

## VI. TRIALS

## KCLCR 40 ASSIGNMENT OF CASES

## (b) Methods.

(1) Trial Setting.

- (A) Note for Trial Setting. Any party desiring to obtain a trial date may note the matter on the trial setting calendar using the Note for Trial Setting (Exhibit A) after all named parties have been served.

The moving party must identify all counsel and/or parties and their mailing addresses. Personal appearance by counsel is not necessary. Settings will be done administratively and the Court shall mail a default case event schedule that contains all case events and deadlines listed herein and the trial date to all parties listed on the Note for Trial Setting. If a dispute arises over a setting, the matter shall be heard on the civil motion calendar in accordance with KCLCR 77(k).

Alternatively, a party may note a motion to set a trial date on the civil motions docket at any time. At said hearing, the Court will set a trial date and (absent good cause) a settlement conference date and the Court may set deadlines for effecting service upon unserved parties and may compel the filing of answers by parties against whom relief is sought. The Court may order the striking of pleadings of parties who/which do not comply with such orders.

After a trial date has been set, if all parties can agree upon a case schedule which includes all case events listed herein, the parties may file the agreed case schedule in place of the Court's default case event schedule. If the parties do not file a case event schedule within 60 days of the announcement of the trial date, the Court's default schedule shall prevail.

A party must file and serve a jury demand on or before the time of trial setting or the right to a jury trial will be waived. A party who/which has not appeared at the time of trial setting must file and serve a jury demand within sixty (60) days of service of the initial pleadings or the right to a jury trial will be waived.

All telephone communications regarding trial settings, special motion settings, and scheduling should initially be with the Court Scheduler at **(360) 337-7008**.

- (B) Visiting Judge Required. The Court shall be notified at the time of trial setting if an attorney practicing in Kitsap County is a party or a witness in any matter before the Court or of any other matter needing a visiting judge.

- (2) Mental Illness Hearings. Mental illness hearings will be set through the Court Scheduler.
- (3) Standby Calendar. In the event that a case cannot be heard on the date set for trial it will be held on a standby calendar and counsel will be given a minimum of two hours' notice for trial.
  - (A) Notification. The Court Scheduler shall contact the parties to advise them of the standby status of their case.
  - (B) Standby Calendar at Counsel Request. A standby calendar at the parties' request may be created with the following conditions and addressed to the Court Scheduler.
    - (i) *Trial - Kitsap County Superior Court.* If an attorney is in another trial in Kitsap County Superior Court.
    - (ii) *Trial - Other Courts.* If an attorney has a conflict with another Superior Court, Appellate Court, or Federal Court, with the approval of the Presiding Judge.
    - (iii) *Emergency.* If an illness or other emergency situation arises involving the litigants, witnesses, or lawyers, with the approval of the Presiding Judge.
    - (iv) *Other Requests.* Any other request must be made to the Presiding Judge.
    - (v) *Pending Settlement.* Cases pending settlement will not be placed on standby at counsel's request, but may be reset.
- (4) Notice to Court of Calendar and Jury Trial Changes. Whenever a cause has been set for trial and thereafter is settled or will not be tried for any reason, or if a jury is thereafter waived, notice shall immediately be given to the Court Scheduler.
- (5) Case Management. A Note For Trial Setting filed pursuant to section (1)(A) above, shall designate that the case falls within one of the following categories:
 

Track I	Standard/General Civil Litigation
Track II	Complex Litigation
Track III	Domestic Relations

Once designated, counsel shall comply with the tracking procedures set forth below.

- (A) Track I - Standard/General Civil Litigation.
  - (i) *Scope.* Except as otherwise provided in these rules or as otherwise ordered by the Court, this rule shall apply to all civil cases except:

- Adoptions;
- Domestic violence;
- Civil harassment;
- URESA cases;
- Juvenile proceedings;
- Paternities;
- Minor Settlements;
- Probates;
- Guardianships;
- Unlawful Detainers;
- Reviews of administrative agency actions;
- Appeals from courts of limited jurisdiction;
- Foreign judgments;
- Petitions for writs of mandamus, restitution, etc.;
- Civil commitments; and
- Proceedings under RCW 70.96A.

