

JURY TRIAL RESUMPTION PLAN FOR SWAIN COUNTY

WHEREAS, on March 10, 2020 the Governor of the State of North Carolina declared a State of Emergency and has issued a series of executive orders and extensions thereof to coordinate both the response and protective measures he deemed necessary to prevent the spread of COVID-19;

WHEREAS, beginning on March 13, 2020, the Chief Justice of the North Carolina Supreme Court has issued a series of emergency directives for the court system aimed at keeping North Carolina Courts open for essential business while protecting the health and safety of court personnel and the public;

WHEREAS, the Senior Resident Superior Court Judge and the Chief District Court Judge have reviewed and continue to review the Chief Justice's Emergency Directives and the minimum requirements established by the Judicial Branch COVID-19 Task Force for the resumption of jury trials;

WHEREAS, prior to the adoption of this Administrative Order, input from all stakeholders (*as defined by the Task Force and the Chief Justice's directive*) was considered and it was concluded that if it is required that jury trials are to proceed that this local plan is reasonable, follows all current and appropriate standards for the health and safety of all participants and follows all current specific guidelines provided by the Chief Justice;

WHEREAS, in order to implement the requirements of the Chief Justice's Emergency Directives the following Administrative Order is entered as the Jury Trial Resumption Plan for the 30A Judicial District;

**JURY TRIAL RESUMPTION PLAN FOR SWAIN COUNTY
FOR JURY TRIALS BEGINNING AFTER SEPTEMBER 30, 2020**

1. On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, and upon confirmation of readiness after consultation with the Clerk of Superior Court and the COVID-19 coordinator, civil jury trials may be calendared in district and superior court in consultation with the COVID-19 coordinator.
2. Counsel in civil matters are encouraged to consider bench trials or six-person juries to reduce the number of people in the courtroom as well as the amount of time required for jury selection.
3. On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, and upon confirmation of readiness after consultation with the Clerk of Superior Court and the COVID-19 coordinator, criminal jury trials may be calendared for trial subject to the recommendations of the Judicial Branch COVID-19 Task Force set forth in the *NCAOC COVID-19 Field Guidance*.
4. Upon the approval of the calendaring of jury trials as set forth above, at least thirty (30) days prior to any sessions of superior or district court requiring a jury, the Clerk of Superior Court or designee shall prepare a randomized list from the jury list of enough panels for the number of jurors required for the session of court as well as any consideration given for additional jurors to be selected to replace grand jury members who are rotating off. Each panel shall contain a number equal to a historically based estimate of the number of jurors who normally appear, so that a panel does not exceed the maximum capacity.
5. Based upon these historic figures and the seating capacity the panels randomly selected for Swain County panels shall consist of 100 randomly selected jurors.

6. The Clerk will summon two separate randomized panels of jurors for each term of court, unless otherwise instructed by the Senior Resident Superior Court Judge or Chief District Court Judge. Panel 1 shall be scheduled for the first day of the court session, Panel 2 for second day of the court session. The daily panels will be placed on telephone standby and instructed to call after 5:30 p.m. on the day before they are to report for instructions on when to report or call back.
7. The size and number of the jury panels will be modified if the number of jurors seeking COVID-19 based excuses or deferrals for jury service are considerable or the historically based estimates used to establish the panel sizes fail to materialize.
8. Each jury summons shall be accompanied with a copy of the Jury Service During Covid 19 Memorandum attached hereto as Exhibit A.
9. To minimize the number of persons at the courthouse, the in-person hearing of jury excuses by District Court Judges pursuant to N.C.G.S. 9-6(b) is suspended. As set forth in Exhibit A, jurors who feel uncomfortable or concerned about serving due to their health status or other reason related to the COVID-19 pandemic may request a deferral. Jurors written requests may be sent via mail, fax or email and must be received within five (5) business days before the date upon which they are to appear in accordance with N.C.G.S. 9-6.1. All written excuses and other excuses not ruled upon prior to the beginning of the term will be ruled upon by the presiding trial judge.
10. In ruling upon requests for deferrals and excuses, judges shall grant deferrals or excuses during the pandemic liberally taking into account the CDC guidance with regard to high risk individuals, persons who live with or act as caregivers for person who are high risk and to essential workers in the health and service industries and persons who have recently traveled, provided that due consideration is given to fair cross section challenges and diversity. Show causes shall not be issued on failures to appear during the months of October through December. Jurors who fail to appear during these months shall instead be given the opportunity to serve at a term after December 31, 2020.
11. On the Friday before the jury trial session all parties involved in the trial (i.e. prosecutor, defendants counsel, judge, clerk, defendant etc.) shall meet at the location for jury selection and jury trial where they will perform a walkthrough of the lay out for the jury trial session where any concerns may be addressed.
12. Upon arrival for jury service jurors shall be seated six feet apart in all directions in the courtroom during orientation and jury selection. Immediately upon entering the courthouse, all jurors shall complete written questionnaires, which will be tailored to the circumstances of the charges to be tried and developed in advance of the trial by the attorneys and the presiding judge. The attorneys will review the completed questionnaires and consult with the presiding judge as to which jurors, if any, should be excused or deferred based on the information in the questionnaires, and such jurors shall be excused immediately. At a minimum, the questionnaires should cover these areas:
 - a. Age;
 - b. Employment (present or from which retired), or disabled, or unemployed, homemaker, etc.
 - c. Name of spouse and spouse's employment;
 - d. Address;
 - e. Appointments or other firm time commitments that would make jury service impossible, even if that could have been made a part of a request for excusal or deferral at the earlier time;
 - f. Health concerns not related to Covid-19, such as being unable to sit for long periods, hearing or vision problems, cognitive concerns;

