

FILED

JURY TRIAL RESUMPTION PLAN

JUDICIAL DISTRICT 16A 20 AUG 28 AM 10:30

2PR 99

RICHMOND COUNTY, C.S.C.

This Jury Resumption Plan ("the Plan") is submitted in response to Emergency Directive 22 by the Honorable Cheri Beasley, Chief Justice of the Supreme Court of North Carolina. The Plan was prepared after consultation with local officials in each of the three counties in Judicial District 16A - Anson, Richmond, and Scotland. The Chief District Court Judge for Judicial District 16A, Amanda L. Wilson, has determined that a separate plan for district court is not warranted and that the conduct of district court business can be adequately managed by maintaining regular close contact with the local officials in each county in the district.

OVERVIEW

In crafting this Plan, the stakeholders gave due consideration to the Chief Justice's emergency directives and the Best Safety Practices of the North Carolina Administrative Office of the Courts. Careful thought was also given to the circumstances in which the Plan was developed. Even before the advent of COVID-19, each county in District 16A was a "Tier One" county under the N.C. Department of Commerce's annual rankings of the economic well-being of North Carolina's 100 counties. [See 2020 County Tier Designation Memo (<https://files.nc.gov.nccommerce/documents/files/2020-Tiers-Memo> as Published 120219.pdf)] The factors that led to those "distress rankings" have existed in these counties for several years. Certainly, the stresses caused by COVID-19 have compounded the challenges facing these three counties-including, but not limited to, the conduct of court business.

It is also worth stating that in facing these new challenges, superior and district court judges continue to rely on the State of North Carolina and home counties for supplies, materials, and staff. As the N.C. Supreme Court described in In Re Alamance County Court Facilities, 329 N.C. 84, 405 S.E. 2d 125 (1991), the inherent power belonging to superior courts is limited to distinctly judicial matters and that power cannot contravene powers granted by the North Carolina Constitution to the legislative branch - namely, the power to draw public money from state and local treasuries except by statutory authority (N.C. Const. art. V, §7) and the power of taxation (N.C. Const.

art. V, §2). See In Re Alamance County Court Facilities, 329 N.C. at 95, 405 S.E. 2d at 130. In other words, judges do not have budgets or funds to satisfy the Chief Justice's directives.

The undersigned are mindful of the Alamance County court's caution that "a court must proceed with a cautious and cooperative spirit into those areas where its constitutional powers overlap with those of other branches." Id. at 32-33, 405 S.E. 2d at 133. As the Court said:

Beyond the definition of its powers imposed by the constitution, the court's judicious use of its inherent power to reach towards the public purse must recognize two critical limitations: first, it must bow to established procedural methods where these provide an alternative to the extraordinary exercise of its inherent power. Second, in the interests of the future harmony of the branches, the court in exercising that power must minimize the encroachment upon those with legislative authority in appearance and in fact. This includes not only recognizing any explicit, constitutional rights and duties belonging uniquely to the other branch, but also seeking the least intrusive remedy.

Id. at 33, 405 S.E. 2d at 133. Accordingly, the undersigned believe that the range of solutions to re-starting jury trials falls within the continuum of the constitutional framework and the existential reality that pre-existed the novel Coronavirus and that will continue after the virus is extinguished.

Even with those new challenges, each county in District 16A re-commits to providing adequate facilities for judicial activities. Specifically, the signatories can confirm the following:

1. Each court facility is in compliance with the Chief Justice's emergency orders in response to the COVID-19 outbreak. The undersigned caution that those orders have evolved as circumstances warranted; and the relevant officials in each county have worked to provide the services, equipment, or materials that were required to comply with each of those orders.

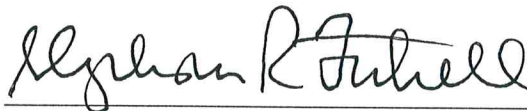
2. Plans for summoning and excusing jurors - with as much "remote" activity as is feasible - have been developed. Those plans are described in the attachments. The undersigned stakeholders remain acutely sensitive to the demographic differences between the counties in District 16A and those in more affluent counties. A greater percentage of our jury pools is less affluent, educated, or experienced with remote technology. They have less access to reliable high-speed broadband internet. A jury plan that fails to account for such differences may be subject to challenge as being non-representative of the local population. Such considerations apply to petit and grand juries. However, the attached plans were designed with the unique circumstances prevailing in each county in mind.
3. Plans for conducting voir dire with social distancing have been made in each county in District 16A. Those plans are outlined in the attachments. All stakeholders recognize how such plans are a substantial change from historical practices. The plans being followed in other courts - federal and state - were carefully studied. The parties express concern about whether such plans will work. Quite simply, successful implementation will require the good faith participation of the lawyers and court personnel (judges included). All participants will have to commit to the proverbial leap of faith that all parties will be afforded the fairest trial or proceeding possible under the extreme circumstances now existing. Also, the participants will have to accept that modifications to the plans may be necessary as experience warrants. However, even good faith acquiescence may not survive appellate or post-trial challenges.
4. Plans for conducting trials with social distancing in the courtrooms for all participants, including the jury, and in the deliberation room have been developed. Those plans are outlined in the attachments. See paragraph No. 3 above, for stakeholder concerns. In addition, it is difficult enough to get citizens to serve as jurors under non-emergent circumstances. It is even more difficult now, as jurors will be extremely hesitant to serve, even if social distancing conventions are observed, because of COVID-related risks.

