

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)	SECOND AMENDED
PUBLIC HEALTH EMERGENCY IN)	EMERGENCY ORDER
WASHINGTON STATE AND SAN JUAN COUNTY)	No. 2020 – 5
_____)	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, and its First Amended Emergency Order entered March 20, 2020. The Court enters this Second Amended Emergency Order 2020-5 in response to the Washington Supreme Court's entry of the revised and extended Order No. 25700-B-615 on April 13, 2020.

This Second Amended Emergency Order 2020-5 supplants and replaces all emergency orders previously entered by this Court, including the First Supplemental Emergency Order 2020-3 and the Second Supplemental Emergency Order 2020-4.

The actions set forth herein will take effect on April 23, 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 June 19, 2020. Due to 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,

the inherent risk to court staff, parties, and counsel, and the effect of public health recommendations on the ability of court staff and counsel to be present in the courtroom as well as for the public to be invited into the courtroom: the time period from the effective date of Emergency Order No. 2020-1 (March 17, 2020) until the continued trial date issued in a given case or July 3, 2020, whichever is sooner, 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 these cases 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 OUT OF CUSTODY CRIMINAL MATTERS are continued until after May 15, 2020 except: (1) Drug Court hearings, which shall occur by telephone; (2) those legal motions, actions on agreed orders, status conferences and other proceedings that can appropriately be conducted by telephone, video or other means that does not require in-person attendance; and (3) matters that require in-person attendance but should in the interests of justice be heard immediately, provided that any such hearings must strictly comply with current public health mandates and all posted Court rules and procedures.

The Court shall issue scheduling orders accordingly, to be approved by defense counsel if possible. Defendants need not sign such orders. Superior Court Administration shall provide copies of such orders to defense counsel and to unrepresented defendants. Defense counsel shall provide notice to defendants of new court dates.

Arraignments for out of custody criminal and juvenile offender cases filed between March 18, 2020 and May 15, 2020 shall be deferred until a date 45 days after the filing of charges. Good cause exists under CrR 4.1 and JuCR 7.6 to extend the arraignment dates. The new arraignment date shall be considered the "initial commencement date" for purposes of establishing the time for trial under CrR 3.3(c)(1) and JuCR 7.8(c)(1).

All conditions of release previously ordered remain in effect.

3. ALL IN-CUSTODY CRIMINAL MATTERS shall be continued until after May 15, 2020, except the following:

- a. Preliminary appearances;
- b. Arraignments;
- c. Motions;
- d. Plea hearings; and
- e. Sentencing.

Parties are not required to file motions to shorten time in scheduling any of these matters. All counsel and defendants may appear by telephone or Skype video conference, if available, unless the Court cannot ensure the opportunity for private and continual discussion by the defendant with his or her attorney during all critical stages of the proceedings, or unless otherwise deemed practically impossible. Counsel must inform Court Administration if they intend to appear by phone or Skype video conference to ensure the technology can be arranged.

For continued matters, the Court shall issue scheduling orders accordingly, to be approved by defense counsel if possible. Defendants need not sign such orders. Superior Court Administration shall provide copies of such orders to defense counsel and to unrepresented defendants. Defense counsel shall provide notice to defendants of new court dates.

All conditions of release previously ordered remain in effect.

4. ALL ADULT DRUG COURT MATTERS will continue to occur as scheduled on the first, third and fifth Mondays of the month at 1:15p.m.; provided, however, that all hearings shall be by telephone. The Clerk will be present in the Courtroom to record the hearing, and all other parties, including the Judge, will appear by telephone.

CIVIL MATTERS

5. No CIVIL JURY TRIALS will be set prior to August 1, 2020.

6. NO NON-EMERGENCY CIVIL MATTERS may be scheduled for in-person hearing prior to June 19, 2020.

7. ALL CIVIL MATTERS that can appropriately be conducted by telephone (or other means that does not require in-person attendance) may be noted to occur by telephone or other

means 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, including presentation of agreed orders, on a regular basis, not limited to the schedule for ex parte presentation provided by LCR 77. Ex parte motions (other than opening probates where original wills are filed) or agreed orders should be filed by fax or email if parties are represented by counsel. Orders entered ex parte shall be returned to parties via email if an email address is provided.
- 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 must be provided to the Court Administrator in Word version 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.

