

Opinion

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JUDGES — SUPERIOR COURTS — COMMISSIONERS — COURT CLERK — STATUTORY AUTHORITY — Authority Of Visiting Superior Court Judges To Preside Over Court Hearings In Visiting Judge's Home County, Appear Remotely, And Delegate Authority To Court Commissioners

1. **With limited exceptions, including the consent of the parties to hold court elsewhere, a visiting superior court judge should hold a hearing in the county in which the judge is visiting.**
2. **This rule applies to single- and multi-county districts.**
3. **The superior court clerk for the visited county is responsible for keeping a record of the proceedings over which a visiting judge presides.**
4. **A visiting judge may delegate authority to an appointed court commissioner in the county in which the judge is visiting. However, the authority to appoint a regular or pro tem court commissioner is generally reserved to the presiding judge of the visited county.**

March 7, 2024

The Honorable Amy S. Vira
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Cite As:
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Dear Prosecutor Vira:

By letter previously acknowledged, you have requested our opinion on the following questions, which we paraphrase as follows:

1. **When a visiting superior court judge presides over a court proceeding, must the proceeding be held in the county in which the action originated or in the visiting judge's home county, and may the visiting judge appear remotely?**
2. **Does RCW 2.08.190 authorize a visiting judge presiding over a single-county judicial district to hold a hearing in their home county?**

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3. **When a visiting judge holds a hearing in their home county, is the superior court clerk for the home county or the superior court clerk for the visiting judge's home county responsible for keeping record of the proceedings held?**
4. **When a visiting judge is assigned, may the visiting judge delegate authority to an appointed court commissioner of the visited county? Does a visiting judge have authority to independently appoint a court commissioner to preside in the county in which the judge is visiting?**

BRIEF ANSWERS

1. Generally, a visiting judge should hold a proceeding in the county in which they are visiting. However, there are some exceptions. Parties in a civil action may consent to a visiting judge holding a court proceeding in the visiting judge's home county, and a criminal defendant can waive their right to a jury comprised of citizens of the county in which the offense is alleged to have been committed. In addition, a visiting judge may appear remotely during certain court proceedings.

2. Yes, with the parties' consent. RCW 2.08.190 recognizes that any visiting judge may hear a matter in their home county with the parties' consent; RCW 2.08.190's language shows that the legislature intended for the statute to apply to all judicial districts in the state, including single-county judicial districts.

3. The superior court clerk for the visited county is responsible for keeping a record of the proceedings over which a visiting judge presides. By statute, a superior court clerk is required to keep a record of the proceedings for only the court or courts in which they are a clerk.

4. A visiting judge may delegate authority to an appointed court commissioner of the county in which the judge is visiting. A visiting judge may not independently appoint a regular court commissioner or a temporary pro tem court commissioner for the county in which the judge is visiting unless the visiting judge is also designated as the presiding judge pro tem for the visited county.

BACKGROUND

The Washington Constitution establishes a superior court for each judicial district in the state. Const. art. IV, § 5. The legislature designates the number of superior court judges for each judicial district. Const. art. IV, § 5; RCW 2.08.061-.065. Some judicial districts in the state contain multiple counties while others, like San Juan County, are made up of only one county. *See* RCW 2.08.061-.065. For San Juan County, the legislature has designated one superior court judge. RCW 2.08.065.

Under certain circumstances, a superior court judge may preside over a superior court proceeding in another county. *State ex rel. New Washington Oyster Co. v. Meakim*, 34 Wn.2d 131, 136, 208 P.2d 628 (1949). A superior court judge presiding in another county's court is known as a "visiting judge." See RCW 2.08.140, .150. Visiting judges frequently preside over superior courts in rural and less populated counties. *Grabicki v. Bays*, 193 Wn. App. 104, 110, 370 P.3d 60 (2016).

The Washington Constitution provides two ways in which a visiting judge may be assigned. Const. art. IV, §§ 5, 7; RCW 2.08.140; *Hindman v. Boyd*, 42 Wash. 17, 27, 84 P. 609 (1906). First, the governor can direct a superior court judge to hold court in "any county other than that for which [they have] been elected[.]" Const. art. IV, § 5; see RCW 2.08.140. Second, a resident superior court judge may request that the judge of another superior court preside in the resident judge's county. Const. art. IV, § 7; see RCW 2.08.150. A visiting judge's decision has the same effect as a decision rendered by a resident superior court judge. RCW 2.08.160.

