given current public health risks.

San Juan County Superior Court is completing significant upgrades to the technology and equipment in its courtroom to facilitate video hearings, and to allow for live streaming of the video (in addition to the audio) of its proceedings to accommodate public access to those proceedings when the courtroom is occupied with physically distanced participants, such as a jury panel for voir dire or a seated jury. We expect these upgrades to be completed by the end of November, but currently have limited capacity for video proceedings.

This Fifth Amended Emergency Order 2020-6 supplants and replaces all emergency orders previously entered by this Court.

The actions set forth herein will take effect on November 20, 2020 and will remain in effect until further order of the Court, unless otherwise stated herein. If a date is stated herein, the date may be extended by further order of the Court.

//

//

//

NOW, THEREFORE, IT IS HEREBY ORDERED:

CRIMINAL MATTERS

1. All CRIMINAL JURY TRIALS shall be CONTINUED until a jury term after January 15, 2021. Criminal jury trials may be scheduled after January 18, 2021 consistent with the joint trial calendar shared by Superior Court and District Court or as otherwise instructed by the Superior Court Administrator. Due to: surging COVID-19 transmission in San Juan County, in Washington State, and nationwide; recommendations by public health officials against in-person gatherings; the reduced ability to obtain an adequate number and spectrum of jurors; the inherent public health risk of sufficient numbers of potential jurors gathering for jury selection—particularly given the recent conclusions of community spread in San Juan County and the impending holidays; and the inherent risk to court staff, parties, counsel, witnesses, and the public of holding in-person jury trials under current conditions, the time period from the effective date of Emergency Order No. 2020-1 (March 17, 2020) until the first hearing occurring in a given case after October 15, 2020, and the time period from November 20, 2020 through January 18, 2021, shall be excluded in computing time for trial pursuant to CrR 3.3(e)(3) and CrR 3.3(f)(2) and JuCR 7.8(e)(3) and JuCR 7.8 (f)(2). The Court further finds that the ends of justice served by continuing jury trials outweighs the defendant’s right to a speedy trial. The Court further finds that any delays for time for trial are the result of the unavoidable and unforeseen circumstances and are therefore excluded from computing time for trial by CrR 3.3(e)(8) and JuCR 7.8(e)(7).

2. ALL CRIMINAL MATTERS MAY PROCEED.

a. **The following criminal matters shall be heard IN-PERSON** unless otherwise ordered by the Court or stipulated by the parties: (1) preliminary appearances for out of custody defendants; (2) arraignments for out of custody defendants; (4) changes of plea and sentencing; (5) motion hearings; (6) pre-trial conferences; and (7) Drug Court hearings. Parties may request VIDEO hearings for any of these proceedings and should inquire with the Court Administrator to ensure video capability. **For Drug Court only:** to reduce public health risks, participants may not invite guests to attend hearings in-person in the Courtroom; rather, participants are encouraged to have guests attend the hearings via telephone or video, or to observe through the livestream of

the audio available on the Superior Court website. Telephone/video hearing information may be obtained from the Court Administrator at 360-370-7480 or the Superior Court website.

b. The following criminal matters regarding IN-CUSTODY defendants shall be heard by VIDEO unless otherwise ordered by the Court or requested by the defendant or defense counsel: (1) preliminary appearances; (2) arraignments; (3) omnibus hearings; (4) status conferences; and (5) readiness hearings. The Court may require an in-person appearance for these proceedings if appropriate in an individual case.

c. The following criminal matters regarding OUT OF CUSTODY defendants shall be heard by TELEPHONE OR VIDEO unless otherwise ordered by the Court or requested by the defendant or defense counsel: (1) review hearings on legal financial obligations or sentence conditions; (2) omnibus hearings; (3) status conferences; and (4) readiness hearings. The Court may require an in-person appearance for these proceedings if appropriate in an individual case.

d. All conditions of release previously ordered remain in effect.

e. Defendants need not sign individual orders.

