

Administrative Order:

JURY TRIAL RESUMPTION PLAN

This Plan assumes and requires that all precautions and procedures that have been established pursuant to existing and future Emergency Directives of the Honorable Chief Justice of the North Carolina Supreme Court, issued in response to the Covid-19 pandemic, shall continue in place and effect.

In each of the three counties comprising this Judicial District 29B, Henderson, Polk and Transylvania counties, discussions and meetings have been taking place for some time regarding procedures, practices and courtroom features, in anticipation of the eventual resumption of jury trials during a time when Covid-19 concerns remain.

The goals of this Plan are (1) to provide for the eventual resumption of jury trials in this County during the time when Covid-19 measures are still in place, by establishing the best protocol that is reasonably available for jury trial logistics, subject to day-to-day practical implementation; (2) to provide information to jury trial participants, especially those summoned to appear for service as a juror, regarding Covid-19 measures and protocol which court officials have implemented.

Pursuant to the Emergency Directive 22 of the Chief Justice:

The plan shall, at a minimum, include the following:

- A. a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak;
- B. a plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;
- C. a plan for conducting voir dire with social distancing;

- D. a plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;
- E. a plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;
- F. a plan for making face coverings available to jurors, court personnel, attorneys, witnesses, and parties; and
- G. a plan for responding in the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial.

Now, therefore, this Plan:

A. Integral to this Plan is a confirmation that each court facility and any alternate facility to be used for court operations is in compliance with each of the Chief Justice's emergency orders in response to the COVID-19 outbreak.

While alternate facilities, including movie theaters, public buildings and school auditoriums have been considered and discussed, as of this time, alternate locations will not be employed except as specifically noted herein, and to that extent, this Plan provides for the use of an existing courtroom, with certain modifications to courtroom practices, as well as some physical alteration to the courtroom itself.

Since March, 2020, all in-person courtroom hearings in this District have observed, with apparent success, certain measures with the goal of limiting the spread of Covid-19 or any such illness. These measures have included, and will continue to include, the following:

EXISTING MEASURES, WHICH WILL CONTINUE:

- 1. Intervals of at least six feet in every direction are marked with tape or other visible markers in all areas where the public is expected to congregate or wait in line;**
- 2. the maximum allowable occupancy of each courtroom or meeting space is established such that all persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;**
- 3. the established maximum occupancy is prominently posted at the entrances to each courtroom or meeting space;**
- 4. hand sanitizer is, at a minimum, available at the entry and exit of the facility and, preferably, at all high touch areas of the facility including doorways, service counters, stairwells, and elevators; and**
- 5. all areas accessed by the public are cleaned daily, with high touch areas cleaned periodically throughout the day (high touch areas include, but are not limited to doorknobs, water fountains, handrails, elevator walls and buttons, bathroom faucets and dispensers, and reception desks or counters);**
- 6. a COVID-19 coordinator is required for each judicial facility;**
- 7. crowded sessions of court where social distancing cannot be observed are prohibited;**
- 8. COVID-19 coordinators must approve court calendars before they are publicly distributed to ensure social distancing is possible and ensure face coverings are available for court personnel;**
- 9. Among other provisions which aim to reduce the number of persons in the courthouse building at any one time (including those possibly infected with COVID-19) is the continuing directive appearing in the box below.**

CONTINUING DIRECTIVE

The clerks of superior court shall post a notice at the entrance to every court facility in their county directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. A person who has likely been exposed to COVID-19 and who has business before the courts shall contact the clerk of superior court's office by telephone or other remote means, inform court personnel of the nature of his or her business before the court, and receive further instruction. For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. has travelled internationally within the preceding 14 days;
- b. is experiencing fever, cough, or shortness of breath;
- c. has been directed to quarantine, isolate, or self-monitor;
- d. has a known exposure to COVID-19;
- e. has been diagnosed with COVID-19; or
- f. resides with or has been in close contact with any person in the abovementioned categories.

Jury trials present a challenge in regard to current circumstances, as the basis for every citizen's constitutional right to a jury trial in both criminal and civil cases requires the invitation of a moderate number of randomly-selected citizens to report to one central location - the courthouse.