- g. Firm religious convictions that would be violated by "sitting in judgment" on a fellow citizen;
 - h. Whether they or any member of their family:
 - i. Worked in either attorney's firm or otherwise had business relations with such attorney;
 - ii. Is related by blood or marriage to an attorney (including staff who will be present during the trial), or the defendant, or a witness, or any court personnel.
 - i. Any other reason at all that would make it inappropriate to sit as a juror on the case to be tried.
13. During the in-courtroom orientation the presiding judge may either orally or in writing include mention to the jury of the safeguards and precautions that have been undertaken to provide a safe place for jurors.
 14. Jury voir dire shall be conducted as follows:
 - (A) Six (6) jurors shall be randomly selected from the panel and will be seated six feet apart in all directions in the jury box and questioned by the court and by the attorneys for the State/Plaintiff(s) and the Defendant(s).
 - (B) Jurors selected will remain until all jurors are selected. At the time of their release, selected jurors shall execute and receive a copy of the Juror Responsibility Form attached hereto as Exhibit B.
 - (C) This process will continue until the full jury, including any alternates, has been selected.
 - (D) Counsel shall remain seated at counsel table during juror examination.
 15. Once a jury has been selected and prior to the jury reporting for the trial, the courtroom tables and seating will be configured so that the State/Plaintiff and Defense tables are situated in such a manner that the attorneys and the parties/defendant will be able to view the witness stand, the jurors and the presiding judge.
 16. All court personnel, jurors, attorneys, parties and spectators shall wear masks while in the courtroom and in the courthouse common areas. If any individual fails to bring a mask, a mask will be provided.
 17. Witnesses will wear either a clear cloth face covering or a clear face shield so jurors can see the face of the witness while they testify, and while social distancing guidelines are being observed. Plexiglass will be placed at the witness table to assist if a clear mask or face shield are found to not be suitable with social distancing guidelines strictly being observed. Witnesses will wear either a clear cloth face covering or a clear face shield so jurors can see the face of the witness while they testify, and social distancing guidelines being observed. Plexiglass will be placed at the witness table to assist if a clear mask or face shield are found to not be suitable and social distancing guidelines strictly being observed. A table will be used with plexiglass and a microphone as the witness stand and will be sanitized before the next witness takes the stand. If A microphone stand is used it shall be permanently fixed to the floor, or otherwise rendered incapable of being converted into a weapon. Lapel microphones are encouraged.
 18. Trial jurors shall be empaneled by affirmation and shall be seated in the courtroom at proper social distancing and at locations which maximize to the fullest extent possible their view of the witness stand, the attorneys, the parties/defendant and the judge as well as maximizing their ability to hear the witness, the attorneys and the judge.
 19. Spectators shall be seated socially distanced in the remaining seating in the courtroom, although no spectator shall be seated closer than ten feet to any juror. If insufficient seats are not available in the courtroom arrangements may be made to allow spectators to listen to an audio broadcast of the trial by any means approved by the presiding judge and if such space is available.

