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SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

[],
Plaintiff,
v.
[],
Defendant.

Case No. []

**ORDER FOR REMOTE JURY TRIAL
BY ZOOM**

The Court orders that trial in this matter be held entirely over Zoom.

I. BACKGROUND

This matter was filed on _____.

When the Court entered its Order on _____ for an in-person civil jury trial, the seven-day average of daily positive coronavirus cases in King County was ____; that number had risen ____ percent to ____ by ____.¹

On November 15, 2020, Governor Jay Inslee issued a Proclamation noting that “from the latter part of October through the first two weeks of November, 2020, COVID-19 cases have doubled in Washington, and COVID-19 related hospitalizations have risen sharply, putting our people, our health system, and our economy in as dangerous a position as we faced in March 2020.”²

¹ Public Health – Seattle & King Cty., *COVID-19 Outbreak Summary*, available at <https://www.kingcounty.gov/depts/health/covid-19/data/daily-summary.aspx> (last visited _____).

² State of Wash. Office of the Governor, *Proclamation 20-25.8 Stay Safe – Stay Healthy Rollback of Cty.-by-Cty. Phased Reopening Responding to a COVID-19 Outbreak*

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

7 In response to the conditions cited in the Proclamation, the Governor prohibited
8 “Indoor Social Gatherings” with individuals outside of one’s household, absent a period of
9 prior quarantine or combination of quarantine and a negative coronavirus test.⁴

10 The restrictions in the Proclamation do not apply to courts.⁵

11 On _____, the Court held a conference with the Parties to hear
12 _____ objections to a remote jury trial.

13 II. FINDINGS AND CONCLUSIONS

14 A. The Washington Supreme Court Allows Trial Courts to Take Measures to 15 Protect the Public Health While Conducting Court Business

16 The Washington Supreme Court allows trial courts to take measures to conduct court
17 business in a way that preserves public health. During the current public health crisis, the
18 Washington Supreme Court requires that courts “follow *the most protective* public health
19 guidance applicable in their jurisdiction,” and requires courts to “*continue using remote*
20 *proceedings for public health and safety whenever appropriate.*” Fourth Revised &
21 Extended Order Re Court Operations, *In the Matter of Statewide Response by Wash. State*
22 *Courts to the COVID-19 Pub. Health Emergency*, at 3 (Wash. Oct. 13, 2020) (the “Fourth

23 _____
24 *Surge*, at 1-2 (Nov. 15, 2020) (the “Proclamation”), available at
https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.8.pdf.

25 ³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.*

1 Supreme Court Order”) (emphasis added). Specifically as to jury trials, the Washington
2 Supreme Court has not limited “the authority of courts to adopt measures to protect public
3 health and safety that are more restrictive” than the orders of the Washington Supreme
4 Court, “as circumstances warrant.” Order Re: Modification of Jury Trial Proceedings, *In*
5 *the Matter of Statewide Response by Wash. State Courts to the COVID-19 Pub. Health*
6 *Emergency*, at 5 (Wash. June 18, 2020). Thus, under applicable Washington Supreme Court
7 orders, the Court has the ability to fashion trial solutions that are the most protective of
8 public health and appropriate for the proceedings.

9 **B. Zoom Satisfies the Right to a Jury Trial**

10 The Parties have the right a trial by jury, but it need not be in person. “The right of
11 trial by jury shall remain inviolate.” Wash. Const. art. I, § 21. Use of the word “inviolate”
12 in this constitutional guarantee “connotes deserving the highest protections,” protections
13 such that the right to a jury trial “must not diminish over time and must be protected from
14 all assaults to its *essential guarantees*.” *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656
15 (1989) (citation omitted) (emphasis added). Those essential guarantees include the right to
16 have a jury “determine the facts of the case from the evidence adduced, in accordance with
17 the instructions given by the court.” *Furnstahl v. Barr*, 197 Wn. App. 168, 175 (2016)
18 (quotation marks omitted). Here, as outlined in attached Zoom Jury Trial Procedures,
19 Appendix A, the Parties will receive the essential guarantees provided for in the Washington
20 Constitution, because the jury will receive testimony over Zoom and receive exhibits
21 electronically, will receive the Court’s instructions on the law, and will be given a virtual
22 jury room in which to determine the facts.

