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NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

WAYNE COUNTY

2020 OCT 19 P 2:07

SUPERIOR COURT DIVISION

WAYNE CO., C.S.C.

In re:

BY

MM

WAYNE COUNTY

ADMINISTRATIVE

JURY TRIAL

ORDER

RESUMPTION PLAN

WHEREAS A WAYNE COUNTY JURY TRIAL RESUMPTION PLAN ("the Plan"):

1. was approved on September 30, 2020, by the signatories thereto;
2. was submitted on September 30, 2020, to the North Carolina Chief Justice for approval; and
3. was approved by the Chief Justice and the North Carolina Administrative Office of the Courts (NCAOC) on or about October 10, 2020, with recognition and direction that as health and safety protocols and other best practices develop and improve, especially as such developments and improvements are or may be recommended by the Chief Justice (see, e.g., Emergency Directive 21) and NCAOC (see, e.g., NCAOC COVID-19 Field Guidance, referenced also in the Plan), the Plan can and should be appropriately modified;

the attached Wayne County Jury Trial Resumption Plan is hereby effective as set out in the Plan and shall be published online on the NCAOC website.

This Plan is applicable to:

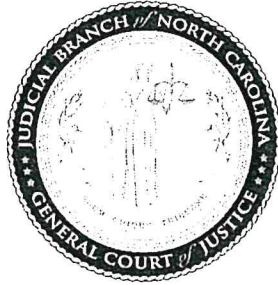
- a. superior court jury trials in District 8-B, which is Wayne County, North Carolina, and
- b. district court jury trials conducted in Wayne County, North Carolina, which is part of the three-county (Wayne, Lenoir, and Greene) Eighth Judicial District.

Entered this the 19th day of October, 2019.



William W. Bland

Senior Resident Superior Court Judge



Jury Trial Resumption Plan: Local Rules and Recommendations

Wayne County, North Carolina

September 30, 2020

Since March 2020, everyone—court personnel, county officials, maintenance staff, litigants, attorneys, and all the many people necessary to keep court operations functioning—have responded cooperatively and professionally to maintain an effective and safe work environment for the people utilizing the services of the Wayne County Courthouse. As in every area affected by the COVID-19 pandemic, there have been challenges, both expected and unanticipated. This community and those who rely on the services of the court system can be assured that courthouse personnel are doing their best to follow best practices to meet the safety as well as the business and constitutional demands of the justice system. Likewise, the patience and cooperation of the public has been very much appreciated by courthouse personnel.

Court operations have been ongoing, though limited in scope. Regrettably but unavoidably, jury trials have been suspended in Wayne County since mid-March. With limited exceptions, the grand jury has continued to convene on its regular schedule (meeting in Courtroom 1), with new grand jurors being selected as statutorily required. With the cooperation of all and working by appointment, the number and type of cases addressed in open court has steadily expanded though not to pre-COVID levels. Effective processing of court matters, both criminal and civil, requires that there be a means of conducting jury trials in a safe and practical manner. The Chief Justice of North Carolina has required that each county in which jury trials are to be conducted publish a Jury Trial Resumption Plan.

Jury trials involve not just having a jury hearing the case, but also selecting the jury from the jury “pool,” traditionally made up of about 40 to 60 citizens summoned for jury duty. For years, the jury pool has convened in the “jury pool room” for juror orientation and then the “pool” has been brought to a trial courtroom for jury selection and the trial itself. This protocol is no longer possible with “social distancing” and other pandemic procedures in traditional trial courtrooms 4 and 5.

Wayne County is fortunate to have a large courtroom, Courtroom 1, which will facilitate distancing and safety requirements. The traditional Courtroom 1 jury deliberation room is too small to accommodate a full (distanced) jury (especially with alternates). The traditional “jury pool room,” however, can be utilized to be an effective “jury deliberation room.”



Courtroom 1, gallery view.

The following is a general plan for the resumption of jury trials. As in all trials, circumstances may arise requiring or allowing for modification of this plan, while still allowing for the safe participation of all persons associated with the trial and the lawful procedure of the trial. Such modifications may be made in the discretion of the presiding judge.

1. Jury Summons: For most trials, the jury clerk shall summon enough jurors (based on experience [which is limited under COVID]) to have about 40 or more jurors available for jury selection on the date of trial. Initially, considering deferrals, excuses, and an anticipated lower yield, this is probably about 80 to 100 summonses. Special trials may require modification of the number of summonses sent out; consideration should be given to possible “pooling” of jurors pursuant to N.C. GEN STAT. § 9-5; this should be coordinated between the judge, the jury clerk, and other concerned parties.

