

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 #5C
IN BENTON & FRANKLIN COUNTIES	)	<i>Re: Jury Trials for September</i>
AND THE STATE OF WASHINGTON	)	<i>-- Civil &amp; Criminal</i>
	)	<b>Effective: September 22, 2020</b>

The public health emergency in Washington State posed by the coronavirus 2019 (COVID-19) continues to evolve and requires modification of prior Orders of this Court. The Court has in mind the factual record of prior Emergency Orders and incorporates the same by reference. In particular, the Court has in mind the following:

1. On June 18, 2020, Washington Supreme Court Chief Debra Stephens entered ORDER RE: MODIFICATIONS OF JURY TRIAL PROCEEDINGS, Order No. 25700-B-631, revising and superseding prior orders to the extent they are inconsistent and stating as follows:

“1. Jury trials are necessary to the open administration of justice in Washington. *Courts may commence new jury trials starting July 6, 2020 in courthouse facilities or offsite facilities, while observing social distancing and following the most appropriate public health guidance in their jurisdiction.*” (Pg. 2, Italics added).

The same order earlier references Washington State Department of Health guidance specific to trial court operations, and the Order concludes as follows:

“9. *Nothing in this Order limits the authority of courts to adopt measures to protect health and safety that are more restrictive than this Order, as circumstances warrant. Courts are encouraged to move toward conducting as much court business as can be done consistent with public health and safety, in the interest of the fair and timely administration of justice.*” (Pg. 5, Italics added).

2. Previously, on May 29, 2020, Washington Supreme Court Chief Debra Stephens entered AMENDED THIRD REVISED AND EXTENDED ORDER REGARDING COURT OPERATIONS, Order No. 25700-B-626, revising and superseding prior orders to the extent they are inconsistent and stating as follows:

“WHEREAS, the presiding judges across Washington need direction and authority to effectively administer their courts in response to this state of emergency, *including authority to adopt, modify, and suspend court rules and orders as warranted to address the emergency conditions.* (Pg. 2, Italics added).

The same order grants this Court the ability to suspend court rules as required by this emergency, stating as follows:

*“23. Nothing in this order limits the authority of courts to adopt measures to protect health and safety that are more restrictive than this Order, as circumstances warrant, including by extending as necessary the time frames in this Order.”* (Pg. 14, Italics added).

3. On August 4, 2020, the Washington State Department of Health (Hereinafter DOH) updated its COVID-19 and Washington State Courts Public Health Risk Reduction Recommendations. Therein, the Department acknowledged:

*“While similar jurisdictional courts share similar risk factors (e.g., number of jurors), each court is unique with regard to: size, seating area, entrances and exits, waiting areas, ventilation, etc. Therefore, it is up to each individual court to determine which strategies will comprise the constellation of activities necessary to reduce COVID-19 risk. Additionally, each individual court will need to tailor the actions outlined below to its particular setting and needs.”*

When considering COVID-19 transmission risk within a particular court jurisdiction, an important consideration is the rate of COVID-19 occurrence within the community served. *The greater the amount of COVID-19 in a community, the higher the risk that a COVID-19 carrying member of the community will be summoned to participate in a jury trial or an in-person court proceeding.* The rate of COVID-19 is likely to fluctuate over time and across communities as social distancing measures are relaxed and/or communities become apathetic. (pg. 5, Italics added).

The DOH further observed:

*As counties are approved to progress from Phase 1 towards Phase 4, increasing social and economic activities are allowed to resume under the Safe Start Plan, as long as positive trends are sustained and required safety precautions are implemented. For the courts, it is anticipated that more in-person proceedings will generally resume in Phase 2 and beyond.* (pg. 6, Italics added).