- (ii) *Preassignment and Case Schedule.* At the time a matter is noted for trial setting, the Court shall randomly preassign a department of the Superior Court to hear the case. The Court shall enter an Order Setting Trial Date and a Civil Case Event Schedule.
- (iii) *Amendment of Order Setting Case Event Schedule.* Upon motion of any party or the Court, and upon good cause shown, the preassigned judge may modify any date in the original Order Setting Trial Date and Civil Case Event Schedule. Copies of said amended order shall be filed and served upon all parties.
- (iv) *Additional Parties.* A party who joins an additional party in an action shall be responsible for serving the additional party with the current Order Setting Trial Date and Civil Case Event Schedule together with the first pleading served on the additional party.
- (v) *Time Intervals for Case Event Schedule.* Except as otherwise provided in the rules, or as otherwise ordered by the Court pursuant to section (A)(iii) above, the parties and counsel shall comply with the case event schedule, which shall include at minimum

<b>EVENT:</b>	<b>DEADLINE:</b>
Disclosure of Possible Primary Witnesses	240 days before trial date
Disclosure of Possible Additional Witnesses	150 days before trial date
Discovery Cutoff	120 days before trial date
Mandatory Settlement	90 days before trial date

<b>EVENT:</b>	<b>DEADLINE:</b>
Conference	
Last day to hear Dispositive Pretrial Motions	60 days before trial date
Exchange of Witness and Exhibit Lists	20 days before trial date
Joint Statement of the Evidence	7 days before trial date
Filing of Trial Briefs	5 days before trial date
Trial Date	

*Comment:* These dates will be set forth in the Civil Case Event Schedule.

- (vi) *Enforcement.* The Court on its own initiative, or on motion of a party, may order an attorney or party to show cause as to why sanctions or terms should not be imposed for failure to comply with the case schedule established by these rules. If the Court finds that an attorney or party has failed to comply with the case schedule and has no reasonable excuse or other good cause, the Court may order the attorney or party to pay monetary sanctions to the Court, or terms to any attorney or party who has incurred expense as a result of the failure to comply, or both. In addition, the Court may impose such other sanctions or terms as justice requires. As used in this rule, “terms” means costs, reasonable attorney fees and other expenses incurred or to be incurred as a result of the failure to comply; “monetary sanctions” means a financial penalty payable to the Court, and “other sanctions” includes, but is not limited to, the exclusion of evidence and other sanctions available pursuant to the Civil Rules and Local Court Rules.
- (vii) *Discovery Cutoff.* Unless otherwise ordered by the Court for good cause and subject to such terms and conditions as are just, all discovery allowed under Civil Rules 26-37, including responses and supplements thereto, must be completed no later than the date specified in the Civil Case Event Schedule. Discovery requests must be served early enough that responses will be due and depositions will have been taken prior to the cutoff date. Nothing in this rule shall modify a party’s responsibility to seasonably supplement responses to discovery requests or otherwise to comply with discovery prior to the cutoff, nor shall a party be prevented from seeking relief under CR 37 after the cutoff date for discovery properly sought in accordance with this rule.

(viii) *Dispositive Pretrial Motions.* No hearings on dispositive pretrial motions shall be heard by the Court after the cutoff date specified in the Civil Case Event Schedule, except upon good cause shown and upon such terms and conditions as the Court may deem just, including assessment of terms and sanctions.

(ix) *Settlement Conference.* Reserved [See KCLCR 16(a).]

(B) Track II - Complex Litigation.

(i) *Leave of Court Required.* Assignment to Track II requires court approval. A request for assignment to Civil Track II may be made by filing and noting the motion on the Presiding Judge's departmental calendar. Where the Court determines that a decision can be made based upon the pleadings of the parties and without oral argument, the Court will strike the hearing noted by the moving party and notify the parties of its decision. The Court may place a case on Track II on its own motion at any time.

(ii) *Scope.* The following factors shall be weighed in determining whether a case will be placed on Track II:

- Nature of subject matter;
- Degree of complexity;
- Amount in controversy;
- Number of attorneys/parties involved; and
- Length of trial.