5. Plans for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection have been devised. See plans outlined in the attachments. The stakeholders express skepticism as to the wisdom of court personnel engaging in any kind of medical survey of trial participants. The information requested (such as "exposure to the virus since last court proceeding") remains uncertain, even to experts. For example, news reports about the incubation period after virus exposure indicate an evolving picture. Some reports indicate that symptoms do not appear for several days after exposure. If so, it is unreasonable to expect jurors to know if they were exposed to COVID in between court sessions, if they show no symptoms. Next, if daily screens are required, records that the screens were performed should probably be made. In that event, how long should that information be kept? Who should have the duty to keep it? As a practical matter, should court personnel be in the business of obtaining or recording juror or court personnel health information? The undersigned strongly suggest that the Court and Administrative Office of the Courts proceed cautiously in assembling or handling this kind of information.
6. All three counties in District 16A expect that all persons entering judicial facilities will obey the order of Governor Roy Cooper to wear face coverings and the Order dated July 16, 2020 by Chief Justice Beasley that face coverings are required in courthouses. All three counties will proceed on the assumption that such individuals will provide their own face coverings just as they provide their own shirts, shoes, and other clothing. In the event of emergency circumstances, some accommodation will be made to assist individuals with obtaining face coverings.
7. Plans for responding in the event of COVID infection of a court participant have been set. Generally speaking, at a minimum, the affected juror or court personnel will be excused immediately and a substitute will replace her or him. If the individual exposed others to the virus, the proceeding will be terminated. The undersigned stakeholders recognize that no such plan is foolproof, and the current state of technology and supplies creates a lot of room for uncertainty. For instance, news reports state that the time period for obtaining test results can vary;

some tests may even require a week or so. The availability of tests can vary. Further, the symptoms generally associated with exposure to COVID are also associated with a wide array of other conditions-allergies, colds, flus, etc. One may reasonably believe that she or he is suffering from a non-COVID condition and, accordingly, not report exposure to or symptoms from COVID. Moreover, the various test results are reported as producing numerous false negatives and positives. Much care is required to ensure judicial participants do not overreact or underreact to a wide range of information. Finally, requiring judicial personnel to oversee health conditions of all participants in a court proceeding places an unusual burden on them: in short, they are being called on to perform actions generally associated with the medical profession. The undersigned have some reservations about their qualifications or willingness to make medical assessments.

SUMMARY

All three counties in District 16A stand ready to resume jury trials in the manner described in the attachments. All participants recognize that adjustments will be necessary as experience dictates. We invite suggestions for improvements from any sources - AOC, the other appellate and trial courts, lawyers, and state and local officials. We recognize that such a team effort is essential to the performance of the essential judicial activities conducted in our court facilities.



Stephan R. Futrell
Senior Resident Superior Court Judge,
District 16A



Amanda L. Wilson
Chief District Court Judge,
District 16A

FILED

ATTACHMENT #B

RICHMOND COUNTY 2020 AUG 28 AM 10:30

JURY TRIAL RESUMPTION PLAN RICHMOND COUNTY, G.S.C.

20799

BY Amber

1. The County Courthouse complies with the Chief Justice's directives.

County officials have worked with court personnel- including the Superior and District Court Judges, the Sheriff's Department, and the Clerk's office - in providing the materials and staff to comply with the various Directives of Chief Justice Cheri Beasley. Hand sanitizer is strategically provided throughout the courthouse. Before entering the courthouse, every person's temperature is checked. Signage relating to entry restrictions is posted at the entrances. Deputies guard the entrances to ensure the safety and health of all who enter. Finally, cleaning staff regularly cleans the building and heavily trafficked areas. Those cleanings occur daily and at heavy-use times.

2. Plan for summoning and excusing jurors with as much "remote" activity as feasible.

All juror summonses will be accompanied by a questionnaire and letter explaining the new COVID-inspired deferral process. See attached. The questionnaire has been reviewed by the District Attorney for Prosecutorial District 21 and defense attorneys who practice in District 16A. The letter specifically inquires as to potential vulnerabilities and concerns as to jury service during a pandemic environment. The resident district court judge, pursuant to G.S. 9-6 and G.S. 9-6.1, shall address deferral requests remotely to the extent reasonably possible, in order to minimize the number of jurors who have to report to the courthouse.

