

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

IN RE THE MATTER OF)	
THE RESPONSE BY)	Nos. 20-2-00001-03 (BCSC)
BENTON & FRANKLIN)	20-2-50001-11 (FCSC)
SUPERIOR COURT TO THE COUNTIES)	
PUBLIC HEALTH EMERGENCY)	EMERGENCY ORDER
IN BENTON & FRANKLIN COUNTIES)	#05-03-C (<i>Amended - see</i>
AND THE STATE OF WASHINGTON)	<i>P. II (D) Disqualifications</i>)
)	re: Criminal Docket Matters
)	Effective: August 1, 2020¹

The public health emergency in Washington State posed by the coronavirus 2019 (COVID-19) continues to evolve and requires modification of Emergency Order #1 (issued March 16, 2020), Emergency Order #2 (issued March 19, 2020) Emergency Order #3 (issued on April 22, 2020), and Emergency Order #4-03 & 3A & 3B (issued May 4, May 18 & June 1, 2020). The Court has in mind the factual record of these Emergency Orders and incorporates the same by reference, and in particular has in mind the following:

1. On May 29, 2020, Washington Supreme Court Chief Debra Stephens entered Order No. 25700-B-626, revising and superseding prior orders and stating as follows:

“8. Many **out of custody** criminal and juvenile offender matters have been continued until after June 1, 2020. After that date, courts should hear matters by telephone, video or other means that do not require in person attendance when appropriate. In addition, courts may hear matters that require in person attendance if those hearings strictly comply with social distancing and other public health measures.”

NOW, THEREFORE it is hereby **ORDERED**, pursuant to the authority of Washington Supreme Court Order NO. 25700-B-625 & 626, and the authority as the Presiding Judge of Benton & Franklin Counties, that the following shall be in effect:

Beginning August 1, 2020, the following temporary procedures will be in place for criminal law dockets in Benton & Franklin Counties:

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¹ To the extent that this order requires earlier action to prepare for the new docket procedures, it takes effect immediately.

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I. Docket Schedule

A. Criminal Dockets:

1. Benton County

a. Double Dockets (August 1, 2020 – August 28, 2020):

Days: Monday – Thursday

Time: 8:30 a.m. to 4:30 p.m. (A.M./out of custody, P.M./in custody²)

Location: Benton County Courtroom B

Telephonic/ WebEx Appearances: Attorneys and litigants are referred to the Superior Court website at <http://www.benton-franklinsuperiorcourt.com/administration/coronavirus/virtual-court-appearances/>, to determine the appropriate WebEx instructions for virtual appearances. The Court is transitioning to WebEx for all courtrooms and attorneys and litigants are encouraged to visit the website frequently. The final dockets published by the clerks also detail the access platform and access information.

b. Single Dockets (August 31, 2020 – Forward):

Days: Wednesday – Thursday

Time: 8:30 a.m. to 4:30 p.m. (A.M./out of custody, P.M./in custody³)

Location: Benton County Courtroom B

Telephonic/ WebEx Appearances: Same as above.

2. Franklin County

a. Single Dockets (August 1, 2020 – Forward)

Days: Tuesday

Time: 8:30 a.m. to 4:30 p.m. (A.M./out of custody, P.M./in custody⁴)

² Preliminary appearances in Benton County will be addressed according to the in-custody list prepared by the jail during the afternoon in-custody dockets on Monday through Thursday, and at 1:30 p.m. on Friday

³ Preliminary appearances in Benton County will be addressed according to the in-custody list prepared by the jail during the afternoon in-custody dockets on Wednesday and Thursday, and at 1:30 p.m. on Monday, Tuesday, and Friday

⁴ Preliminary appearances in Franklin County will be addressed according to the in-custody list prepared by the jail the afternoon in-custody dockets on Tuesday, and at 1:30 p.m. on Monday, Wednesday-Friday. As indicated below, the jail will have in custody matters ready at 11:00 a.m., and the Court may take those matters starting at 11:00 a.m., if out of custody matters have been completed, with accommodation for counsel who have obligations on the Benton County double dockets.

Location: Franklin County Courtroom 1
Telephonic/ WebEx Appearances: Same as above.

B. 3.5/3.6 (Motion) Dockets:

1. Benton County (August 1, 2020 – Forward):

Day: Friday

Time: 8:30 a.m. to 12:00 p.m.

Location: Benton County Courtroom B

Telephonic/ WebEx Appearances: Same as above.

