

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 20 R 476

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IN RE:

MCDOWELL CO., C.S.C.

JURY TRIAL RESUMPTION PLAN
FOR MCDOWELL COUNTY

ADMINISTRATIVE ORDER

On March 13, 2020 Chief Justice Cheri Beasley announced measures on behalf of the Judicial Branch to minimize the spread of COVID-19 among members of the public. On July 16, 2020 Chief Justice ordered, *inter alia*, that all Jury Trial Sessions be postponed until after the end of September 2020. Chief Justice Beasley likewise ordered that each Senior Resident Superior Court Judge, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district.

**A. CONFIRMATION OF FACILITY COMPLIANCE WITH CHIEF JUSTICE
CHERI BEASLEY'S EMERGENCY ORDER**

1. Pursuant to Emergency Directive 11 of Chief Justice's Order dated May 21, 2020 the Senior Resident Superior Court Judge is serving as the COVID-19 Coordinator.
2. Pursuant to Emergency Directive 12 of Chief Justice's Order dated May 21, 2020 the Senior Resident Superior Court Judge for Judicial District 29A has ensured that the McDowell County Courthouse:
 - a. Is visibly marked in appropriate intervals in every direction in all areas where the public is expected to congregate or wait in line;
 - b. The maximum allowable occupancy of each courtroom is established such that persons who must sit or stand in such space may observe social distancing of six feet in every direction;
 - c. The established maximum occupancy is prominently posted at the entrances to each courtroom;
 - d. Hand sanitizer is available at the entry and exit of the facility and at all high touch areas of the facility;
 - e. All areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day; and
 - f. Face coverings shall be worn at all times inside the courthouse.
3. That pursuant to Emergency Directive 13 of Chief Justice's Order dated May 21, 2020 the Senior Resident Superior Court Judge/COVID-19 Coordinator for Judicial District 29A has:

- a. Prior to publication and distribution, caused to be reviewed each calendar, both individually and collectively with other sessions of court, to ensure that the calendars will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
- b. That all judicial branch personnel assigned to a courtroom have a facemask made available prior to the session of court.

B. SUMMONING AND EXCUSING JURORS

4. For all Jury Trial Sessions, the Clerk of Superior Court will summon separate panels of potential jurors with planning to obtain actual attendance of less than forty (40) potential jurors for each day (Monday, Tuesday, Wednesday, and Thursday) of the Jury Trial Session. This procedure shall, however, be conducted in accordance with specific instructions from the Senior Resident Superior Court Judge, Chief District Court Judge, and the presiding Superior or District Court Judge. The Clerk of Superior Court shall in the jury summons provide a phone number for jurors to call the day before their appearance date for further instructions on their attendance the next day consistent with the current practice.
5. Jury summonses will be updated to provide that potential jurors may make request to the Clerk of Superior Court in writing, by fax, by email, or by phone to be excused or deferred from jury service.
6. Potential jurors will not be required to appear in person before a District Court Judge to be excused or deferred from jury service as authorized under N.C. Gen. Stat. §9-6(b) due to the public health concerns over COVID-19. The Clerk of Court shall receive and collect juror's requests for excuse or deferment and present the same to any District Judge in the District for determination. The Clerk shall then inform the juror of the result.
7. Requests for excusal or deferral arising on the day a potential juror is told to appear will be heard by the presiding Superior or District Court Judge on the day the potential juror appears for service.
8. Any juror's request for excuse or deferral of jury duty as a result of the juror's sincere concerns or conditions related to COVID-19 shall be a valid excuse for excusal or deferral from jury service pursuant to NCGS §9-6.1(b).
9. In lieu of showing the orientation video to potential jurors on the day they report, the Clerk may in the Clerk's discretion revise the jury summons to include the link to the Jury Orientation Video allowing potential jurors to watch the video prior to "in-person" orientation. Upon doing so the orientation video will not be required to be shown on the day jurors report.
10. A notice will be provided with summonses to potential jurors stating that precautions have been taken in accordance with guidelines from the Judicial Branch of North Carolina and the Centers for Disease Control and Prevention to reduce the risk of transmission of COVID-19. The notice will be updated from time to time to reflect the most recent guidelines and the jury orientation process will be conducted in accordance with the guidelines, including any social distancing guidelines then in effect. Jurors may, if they wish, bring their own notepad and pens for the purpose of

notetaking. In addition, said notice will provide that potential jurors should not enter the courthouse if the potential juror:

