

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 20R 371

20-42CA

CA

FILED

2020 OCT 14 A 9:53

JOHNSTON COUNTY, C.S.C.

BY CA

**ADMINISTRATIVE ORDER REGARDING
JURY TRIAL RESUMPTION PLAN**

Pursuant to Emergency Directive 22 issued on 16 July 2020 by the Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, the undersigned senior resident superior court judge for Superior Court Judicial District 11B hereby establishes the following jury trial resumption plan for Johnston County, North Carolina.

I. DESCRIPTION OF COURTROOM FACILITIES

The Johnston County Court House complex is comprised of three buildings designated as Buildings A, B, and C and connected by a glass enclosed, climate-controlled atrium. Building A, usually referred to as the old courthouse, was completed in 1921. It contains the historic superior courtroom (Courtroom 4) on the second level and two small hearing rooms (Courtrooms 5 and 6) on the first floor. It also houses the grand jury room, the Estates and Juvenile Divisions of the Clerk of Superior Court's Office, and the district court judges' offices. Building B, sometimes called the courthouse annex, was completed in 1988 and contains Courtrooms 1, 2, and 3 on its second floor. Building B also contains the Clerk of Court's Civil and Criminal Division, the senior resident superior court judge's office, the county manager's office, the Register of Deeds, the County Tax Administrator, and the Johnston County Detention Center or jail. Building C, completed in 1996 and generally known as the law enforcement center, houses the Johnston County Sheriff's Office, the Emergency Management and 911 Center, the district attorney's office, the child support enforcement office, and a small claims or magistrate's courtroom.

Superior court sessions generally are held in Courtrooms 2 and 4, each of which contains a jury box. District court sessions usually are held in Courtrooms 1, 3, 5, and 6, though district court may be conducted in Courtrooms 2 and 4 when they are not needed for superior court. Courtroom 3 has a jury box, but that courtroom seldom is used for jury trials because of its small size.

On 21 May 2020, the Chief Justice issued Emergency Directive 12 directing senior resident superior court judges to establish the maximum capacities of all courtrooms in their districts when allowing for social distancing of at least six feet in every direction. The undersigned determined that, with social distancing, the maximum capacity of the courtroom gallery of Courtroom 1 is 24 persons, of Courtrooms 2 and 3 is 18 persons each, and of Courtroom 4 is 50 persons.

Courtroom 4 (the historic superior courtroom) is the only courtroom in the Johnston County Court House complex large enough to accommodate a jury trial, and it shall be used for all criminal and civil superior court trials so long as this order remains in effect.

II. ARRANGEMENT OF THE COURTROOM

The gallery of Courtroom 4 is comprised of two sections of benches or pews divided by a wide center aisle. During jury selection and trial, jurors will sit six feet apart on the first seven rows of the gallery on the State or plaintiff's side of the courtroom. This area will serve as the jury box. A limited number of spectators may sit six feet apart on the first three rows of the defendant's side. The members of the jury venire will sit six feet apart on both sides of the courtroom behind either the jury box or the spectators. On both sides of the courtroom, an empty row will separate members of the jury venire from the jury box and any spectators.

The well of Courtroom 4 is spacious. The counsel tables are 10 feet long and easily can accommodate two persons sitting at them. Portable tables can be set up next to them if needed to accommodate additional persons. Attorneys may choose to sit at the end of the tables so they can see both the judge and jurors. Alternatively, counsel tables can be arranged perpendicular to the bench and facing each other so that the attorneys sit at a 90 degree angle to the judge and to the gallery.

From the view of the bench, the courtroom clerk's desk is to the right of the judge; the clerk's chair is 12 feet from the judge's chair. The witness box is located to the left of the bench, and the witness chair is 7 feet from the judge's chair. A portable clear plexiglass divider will separate the witness from the judge, and another plexiglass divider will sit on the front edge of the bench directly in front of the judge. The court reporter will sit in the well of the courtroom in front of the bench and will be located at least six feet from the judge, the witness box, and persons seated at counsel tables.

The jury assembly or jury pool room shall serve as the jury deliberation room. With six-foot social distancing, the jury assembly room can accommodate 16 persons. This room is located on the second floor of Building B in a secured area behind Courtroom 1. It is easily accessed from Courtroom 4 via the secured hall behind that courtroom leading across an elevated walkway through the atrium to the secured hallway behind the courtrooms in Building B.