2. Franklin County (August 1, 2020 – Forward):

Day: Thursday

Time: 8:30 a.m. to 12:00 p.m.

Location: Franklin County Courtroom 1

Telephonic/ WebEx Appearances: Same as above.

II. Docket Preparation

A. Criminal Docket:

1. Benton/Franklin Counties:

- a. For Benton County only, the Wednesday and Thursday criminal dockets now set beginning the week of August 3, 2020, through the week ending with August 28, 2020 will be divided in half, by alphabetic order of the case, with the first half of those cases from the Wednesday docket set on Monday, and the remainder of the Wednesday docket set on Tuesday. The Thursday docket will be similarly divided and placed on Wednesday and Thursday, respectively.

Franklin County will return to single criminal dockets on Tuesday.

For Benton County only, the resulting provisional dockets for the four-week period of double dockets will be available to be sent to individuals who have requested to be included in e-mail docket notice from the Clerk, by 12:00 p.m. on July 28, 2020.

- b. Individuals who have not previously asked to be included in docket notices should send their request, along with the e-mail address at which they wish to receive notice, to the respective Clerk to the e-mail addresses as follows:
clerk@co.benton.wa.us

criminalclerk@co.franklin.wa.us

Individuals shall not attempt to give their e-mail address to the Clerk over the phone.

- c. **For both Counties, the Monday of the week prior to the following week's dockets**, each Clerk will send the provisional dockets for the following week to any Counsel or party who request notice above.
- d. **Until 4:00 p.m. Thursday, of the week prior to the following week's dockets**, notes for motion may be filed by any party for the following week's dockets. **Thereafter, no additional cases will be added to any of the following week's dockets**, other than initial appearances and motions to address conditions of release. The Court anticipates that counsel will, prior to this cutoff date and time, consolidate matters to the same dockets as appropriate and that retained counsel will, with the cooperation of the State, re-set cases within that week's dockets so that retained counsel are not double set in more than one court on a given day and time. The Court anticipates that the same courtesies will be extended to **all counsel**.
- e. **By 12:00 p.m., the Friday of the week prior to the following week's dockets**, Each Clerk will post on their website the provisional final dockets for the following week.
- f. **Until 12:00 p.m. of the day prior to a given docket**, cases can be stricken from a docket upon: 1) filing of a completed omnibus order accompanied by an order to strike the omnibus hearing; or 2) filing of a waiver of speedy trial signed by all parties,⁵ and an agreed order setting of dates. These orders can be presented *ex parte* for signature.
- g. Each Clerk of the Court will post to their website the final individual dockets for the following day per their normal procedure. The dockets are available at:
<https://www.co.benton.wa.us/pview.aspx?id=1756&catID=45>
<http://co.franklin.wa.us/clerk/dockets.php>

Each Correction Center's on-line inmate list will advise counsel and the Court of which matters are anticipated to be called on the afternoon in-custody docket. The list is available at:
<https://www.co.benton.wa.us/pView.aspx?id=1803&catid=45>

⁵ The rules regarding the form of signatures, and signatures on behalf of a Defendant in prior emergency orders remain in effect. An affidavit of counsel shall accompany a waiver of speedy trial signed on behalf of a Defendant.

<http://www.co.franklin.wa.us/sheriff/corrections.php>

Each Correction Center's in-custody grouping list will be available, either as a provisional list the day before the docket, or the morning of and will be distributed to the same list of individuals who request notice from the clerk. This will be accomplished by the respective Correction Centers being included in the respective Clerk's docket notice list and including the in-custody groupings as a "reply all" to the group.

- h. All cases will be called on the morning docket in the first instance. **The Court will call the docket in numerical order,⁶ with the following exception: at 9:00 a.m. the Court in each county will address, in numerical order, all out-of-custody arraignment matters.⁷** Any matter where the Defendant is in-custody will be continued to the afternoon docket, unless counsel agrees that it can or has been resolved without the need for the Defendant to appear. Counsel will notify the jail that the individual is not needed for court that day.

In Benton County, no in-custody matters will be taken in the morning.

In Franklin County, the Jail will have in-custody individuals ready for hearing at 11:00 a.m., and the Court may begin taking these in-custody matters starting at 11:00 a.m. if all out-of-custody matters have been completed. During the month of August, the presiding judge on the Franklin County Criminal Docket will be aware of, and may make adjustments to procedure for, the fact that assigned and appointed counsel may have conflicting obligations on Benton County criminal docket.