ANALYSIS

1. When a visiting superior court judge presides over a court proceeding, must the proceeding be held in the county in which the action originated or in the visiting judge's home county, and may the visiting judge appear remotely?

Your first question calls for our construction of the constitutional provisions and statutes governing visiting judges, Const. art. IV, §§ 5, 7; RCW 2.08.140, .150. Where possible, courts construe constitutional and statutory provisions from the plain language of their text and related provisions. See *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 403, 377 P.3d 199 (2016). We conclude that the applicable constitutional and statutory provisions ordinarily call for the visiting judge to travel to the county being visited, but that some exceptions exist and a visiting judge may appear remotely during certain court proceedings.

The applicable constitutional provisions speak in terms of the visiting judge "hold[ing] court in any county other than that for which he has been elected[.]" Const. art. IV, § 5; see also Const. art. IV, § 7 ("The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof[.]"). RCW 2.08.150 provides more explicitly that a visiting judge is empowered to "hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session" Where a visiting judge is present at the direction of the governor, RCW 2.08.140 requires the judge to hold court "at the seat of judicial business . . . and in such quarters as the county commissioners of said county may provide for the holding of such session." Under the plain language of RCW 2.08.140 and .150, a visiting judge presiding over a court proceeding in another county is authorized to hold the proceeding in the county in which they are visiting. In other words, the constitution and statute harmoniously presume that a visiting judge will hold proceedings in the county they are visiting.

Other statutes within RCW 2.08 bolster this conclusion. For example, RCW 2.08.030, which governs the location of a county's superior court, states that "superior courts . . . shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated . . ." *See also* CR 77(f). In requiring that superior courts be located at the county seat, the legislature intended "to provide a central, convenient location for county business, which is readily known and available to all inhabitants of the county." *Thurston County ex rel. Bd. of Cnty. Comm'rs v. City of Olympia*, 151 Wn.2d 171, 179, 86 P.3d 151 (2004). In addition, RCW 2.08.170 allows visiting judges to ask for reimbursement for lodging, travel, and dining expenses from the county they visited. Read together, RCW 2.08.030 and .170 further demonstrate that a visiting judge generally must travel to the superior court in which they are visiting.

However, both statutes and court rules provide some exceptions to RCW 2.08.140's and .150's expectation that visiting judges will hold proceedings in the county in which they are visiting. First, parties in a civil action may consent to a visiting judge holding a court proceeding in the visiting judge's home county, rather than the county in which the action originated. Under Civil Rule 77(j), hearings may "be conducted outside the county in which the cause or proceedings are pending with[] the consent of all parties affected thereby." *See also* RCW 2.08.190. And similarly, in the criminal context, a defendant can waive their right to a trial by a jury comprised of citizens of the county in which the offense is alleged to have been committed. RCW 4.12.040(2). A visiting judge may properly proceed elsewhere under these circumstances.

Further, a visiting judge may appear remotely during certain court proceedings. In response to the COVID-19 pandemic, the Washington Supreme Court issued a number of orders to ensure that court operations could safely continue; many of the Court's orders remain in effect today. Order Regarding Court Operations After October 31, 2022, *In re Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-697, at 1-2 (Wash. Oct. 27, 2022). Of relevance here, the Court granted superior courts "authority to conduct all proceedings in civil matters, including civil jury trials and non-jury trials, by remote means . . ." *Id.* at 2. In criminal and juvenile offender matters, courts have authority to conduct nonjury trials either remotely or in person and "should continue to hear out of custody criminal and juvenile offender matters" remotely. *Id.* at 3 (emphasis omitted). Criminal jury trials, on the other hand, must be heard in person. *See id.* at 5.¹ The Court further clarified that "[f]or purposes of any law specifying the location of court proceedings, whenever remote proceedings are authorized, they are deemed to take place in the courthouse where the matter is pending or venue exists regardless of where the judge, parties, witnesses, or others participating remotely are located." *Id.* at 6. Although these provisions were first put in effect in response to COVID-19, the Court has extended them indefinitely, until further order of the Court. *Id.* at 2.