As noted above, this Plan requires the observance of all existing and future Directives issued in response to Covid-19 by the Chief Justice of the North Carolina Supreme Court.

During restroom and other breaks when pool members (or jurors, after empaneling) are moving about the building, distancing requirements shall continue to be observed (in addition to mask

wearing requirements). In addition, restroom facilities must be cleaned more frequently than in the past. This practice is presently in place in this County as a result of the Clerk's and the County's concerns for the public, as well as for the observance of existing directives of the Chief Justice. The flow of persons coming in and out of the courthouse is assisted by signs which provide separate pathways for entrance and exit.

To the extent possible, courtroom doors or other doors which will be used frequently by pool members or jurors should remain open (or be opened by court security staff), to avoid the necessity of door handle use. Discretion shall be with the presiding judge.

Pursuant to existing directive, the Clerk has continued to post signs at the courthouse entrance regarding limitations upon entry into the courthouse building.

The jury pool room has been socially distanced to accommodate a maximum of 20 jurors at a time. If a larger number of jurors appear for service, their seating will be split between the jury pool room or the grand jury room. A jury clerk will be assigned to each room in that event, and jury orientation may be given simultaneously in each room.

The jury trial courtroom (Courtroom 2) has been socially distanced in the public area to seat 20 individuals. Fourteen additional socially-distanced chairs are located on the bench side of the bar, where members of the pool may also be seated for the purpose of receiving instructions from the presiding judge. When jury voir dire, or jury selection, begins, the fourteen seats in front of the bar must be vacated, and jurors must return to whichever room in which they were assembled prior to receiving the judge's instructions.

B. Plan for summoning and excusing jurors, which allows for as much of the process to be handled remotely as possible;

The number of jurors to whom summons are issued for any particular date and time, is reduced from 130 to between 40 and 50.

Two separate jury pools for the same day shall be summoned with the use of the random-selection jury software; one group shall be summoned to appear in the morning, and the other group in the afternoon.

Each jury summons shall be accompanied by a letter which explains that in the event that the recipient of the summons shall have personal concerns regarding their service at this time, whether such concerns are based upon that person's age, infirmity, susceptibility to illness (either generally, or specifically as to respiratory-related), they shall be afforded the opportunity to simply telephone or respond in writing to the office of the Clerk of Superior Court and advise the Clerk that they wish to defer their service to another term in the near future. Written communication may be made through the U.S. mail, or via email (by sending a message to a specific email address for the Clerk). Such persons requesting to defer their service shall have been informed in the summons that the specific reason offered by them for such deferral request shall remain confidential, and that should they desire to offer further support to their request, they may, confidentially, send such supporting documents or statements as they believe to be relevant. It is also noted that persons wishing to communicate other, non-medical requests for deferral, for example: work schedule, child care needs, vacation plans and the like, shall not be required to come to the courthouse to do so. Such requests for deferral can also be communicated by telephone or in writing, and may be supported by written documentation, for the purpose of limiting the number of persons in the courthouse building. The Chief District Court Judge or one or more other District Court judges shall consider, and shall rule upon the requests for deferral. The Clerk shall communicate the decision to the person requesting the deferral, who shall have provided an email address, or telephone number, by which to so inform him or her.

Pursuant to G.S. 9-6, if service as a juror by any citizen would be contrary to the public welfare, health, or safety, then (pursuant to the policy set out in 9-6(a)), the chief district court judge shall establish

procedures whereby he or any district court judge of this district, prior to the date that a jury session (or sessions) of superior or district court convenes, shall receive, hear, and pass on applications for excuses from jury duty, and including those applications that have been submitted to the Clerk in writing or by telephone pursuant to this Plan. The authority of a presiding judge to excuse a member of the jury pool who is present at the beginning of a session of court is not affected by this Plan.

Notwithstanding our interest in limiting the number of persons unnecessarily or unadvisedly present in the courthouse, it should be remembered that the district court judge who handles these requests in advance of trial, has the discretion whether to allow or deny the request, but a judge may not adopt a blanket policy, for example, of excusing all elderly jurors who request to be excused.