- a. Is experiencing fever, cough, shortness of breath or new loss of taste or smell;
 - b. Has been directed to quarantine, isolate, or self-monitor;
 - c. Has a known exposure to COVID-19;
 - d. Has been diagnosed with COVID-19; or
 - e. Resides with or has been in close contact with any person in the abovementioned categories.
11. The Court in its inherent authority finally orders that the citizens of McDowell County shall be duly summoned for potential service as Grand Jurors or as Trial Jurors for the criminal and civil sessions of McDowell County.

C. CONDUCTING VOIR DIRE WITH SOCIAL DISTANCING

12. The court will conduct voir dire in the Superior Court Courtroom with summoned jurors therein spaced at appropriate intervals in the public seating section of the courtroom and the jury box. Any excess jurors will be assigned to the Jury Assembly Room when completed until needed, or such other location as the presiding Judge may determine. Jurors will wear face coverings at all times.
13. Potential jurors may be asked to complete questionnaires prior to their scheduled day of service and as part of the questions jurors at their option may provide health concerns related to age and/or medical condition.
14. The Jury Assembly Room when completed, or such other place as the presiding Judge may determine, will be used for the jury break room when completed after a jury has been impaneled. The jury deliberation room for the upstairs courtroom will be the primary deliberation room in that it allows for better distancing between jurors. However, the Jury Assembly Room may be used for deliberations when completed. Proper social distancing will be observed during breaks and deliberation.

D. CONDUCTING TRIALS WITH SOCIAL DISTANCING IN THE COURTROOM FOR ALL COURT PARTICIPANTS, INCLUDING THE JURY, AND IN THE DELIBERATION ROOM

15. Jury selection and trials will be held in the Superior Court Courtroom (New Courtroom).
16. The jury will be seated in and around the regular jury box, including the first row of the public section if needed, and jurors will be appropriately spaced.
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 testifying. Proper distancing will be observed when the witness is

wearing a face shield. When not wearing a clear face shield for testimony the witness will wear other appropriate face covering.

18. The remaining courtroom will be as is with the exception of tables and chairs being moved to further distance attorneys from the jury area.
19. Questioning of witnesses by counsel will remain in a seated position as allowed by Rule 12 of the General Rules of Practice for the Superior and District Court or from a standing position in the discretion of the presiding judge. Jury voir dire by counsel will be from a seated position or, in the discretion of the presiding judge, from a standing position behind a podium.
20. Court will be open to the public with limited, dedicated seating identified for spectators. At least one seat will also be open and dedicated for the press.
21. Exhibits published to the jury will be either presented electronically to the extent available, or collectively to avoid repeated publications. Paper exhibits will be distributed directly to the jury individually by the bailiff after hand sanitizing and as the presiding judge may direct. Passing of documents or photographs down from juror to juror should not be done and a separate copy should be made for each juror with a minimum of individual contact.
22. The jury will be instructed that the court will provide pens and notebooks that are appropriately sanitized to the extent a juror requests and the presiding judge allows. When note taking is allowed by the presiding judge, jurors should be given the option of bringing their own pen and paper.
23. Unless otherwise ordered by the presiding judge, bench conferences lasting more than five minutes will be conducted in the judge's chambers unrecorded. The court will then summarize the bench conference on the record outside the presence of the jury at the Court's first opportunity with counsel for each party having an opportunity to concur, correct, add to, or modify the summary.
24. Restrooms located in the new jury room and upstairs jury deliberation room in the Superior Court Courtroom will be reserved for jurors while in trial.