¹ Courts may remotely facilitate only jury selection and voir dire for criminal jury trials. Order, *In re Statewide Response*, No. 25700-B-697, at 5-6.

As to the issuance of rulings, a visiting judge may decide or rule upon a case they heard as a visiting judge while in any county within the state, including their home county. RCW 2.08.200. In a civil proceeding, a visiting judge may also consider an issue on the pleadings when they have previously presided over the matter in the superior court in which they visited. CR 77(c)(8)(B); *see In re Est. of Shaughnessy*, 104 Wn.2d 89, 94, 702 P.2d 132 (1985) (holding that a visiting judge did not err in holding an attorney fee hearing in their home county when the hearing was ancillary to the will contest heard in the county in which they visited). When a visiting judge issues a ruling or decision while in a county other than the county in which they presided as a visiting judge, they must immediately file their ruling or decision with the superior court clerk of the visited county. RCW 2.08.200.

In sum, our state's constitution, statutes, and the Washington Supreme Court's emergency order contemplate that a visiting judge will ordinarily travel to the county being visited. As discussed in more detail above and below, however, there are some exceptions, such as when all parties consent to a proceeding being heard in the visiting judge's home county. Further, a visiting judge may appear remotely during certain court proceedings.

2. Does RCW 2.08.190 authorize a visiting judge presiding over a superior court in a single-county judicial district to hold a hearing in their home county?

RCW 2.08.190 allows a visiting judge to hear a matter outside the county in which a case is pending with the parties' consent, regardless of whether the visited county is within a single- or multi-county judicial district.

We first note that RCW 2.08.030 appears to specify a presumption that court hearings will be held in the county seat of the county in which a matter is pending; or, with approval by the chief justice of the Washington Supreme Court and of the governing body of the county, other places within the county:

The superior courts are courts of record, and shall be always open, except on nonjudicial days. They shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof.

But, as you note, RCW 2.08.190 also speaks to locations where court business may be transacted.

RCW 2.08.190 provides that any superior court judge may perform certain actions, like signing orders and deciding matters already submitted, in any county within his or her district, regardless of whether the underlying matter is also pending within that district. The statute states:

Any judge of the superior court of the state of Washington shall have power, in any county within his or her district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his or her district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his or her district; (3) to decide and rule upon all motions, demurrers, issues of fact, or other matters that may have been submitted to him or her in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county[.]

RCW 2.08.190. That same statute specifies in a proviso, however, that it does not authorize any judge to *hear* any matter outside the county in which the case is pending. RCW 2.08.190 (“PROVIDED, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties.”). But that proviso itself contains an important exception: “except by consent of the parties.” Thus, although the legislature clarified in its proviso that RCW 2.08.190 should not be read to authorize court hearings outside of the counties in which cases are pending, it carved out from that proviso situations where the parties consent. Reading this provision as a whole and in context with related statutes, we conclude that the legislature intended to allow for judges to hear matters outside the county in which the case is pending where the parties consent.

To the extent RCW 2.08.030 can be read as preventing a judge from hearing a matter outside of the county in which the matter is pending, we conclude that a harmonious reading of RCW 2.08.030 and .190 shows that although the legislature intended for judges to ordinarily hear matters in the county in which the matter originated, the legislature also intended to permit judges to hear matters outside that county with the parties’ consent. “[W]here statutes relate to the same subject matter, [courts] must read them as a unified whole to the end that a harmonious statutory scheme evolves which maintains the integrity of the respective statutes.” *Anderson v. Dep’t of Corrs.*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007). Allowing judges to hear matters outside of the county in which the matter originated with party consent affords meaning to both statutes.

We conclude, moreover, that RCW 2.08.190 is not limited to only multi-county judicial districts. RCW 2.08.190’s plain language shows that the legislature intended it to apply to all judicial districts in the state. By its terms, RCW 2.08.190 applies to “[a]ny judge of the superior court,” not merely judges in multi-county judicial districts. Nothing in the proviso language limiting hearings to the county in which the case is pending suggests it is intended to apply only to multi-county districts. Finally, nothing in the exception from the proviso language, recognizing that hearings may be held outside the county if all parties consent, indicates application only to multi-county districts. Accordingly, we conclude that the legislature intended to permit all superior court judges, including visiting judges, to hear a matter outside of the county in which the proceeding is pending with the parties’ consent regardless of whether that county is within a single- or multi-county judicial district.