3. Plan for conducting voir dire with social distancing.

After the resident district court judge completes his or her review under Section 2, preceding, jurors will report to the jury assembly room on the first day of the court session. There, they will complete a questionnaire, the form of which will have been prepared by the District Attorney and the defense lawyers (in criminal cases) or the parties' lawyers in the first case for trial (in civil cases). Copies of the completed

questionnaire will be distributed to the attorneys involved in the trial(s) that week.

Jurors will sit in the audience area during the course of the trial. They will sit in numbered seats in that area during jury selection and throughout the trial. Seats in the audience area have been measured and taped in order to designate spots for jurors to sit.

4. Plan for conducting trials in the courtroom for all court participants, including the jury, and in the deliberation room.

As stated above, jurors will sit in the audience area during the trial. Each juror will sit in a numbered seat to which she or he originally was called.

- Lawyers' tables will be turned to face the jurors during jury selection.
- If amplification is available, the witness will testify from the traditional witness seat. Amplification and video capabilities will be added as soon as they can be acquired and installed, so that jurors can see the witness's facial and body features during live testimony.
- The video feed will include a monitor at the judge's seat/bench, so that the witness's face is always visible to the judge. If possible, the same capability shall be provided for the court reporter and court observers in other courtrooms.
- Additional video monitors have been requested, and once received, they will be placed in the courtroom so that jurors can view them without interfering with the court's or lawyers' ability to see the jurors.
- Motions and objections that have to be heard outside jurors' presence will be conducted in the courtroom, and jurors will be sent to the jury assembly room (for superior court cases) or another second floor courtroom (for district court cases).
- The jury assembly room, which is located down the hall from the courtroom, shall serve as the jury deliberations room in superior court trials. Any available second floor courtroom will serve as the jury deliberations room in district court trials.

5. A plan for daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection.

All persons entering the courthouse - including parties, witnesses, attorneys, jurors, or visitors to offices in the courthouse - are required to have their temperatures measured. They are prohibited from entering if their temperatures exceeds 100° F or if they have any symptoms associated with COVID-19.

6. Plan for face coverings.

All persons entering the courthouse are required to obey Governor Roy Cooper's order that face masks be worn in public places. Also, face masks are required by the Order adopted July 16, 2020 of Chief Justice Cheri Beasley and the May 17, 2020 Supplement to Administrative Order dated 03/12/2020 (filed 03/13/2020) by Senior Resident Superior Court Judge Stephan R. Futrell and Chief District Court Judge Amanda L. Wilson. The undersigned stakeholders believe that persons entering the courthouse should supply their own face coverings in the same manner that they supply their own shoes, shirts, and clothes. In the event that a person seeking entrance to the courthouse lacks appropriate face covering, every effort will be made to assist her or him in finding suitable attire. During hearings, the speaker (whether it is a witness, attorney, or judge) may remove his or her face covering while he or she speaks, so long as he or she is 6 feet from the closest person.

7. A plan for responding to intervening sickness by a trial participant.

None of the undersigned stakeholders (or the entities or groups they represent) purports to engage in the practice of any of the medical sciences. None represents that she or he is trained or educated in the diagnosis or treatment of illnesses. None wishes to undertake responsibility for diagnosing or treating illnesses (including but not limited to COVID-19). None wishes to participate in the activity of contact tracing as to any illnesses (again, including but not limited to COVID-19) from which court personnel or jurors may suffer in the course of a proceeding.

As a corollary to the above, none of the undersigned stakeholders wishes to imply that she or he is performing any kind of medical analysis, diagnosis or treatment when she or he

observes symptoms exhibited by a juror or court personnel. Any reporting or discussion relating to such observations is not intended in any way, directly or indirectly, to suggest any sort of medical knowledge or expertise or that she or he is diagnosing or recommending any course of treatment. Nor should any such reporting or discussion be interpreted to constitute the publication of any fact, allegation, or statement as to any individual's health, medical conditions, or status.

To the extent that any participant in the court's activities makes an inquiry or observation as to the actions, inactions, symptoms, conditions, or appearance of any juror or court personnel, such inquiry or observation is not intended to pry into anyone's private personal health information or status. Nor is that inquiry or observation intended to be used for any purpose other than the determination of whether the court proceedings can continue without impairing the health or safety of any juror or court personnel.

Finally, if any record is made as to the inquiry or observation of symptoms or health conditions of any juror or court personnel, such record is not intended in any way, shape, or form, directly or indirectly, to publish any statement or opinion as to the medical or health condition of any juror or court personnel. Such record is made solely to document the performance of the ministerial act of obtaining the responses of jurors or court personnel about symptoms, test results, or exposure to persons who have tested positive for COVID-19 during a court proceeding.