CIVIL MATTERS

3. NO CIVIL JURY TRIALS will be set prior to February 1, 2021.

4. CIVIL EVIDENTIARY HEARINGS AND BENCH TRIALS shall occur by telephone/video until further notice unless a motion is brought establishing good cause to hold a particular matter in person. A motion for in-person hearing may be made on shortened time. Parties may contact the Court Administrator at 360-370-7480 about video capability.

5. CIVIL HEARINGS OTHER THAN EVIDENTIARY HEARINGS/BENCH TRIALS shall continue to occur by telephone or video only, unless a motion is brought specifically requesting in-person hearing and establishing good cause to proceed in-person. A motion for in-person hearing may be made on shortened time. Parties may contact the Court Administrator at 360-370-7480 about video capability.

Civil hearings may be noted to occur by telephone or video at a date/time consistent with the San Juan County Superior Court Local Court Rules and the Washington Civil Rules.

The Court also will consider the following additional matters:

a. EX PARTE: The Court will consider ex parte matters electronically, including presentation of agreed orders, without a fee, by telephone or video at the beginning of the Civil Law and Motion Calendar at 10:30a.m. on Fridays. The Court will consider ex parte matters with the required \$30 fee on a regular basis when submitted to the Clerk's Office by e-mail, mail, or in-person drop off. Until further order, there is no in-person ex parte calendar. Ex parte requests should still be submitted through the Clerk's Office for the Judge's consideration. If the \$30 ex parte fee is paid, the Clerk's Office will return the order(s) entered by e-mail or via self-addressed-stamped-envelope. If the fee is not required because it is presented at the Civil Law and Motions Calendar, parties/counsel may obtain copies online in Odyssey or from the Clerk's Office. The San Juan County Clerk has a detailed ex parte policy available here:

<https://www.sanjuanco.com/DocumentCenter/View/21163/Ex-Parte-Process---COVID>

b. MOTIONS WITHOUT ORAL ARGUMENT: The Court will consider any civil motion filed where the Note for Motion indicates that the party seeking relief has elected to have the matter heard without oral argument. The motion should still be noted for a date certain (not limited to regularly scheduled court calendars noted in LCR 77) with the notice required by applicable civil and local court rules. Proposed orders should be lodged by providing them to the Court Administrator in PDF format by email to JaneS@sanjuanco.com. The Court will issue a decision as soon after the date noted for consideration as possible, and the Court Administrator will circulate the decision to counsel by email and unrepresented parties by mail or email if an email address has been provided.

GENERAL COURT ADMINISTRATION

6. FOR ANY HEARING WHERE PARTICIPANTS OR MEMBERS OF THE PUBLIC APPEAR IN-PERSON IN THE COURTROOM, the following rules apply:

a. Each person in the gallery must sit at least six (6) feet apart, in locations designated on the courtroom benches. Once the designated locations are occupied, YOU MUST WAIT OUTSIDE THE COURTROOM UNTIL THERE IS SUFFICIENT SPACE.

b. Each person in the Courtroom must cover their face with a mask unless they cannot do so for a medical or religious reason.

c. Each person must use the hand sanitizer at the counsel tables (or their own sanitizer) before addressing the Court or signing papers.

d. The Court will not provide water to participants, but participants are invited to bring their own water bottles or to take a paper cup provided and fill it at the public water fountain in the hallway.

e. Court participants and visitors entering the Courtroom are asked to sign a log at the rear of the courtroom indicating the date/time of the hearing they attended, and a contact name and phone number or email address for their household where they may be reached in the event that contact tracing for any confirmed case of COVID-19 is needed.