Other statutes within RCW 2.08 further support an interpretation that the legislature intended for RCW 2.08.190 to apply to all superior court judges, and not solely judges within multi-county judicial districts, and therefore intended to permit all superior court judges to hear matters outside the county in which a proceeding is pending when all parties consent. For example, under RCW 2.08.200, any superior court judge who has heard a legal matter in a county outside of their judicial district may decide and rule upon that matter while located in any county within the state. Like RCW 2.08.190, RCW 2.08.200 refers to “[a]ny judge of the superior court[.]” Consequently, reading the statute’s use of the term “district” as applying to only multi-county judicial districts would produce confusing and contradictory results.

Moreover, the court of appeals has applied RCW 2.08.190 to single-county judicial districts. In *Toney*, the court of appeals applied RCW 2.08.190 in determining that a visiting judge from Cowlitz County, a single-county judicial district, visiting in Lewis County, another single-county judicial district, was not authorized to hear a court proceeding in their home county without first obtaining the parties’ consent. *Toney v. Lewis County*, No. 76030-1-I, 2017 WL 398701, at *2 (Wash. Ct. App. Jan. 30, 2017) (unpublished);² see RCW 2.08.062, .064.

In sum, the plain language of RCW 2.08.190 and the statutory scheme as a whole recognize a party-consent exception to the general rule that court hearings should occur in the county in which a matter originated. And this exception is not limited to multi-county judicial districts. Instead, the statute applies to all judicial districts, including single-county judicial districts like San Juan County. Accordingly, a visiting judge may hold a court proceeding in their home county only when the parties consent to the hearing taking place in the visiting judge’s home county, regardless of whether the county in which the proceeding is pending is within a single- or multi-county judicial district.

3. When a visiting judge holds a hearing in their home county, is the superior court clerk for the home county or the superior court clerk for the visiting judge’s home county responsible for keeping record of the proceedings held?

Your third question asks whether the superior court clerk for the visiting judge’s home county or the county being visited is responsible for keeping a record of the proceedings. Consistent with our conclusion that the visited county remains the county in which the case is pending, we conclude that the superior court clerk of the visited county is responsible for keeping the court record.

² An appellate court may give an unpublished opinion whatever persuasive value the court deems appropriate. GR 14.1(a) (“[U]npublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.”).

The duties of a superior court clerk are defined by statute and court rule. *Burrowes v. Killian*, 195 Wn.2d 350, 358, 459 P.3d 1082 (2020). Among other things, a superior court clerk is statutorily required to keep: “[a] record in which he or she shall enter all appearances and the time of filing all pleadings in any cause”; “[a] docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session”; and “[a] record in which he or she shall record the daily proceedings of the court[.]” RCW 36.23.030(1), (2), (4). More specifically, “for each of the courts in which he or she is a clerk,” court clerks are statutorily required to keep a record of the court’s proceedings and to “attend, either in person or electronically if the proceeding is virtual, the court of which he or she is clerk[.]” RCW 2.32.050(1) (emphasis added), (2), (5).

By extending clerks’ duties only to the courts in which they are a clerk, the statute indicates that the visited court’s clerk, and not the visiting judge’s home court’s clerk, is responsible for keeping a record of the proceedings. In addition, while a visiting judge may issue a ruling or decision from any location, RCW 2.08.200 requires that the judge immediately file their ruling or decision with the superior court clerk of the visited county. Thus, it is the superior court clerk for the visited county’s responsibility to keep the record.

4. When a visiting judge is assigned, may the visiting judge delegate authority to an appointed court commissioner of the visited county? Does a visiting judge have authority to independently appoint a court commissioner to preside in the county in which the judge is visiting?

In response to your final question, we conclude that a visiting judge may delegate authority to an appointed court commissioner of the visited county to the same extent that a sitting judge of that county may do so. A visiting judge does not, however, have authority to independently appoint an individual to serve as either a regular or temporary pro tem court commissioner for the visited court, unless the visiting judge is also designated as the presiding judge pro tem for the county in which the judge is visiting.