20. Opening and closing arguments of counsel shall take place at the bar, with or without a podium, with the jury seated in the courtroom. Provided plexiglass is installed at the location established for opening and closing arguments, counsel shall be allowed to remove their masks from their nose and mouth during opening and closing arguments. The plexiglass and podium (if used) shall be sanitized between arguments. At all times during arguments, counsel shall remain six (6) feet from all other persons in the courtroom.
21. Attorneys/parties are required to prepare and provide marked original exhibits to be used at trial and provide copies of the marked exhibits to opposing counsel, the judge, and the court reporter prior to the beginning of trial; and to each witness (that will testify regarding the exhibit) prior to the witness taking the stand. The witness will take his copies to the stand to avoid the unnecessary passing of documents.
22. Exhibits published to the jury shall be published electronically whenever possible. If exhibits cannot be published electronically, they shall be published in a manner acceptable to the presiding judge that protects the health and safety of the jurors. This shall include at a minimum that each juror be provided their own copies to eliminate the passing of a single exhibit between jurors. If multiple copies are not possible, jurors shall sanitize their hands and wear gloves prior to handling the exhibit and shall properly remove and dispose of the gloves and sanitize their hands after handling the exhibits. Trash cans and sanitizers shall be available in the courtroom for this purpose.
23. If juror notebooks are used for the publishing of exhibits, they shall be in a binder or plastic folder that can be easily cleaned with a disinfecting wipe. The court will provide instructions to the jury as to how they are to be left, safely gathered and stored to prevent cross-contamination.
24. Jurors shall be instructed to bring their own pencils or pens. If pencils or pens need to be provided to jurors by the court, they will be either new pens or properly sanitized pens prior to a juror's use.
25. If jurors are permitted to take notes during their jury service, they shall be given a plastic zip lock bag upon which they will place their name to store their notebook and pencil/pen. The court will provide instructions as to how they are to be left, safely gathered and stored to prevent cross-contamination and maintain confidentiality.
26. Counsel shall remain seated at counsel table during witness examination and social distancing shall be complied with at counsel tables.
27. No one will be allowed to approach the bench, the clerk of court or the court reporter without the prior permission of the court.
28. If counsel needs to consult privately and confidentially with their clients during the trial, the regular jury room in each courthouse will be made available for that purpose and social distancing shall be maintained by counsel and their clients during any such meetings. This area will be sanitized before and after such meetings.
29. Bench conferences shall not be allowed. If conferences need to be conducted, the jury will be excused and allowed to leave the facility and given a definite time in which to return. Conferences will take place in the courtroom during the jury's absence. If issues requiring a bench conference or hearing can be foreseen by counsel, the court will schedule those to be heard in the courtroom prior to the time the court requires the jury to appear to avoid unnecessary delay in the trial.
30. Jury deliberations shall take place in the Jury Assembly Room with all jurors seated socially distanced.
31. Once the jury has reached a verdict, court will reopen, and the court will proceed with the taking of the verdict.

32. All jurors, court personnel, attorneys, witnesses, parties and spectators shall be screened daily for COVID-19 by requiring each to complete the Screening Sheet attached hereto as Exhibit C. In addition, those counties that are equipped with instruments shall take the temperature of all individuals entering the courthouse. These screening sheets shall be collected, reviewed by the judge and placed in a sealed envelope.
33. If a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive with COVID-19 or has a known exposure to someone who tested positive for COVID-19 during the trial, the COVID-19 Coordinator in that county will be notified immediately. The COVID-19 Coordinator in consultation with the presiding judge and the County Health Director and in accordance with the directives of the Chief Justice and CDC guidelines shall determine the appropriate action to be taken to ensure the health and safety of all individuals involved in the trial.
34. Except as are specifically modified herein all prior Administrative Orders relative to Superior and District Courts in Judicial District 30A remain in full force and effect.
35. This Administrative Order shall remain in full force and effect until modified or revoked.

This the 30 day of September 2020.



Honorable William H. Coward

Senior Resident Superior Court Judge

Judicial District 30A

Honorable Richard K. Walker

Chief District Court

30th Judicial District

Misti W. Jones

Swain County Clerk of Superior Court

COVID -19 Coordinator

Ashley H. Welch

District Attorney

43rd Prosecutorial District

Curtis Cochran

Swain County Sheriff

Fred H. Moody

Criminal Defense Attorney

Ben Bushyhead

Chairman, Swain County Commissioners

Kevin King


Swain County Manager

Alison Cochran

Swain County Health Director

Honorable William H. Coward

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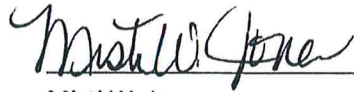
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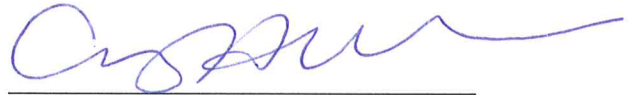
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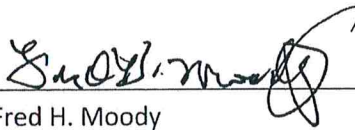
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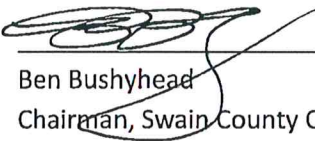
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EXHIBIT A