III. SUMMONING AND EXCUSING JURORS

Prospective jurors shall be drawn pursuant to N.C. Gen. Stat. 9-5 and summoned pursuant to N.C. Gen. Stat. 9-10. For each session of superior court, the undersigned shall specify the number of jurors to be drawn to ensure an adequate number of potential jurors appear from which a trial jury can be selected. For most trials, a jury venire of 40 persons should be sufficient. If more than 40 potential jurors appear and remain after the presiding judge has heard requests for excusal or deferment, the presiding judge shall: (1) have the clerk randomly draw the names of enough potential jurors to reduce the number to 40, and then excuse those persons whose names are drawn; or (2) divide the potential jurors into panels and excuse one or more

panels with instructions to call the jury clerk's telephone number at a later time to ascertain if they are needed.

If it appears to the court that an insufficient number of potential jurors have reported from which to select a trial jury and if additional jurors have been summoned for the following day, the judge may begin *voir dire* with those jurors available and complete jury selection the next day.

Pursuant to N.C. Gen. Stat. 9-6 and the provisions of this order, the chief district court judge may consider and grant requests from potential jurors for excusal or deferment prior to the date that a jury session of superior court convenes. On the day the session begins and thereafter, such requests must be submitted to the presiding superior court judge.

The Clerk of Superior Court shall include a letter with all jury summonses informing potential jurors that they must not report for jury duty if they are sick, if they have been diagnosed as suffering from COVID-19, if they are in quarantine because of exposure to COVID-19, or if they are exhibiting any of the known symptoms of COVID-19. A list of those symptoms shall be included in the letter. The letter shall instruct such persons to telephone the jury clerk as soon as practicable and explain their reasons for not reporting. The jury clerk shall forward the names of such persons to the presiding judge who shall either excuse them from jury service or defer their service to some later session.

The jury summons or the Clerk's letter shall inform prospective jurors of their right to request excusal or deferment under N.C. Gen. Stat. 9-6 and 9-6.1. In addition, the summons or letter shall inform prospective jurors that they may request excusal or deferment of their jury service if they believe they suffer from a compromised immune system or from some medical condition that renders them particularly susceptible or vulnerable to the effects of COVID-19. The summons or letter shall explain that they may submit their request as provided by N.C. Gen. Stat. 9-6.1, or by submitting the request to the chief district court judge by email addressed to Jacquelyn.L.Lee@nccourts.org, by written facsimile sent to 919-209-5401, or by telephone call to the jury clerk at 919-209-5400, Ext. 5. The chief district court judge shall notify such prospective jurors of the disposition of their requests as soon as practicable by letter, telephone, or email.

Prospective jurors shall report directly to Courtroom 4 for orientation by the Clerk at least one hour before the commencement of any trial jury. Before entering the courtroom, they shall be screened for COVID-19 infection or exposure as set forth below.

IV. SCREENING OF COURT PARTICIPANTS

All persons entering the Johnston County Court House complex currently are required to pass through metal detectors, and bailiffs ask any persons entering one of the courtrooms a series of questions concerning possible COVID-19 infections or exposure. Any person who indicates that he or she is experiencing symptoms of COVID-19 or may have been exposed to the virus is denied entry into the courthouse. These procedures shall continue after jury trials resume.

Additional screening procedures shall be implemented for all persons entering Courtroom 4 for a jury trial. Each day, bailiffs shall ask all such persons including jurors, court personnel, attorneys, litigants, and witnesses several more probing questions, including the following:

- Do you presently have a fever, cough, shortness of breath, chills, muscle pain, or a sore throat?
- Have you recently lost your sense of smell or taste?
- Are you presently awaiting the results of a COVID-19 test?
- Have you had contact with someone in the past 14 days who has tested positive for COVID-19 or who is under quarantine for exposure to COVID-19?
- Have you contacted your doctor or other health care provider during the past 14 days because you believed you had COVID-19 symptoms?
- Have you been directed to quarantine, isolate, or self-monitor at home by any health care professional in the past 14 days?