8. EMERGENCY CIVIL MATTERS must be heard by telephone or other means that does not require in-person attendance unless impossible. Where emergency civil matters must be heard in person, current public health recommendations and posted rules regarding physical distancing and other health practices must be strictly observed. Parties may file a motion ex parte asking the Court to deem a given matter an “emergency” and to note it accordingly. The following types of civil matters will be presumed to be an emergency and do not require an ex parte motion to deem it as such:

- a. Full protection order hearings in domestic violence, sexual assault, anti-harassment, and vulnerable adult petitions for protection orders;

- b. Other types of protection order requests in family law cases (dissolution of marriage, parentage, committed intimate relationships, non-parental custody, or de facto parentage);
- c. Shelter care hearings in dependency cases under Ch. 13.34 RCW;
- d. Initial hearings on petitions for At Risk Youth or Child in Need of Services under Ch. 13.32A RCW; and
- e. Requests for temporary restraining orders in civil cases.

GENERAL COURT ADMINISTRATION

9. FOR ANY HEARING THAT TAKES PLACE IN-PERSON IN THE COURTROOM, the following requirements apply:

- a. Each person in the gallery must sit at least six (6) feet apart, in locations designated on the courtroom benches. Once all of 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 mask, scarf, or other covering.
- c. Each person must use the hand sanitizer at the counsel tables 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.

10. NO PERSON MAY ENTER THE COURTROOM if sick or exhibiting signs of illness including coughing or sneezing. IF YOU ARE SNEEZING OR COUGHING, YOU WILL BE ASKED TO LEAVE.

11. MISSED HEARING. If you will miss a required Court hearing because of illness, you must call your attorney, as well as the Court Administration message number at 360-378-2399 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.

12. TELEPHONIC HEARING PROCEDURES.

- a. All parties are permitted to appear by telephone except as expressly set forth herein, and in most instances, parties are required to do so. In criminal cases, defendants must either appear in person or by Skype for Business video conference in order to enter a change of plea. Where criminal defendants choose to appear by telephone for other hearings, defense counsel must be confident that a sufficient mechanism exists for private and continual discussion between the defendant and counsel. The Court will do all it can to facilitate such communication.
- b. The audio of all telephonic and video hearings shall be recorded by reliable means. The hearing may be recorded without anyone being present physically in the Courtroom if a reliable recording can be facilitated without a clerk's presence.
- 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.
- 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 provide call-in information to attorneys and unrepresented parties, and shall make call-in information available in physical locations outside and inside the Courthouse, as well as on the Superior Court website for hearings set with at least 3-court days' notice.

- f. To protect public health and to slow the spread of COVID-19, the public, including victims and family members, are permitted and encouraged to call-in to observe and/or participate in hearings 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 including Court staff and to cover their faces.
- g. To further support 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. (The Court does not have video capability at this time.) 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.

13. 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.

14. WORKING COPIES. In all cases where parties are represented by counsel, judge's working/courtesy copies shall be provided electronically to Court Administrator Jane Severin at JaneS@sanjuanco.com. All unrepresented parties are encouraged to provide electronic working/courtesy copies.

15. SIGNATURES ACCEPTED ON FILED DOCUMENTS.

- a. Attorney Signatures. Scans and faxes of an original attorney signature shall be deemed the equivalent of an original and may be filed as such. An electronic signature as defined by RCW 19.360.030 or digital signature as defined by RCW 9A.72.085(5) shall be accepted as the equivalent of an original signature for

filing. An attorney may affix his or her signature in a manner that complies with GR 30(d)(2)(A); provided, however, that the attorney must send any document to be filed with such signature to the Clerk for filing from his or her email address or facsimile number on file with the WSBA. Sending from such email address/fax number is required to ensure the identity of the attorney submitting because the San Juan County Clerk and Superior Court do not have the capacity to issue user identifications and password for e-filing, and compliance with GR 30(d) is hereby temporarily waived. On documents not signed under penalty of perjury, an attorney also may utilize a “third party” signature made by an authorized third party where the attorney signing conveys permission and that permission is reflected on the signature page by the third party. Likewise, an attorney may approve entry of an order by telephone on the record, and the Judge shall indicate on the order that there has been telephonic approval on the record.