Afternoon in-custody matters will be called in the order the jail prepares for the transport of in-custody inmates to court. In custody matters will be presumed to be addressed by video conference, however a party may ask that an in-custody defendant be brought to the courtroom for a hearing.

⁶ For those Defendants who have multiple matters before the Court, all of that Defendant's cases will be called together with the first case that appears numerically on the docket.

⁷ This procedure is intended to reduce the number of individuals present in the Courtroom as quickly as possible during each session. The Court recognizes that representatives of OPD need a credible opportunity to meet with individuals who arrive on time and are unaware of the necessary preparations prior to addressing arraignment. That said, those individuals who are not present and ready to proceed when their out-of-custody arraignment cases are called during this period will be addressed in numerical order.

In Benton County, all matters that will proceed to sentencing as part of the hearing will be brought to the courtroom.

B. 3.5/3.6 (Motion) Dockets:

1. Benton/Franklin Counties: The procedure for noting a matter on this docket, the limitations on what matters may be noted, forms, and the procedure for the operation of this docket are available at the Court's website. www.benton-franklinsuperiorcourt.com/information-and-forms-by-case-type/adult-criminal-case-information-and-forms/3-5-3-6-docket/

C. Bench Copies: Bench copies of all pleadings shall be submitted via eMotion, in accordance with LCrR4.5. Counsel are reminded that LCrR 4.5 requires submission "not later than nine (9:00) o'clock a.m., one (1) day prior to the scheduled hearing, proceeding or trial." In addition to formal pleadings, *all materials* upon which either party will rely in argument shall be submitted via eMotion.

II. Docket Operation:

A. Docket Order: Dockets will be called by the Bench, in numerical order (with the exceptions previously noted).⁸ Counsel must act diligently to prepare matters before the docket so that they are ready to proceed when called by the Court. If a matter is not ready to proceed when called, it will be either continued or stricken as the Court deems appropriate. In the case of a critical stage hearing where continuance would affect a fundamental right of a party or person with an interest in the matter, the Court may vary this procedure.

B. File Coverage: For each docket in each County, Counsel, with due regard for sudden illness and emergency, are expected to remain in attendance (although not necessarily in person attendance) until their matters are complete, or to provide file notes that allow a colleague to address the Court.

C. Appearance By Counsel/Parties/Public: Counsel/Parties and the Public may, consistent with health and safety and consistent with the rights of others, appear in person, via videoconference, or teleconference. Prior to any hearing, counsel must communicate the manner of appearance they, their client, or a witness intends to the opposing party (if it is other than an in-person appearance). Any person may object to appearances other than in-person. If there is an objection, or if the Court has a concern, the Court will balance the interests of counsel, parties and the public and consider the current health and safety restrictions with respect to COVID-19 and other related concerns. Other than

⁸ The Court recognizes that some initial appearances may appear out of custody by the time of afternoon hearing, as District Court provides a 1:30 p.m. appearance time for those who are released on bail from District Court.

those limited situations where the location from which the remote appearance is initiated provides sufficient proof of identity, such as confinement in the jail, the Court will not conduct an arraignment by audio appearance only. The Court begins with the presumption that it cannot, based on an audio appearance only, satisfy its obligation to confirm that a plea of guilty is entered knowingly, intelligently and voluntarily, as required by CrR 4.2(d).

D. Disqualifications: *When Court Administration assigns a judicial officer to a criminal docket, and an Affidavit of Prejudice or Notice of Disqualification has been filed for that judicial officer, the matter shall, pursuant to this order, be continued one week when called, unless the then presiding judge advises the parties that Court Administration has provided for a conflict judge. The assignment of a conflict judge, and the timing of the determination of whether an assignment can be made, is at the sole discretion of Court Administration. Parties may not request a conflict judge for a docket. Parties shall not contact Court Administration to determine if a conflict judge has been assigned.*

E. Safety: The Courtroom has been arranged for social distancing. The Court may modify the listed procedures, timeframes and other provisions of this order and may take additional actions to preserve the health and safety of those present. Interested parties should consult the Court's website: <http://www.benton-franklinsuperiorcourt.com/administration/coronavirus/temporary-docket-procedures/> for further information.

F. Prior Orders: This emergency Order supplements the prior emergency orders which remain in full force and effect to the extent that they are not inconsistent with this order.

Dated at Kennewick, Washington, this 31th day of July, 2020.


Carrie Runge, Presiding Judge
Benton & Franklin Counties Superior Court