In addition, bailiffs shall use a hand-held thermometer to take the temperature of all persons entering Courtroom 4. Bailiffs shall deny entry to any person who answers one of these screening questions affirmatively or who exhibits a temperature in excess of 100.4 degrees F., and bailiffs immediately shall notify the presiding judge of that person's identity and role in the trial. The judge shall take such action as the judge deems appropriate. (See Section VI. below.)

All court participants will be required to wear face masks or coverings at all times pursuant to the Chief Justice's Emergency Directive 21 and the earlier Administrative Order of this court dated 26 June 2020. Masks will be available at all public entrances to the courthouse, and a bailiff will provide a mask to any person who attempts to enter the court facilities without one. Hand sanitizing stations also will be placed at the public entrance to Courtroom 4 and in the jury assembly room.

If the defendant in a criminal trial is in custody, the court shall order the defendant tested for COVID-19 at least three days prior to the commencement of the trial. Following this COVID-19 test, the defendant shall be held in quarantine until and throughout the trial. Should the defendant test positive for COVID-19, the court shall postpone the trial until such time as the defendant tests negative for the coronavirus.

The court also may order COVID-19 testing of any defendant who becomes symptomatic during a trial. If the court orders such testing, the court shall recess the trial until such time as the court receives the test result. If the defendant is in custody, the defendant shall be held in quarantine pending the receipt of that result. Should the test result be positive, the court shall proceed as described in Section VI below.

V. CONDUCT OF THE TRIAL

There will be no calendar call during either criminal or civil jury sessions. By no later than noon on the Friday prior to any criminal session, the district attorney shall determine the order in which cases will be called for trial and shall send email notice of that order to all those attorneys with cases on the calendar. The State thereafter may not deviate from that order

without leave of the court. The attorneys and defendants in the first three cases for trial shall be present in court at the beginning of the session, but after jury selection commences in the first case, the attorneys and defendants not involved in that trial may be excused by the court. Those attorneys and their clients as well as all other attorneys and defendants on the calendar may remain on a two hour standby for the remainder of the session unless otherwise instructed or released by the court.

By no later than noon on the Friday prior to any civil session, the undersigned judge's trial court coordinator (TCC) shall notify the attorneys or *pro se* litigants of the order of trials appearing on the calendar and of the times that their motions and other nonjury matters will be heard. The TCC shall advise the attorneys or *pro se* litigants involved in the first trial of the session of the time they need to appear, and all other attorneys or litigants will be placed on a half-day standby notice unless otherwise instructed or released by the court.

After the presiding judge calls a case for trial and makes the customary introductory remarks to the jury venire, the courtroom clerk will call twelve jurors to that part of the gallery serving as the jury box. The backs of the first 7 benches or pews on the State's or plaintiff's side of the courtroom will be marked with blue painter's tape at locations 6 feet apart, and these locations will be numbered 1 through 12 for the petit jurors. At least two additional seats will be marked and numbered for alternate jurors. After the first 12 prospective jurors have been called, jury *voir dire* will proceed as usual.

The court will seat at least 2 alternate jurors in any trial that is expected to last more than one day. In civil cases, the court will encourage the parties to stipulate prior to jury selection that a unanimous decision by at least 10 jurors may constitute a verdict if one or more petit jurors are unable to complete the trial. The court also will encourage the parties in civil cases to consider selecting 8 person juries in lieu of the usual 12 persons.

Once a trial is underway, the bailiff will distribute security badges to the trial jurors so the jurors can access the jury assembly room in the secured area behind Courtroom 1. Again, this room will serve as the jury deliberation room. There will be no conference table located in this room, and each chair in it shall be placed at a location at least 6 feet from the other chairs. The jurors shall retain their security badges until the conclusion of the trial.

The jury assembly room has two restrooms attached to it. Vending machines containing snacks and soft drinks are in the room. The court will instruct the trial jurors to assemble in this room each morning and after each recess. The court and bailiffs constantly will remind the jurors to practice social distancing at all times during the trial.

During trial, the court will encourage attorneys to publish their exhibits to the jury using the audiovisual display system in the courtroom. The court will allow exhibits to be passed among the jurors only in compelling circumstances. If the court allows exhibits to be passed among the jurors, the court will provide the jurors with latex gloves and hand sanitizers.