All of the above having been said, all jurors and court personnel will be asked, before re-entering the courtroom, if, since they were last in the courtroom, they have become symptomatic, have tested positive for COVID-19, or have been exposed to someone who has tested positive for COVID-19. Anyone that responds affirmatively will be sent home immediately. If he or she has not exposed other court participants to the virus, then that individual will be replaced, and the case will proceed. If it is determined that the affected individual has exposed others to the virus, court personnel will confer with the health director and attorneys to determine whether the proceeding can continue without endangering the health of jurors, the parties, or court personnel.

This the 25th day of August, 2020.

Amanda L. Wilson

Amanda L. Wilson
Chief District Court Judge
Judicial District 16A

Stephan R. Futrell

Stephan R. Futrell
Sr. Resident Superior Court Judge
Judicial District 16A

Wickie B. Daniel

Wickie B. Daniel
Clerk of Superior Court
Richmond County

James Clemmons

James Clemmons
Richmond County Sheriff

Scott T. Brewer

Scott T. Brewer
President, District Bar 16A

W. Reece Saunders, Jr.

W. Reece Saunders, Jr.
District Attorney

Tommy Jarrell

Tommy Jarrell
Richmond County Health Director

DATE

Dear Potential Juror:

You have been summoned for jury duty. Our courts and our community depend on citizens such as yourself serving on trial juries and grand juries to provide justice. Your service is fundamental to the rights and liberties provided in the United States Constitution and the North Carolina Constitution. I look forward to working with you.

We are living in challenging times caused by the COVID-19 pandemic. The Court must continue to address emergency and time sensitive cases and must do so in a safe manner. Our Court, in consultation with the Richmond County Department of Public Health and Human Services, has engaged in continuous and extensive planning since early March to keep our Court functioning and to protect the health of those who interact with us. We take public health and safety seriously and have implemented policies to minimize the risk of infection. We have taken the following precautions:

1. Social distancing is required in our courthouse. The capacity of our courtrooms has been dramatically reduced and seats have been marked to provide a 6 feet space in all directions. Jury pools will not be assembled in the customary large groups.
2. Everyone entering or remaining in the courthouse must wear a mask or face covering unless they meet specific exceptions.
3. The temperature of every person entering the courthouse is measured by a non-touch device. If the device finds a temperature of 100.4° F or more, access will be denied.
4. Hand sanitizer is being provided at each courthouse entrance and in the courtrooms.
5. The courthouse is being cleaned daily and frequently touched areas are cleaned continuously throughout the day.

Your enclosed jury summons provides for a process to seek deferment or to be excused from jury service for those that fall within certain limited categories. Please follow those instructions if you seek to be deferred or excused for a non-COVID-19 reason. Additionally, please find enclosed a "COVID-19 Deferral Questionnaire" and a "Grand Jury Questionnaire." Both documents must be completed and returned to the Jury Clerk _____, by U.S. Mail or hand delivery to the Clerk's office. In addition to mailing the documents, you can

choose to scan the documents and email them back to _____ at _____ . Also, if you have any questions, please call _____ at (phone number: _____). Finally, up to the moment you arrive at the courthouse, if you need to update any of the questions on the COVID-19 Deferral Questionnaire, please call _____ before you report to the courthouse.

You must complete and return both questionnaires.

The Court will do its part to provide a healthy and safe environment for you to fulfil your civic responsibility. Thank you for your unselfish service to our community. Without your fulfilling your critical role, our system of justice does not work – and the rights provided in our state and federal constitutions go unfulfilled.

Again, thank you for your service.

Sincerely,

Stephan R. Futrell
Senior Resident Superior Court Judge
Judicial District 16A

COVID-19 DEFERRAL QUESTIONNAIRE

Your participation is an important part of the precautionary measures necessary to protect you and others in the courthouse. Please answer truthfully to the following questions:

1. Please provide your name.
2. Please provide your email address.
3. Please provide a phone number, preferably a cellphone.
4. Have you been diagnosed with, or had close contact with, anyone who has been diagnosed with COVID-19 within the last 14 days?
5. Have you experienced any cold or flu-like symptoms in the last 14 days (including fever, cough, sore throat, respiratory illness, loss of smell, or difficulty breathing)?
6. Are you over the age of 65?
7. Do you have an underlying medical condition that puts you at a higher risk of developing serious health complications from COVID-19?
8. Have you been directed to isolate or quarantine?
9. Do you live with or provide direct care for a vulnerable person?
10. Do you have children at home who require your direct supervision due to school and/or daycare closings? Note: this applies if there is NO ONE else in the household who can provide care during jury service.
11. For any of the reasons listed above, are you requesting that your jury service be deferred?

Date:

Signature:

If you have any questions, please contact the Jury Clerk at _____.