23 **C. There is Good Cause for All Testimony to Occur by Zoom, and There Is No**
24 **Material Risk that Witness Testimony Will be Compromised**

25 **1. The increased instances of coronavirus in King County are compelling**
circumstances supporting good cause for remote testimony.

1 There is good cause to allow all witness testimony to be by Zoom. “For good cause
2 in compelling circumstances and with appropriate safeguards, the court may permit
3 testimony in open court by contemporaneous transmission from a different location.” CR
4 43(a)(1). Such good cause and compelling circumstances exist, for example, where in-
5 person testimony could threaten an individual’s health. *In re Marriage of Swaka*, 179 Wn.
6 App. 549, 557 (2014) (“If Alexandra was required to travel to Washington for trial she
7 would have to choose between irritating her son’s medical condition or leaving him in a
8 foreign country.”). Here, given that the seven-day average of daily positive coronavirus
9 cases has increased _____ percent in King County since the Court ordered an in-person jury
10 trial, and given the Governor’s finding that coronavirus is often spread during indoor
11 gatherings, and given that Washington residents are otherwise nearly completely prohibited
12 from gathering with anyone outside of their own households, the Court concludes that
13 compelling circumstances exist providing good cause for all witnesses to testify over Zoom.

14 **2. Concerns about the potential for misconduct are unfounded.**

15 Court and ethics rules still apply to an all-Zoom trial. Any concerns that a party or
16 witness could be covertly coached during testimony are unfounded. As an initial matter, a
17 trial conducted over Zoom is still a trial, and ethics rules still apply. Thus, for example,
18 counsel are expected to be candid with the Court, RPC 3.3, act fairly to opposing parties,
19 RPC 3.4(a), refrain from assisting a witness to testify falsely, RPC 3.4(b), act with decorum
20 RPC 3.5(b), and not fail to disclose a material fact, RPC 4.1. The Court has no reason to
21 conclude that counsel would violate the Rules of Professional Conduct merely because the
22 trial is being conducted over Zoom. Furthermore, the King County Superior Court has been
23 holding civil bench trials entirely over Zoom for several months now and is not aware of
24 any significant incidences supporting Defendants’ concerns. All rules still apply, and the
25 Court expects the Parties, counsel, and witnesses to follow them.

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D. Zoom Breakout Rooms Satisfy the Statutory Jury Room Requirement

A virtual space for the jurors to deliberate in meets statutory requirements. Washington law provides that jurors “must be kept together in a room provided for them, or some other convenient place.” RCW 4.44.300 (emphasis added). The “statute is designed to insulate the jury from out-of-court communications that may prejudice their verdict.” *State v. Crowell*, 92 Wn.2d 143, 147 (1979). Here, given that the jury will be in a Zoom breakout room during breaks, deliberations, and other times when the Court needs to address the Parties outside of the presence of the jury, the breakout room satisfies the requirement that the jury be in a convenient place. Moreover, the jury will be insulated in the breakout room from communications that may prejudice them, because participants in breakout rooms are “completely isolated in terms of audio and video from the main session.”⁶

E. Court Will Not Be Closed, and the Public Will Have Access to the Trial

The all-Zoom jury trial satisfies the requirement for public access to the trial. By Washington Supreme Court order, courts “should develop protocols for allowing public observation of video . . . hearings.” Fourth Supreme Court Order at 12. “Any limitations placed on public access to court proceedings due to the public health emergency must be consistent with” controlling authority. *Id.* at 12-13. Such authority would be applicable to a court “closure.” *State v. Bone-Club*, 128 Wn.2d 254, 258 (1995). Here, the Court will not be closed; to the contrary, the trial judge will be on the bench in the King County Courthouse, the courthouse will be open to the public, the courtroom will be unlocked, and video and audio will be available to members of the public in the gallery. Thus, the public will be able to observe the full jury trial.

⁶ Zoom, *Participating in Breakout Rooms, available at* <https://support.zoom.us/hc/en-us/articles/115005769646>.

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III. CONCLUSION

For the reasons stated above, the Court orders that trial in this matter be held entirely over Zoom.

IT IS SO ORDERED.

DATED _____.

[]
Judge