- b. Party Signatures. The signatures of parties may be waived on any scheduling or continuance order. A scan or fax of an original party signature shall be deemed the equivalent of an original and may be filed as such. An electronic signature as defined by RCW 19.360.030, a digital signature as defined by RCW 9A.72.085(5), and an electronic signature designated by “/s/ [name of signor]” and adopted by a person with the intent to sign the record shall also be accepted as the equivalent of an original signature for filing. A party may approve entry of an order by telephone on the record, and the Judge shall indicate on the order that there has been telephonic approval on the record.
- c. Judge and Clerk Signature. Scans and faxes of the Judge’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, in which case the written authorization shall be attached for filing; 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. An electronic signature as defined by RCW 19.360.030 or digital signature as

defined by RCW 9A.72.085(5) shall also be accepted as the equivalent of an original signature for filing.

16. EXHIBITS FOR TELEPHONIC EVIDENTIARY HEARINGS.

Evidentiary hearings currently are going forward only by telephone unless a matter is an emergency and it is impossible to conduct the hearing by telephone. This situation presents unique difficulties in the Clerk's Office receiving and marking proposed exhibits, and in the parties and the Court considering exhibits once they are offered and admitted during the course of the hearing. In order to facilitate the Clerk marking and maintaining exhibits, particularly given their limited ability to print documents in color or to modify documents received as PDF, the Court will utilize the following procedure for the limited number of evidentiary hearings occurring by telephone while the Court's emergency orders are in place:

- a. Lodging proposed exhibits: Counsel or unrepresented parties shall submit proposed or lodged exhibits to the Clerk's Office in hard copy, to be left in the drop box outside the Clerk's Office, at least 30 minutes before a scheduled hearing. The exhibits shall be provided in the order they are intended to be offered/admitted. The exhibits shall be marked with slip sheets between documents as Petitioner Ex _ / Respondent Ex _.
- b. Courtesy copies of proposed exhibits: Counsel or unrepresented parties shall submit courtesy copies of proposed or lodged exhibits by email to the Court Administrator at least 30 minutes before a scheduled hearing. The exhibits shall be numbered in the order they are intended to be offered/admitted. The Judge will not review the proposed exhibits in advance of them being offered at the hearing.
- c. Service of proposed exhibits: Counsel or unrepresented parties should serve by email or a hard copy by mail all proposed exhibits on the opposing counsel or unrepresented party at least 30 minutes before a scheduled hearing. The exhibits shall be numbered in the order they are intended to be offered/admitted. If the proposed exhibits are served by mail, the party mailing the exhibits must mail them at least 3 mail days ahead of time.

17. SERVICE OF ORDERS.

- a. Orders submitted to the Superior Court Clerk for ex parte entry 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.
- b. Orders entered by the Superior Court Judge unilaterally, following taking matters under advisement, on motions submitted without oral argument, or after a telephonic hearing will be served on all attorneys and un-represented parties by the Court Administrator 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.

18. COURT FACILITATOR. All appointments with the San Juan County Court Facilitator Kathy Hagn shall be by telephone, until further order. Appointments with the Court Facilitator may be scheduled through the County Clerk's Office at: 360-378-2163.

19. PUBLIC DEFENDER SCREENER. All screening by the public defender screener shall be by telephone, until further order. The Public Defender Screener may be reached Monday – Friday from 9am – 12pm at: 360-370-7444.

20. COURT INTERPRETER. Court interpreters are permitted to appear by telephone until further order.

21. THE SAN JUAN COUNTY LAW LIBRARY is CLOSED to the public until further order.

22. THE SUPERIOR COURT ADMINISTRATION OFFICE is not open for in-person communications, but may be reached via phone at 360-370-7480, or by email to Court Administrator Jane Severin at JaneS@sanjuan.co.com until further order.

23. No non-essential group meetings may take place in Superior Court meeting rooms, including the Superior Court Jury Room, until further order.

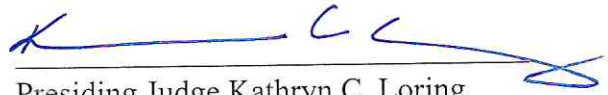
24. CIVIL CEREMONIES, such as weddings and administration of oaths, performed by the Superior Court Judge are suspended until further order.

25. 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.

26. This Emergency Order No. 2020-5 replaces and supplants ALL prior emergency orders issued by the Court in response to the COVID-19 public health emergency.

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 23rd day of April, 2020.



Presiding Judge Kathryn C. Loring