The summons itself shall make clear that having one's jury service deferred means that they will be called upon again in the future; at that time, the summoned juror will also have the opportunity to inform the Clerk of any concern or conflict which the juror believes that he or she has at that time.

In light of such deferral aims, however, court officials must guard against the possible result that our jury pools do not consist of a constitutionally-based cross section of peers. It will not suffice to have a pool consist primarily of presently unemployed, childless, healthy persons in their early to mid-twenties, who have no immediate vacation plans, or any other group which greatly modifies the natural results of the random selection process by which jury summons are issued. This Plan does not amend any existing law that prohibits the systematic exclusion from the jury pool of certain members of a cross-section of the community, even if based upon such a group's Covid-19 concerns.

For the term of this Plan, it will be helpful for all to recognize in advance that the jury trial process must necessarily move slower than what some may have believed to be a slow process in the past.

C. Plan for conducting voir dire with social distancing:

Jury “voir dire” is the process by which each party to a criminal or civil trial has the opportunity to inquire of members of the jury pool (after they been randomly called to sit in the jury “box”), and to excuse them from service on that trial should that party deem it appropriate. The voir dire process immediately follows the orientation of the jury pool by the Clerk, and the instructions given by the presiding judge to the jury pool - instructions concerning the jurors’ roles and responsibilities.

The courtroom clerk will call the first twelve names (for cases with a panel of at least twelve persons) and these persons may possibly already be seated in the jury pool area in the courtroom, or the court security officers must be sufficient in number to go to such other place or places in the courthouse as the pool members may be waiting during the jury selection process for the purpose of escorting to the courtroom those whose names have been called. In civil actions, a jury of less than twelve and as few as six may be utilized.

Two sets of statutes govern jury voir dire, General Statutes 9-14 and 9-15, and General Statutes 15A-1211 through 15A-1217, and this Plan does not alter the presiding judge’s exercise of discretion in the conduct of voir dire, as provided in those statutes.

Once called to the jury “box” during the jury voir dire process, if excused by counsel or the judge, the excused juror should be permitted to leave directly from the courtroom, without first stopping at the Clerk’s office or any other location in the building. All jurors requiring evidence of their juror service for their employer or for any other purpose may retrieve an official note from the Clerk which confirms their service, as they leave the courtroom.

At such time as the remaining number of members of the pool is insufficient to provide for replacement of an excused juror, the court shall be required to wait until the next pool “wave” shall arrive.

Typically, in this County, depending upon the session starting time, either one, or not more than two such staggered groups shall be scheduled to report to court during the course of either a morning session or an afternoon session. (The jury selection process is lengthy enough for those citizens involved, without adding to the waiting time by having a second pool wave report before they are needed.) Given how quickly jury selection is proceeding, a Clerk may be orienting a second pool group in another part of the courthouse even while jury voir dire is taking place with the preceding group. Members of the jury who have already been passed upon by all parties might be excused for lunch or other break while a judge gives the initial charge to a second pool group. However, during jury voir dire, all previously passed upon jurors must continue to be present even while a “new” wave is beginning their part in the voir dire process.

To expedite voir dire during this time, the trial judge may exercise his or her discretion to require the parties to direct certain general questions to the panel as a whole. Counsel of course maintains the right to ask further questions on the same topic (or the same questions), but it is possible that such panel questioning may aid the parties, as well as the process itself. In addition, the presiding judge may also facilitate the process by asking certain general questions of the jurors, provided again that the parties have the right to repeat such questions should they desire.

The presiding judge may also exercise his or her discretion to authorize the use of voir dire questionnaires to facilitate the process. If authorized, such questionnaires shall be completed by members of the jury pool at the conclusion of their orientation by the Clerk. The Clerk shall give a copy of the completed questionnaires to the parties at the time of the calling of that pool member’s name by the courtroom clerk. Any party reserves the right to object to the use of the questionnaire.

Likewise, however, nothing in this Plan shall be construed as limiting the discretion of the presiding judge. A presiding judge may, for example, in the judge’s discretion provide for individual voir dire.

