

## **WACDL/WDA Concerns Relating to the Resumption of Jury Trials**

Dear Chief Justice Stephens,

WDA and WACDL deeply appreciate how open and responsive you and the Court have been to receiving feedback from the criminal defense bar regarding public health issues that have come to light as our courts continue to ramp up operations. Jury trials are beginning in jurisdictions across the state amidst the backdrop of a spike on COVID-19 infections, and a pressing issue has come up. We have been alerted by our members that jury trials are commencing without published and publicized health and safety plans in place. The June 18, 2020 Order and Operational Guidelines, at least as we understand them, contemplate that these plans will be in place prior to restarting jury trials and publicly available. The Operational Guidelines also provided helpful and detailed guidance on the messaging of these plans and how to raise public awareness of them. We received feedback from practitioners in King, Pierce, Snohomish, Spokane, Thurston, and Yakima County Superior Courts. Pierce County is the only county with a published safety plan in place, which has distributed to practitioners as well. No other courts appear to have safety plans in place (and some jurisdictions have had jury trials already begin), nor have there been any efforts to communicate safety measures to practitioners, participants, and the public. We provide the feedback we have received from the other jurisdictions:

- **King County Superior Court:** King County Superior Court informed stakeholders that it would implement a safety plan before restarting jury trials. In giving this assurance the Court affirmed its commitment to the safety of jurors, attorneys, parties, court staff, and judges. It is our understanding that the Court commissioned two UW Public Health professors to assess the best practices, procedures, and policies of safely restarting jury trials and this assessment would inform the development of a safety plan for court operations. However, it appears that jury trials have started without either the UW study or the safety plan being completed and published. This raises serious concerns about the safety of the procedures the Court intends to use.
- **Snohomish County Superior Court:** Snohomish County Superior Court intends to resume jury trials next week. Defense attorneys are unaware of any public health consultations or publicized safety plan.
- **Spokane County Superior Court:** Spokane County Superior Court had its first jury trial this week. Prior to trial beginning Spokane County consulted with the County Health District regarding jury selection and trial. There is not an official public health plan in place. We understand that court administration is further developing procedures.
- **Thurston County Superior Court:** Thurston County Superior Court intends to resume jury trials next week, and defense attorneys are unaware of any efforts to develop and publicize a safety plan.
- **Yakima County Superior Court:** While Yakima County has not yet resumed jury trials, practitioners have advised (and we have observed via live video feed) that judges are

not adhering to public health mandates regarding the wearing of masks. Defense attorneys are concerned that the failure to abide by these requirements may lead to challenges in enforcing them with jurors who may not want to follow those guidelines, and may limit the reach of any safety plan that may be developed by that court.

We respectfully ask that the Court clarify that public health plans shall be in place prior to commencing jury trials and made readily available to the public. We believe it is critical that all persons required to attend court have access to this information prior to entering court so that they have confidence that the courts as an institution continues to prioritize public health.

Finally, we continue to receive feedback from attorneys regarding their inability to safely and confidentially communicate with clients while in court. We plan to summarize and share this information with the BJA Court Recovery Taskforce through our representatives, and look forward to collaborating with judges and other stakeholders to address these issues. We understand that there will not be a “one size fits all” approach that the Court can adopt because there will be space and technology issues unique to each courtroom, but will propose to the Taskforce that courts have a range of options available to ensure safe and confidential communication. This could include the use of tablets, phones with texting capabilities, and/or headsets to ensure safe and confidential communication. While we hope to further address these issues through the BJA Court Recovery Taskforce, please be aware that today, in courts across Washington, defendants and their counsel are being forced to assume the risk of exposure to each other in order to preserve the right to counsel and all it entails. The safety plan issue, however, is one that, from our view, requires an urgent and uniform response because jury selection is actively underway, or will shortly be underway, in multiple jurisdictions, and because the public needs this information prior to entering courthouses to serve on juries.

We truly appreciate how receptive the Court has been to receiving feedback from the criminal defense bar, how seriously the Court has taken all of our concerns, and how promptly the Court has responded to them. Thank you for your review of our letter, and should the Court desire additional information, please do not hesitate to request it.

Sincerely,

Christie Hedman, WDA Executive Director  
Amy Hirota, WACDL Executive Director