Trial courts have inherent authority to manage their calendars and the proceedings before them. *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012). Superior courts may appoint one or more court commissioners for that judicial district and “appoint pro tem. commissioners to serve in the temporary absence of regularly appointed commissioners.” *Ordell v. Gaddis*, 99 Wn.2d 409, 411, 662 P.2d 49 (1983); see Const. art. IV, § 23; RCW 2.24.010(1). An appointed commissioner may “hold the office during the pleasure of the judges making the appointment.” RCW 2.24.010(1). A court commissioner appointed by the superior court may have authority to act in any court proceedings not requiring a trial by jury, subject to revision by a superior court judge. Const. art. IV, § 23; *State v. Goss*, 78 Wn. App. 58, 60, 895 P.2d 861 (1995); RCW 2.24.040.

As previously described, once a visiting judge is properly designated, they have the same authority that resident judges have to hear and decide cases in the visited county. Thus, we conclude that if a resident judge may delegate authority to hear and decide a case (subject to revision by a superior court judge) to a court commissioner consistent with court rules and any other controlling authority, so may a visiting judge.

We conclude, however, that a visiting judge does not have authority to independently appoint a court commissioner for the visited court unless the visiting judge is also designated as the presiding judge pro tem for the visited county. In reaching this conclusion, we look to both GR 29 and RCW 2.24.010. Those authorities both suggest that it is the presiding judge of each superior court that is authorized to make appointments of regular and pro tem court commissioners.

Each judicial district must elect a presiding judge, as well as an assistant presiding judge who will serve as the acting presiding judge during the absence of or at the request of the elected presiding judge. GR 29(a)(1). In judicial districts with only one judge, like San Juan County, “that judge shall serve as the presiding judge for the judge’s term of office, and shall predesignate and prepare a presiding judge pro tem to fulfill presiding judge duties in the case of illness, incapacity, resignation, death, or unavailability of the judge.” GR 29(b); *see* RCW 2.56.040 (providing that the chief justice of the Washington Supreme Court may appoint a presiding judge pro tem in certain circumstances).

A presiding judge is entrusted with specific duties; they are responsible for “leading the management and administration of the court’s business, recommending policies and procedures that improve the court’s effectiveness, and allocating resources in a way that maximizes the court’s ability to resolve disputes fairly and expeditiously.” GR 29(e). While a presiding judge may delegate ministerial duties to court employees, the presiding judge also performs “significant and nondelegable administrative, budgetary, and personnel responsibilities,” which include the supervision and hiring of all court personnel and determining the qualifications of pro tem court commissioners. GR 29(b); *see* GR 29(f), (f)(5)(b), (f)(12). More specifically, only “the judges of the superior court having jurisdiction therein or a presiding judge pro tem who is fulfilling presiding judge duties for a single judge court” may appoint a court commissioner. RCW 2.24.010(1).

The foregoing legal authority provides that a presiding judge, or their designee, has authority to appoint either a regular or temporary pro tem court commissioner.³ Presiding judges

³ The Washington Supreme Court has said that courts have “inherent power to appoint pro tem. commissioners to serve in the temporary absence of regularly appointed commissioners. . . . The power of appointment stems from the inherent right of the court to provide for the efficient administration of justice.” *Ordell*, 99 Wn.2d at 411. However, *Ordell* predates the Washington Supreme Court’s adoption of GR 29. GR 29 now governs court administration and, as explained above, addresses courts’ authority to appoint both regular and pro tem court commissioners.

are responsible for various nondelegable duties, including appointing court commissioners. In judicial districts with only one judge, the judge also serves as the presiding judge and must predesignate a presiding judge pro tem to fulfill their administrative duties in the event they are unavailable. Accordingly, if the presiding judge in a single-judge judicial district is unavailable, only the predesignated presiding judge pro tem may appoint either a regular or temporary pro tem court commissioner in the judge's absence. A visiting judge may not independently appoint a court commissioner unless that individual is also the predesignated presiding judge pro tem for the county in which they are visiting.

In closing, we want to emphasize that Attorney General Opinions answer broad legal questions, and are not intended to resolve any particular case. This opinion expresses no view on what the remedy should be if any of the principles discussed here were not followed in a particular case that already occurred (e.g., if a visiting judge held court in their home county without consent of the parties). Such issues are beyond the scope of this opinion and might turn on a variety of facts specific to the case.

We trust that the foregoing will be useful to you.

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