E. DAILY SCREENING OF JURORS, COURT PERSONNEL, ATTORNEYS, WITNESSES, AND PARTIES FOR COVID-19 EXPOSURE OR INFECTION

25. On each day of trial screening will be done by Court personnel. This screening will ask the following questions of jurors, court personnel, attorneys, witnesses and parties regarding known exposures and current health status as follows:
 - a. Are you experiencing fever, cough, or shortness of breath?
 - b. Have you been directed to quarantine, isolate, or self-monitor?
 - c. Have you had a known exposure to COVID-19?
 - d. Have you been diagnosed with COVID-19?

e. Do you reside with or have you been in close contact with any person in the above mentioned categories?

26. Jurors seated in a trial shall be required to report by phone to a designated number or otherwise in the event of sickness or COVID 19 exposure. If a juror reports such symptoms, the juror shall be instructed they are not to come into the courthouse or will be otherwise quarantined pending further instruction depending on the circumstances. If a juror reports COVID-19 symptoms the clerk will notify the presiding judge in order to determine appropriate concerns and procedures depending on the reported circumstances. Confidentiality of the particular juror's situation should be protected as appropriate.

F. FACE COVERINGS AVAILABLE FOR JURORS, COURT PERSONNEL, ATTORNEYS, WITNESSES AND PARTIES

27. All court personnel have been provided with appropriate face coverings.

28. Face coverings will be made available for jurors, attorneys, witnesses and parties, or they may provide their own.

29. Sanitized face shields or clear masks will be provided to witnesses to wear during testimony so jurors may see the faces of witnesses.

G. RESPONSE IN THE EVENT 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

i. During Trial

30. In the event of a positive COVID-19 diagnosis of a juror, party, attorney, witness, courtroom personnel or judge, the presiding judge should consider declaring a mistrial pursuant to N.C. Gen. Stat. § 15A-1063, unless the presiding judge determines based on the circumstances, after consultation with the local Health Department and consideration of the precautions taken, that there is an unlikely exposure to others involved in the trial.

31. In the event of a mistrial, the presiding judge shall inform the jurors that a positive COVID-19 case has been reported and this information has been provided to the McDowell County Public Health Department. You may hear from them if you were considered a close contact and that you always have the option of obtaining a test for infection. In the event of no mistrial, the presiding judge shall determine the appropriate notice to jurors with their health and safety, as well as other trial participants, being of paramount concern.

32. The court will contact the McDowell County Public Health Department and ask for assistance including, but not limited to, contact tracing and other guidance.

33. At the commencement of all jury sessions contact tracing information will be collected of all those participating in jury trials for use by the public health department if an exposure event occurs. The Public Health Department shall delineate what information the Court will collect to assist with contact tracing.

ii. After Conclusion of Trial

34. The court will contact the McDowell County Public Health Department and ask for assistance including, but not limited to, contact tracing.
35. At the commencement of all jury sessions contact tracing information will be collected of all those participating in the jury trials for use by the public health department if an exposure event occurs. The Public Health Department shall delineate what information the Court will collect to assist with contact tracing.

General Provisions

This Administrative Order shall become effective on the date on which the Chief Justice's Emergency Directive 10 expires. A copy of this jury plan has been provided to each of the following individuals for comment, changes, modifications, or concerns, and each has provided to the undersigned his or her approval of it prior to execution by the undersigned: The Chief District Court Judge, the Clerk of Superior Court, the District Attorney, the Public Defender, and the Sheriff. The local Health Director has been provided with a draft copy and final copy of this order, however, despite good-faith efforts no response or approval could be obtained from the Health Director.

This order is without prejudice to any presiding Judge in any particular trial to alter or amend the procedures herein as the circumstances dictate to protect the rights, health, safety, and welfare of all the parties and trial participants, with the health and safety of all being of paramount concern.

Signed this the 28 day of September, 2020.



Senior Resident Superior Court Judge