The presiding judge should attempt to avoid bench conferences during trial. The judge shall provide frequent opportunities for attorneys to confer privately with their clients during

trial. The court on its own motion may sequester witnesses, especially if necessary to avoid exceeding the maximum capacity of the courtroom. The bailiffs will assist the court in periodically counting the number of people in the courtroom.

The courthouse housekeeping staff shall thoroughly clean the courtroom during each lunch break and overnight recess.

VI. ADDRESSING COVID-19 SYMPTOMS OR EXPOSURE

Should a participant in a jury trial become symptomatic for COVID-19, test positive for COVID-19 during the trial, or report a known exposure to someone who has tested positive for COVID-19 during the trial, the presiding judge, after considering the role of the participant in the trial, the circumstances related to the participant's symptoms, positivity, or exposure, and the extent to which the participant may have been exposed to other persons involved in the trial, and after affording the parties an opportunity to be heard, must take one or more of the following actions:

- Direct the courthouse housekeeping staff to thoroughly clean and disinfect all areas of the courthouse complex the participant is known to have travelled through or occupied;
- Inform other persons with whom the participant is known to have had contact of their possible exposure, attempt to ascertain the duration and closeness of the contact, and ensure that those persons are familiar with the known symptoms of COVID-19;
- If the participant is a seated juror, excuse that juror from further participation in the trial, and, when required, replace that juror with an alternate;
- If the participant is an essential witness in a civil case and has not testified, determine whether it might be possible for the party calling the witness to offer the witness's testimony remotely or through a deposition;
- If the participant is a party to a civil case, determine whether the trial might proceed without the party's presence;
- If the participant is the defendant in a noncapital criminal case, determine whether the defendant might waive his or her personal presence and participate in the trial remotely or virtually;
- If the participant is the courtroom clerk, court reporter, or bailiff, replace him or her with another person to perform that role;
- If the participant is one of the trial attorneys or the presiding judge, recess the trial for a reasonable period of time, or, after considering such factors as judicial economy and hardship to the parties, and after entering findings of fact and conclusions of law in the record, order a mistrial; and
- Make such other decisions and enter such other orders as may be reasonable and just under all the relevant circumstances, including a recess of the trial or an order of mistrial.

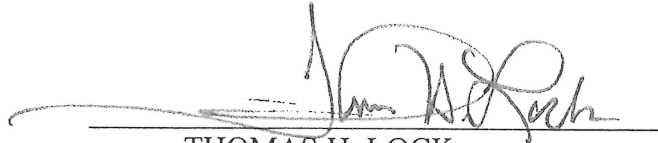
VII. CONCLUSION

This jury trial resumption plan does not address every contingency that might arise in the course of a jury trial during the present COVID-19 pandemic. The presiding judge must remain vigilant for situations that jeopardize the health and safety of all participants. Moreover, the judge must not hesitate to order such measures as necessary and reasonable to mitigate the risk to the participants from the coronavirus.

Pursuant to the Chief Justice's Emergency Directive 22, this plan has been reviewed and approved by those Johnston County officials whose signatures appear below.

This plan shall become effective immediately upon the entry of this administrative order, and it shall remain in full force and effect until revoked or modified by the undersigned.

SO ORDERED, this the 23^d day of September, 2020.

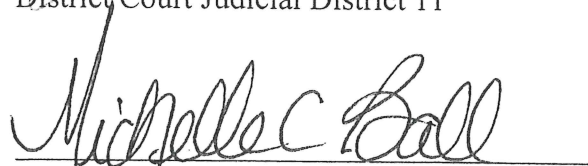


THOMAS H. LOCK
Senior Resident Superior Court Judge
Superior Court Judicial District 11B

This Jury Trial Resumption Plan has been reviewed and approved by:



JACQUELYN L. LEE
Chief District Court Judge
District Court Judicial District 11



MICHELLE C. BALL
Clerk of Superior Court of Johnston County

(Other signatures attached)



SUSAN I. DOYLE
District Attorney
Prosecutorial District 13



STEVE BIZZELL
Sheriff of Johnston County



MICHAEL J. REECE
Johnston County Criminal Defense Bar



MARILYN R. PEARSON, M.D.
Johnston County Public Health Director