4. On August 24, 2020, this Court, by its *Emergency Order #5B, Re: Jury Trials for September – Civil and Criminal*, excluded the month of September when calculating time for trial in the Adult Divisions of this Judicial District, pursuant to the aforementioned delegated emergency authority, under to CrR 3.3(e)(3). On September 10, 2020, Washington Supreme Court Chief Debra Stephens entered ORDER EXTENDING ECLUDED PERIOD IN CALCULATING TIME FOR TRIAL, AND ADOPTING RELATED EMERGENCY MEASURES, Order No. 25700-B-642. This Supreme Court Order supersedes and replaces this Court’s prior order with respect to speedy trial. Therein, under CrR 3.3(e)(3) & JuCR 7.8(e)(3), time for trial in both the Adult & Juvenile Divisions of this Judicial District is excluded through “the next scheduled court hearing after October 15, 2020.”
5. All but five counties in the State of Washington have advanced to Phase 2 or 3 of the Governor’s phased reopening plan, known as “Safe Start.” Benton and Franklin Counties are two of the five counties that remain in Phase 1.5 (Modified Phase 1) restrictions. As of the date of this Order, COVID-19 infection rates continue to fluctuate in both Counties, and neither Benton nor Franklin Counties have advanced from those modified restrictions since August 1, 2020. Significant numbers of jurors, called for service during August and September as a precautionary measure, have expressed concern regarding a risk to their health from potential jury service. The majority of counsel and parties on all dockets, including Criminal Dockets in both Counties, elect to appear by telephone or videoconference.
6. The Court recognizes that jury trials are necessary and that court operations are essential. The Court is aware that some civil and criminal matters are not capable of resolution without resort to a jury trial. The Court is additionally aware that, in addition to rule-based speedy trial rights, all individuals before the Court on criminal charges have a Constitutional right to a speedy trial. *See State v. Oliver*, 178 Wn.2d 813, 826, 312 P.3d 1 (2013) (incorporating Sixth Amendment analysis of the four factor test in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed. 2d. 101 (1972)). Finally, the Court is aware of the stress and anxiety that attends the delay in resolution of cases for those accused, both in and out of custody, and those alleged to be victims of charged offenses. Nevertheless, the Court concludes that, it is not reasonable to believe, under the totality of present circumstances (including but not limited to the current emergency restrictions on members of potential jury venires and the need to prepare procedures and facilities to comply with the guidance in the aforementioned Washington Supreme Court Order and instructions as well as the current guidance from DOH), the Court could conduct jury trials, while sufficiently protecting the rights of parties nor the safety of parties and participants, including potential jurors, during the month of October, 2020. The Court, however, recognizes that this situation is not static. As the length of time without the effective right to a trial by jury increased, the balance continues to shift more toward attempts to

conduct jury trials under sub-optimal conditions.

7. The Court is currently limited in its ability to conduct in person proceedings in the Benton County Justice Center, due to construction designed to improve the lighting, sound, and audio-visual capacity (including remote access) in all 6 courtrooms. The Court does presently have available to it alternative county facilities in which it could, were the above conditions different, attempt to conduct jury trials: the Benton County Fairgrounds. The court presently believes this facility to be of adequate size with the necessary infrastructure for the purpose of conducting a jury trial. This opinion is based on initial planning that included a review of building plans and a physical site visit conducted by the Court and other stakeholders. The facility is located in the County of Benton.

**NOW, THEREFORE** it is hereby **ORDERED**, pursuant to the authority of Washington Supreme Court Order No. 257000-B-631, No. 25700-B-626 and Order No. 25700-B-642 and the authority as the Presiding Judge of Benton & Franklin Counties, that the following shall be in effect:

**A. Jury Trials (Civil & Criminal):** No Jury Trial, in either a civil or a criminal case, will be held during the month of October, 2020. The Court will continue to work with stakeholders toward the goal of empaneling juries as soon as it can be safely accomplished. With respect to criminal matters in the Adult Divisions of the Judicial District, based on all of the above, the Court finds that the local continuing serious danger posed by COVID-19 constitutes continuing good cause to continue criminal trials, and thus constitutes a continuing unavoidable circumstance under CrR 3.3(e)(8), the time between October 16, 2020 and October 31, 2020 shall be EXCLUDED when calculating time for trial in the Adult Divisions of this Judicial District. CrR 3.3(e)(3). Because the Court has adopted a policy for conducting Bench Trials for juvenile offenders, the Court declines to make such a finding under JuCR 7.8(e)(7) for all pending juvenile matters, leaving such matters to individual presiding judicial officer on a case-by-case basis.

**B. 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.

**C. Incorporation Into The Record:** As with all prior Orders of the Supreme Court of Washington, and prior orders of this Court, this Order is deemed part of the record in affected cases for the purposes of appeal without the need to file this order in each case.

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Dated at Kennewick, Washington, this 22<sup>nd</sup> day of September, 2020.

A handwritten signature in cursive script that reads "Carrie Runge". The signature is written in black ink and is positioned above a horizontal line.

Carrie Runge, Presiding Judge  
Benton & Franklin Counties Superior Court