D. Plan for conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room;

Our present circumstance has also required us to consider the manner of seating and accommodating all trial participants, including those citizens ultimately selected to sit on a particular jury panel. All participants shall be properly spaced, and masked. Each member of a jury panel and each party must be situated such that they can clearly see and hear all counsel, each witness, the parties, the judge, and any video recordings or physical offerings of evidence, at all times. Likewise, all members of a panel should be free from distractions regarding medical concerns and safeguards during the trial and while deliberating and discussing the evidence at the close of the case. Additionally, one must consider the logistics of restroom breaks, lunch recesses, and the general comings and goings of the panel and other participants.

In this County, county administration officials and county health authorities have worked closely with the Clerk of Court to modify the physical courtroom to take into account Covid-19 concerns and best practices.

Only one jury trial may be in session at any time. One courtroom has been set aside for this purpose, namely, Courtroom 2 in the Henderson County Courthouse.

Courtroom 2 no longer has a “jury box” as such. The box has been removed. New chairs have been purchased for use by jurors. These chairs have the ability to swivel. These chairs have been placed on the attorney side of the bar, as was the jury box previously, but they have been spaced and located in order to observe a six-foot separation from other persons in all directions. The fact that the chairs have the ability to swivel will allow the juror to face whomever is

the subject of their attention, whether it be counsel, witness, judge, or video monitor.

Counsel tables, and accompanying wiring for microphones, have been moved to a location side by side to each other, facing the jurors' chairs, and perpendicular to the bench.

The location of the witness stand is directly in front of the judge's bench, with the witness's back to the judge's bench, such that the jurors, the parties and counsel, and the reporter may see the witness's face. Though not yet installed, it is proposed that the witness stand be equipped with a camera, such that the judge may also observe the witness's face. The court reporter station is facing the new location of the witness stand, with the reporter's back to the bar and the public galley. On the galley side of the bar, no person will be seated within six feet of the court reporter's back. The presiding judge shall direct the cleaning of the witness stand (and microphone, as needed) between witnesses.

The courtroom clerk desk has been moved to a location facing the jurors, and behind the counsel tables.

The room presently used as the grand jury room will now be used for jury deliberation, with all chairs spaced appropriately. Jurors shall be assigned a chair which they will use for the duration of their service; chairs will continue to be cleaned, however. Restrooms for use by the jurors are within the secure space of the room. The hallway which is common to the jury deliberation room and the restrooms is separated from any public space by locked doors, and is also separate from any area which must be used by court officials. While a jury is deliberating, the doors to the said common hallway shall bear signs on the outside noting that a jury is deliberating and that admittance to the hallway by a non-juror is restricted.

As noted, face coverings do not take the place of social distancing requirements. Face coverings shall be worn in the courtroom by all participants. Speaking participants shall take care to

speak clearly and to use a microphone. Face coverings will be worn in the jury deliberation room. There is an exception to the face covering requirement: as the witness stand is more than six feet from the location of any other participant, the witness will not wear a face covering while occupying the witness chair, in the discretion of the presiding judge.

The parties shall provide sufficient copies of any document which the jurors shall be called upon to examine such that each juror has their own copy, and one copy of a document need not be passed among the members of the jury panel.

During opening statements and closing arguments, counsel shall observe distancing requirements.

Members of the public, media representatives, or other interested parties shall continue to occupy the galley seating, and shall sit only where marked and designated.

With respect to a pre-trial motion to continue a trial, the presiding judge shall take into account the effects of the Covid-19 pandemic upon the logistics of trial preparation and readiness in ruling upon any such motion. Furthermore, the presiding judge and litigants waiting for trial shall honor the Chief Justice's Task Force recommendation that less complicated criminal and civil cases be first tried when jury trials resume.

E. Plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection;

Following each overnight recess, all trial participants shall be screened for Covid-19 exposure or infection upon return to the jury pool room, or the courtroom, as follows:

Participants shall be asked to report confidentially in the event that they could answer "yes" to any of the following questions:

1. Are you currently experiencing COVID-19 symptoms?

Since you last appeared at the courthouse:

2. Have you been diagnosed with, or tested positive for, COVID-19?
3. Have you been exposed to COVID-19?
4. Have you been directed to quarantine?
5. Has anyone in your household tested positive for COVID-19 or been directed to quarantine?
6. Have you been in close contact with anyone who has tested positive for COVID-19 or have you been notified by your county health department that you were or might have been in close contact with someone who tested positive for COVID-19?
7. Do you have any questions or comments concerning courtroom procedure or practices concerning Covid-19?