(iii) *Preassignment and Case Schedule.* The Presiding Judge will accept or deny a request submitted pursuant to section (B)(i) above and notify parties. A department of the Superior Court shall be preassigned to hear the case.

(iv) *Management conference.* A case must be at issue at the time of the initial management conference. The initial management conference shall be held within 60 days of acceptance into Track II, at which conference the following shall occur:

- Assignment of a trial date;
- Parties submit case management schedule approved by the Court; and
- Assignment of a date for the mandatory settlement conference.

(v) *Amendment of Order Setting Case Schedule.* Upon written motion of any party or the Court, and upon good cause shown, the preassigned judge may modify any date in an order entered pursuant to section (B)(iii) above. Copies of said amended order shall be filed and served upon all parties.

- (vii) *Cases under the Land Use Petition Act, RCW 36.70C.* When a land use petition (pursuant to RCW 36.70C) is filed with the Kitsap County Superior Court, all such cases shall be treated as Track II complex litigation and in accordance with the following procedures:

*Pre-Assignment to a Superior Court Judge.* Land Use Petition Act cases shall be assigned to a superior court judge, who shall hear and decide all matters in the case.

*Notice of Land Use Petition.* Within 7 days of the filing of a petition under the Land Use Petition Act, RCW 36.70C, the petitioner shall provide written notice of the filed petition to the Kitsap County Court Scheduler, identify it as a Land Use Petition Act case, and ask that the case be assigned to a judge. The Court Scheduler will note an initial hearing before the assigned judge.

*Initial Hearing.* A scheduling order setting the dates for filing the record, submitting briefs, and hearings will be issued at or shortly after the initial hearing. The parties should attempt to determine a mutually agreed upon scheduling order prior to the initial hearing. The parties may waive the initial hearing by filing a stipulated order resolving jurisdictional and procedural issues raised by the petition and setting a schedule for briefing, filing the record and transcripts and a hearing on the merits. Prior to filing a stipulated scheduling order, the petitioner shall contact the Court Scheduler to obtain a tentative date for the merits hearing.

*Preparation of Administrative Record.* Copies of the administrative record shall be provided to all parties. A bench copy of the record with an index and document identification tabs shall be provided to the assigned judge. A copy of the administrative record without side tabs shall be filed with the Superior Court Clerk for the court file.

*Preparation of Transcripts.* Verbatim transcripts shall be prepared by a certified court reporter and submitted to all parties for a period of seven days for correction of errors prior to filing.

*Briefs.* The petitioner shall have at least 30 days after the record and verbatim transcripts are filed to file and serve its brief. Respondent's brief shall be filed and served 30 days following filing and service of the petitioner's brief. Petitioner shall have an additional 14 days for filing a service of a reply brief. Reply briefs are in strict reply only. If a reply brief raises new issues, respondent may respond to those issues. In all statements of fact, briefs shall contain citations to the administrative record and the transcripts. Citations to the administrative record and the transcripts shall be denoted "AR" and "HR [date]," respectively, plus a page number.

*Hearing on the Merits.* Unless otherwise granted at the initial hearing, the Land Use Petition Act hearing on the merits shall be scheduled for one (1) day. The assigned judge shall take the first half of the day for reviewing the record, transcripts and briefs. The assigned judge will determine the amount of time granted for argument on the merits.

*Related Matters.* If a LUPA petition is consolidated with another claim, such as a damage action, the case may be bifurcated on stipulation of the parties or pursuant to motion. If the related matter is not bifurcated and entails a trial, a note for trial setting shall not be filed until after the record and transcripts are filed and served.

(C) TRACK III - Domestic Relations. [See KCFLR 8]

*Amended September 1, 1997; September 1, 2001; September 1, 2002; September 1, 2003; September 1, 2010; September 1, 2011; September 1, 2012; September 1, 2014; amended, effective September 1, 2015; amended on an emergency basis, November 19, 2019, effective December 1, 2019; amended, effective September 1, 2020; amended on emergency basis December 19, 2023, effective January 1, 2024; amended on an emergency basis March 23, 2024, effective April 1, 2024.*

Official Comment:

Parties are advised to consult the Land Use Petition Act statute for further procedural rules that apply in these proceedings.