7. **NO PERSON MAY ENTER THE COURTROOM** if sick, exposed to a person with COVID-19 during the last 14 days, or exhibiting symptoms of COVID-19. **IF YOU ARE COUGHING, YOU WILL BE ASKED TO LEAVE.**

8. **MISSED HEARING.** If you will miss a required Court hearing because of illness, you must call your attorney, as well as the Court Administration at 360-370-7480 and leave a clear, detailed message, which will be made a part of the record. The Court will **NOT ISSUE A BENCH WARRANT** for failure to appear due to illness; however, the Court reserves the right to require documentation for multiple absences and a bench warrant may be issued for failure to provide such documentation in the Court's discretion.

9. **TELEPHONIC/VIDEO HEARING PROCEDURES.**

a. Parties are permitted to appear by telephone except as expressly set forth herein, and in many instances, parties are required to do so. Video hearings may also be available, and the parties are invited to inquire with Superior Court Administration and/or the Superior Court Website about video capability and procedures. Where criminal defendants choose to appear by telephone or video for appropriate hearings, defense counsel must be confident that a sufficient mechanism exists for confidential communication between the defendant and counsel, or waive the right to such communication. The Court will do all it can to facilitate such communication.

b. The audio of all hearings shall be recorded by the most reliable means practically available. The hearing may be recorded without anyone being present physically in the Courtroom if a reliable recording can be facilitated without a clerk's physical presence in the courtroom.

c. Where all parties are required to attend a hearing by telephone or video, the Judge will also attend by telephone or video in order to limit person-to-person contact and to minimize risk to Court staff. However, where a criminal defendant attends Court in person, the Judge will make every effort also to attend in person, if possible.

d. In order to provide a telephonic hearing service that does not require payment to participate, Superior Court Administration shall arrange conference calls. The use of CourtCall is suspended until further notice, and all Local Court Rules requiring CourtCall are likewise suspended.

e. The Court Administrator will schedule conference calls for all regularly scheduled hearing calendars and for special set hearings. The Court Administrator shall make call-in information available in physical locations at the Courthouse, as well as on the Superior Court website for hearings set with at least 3-court days' notice. Otherwise, persons may call the Court Administrator at 360-370-7480 with questions.

f. To protect public health and to slow the spread of COVID-19, the public, including victims and family members, are encouraged to call-in to observe and/or participate in hearings or to observe through the online audio livestream, rather than attending Court in person. However, at this time, the Courthouse remains open to the public and people may come to Court in person so long as they adhere to the posted rules, including to maintain distances of at least six (6) feet from other persons not in their household and to wear a face covering. Participants and visitors attending Court in person also are asked to provide a contact telephone number or email address for their household in the Courtroom log for contact tracing of any confirmed COVID-19 case.

g. To support safe public access, the Superior Court shall make the audio of its hearings available to the public via live streaming in real time until further notice. A link to such live stream is available on the Superior Court's website.

h. ***The public is prohibited from recording or broadcasting any hearing.*** An official recording of an open proceeding may be obtained from Clerk's Office subject to the Clerk's fee schedule.

10. ELECTRONIC FILING. All parties represented by counsel shall, and pro se parties may, file documents with the San Juan County Clerk of Court via facsimile at 360-378-

3967 pursuant to LCR 78(i) or electronically by email, until further order. A document is considered electronically filed when a responsive email is provided by the Clerk. New cases are not officially filed until receipt of any required fees is confirmed. The Clerk's office has provided detailed procedures for electronic filing on its website at:

<https://www.sanjuanco.com/184/County-Clerk>. To allow for electronic filing, GR 30 (d)(1)(A)-(C) are temporarily suspended. When documents are filed electronically, proposed orders shall be lodged by sending proposed orders in PDF format electronically to Court Administrator Jane Severin at JaneS@sanjuanco.com.

11. WORKING COPIES/PROPOSED ORDERS. In all cases where parties are represented by counsel, judge's working/courtesy copies and lodged proposed orders shall be provided electronically to Court Administrator Jane Severin at JaneS@sanjuanco.com. All unrepresented parties are encouraged to provide electronic working/courtesy copies and electronic proposed orders, but may provide both in paper copy if necessary.

