

IN THE MUNICIPAL COURT FOR THE CITY OF BLACK DIAMOND
COUNTY OF KING, STATE OF WASHINGTON

IN RE:) ADMINISTRATIVE ORDER
COURT OPERATIONS UNDER THE) NO. 20-03
EXIGENT CIRCUMSTANCES CREATED)
BY COVID 19) Re-Scheduling of Hearings and
_____) Other Changes to Court Operations

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and

WHEREAS, The Chief Justice issued an emergency order in response to the public health emergency that affects the operations of trial courts in Washington State on March 4, 2020; and

WHEREAS, the Washington State Supreme Court adopted Order No. 25700-B-602, granting emergency authority to this court to adopt, modify, and suspend court rules and orders, and to take further actions concerning court operations, as warranted to address the current state of emergency;

WHEREAS, on March 11, 2020 the Governor imposed additional restrictions prohibiting gatherings of more than 250 people within King, Snohomish, and Pierce County due to the danger of continued spread of the virus and the increasing danger the virus presents to the health care system in the region;

WHEREAS, on March 11, 2020, Dr. Jeff Duchin, Health Officer for Public Health – Seattle and King County, issued a parallel local Health Officer Order for King County to prohibit gatherings of fewer than 250 people unless measures are taken by event organizers to minimize risk;

WHEREAS on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, on March 18, 2020, the Washington State Supreme Court adopted Order No. 25700-B-607 in the matter of statewide response by the Washington State courts to the Covid-19 public health emergency;

WHEREAS, during this state of emergency, the Centers for Disease Control and Prevention and the Washington State Department of Health have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces; and

WHEREAS, consistent with these recommendations, Governor Inslee issued and extended a “Stay Home, Stay Healthy” order directing non-essential businesses to close, banning public gatherings, and requiring Washingtonians to stay home except to pursue essential activities; and

WHEREAS, on April 13, 2020, the Washington State Supreme Court adopted Order No. 25700-B-615 in the matter of statewide response by the Washington State courts to the Covid-19 public health emergency noting that the coordinated response from Washington courts to prevent the further spread of COVID-19 must be continued beyond the time frames in the March 18, 2020 order, while allowing courts to operate effectively and maintain effective and equitable access to justice; and

WHEREAS, on April 29, 2020, the Washington State Supreme Court adopted Order No. 25700-B-618 in the matter of statewide response by the Washington State courts to the Covid-19 public health emergency noting that it may be necessary to continue the coordinated response from Washington courts to prevent the further spread of COVID-19 beyond the time frames in the April 23, 2020 order, while allowing courts to operate effectively and maintain effective and equitable access to justice; and

WHEREAS, on May 29, 2020, the Washington State Supreme Court adopted Order No. 25700-B-626 in the matter of statewide response by the Washington State courts to the Covid-19 public health emergency noting that it may be necessary to continue the coordinated response from Washington courts to prevent the further spread of Covid-19 beyond the time frames in the April 29, 2020 order, while allowing courts to operate effectively and maintain effective and equitable access to justice; and

WHEREAS, the Supreme Court recognized that 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.

WHEREAS this court has the duty, broad authority and inherent discretion to enforce order in the courtroom, protect the safety of all those in the courtroom, remove distracting spectators or litigants, and to reasonable regulate access to courts. RCW 2.28.010. RCW 7.21, See, *Bly v. Henry*, 28 Wn.App. 469 (1980)(citing, *Sandstrom v. State*, 309 So.2d 17, 22 (Fla.App.1975); *Friedman v. District Court*, 611 P.2d 77 (Alaska 1980)), *State v. Elwood*, 193 Wash. 514 (1938), *State v. Lormer*, 172 Wn.2d 85 (2011), *State v Giordano*, 57 Wn.App. 74 (1990), *State v. Hartzog*, 26 Wn.App. 576 (1980). *State v. Basford*, 1 Wn.App. 576 (1970). *State v. S.H.*, 102 Wn.App 468 (2000), *State v. Caffrey*, 70 Wn.2d 120 (1966).

NOW, THEREFORE, pursuant to the authority granted by the Supreme Court and to administer justice and to ensure the safety of court personnel, litigants, and the public,

IT IS HEREBY ORDERED:

1. The Black Diamond Municipal Court adopts all provisions of the Supreme Court's Order No. 25700-B-626 in the matter of statewide response by the Washington state courts to the Covid-19 public health emergency dated May 29, 2020 that are relevant to a municipal court, including, but not limited to, the provision providing that out of custody criminal matters may be continued until after June 1, 2020.
2. To the extent that this Administrative Order adopts measures to protect

health and safety that are more restrictive than the Supreme Court's Order No. 25700-B- 626, including extensions of time frames under the court rules, this Administrative Order controls. See Supreme Court Order 25700-B-626.