This list of questions shall be posted at the entrances to the courtroom, and also at the entrance to the jury pool room, for view by all participants, and shall be referred to daily in open court by the presiding judge or by someone designated by him.

Participants shall be encouraged to report such information without being required to come to the courthouse to do so, should the concern arise while court is in recess. Specific contact information for use during recesses should be available to all participants in order to promote remote reporting.

F. Face coverings shall be available to jurors, court personnel, attorneys, witnesses, and parties.

Each courtroom clerk shall maintain a supply of masks; announcements shall be made at appropriate times and intervals, by the judge or court security officers, that masks are available to anyone who needs one.

Face coverings shall also continue to be available at the security entrance to the courthouse.

G. In the event that a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for Covid-19, or has a known exposure to someone who has tested positive for Covid-19 during the trial, this is the plan for responding.

Consistent with existing Emergency Directive requirements, upon a determination that a trial participant becomes symptomatic, tests positive, or has a known exposure, that participant must be immediately excused from the courthouse. In such instance, if the trial continues, it must continue without that person. If it is not possible to continue without that person, the trial must be recessed for a minimum of 14 days; the presiding judge also retains the discretion to enter a mistrial.

This Plan assumes that any person thus released has not been in close contact with any other trial participant. If the presiding judge determines otherwise, the presiding judge will then be required to determine whether close contact with the other trial participant will require the release of that person. If the answer to that question is “yes,” then that other participant will need to be excused from the courthouse. If the trial continues, it must continue without that other participant. If it is not possible to continue without that other participant, the trial must be recessed for a minimum of 14 days; the presiding judge also retains the discretion to enter a mistrial.

“People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness. Symptoms may appear **2-14 days after exposure to the virus**. People with these symptoms may have COVID-19:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

This list does not include all possible symptoms. CDC will continue to update this list as we learn more about COVID-19.”

Centers for Disease Control and Prevention

While the Centers for Disease Control and Prevention does not address it in the quoted statement, we all recognize that having one or more of the symptoms noted above does not mean that such a person is suffering from a Covid-19 infection. Existing Emergency Directives of our Supreme Court require that no one exhibiting symptoms of Covid-19 enter the courthouse. Proper determination of Covid-19 status should be made by a health care provider. Neither judges nor court staff are able to make a valid determination. Nevertheless, this Plan calls upon the presiding judge to consider the best course of action, taking into account existing requirements and good practices. This Plan does not call upon a presiding judge to determine whether someone has been infected by the Covid-19 virus, but it does call upon the presiding judge to determine whether the report from a juror that they have begun to suffer from a sore throat and headache, for

example, is reason to release that juror immediately, and to recess a trial for fourteen days. This Plan does not address what we also know from the CDC, namely, that many persons who have been infected, and who can therefore communicate the infection to others, exhibit no symptoms whatsoever. These statements are not meant to raise concern about jury service or other participation in a jury trial. They are merely facts which cannot be overlooked if we are honest. This Plan is an attempt to provide the best effort in resuming the observance of the right of citizens to fair and impartial trials by jury, and it relies heavily upon the observance of best practices to minimize the spread of the virus, even from asymptomatic persons.

The lawful authority and discretion which any judge maintains over a trial proceeding is not altered by this Plan. It is the intent of this Plan that (1) court officials are not bound by the exact language of this Plan as to the means of accomplishing the result required by the Plan, and (2) that this Plan need not be modified on a frequent basis requiring constant referral to it by those attempting to follow it. Variations of the process can be attempted within the parameters of this Plan to see what works best as we move along, provided that the result required by the Plan, and all then-existing Emergency Directives of the Chief Justice of the North Carolina Supreme Court be observed.

This Plan shall become effective at such time as the Chief Justice shall modify or cause to expire Emergency Directive 10 or shall otherwise permit the resumption of jury trials.

Entered this 15th day of October, 2020.

PETER KNIGHT
Senior Resident Superior Court Judge