12. SIGNATURES ACCEPTED ON FILED DOCUMENTS.

Notwithstanding any provision of GR 30 to the contrary, a fax, scan, or electronic signature shall be deemed a reliable means for authentication of documents and shall have the same force and effect as an original signature to a paper copy of the document so signed. For purposes of this Order, "electronic signature" means: an electronic signature defined by RCW 19.360.030 (repealed by SB 6028); a digital signature as described in Supreme Court Order No. 25700-B-596 (July 16, 2019) and RCW 9A.72.085(5); an electronic image of the handwritten signature of an individual; or other electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to "/s/ [name of signatory]".

Scans and faxes of a judicial officer's original signature or the Clerk's original signature shall be deemed the equivalent of an original and may be filed as such. The Judge's signature stamp may be used by the Court Administrator or Clerk with written instruction to affix the signature via stamp; the signature stamp shall be deemed the equivalent of an original signature. The Clerk's signature stamp shall likewise be deemed the equivalent of an original signature.

Further, whenever a judicial officer or clerk is required to sign an order, judgment, notification or other document an electronic signature shall be sufficient.

13. SERVICE OF ORDERS.

a. Orders submitted to the Superior Court Clerk for ex parte entry with the \$30 fee will be returned by the Clerk by email to the attorney or party who submitted them for consideration (unless mailed with self-addressed-stamped envelope). Such attorney or party is responsible for serving all other parties/attorneys. Orders presented at the Civil Law and Motion calendar may be obtained from Odyssey or directly from the Clerk's Office.

b. Orders entered by the Superior Court Judge unilaterally, following taking matters under advisement, or on motions submitted without oral argument will be served on all attorneys and un-represented parties by the Court Administrator via email, so long as the attorney or party has provided an email address to the Court Administrator. Attorneys are required to provide an email address. Hard copies will not be mailed unless an un-represented party has not provided an email address or unless returning documents by email becomes impractical or impossible. Orders presented and entered after a telephonic hearing may be obtained by the parties or counsel through Odyssey or the Clerk's Office.

14. COURT FACILITATOR. All appointments with the San Juan County Courthouse Facilitator shall be arranged by calling Juvenile Court Services at: 360-370-7446.

15. PUBLIC DEFENDER SCREENER. Screening by the public defender screener shall be arranged by calling the Public Defender Screener from Monday – Friday from 9am – 12pm at: 360-370-5471.

16. THE SAN JUAN COUNTY LAW LIBRARY is CLOSED until further order.

17. THE SUPERIOR COURT ADMINISTRATION OFFICE is closed to in-person communications, but Court Administrator Jane Severin may be reached via phone at 360-370-7480, or by email at JaneS@sanjuanco.com until further order.

18. No meetings may take place in the Superior Court Jury Room without specific, individual approval by the Court Administrator, until further order. Coordination of use of the Jury Room and other Superior Court spaces is essential to ensure proper sanitizing.

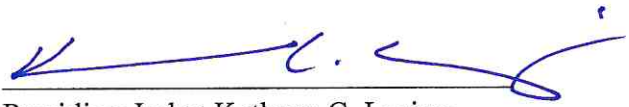
19. CIVIL CEREMONIES, such as weddings and administration of oaths, performed by the Superior Court Judge are suspended until further order.

20. This Emergency Order modifies all San Juan County Local Court Rules inconsistent herewith, including LCR: 8(h), 77(q), 77(r), 78, and SPR 94.08.4.

21. This Emergency Order No. 2020-8 replaces and supplants ALL prior emergency orders issued by the Court in response to the COVID-19 public health emergency except as incorporated herein.

This Emergency Order may be modified or further extended consistent with ongoing assessment of the current public health emergency based on recommendations of San Juan County Department of Health and Community Services, Washington State Health Department, and other appropriate agencies and public health officials.

DATED this 19th day of November, 20 20



Presiding Judge Kathryn C. Loring