IT IS FURTHER HEREBY ORDERED that to protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Court, and the public at large:

1. The Black Diamond Municipal Court remains open. However, to protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the court and the public at large, the doors are locked and the front window is closed. Staff in the court clerk's office are available by telephone, and both mail and email will be received.

Mailing Address: PO Box 599, Black Diamond, WA 98010

Phone: 360-851-4490

Email: court@blackdiamondwa.gov

2. During the public health emergency related to the Covid-19 pandemic the court anticipates making daily findings under *State v. Bone-Club*, 128 Wash.2d 254, 906 P.2d 325 (1995) addressing whether there is a compelling interest requiring that hearings be held by way of a virtual courtroom and/or limiting physical access to the courtroom and limiting public interaction with the parties and court staff. Anyone who objects to the use of a virtual courtroom may contact the court and request access to the hearing for the purpose of stating their objection, provided that permission to address the Court is requested and granted.
3. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Court and the public at large, the court will continue to hold calendars for persons detained in jail virtually utilizing Zoom, which will be livestreamed on YouTube. The YouTube channel is accessible on the court's website. Other persons who are interested in participating in the hearing will also be given access to the video courtroom. However, video hearings are courtrooms and persons participating must remain quiet unless called upon to speak. Recording of the livestream broadcast is prohibited without prior approval of the court.
4. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Court, and the public at large, the Court will be conducting hearings for persons not detained in jail virtually utilizing Zoom, which will be livestreamed on YouTube. The YouTube channel is accessible on the Court's website. Defendants will be mailed notice advising them how to access the video courtroom, which can be done by utilizing an electronic device, including a computer, tablet or cell phone, or by calling in by telephone. Failure to participate in a virtual hearing may result in a finding that the defendant has "failed to appear," but will not provide a basis for an arrest warrant. An arrest warrant may, however, be issued for reasons unrelated to the failure to appear including, but not limited to, ongoing

criminal law violations. Where a warrant is not issued, persons who fail to appear will reset to a date when we are able to schedule an in-person court date. Other persons who are interested in participating in the hearing will also be given access to the video courtroom. However, video hearings are courtrooms and persons participating must remain quiet unless called upon to speak. Recording the livestream broadcast is prohibited without prior approval of the court.

5. It is anticipated that beginning July 8, 2020, persons with court hearings and/or other business with the court who are unable to utilize the video courtroom and/or for some other reason need to appear in person at the courthouse will be able to appear in-person at the courthouse. To protect the health and safety of these persons, the Black Diamond Municipal Court staff, other persons having business with the Court and the public at large, any person who enters the Black Diamond Municipal Court building will be required to comply with the following court rules which will be mailed with notice of the hearing and will be displayed on the courthouse doors:

All persons entering the courthouse must observe the following social distancing and hygiene measures:

- If you feel ill, do not enter the courthouse - contact your attorney and/or court staff at the contact information above.
- Absent extraordinary circumstances, a maximum of three defendants, two defense attorneys and two spectators and/or witnesses will be permitted in the courtroom at a time. Other individuals must wait outside and will be called in when space allows.
- To maintain social distancing protocols, spectators will not be allowed in the courthouse without pre-approval of the judge. Spectators may observe the proceedings by way of the virtual courtroom. If you are a spectator and would like to enter the courthouse for the purpose of observing court proceedings, please contact the court clerk so that we can assist you in presenting your request to the judge. Spectators may also observe the proceedings by way of the virtual courtroom.
- Keep 6 feet from others while either inside the courthouse, or in line to enter the courthouse. Observe all social distancing markers.
- All persons entering the courthouse must wear a protective mask or other face covering. Persons who do not have a face covering should contact their attorney to reschedule their court date so that they can appear with a face covering. Persons without an attorney should contact the court. The first occurrence of a defendant having to reschedule a court date as a result of a lack of a face covering will result in a finding that the defendant has “failed to appear,” but will not be the basis for the issuance of a warrant. An arrest warrant may, however, be issued for reasons unrelated to the failure to appear including, but not limited to,

ongoing criminal law violations. Speedy trial will recommence at the defendant's next court date, except to the extent it is extended by this Administrative Order and/or Supreme Court Order 25700-B-626.

- All persons entering the courthouse will be required to use hand sanitizer.
 - All persons entering the courthouse may be required to have their temperature taken utilizing the court's non-contact infrared thermometer.
 - If you have business with the clerk's office, please proceed directly to the clerk's window and leave immediately upon completing any business.
 - Persons entering the courtroom must be seated unless instructed otherwise. Courtroom chairs are not to be moved.
 - Do not approach the in-court clerk's desk without receiving permission from the judge.
 - Court staff may direct persons to comply with social distancing and hygiene measures and persons entering the courthouse will be required to comply with any such directives. Any failure to comply with a direction from court staff will be grounds for removal from the courthouse and may result in a finding that a defendant has failed to appear and in the issuance of a bench warrant.
6. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, absent a showing of good cause any emergency non-testimonial motions, including but not limited to motions to quash bench warrants, will be heard by email. Where the court determines that an additional hearing is necessary and/or required and/or where the court authorizes a hearing pursuant to a party's request the court will schedule a hearing and may require that it be held using the virtual courtroom.

