

A letter to the citizens of Kitsap County from Kitsap County Superior Court and Kitsap County District Court.

During the COVID-19 pandemic, judges across the country have been asking the same question: How can we safely provide access to justice? Like your place of employment or favorite place to eat, the Kitsap County Courthouse was not designed for a pandemic. Social distancing is difficult. A courtroom intended to hold 60 people can only seat up to 20 with proper social distancing. During the pandemic, the Kitsap County Courthouse has remained open by utilizing remote technology. Using Zoom, lawyers and litigants have been able to obtain judicial decisions without having to physically appear at the Courthouse. For those that are not able to access remote technology or need immediate emergency relief, the Courthouse has been open. These practices will continue.

In response to the COVID-19 pandemic, Chief Justice Debra Stephens of the Washington State Supreme Court ordered all jury trials in Washington suspended until July 6<sup>th</sup>. As we prepare to begin jury trials in July, you may receive a summons to appear for jury duty. We hope you will answer the call. If you do, it is our obligation to ensure that the Kitsap County Courthouse is a safe place to serve.

A jury trial workgroup was established in May consisting of lawyers, clerks, court staff and judges. The mission of the workgroup was to anticipate the problems we may face with jury trials and identify solutions. We will take several steps to protect you and your fellow jurors:

- Smaller groups of jurors will be brought in at one time to ensure safe and socially distant seating in the courtroom (this will also reduce foot traffic in the Courthouse);
- Jurors reluctant to serve for safety reasons may have their service postponed;
- We are requiring masks be worn in the courtroom, except for those who are actively participating in the trial. While jurors are encouraged to bring their own masks, the court will provide a mask for those that do not have one. [The Centers for Disease Control advises: “It is critical to emphasize that maintaining 6-foot social distancing remains important to slowing the spread of the virus. CDC is additionally advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.”];
- Hand sanitizer will be readily available;
- Public water fountains are closed in the Courthouse. Jurors may bring their own water. The court will also provide water;

- Increased cleaning and sanitization will occur in our courtrooms, including during breaks;
- Jury deliberations will occur in courtrooms and not in separate jury deliberation rooms. Our jury deliberation rooms are too small to allow for safe social distancing.

As we reengage jury trials, current events remind us that diverse jury panels are a critical component of justice. The Centers for Disease Control has found that minority communities are disproportionately affected by COVID-19. As Andrew Ferguson noted in his book, **Why Jury Duty Matters**, process alone is insufficient to guarantee justice. Ferguson correctly states that our legal process upheld slavery, segregation laws, and the internment of Japanese Americans in World War II. To the victims of those atrocities, justice was a fiction. Judges condoned laws that were deliberately and blatantly racist.

You have a Constitutional right to serve as a juror. In *Powers v. Ohio*, the United States Supreme Court stated, “We hold that the Equal Protection Clause prohibits a prosecutor from using the State’s peremptory challenge to exclude otherwise qualified and unbiased persons from the petit jury solely by the reason of their race, a practice that forecloses a significant opportunity to participate in civic life. An individual juror does not have a right to sit on any particular petit jury, but he or she does possess the right not to be excluded from one on account of race.” The prohibition of exclusion of jury service based on race applies to all participants, not just prosecutors.

In 2018, the Washington State Supreme Court enacted General Rule 37 with the stated purpose “to eliminate the unfair exclusion of potential jurors based on race or ethnicity.” This rule provides specific and presumptively invalid reasons for striking a potential juror. The rule provides enhanced protections to ensure that individuals are not improperly stricken from the jury based upon race.

The Washington State Supreme Court recently issued an open letter regarding the current events that we are all watching closely. You can read the statement on the Supreme Court’s website:

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

An excerpt of the letter from the Washington State Supreme Court states: “As judges, we must recognize the role we have played in devaluing black lives. This very court once held that a cemetery could lawfully deny grieving black parents the

right to bury their infant. We cannot undo this wrong - but we can recognize our ability to do better in the future. We can develop a greater awareness of our own conscious and unconscious biases in order to make just decisions in individual cases, and we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole.” We wholeheartedly agree with our Supreme Court Justices.

We understand that many of you who receive a jury summons will be unable to serve. The pandemic has caused both a health and economic crisis. Taking time off of work to serve as a juror now or in the immediate future may create a financial hardship for you. This is understood. But to those of you who can serve and are looking for a way to participate in the justice system in the most impactful way, we welcome you to the Kitsap County Courthouse. We are committed to making your experience as a juror safe. In return, you have the opportunity to achieve justice for everyone in our community.

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