TO: Jurors summoned for Jury Service During COVID-19

At this time, the Chief Justice of North Carolina Supreme Court has directed that a Jury Trial Resumption Plan be created prior to the issuing of juror summonses and the beginning of jury trials in all judicial districts throughout the state. The 30A Judicial District in consultation with local officials including sheriffs, public health directors and members of the bar, has adopted a plan that complies with each of the emergency directives of the Chief Justice and conforms to the best safety practices of the Judicial Branch COVID-19 Task force as set forth in NCAOC's COVID-19 field Guidance. The complete Jury Trial Resumption Plan, all COVID-19 directives of the Chief Justice and NCAOC's COVID-19 Field Guidance are available on the Judicial Branch COVID-19 page at <https://www.nccourts.gov>.

Jury service is one of the cornerstones of our system of justice, expressly provided for the United States Constitution and the North Carolina Constitution. The Courts of our state have an obligation to uphold the constitutional rights of its citizens, including the right to a jury trial. However, the 30A Judicial District takes public health very seriously and will make every effort to attempt to minimize your health and safety concerns during your jury service. In that regard, I want to share with you in advance some of the major precautions and procedures that will be implemented when jury trials resume

1. By Order of the Chief Justice all persons entering the courthouse and courtrooms are required to wear a face covering that covers the nose and mouth. **The face coverings are to be worn at all times when you are in the common areas of the courthouse (hallways, bathrooms) and the courtrooms and the jury assembly rooms.** There are exceptions for those that cannot wear a face covering due to health and safety reasons. If you have a health or safety reason as to why you cannot wear a face covering please bring proof with you at the time of your reporting for jury service. If an individual forgets to bring a face covering one will be provided.
2. **Notices have been posted at each entrance to the courthouse directing that any person falling into any of the below categories shall not enter the courthouse:**
 - a. **Have traveled internationally within the preceding 14 days;**
 - b. **Are experiencing fever, cough, or shortness of breath;**
 - c. **Have been directed to quarantine, isolate, or self-monitor;**
 - d. **Have a known exposure to COVID-19;**
 - e. **Have been diagnosed with COVID-19;**
 - f. **Reside with or have been in close contact with any person in any of these categories.**

If you fall into one of these categories, you need to contact the Clerks' Office and advise as to which category you are in. Do not report for jury service if you are in one of these categories. Your jury service will be deferred.

3. Any Juror who feels uncomfortable or concerned about serving due to their health status, being in a high risk category (age 65 or older or who have certain underlying medical conditions listed by the CDC as high risk) or other reason related to the COVID-19 pandemic may request a deferral. **Jurors written requests forms should be mailed to PO Box 1397 Bryson City, NC 28713. Hand deliveries of these forms in a sealed envelope may also be made to the Courthouse drop box located at the front entrance to the Courthouse. If you are unable to**

EXHIBIT A

mail or hand deliver your juror excuse form to the court on time, you may email your jury excuse form to Swain.Clerk@nccourt.org. If you elect to email your juror excuse form, please be aware that you assume all of the risks associated with transmitting any confidential or personal information over email. Excuses must be received within five (5) business days before the date upon which they are to appear in accordance with N.C.G.S. 9-6.1. All written excuses and other excuses not ruled upon prior to the beginning of the term will be ruled upon by the presiding trial judge.