Motions should be filed by submitting an email indicating the requested relief at: court@blackdiamondwa.gov. The defendant's name and cause number should be included in the subject line of the email. The email must also establish that opposing counsel has either agreed to the motion, or has been provided notice of the motion. Notice to the Prosecuting Attorney by email sent to igunderson@blackdiamondwa.gov will be considered sufficient notice. Notice to by email sent to O'Brien, Barton & Hopkins, PLLP at matt@obrienlawfirm.net will be considered sufficient notice. For any other attorney it will be necessary for the moving party to establish proper service.

Where a defendant files a motion or request by mail the court clerk will forward a copy of the written motion by email to the prosecutor and, where appropriate, counsel of record. The court will consider any such request on the date following the date on

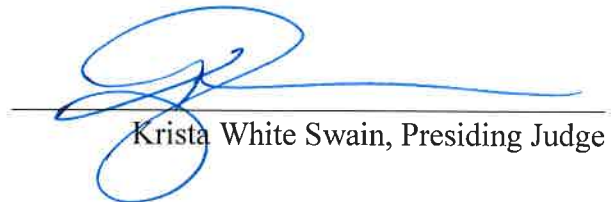
which the clerk forwarded the email, in the same manner as a motion by email as set forth above.

7. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, defendants will be allowed to apply for the public defender by email and/or phone by contacting the Black Diamond Municipal Court at 360-851-4490 or court@blackdiamondwa.gov. Where they are appointed, the public defender is encouraged to waive arraignment whenever authorized and appropriate, thus allowing cases to be set directly to pretrial.
8. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, this Administrative Order suspends the requirement under CrRLJ 4.1(a)(2) that defendants “shall be arraigned not later than 14 days after that appearance which next follows the filing of the complaint or citation and notice, if the defendant is not detained in such jail or subject to such conditions of release.”
9. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, continuances pursuant to this Administrative Order of criminal cases in pre-trial status shall be “excluded periods” under CrRLJ 3.3(e)(8)[unavoidable or unforeseen circumstances] in computing the time for trial and/or this Administrative Order suspends the right to a speedy trial under CrRLJ 3.3(b).
10. During the Covid-19 outbreak, obtaining signatures on court pleadings and documents places significant burdens on defendants, defense attorneys, prosecutors and other persons having business with the court. Therefore, to protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, by this Administrative Order the court finds that an electronic signature shall be deemed a reliable means for authentication of documents and shall have the same force and effect as an original signature to a paper copy of any document so signed. An electronic signature shall include, but is not limited to, (1) an electronic image of a person’s handwritten signature, (2) circumstances where a person during a recorded open court session verbally authorizes that his or her signature be placed on a document by another person, or (3) any other process logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to “/s/ [name of signatory]”, including circumstances where the signature is placed by the attorney at the request or direction of his or her client. This Administrative Order specifically suspends the requirement under CrRLJ 3.3(c)(2)(i) to the extent that it requires that a written waiver of the right to a speedy trial be signed by the defendant and authorizes the use of an electronic signature.
11. Notwithstanding paragraph 10, above, guilty pleas will only be accepted with a defendant’s original signature to a paper copy, or an electronic image of a defendant’s signature utilizing a facsimile, a PDF or some other similar process that the court determines to be acceptable.

12. To protect the health and safety of the Black Diamond Municipal Court staff, persons having business with the Black Diamond Municipal Court and the public at large, this Administrative Order suspends the requirement under IRLJ 2.6(a)(1) that infraction hearings “be scheduled for not less than 14 days from the date the written notice of hearing is sent by the court, nor more than 120 days from the date of the notice of infraction or the date a default judgment is set aside.”
13. No part of this order suspends the defendant’s right to a public trial, or the general right of the public to be present at court proceedings under the constitutional provisions that require the open administration of justice.
14. The court will re-assess the terms of this administrative order bi-weekly, beginning June 24 2020.
15. The court may re-assess the need for other protective measures on an as needed basis.
16. This order replaces the prior court order dated April 30, 2020.

For all hearings currently pending and for hearings on new cases filed during the pendency of this order that are delayed by effect of this order, this administrative order suspends the right to a hearing within any specific time period required by any court rule AND/OR any delay/continuance shall constitute an excluded period for purposes of Speedy Trial, CrRLJ 3.3, CrRLJ 4.1, IRLJ 2.2, IRLJ 2.4, IRLJ 2.6, and any other applicable court rule.

Dated June 10, 2020



Krista White Swain, Presiding Judge