4. In accordance with the Chief Justice's directives, hand sanitizers, are available at all entrances. High touch areas are cleaned and sanitized frequently according to CDC guidance.
5. **All jurors, court personnel, attorneys, witnesses, parties and spectators shall be screened daily for COVID-19 by requiring each to complete the Screening Sheet and have their temperature checked when entering the courthouse.** These screening sheets shall be collected, reviewed by the judge and placed in a sealed envelope.
6. Courtroom seating is restricted and marked at six-foot social distancing in all directions. Spaces where the public and jurors will congregate will be marked at intervals of six feet to ensure social distancing.
7. Upon arrival for jury service you will be directed by court personnel as to whether you will be in the Superior Courtroom, District Courtroom, or Jury Assembly Room. All seating will be marked at six foot social distancing in all directions and hand sanitizer will be available.
8. All oaths of jurors and witnesses shall be by affirmation.
9. Jurors are advised to bring their own pencils and pens for their personal use during their jury service.
10. **If during your jury service, you begin experiencing COVID-19 symptoms or have a recent exposure to COVID-19 while at home or away from the courthouse, please contact the clerk's office to report your symptoms or exposure. DO NOT APPEAR for jury service until notified to do so and DO NOT APPEAR in person to report this information.**
11. **If during your jury service you begin experiencing COVID-19 symptoms while at the court facility, please bring that to the court's attention immediately by notifying the clerk, the bailiff, or the presiding judge.**
12. **If a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive with COVID-19 or has a known exposure to someone who tested positive for COVID-19 during the trial, the COVID-19 Coordinator in Swain County will be notified immediately.** The COVID-19 Coordinator in consultation with the presiding judge and the County Health Director and in accordance with the directives of the Chief Justice and CDC guidelines shall determine the appropriate action to be taken to ensure the health and safety of all individuals involved in the trial.
13. If at any time during jury service, a juror has a concern about his/her health or safety due to a lack of safety measures or because of guidelines or directives not being followed, the juror should bring his/her concerns to the judge, the clerk of bailiff so that the court can properly and quickly address them.
14. To contact the Swain County Clerk of Courts office you can call 828-488-7400 or email Swain.Clerk@nccourts.org.

The Judicial District Executive Committee thank you for your service and certainly hopes that these precautions alleviate any concerns you may have had regarding your jury service.

EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE#: _____

STATE OF NORTH CAROLINA

)

)

VS

)

)

)

Defendant

)

JUROR RESPONSIBILITIES

As a juror selected in in the captioned case, I understand that I have these duties and responsibilities:

1. I will serve for the duration of the case. During the trial of this case, I will pay attention to the evidence and I will base my verdicts solely on the evidence as presented in court and on the law as instructed by the presiding judge.
2. I will not talk with any fellow juror about the case until instructed by the judge. I understand that the only place this case may be talked about is in the jury room, and then only after the jury has begun deliberations, after hearing all the evidence, closing arguments by the attorneys and instructions on the law from the Judge.
3. I will not talk about this case with anyone else or allow anyone else to talk with me or say anything in my presence about this case, until the case has concluded. If anyone communicates or attempts to communicate with me or in my presence about this case, I will notify the presiding Judge of that fact immediately.
4. I will not form an opinion about the case, nor will I express to anyone any opinion about the case, until the presiding Judge has instructed the jury to begin its deliberations.
5. I will not read, watch, or listen to any media accounts of the jury selection or the trial.
6. I will not go to the scene where the events of this trial are alleged to have taken place, nor will I attempt to personally investigate any aspect of the case in any manner whatsoever.

EXHIBIT B

7. In the event anyone seeks to talk to me about the case, I will not share the nature of the conversation with any of my fellow jurors, but I will bring that matter to the attention of the presiding Judge or the bailiff as soon as possible.
8. If at any time during my juror service I have a personal emergency, begin experiencing any COVID-19 symptoms while at home or in the court facility, test positive for COVID-19, have a known exposure to someone who has tested positive for COVID-19, have a concern about my health or safety measures or observe guidelines not being followed, I will bring that to the attention of the judge, clerk or bailiff immediately.

Juror's signature: _____

Printed name of juror: _____

COVID-19 SCREENING AFFIRMATION

I am a _____ (juror, bailiff, clerk, attorney, judge, witness, spectator) in the above referenced trial.

Initials

_____ 1. I have **not** travelled internationally within the preceding 14 days.

_____ 2. I am **not** currently experiencing fever, cough, or shortness of breath.

_____ 3. I have **not** been directed to quarantine, isolate, or self-monitor or COVID-19.

_____ 4. I have **not** been exposed to COVID-19.

_____ 5. I have **not** been diagnosis with COVID-19.

_____ 6. I do **not** reside with nor to my knowledge have I been in close contact with any person in any of the abovementioned categories.

This the ____ day of _____. 20____.

"I affirm, under the penalties of perjury, that the foregoing representations are true."

(Signed) _____ (Print) _____

"This document is not a public record. It should be filed with other confidential juror excuse information that is maintained pursuant to G.S. 9-6(e) and G.S. 9-6.1(b)."