Jury summons shall include information explaining the safety precautions that are already in place at the courthouse and which will be taken throughout the jury trial process. The importance of jury trials to our North Carolina and American system of justice should also be explained. Jury summonses shall indicate a telephonic, written, or electronic means (remote, rather than in-person) for potential jurors to initially request or discuss deferral or other jury service concerns with a district court judge. An in-person conference can then be arranged if the judge deems appropriate and necessary.

2. Courtroom 1 shall be the location of the jury trial, unless Courtroom 4 or 5 may be practicable with a smaller jury. (A civil trial may have by agreement a substantially smaller number of jurors [but at least six]. After jurors are selected, it may be possible to use the front rows of the “gallery” in courtrooms 4 and 5 as the “jury box.”)

In any event, jury selection and orientation shall be in Courtroom 1 and, in any jury trial, all persons—jurors, court personnel, attorneys, witnesses, and other trial-affiliated persons—shall be screened daily by a body temperature measurement and a short general health and screening (contact) inquiry. Consistent with current protocol, face coverings shall be made available to any jurors, court personnel, attorney, witness or party who do not have such covering. (Note that facial coverings are already required of a people in the public areas of the courthouse, including Courtroom 1.)

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, that person (if in the courthouse) shall be promptly separated from others, and the presiding judge shall be promptly informed and shall make a discretionary determination as to whether and how to proceed. The judge may consult with the parties and health professionals as deemed appropriate, and the judge should act quickly, especially as to the isolated person.

Any person, including a juror, who exhibits COVID symptoms or who has COVID related concerns, should not report to the courthouse. Jurors should contact the jury clerk regarding concerns; others should contact the presiding judge’s office or the clerk’s office to communicate concerns.

3. Jury Orientation: Persons summoned for jury duty shall report to Courtroom 1 and jury orientation shall occur in Courtroom 1. All current courthouse safety protocols—masks, distancing, “sit here” markings, etc.—shall be followed. Courtroom 1 shall serve as the “jury pool room” until the trial begins. Reasonable efforts should be made to begin the trial as soon as practicable after jury orientation.

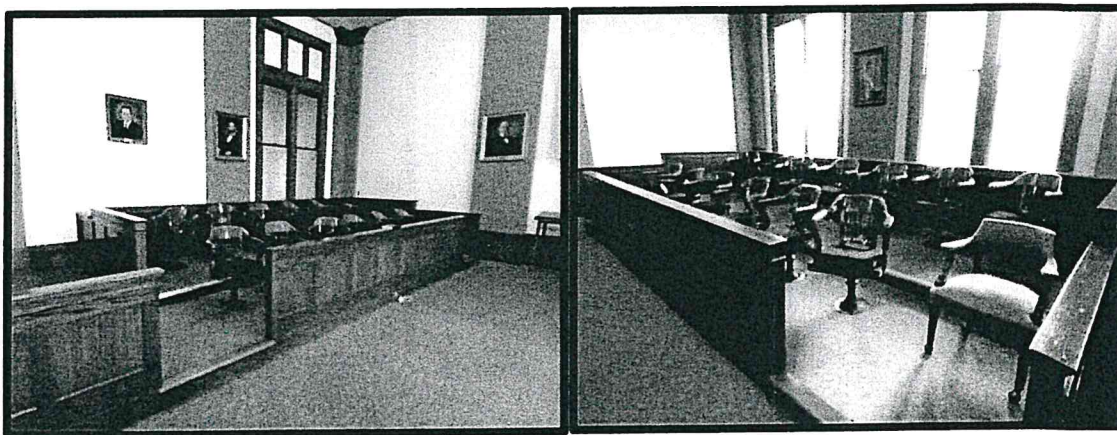
All parties and courtroom personnel necessary to conduct a trial by jury shall set up in Courtroom 1 after jury orientation. (The court would now bring itself to the jury pool, rather than the jury pool coming into the court as before.)



Courtroom 1, bench view.

4. **Jury Selection and Seating:** Courtroom 1 is unusual by today's standards in that it has two jury boxes, each with 12 to 14 seats, with one jury box on each side of the courtroom. Jurors, when called to the "jury box," shall be positioned among those seats (with the possible addition of about three chairs placed in front of each jury box) to maintain appropriate distancing. Empaneled jurors shall each be given a disposable "Juror" sticker to wear each day of jury service, rather than the regular plastic badge.

Jury selection shall be conducted with the potential jurors positioned as seated or in such a manner as the presiding judge deems appropriate to accomplish jury selection. Concern has been expressed that masks may hinder observation by counsel and others of a juror's facial expressions, a potentially important observation during jury selection. This concern, if any, will be addressed by in the discretion of the presiding judge in consultation with the parties.



Wayne County Courtroom 1 has two jury boxes, one on each side of the courtroom. Additional juror seating can be set up in front of the jury boxes.

For the trial to facilitate observation of a witness by each juror, a "hybrid" seating arrangement in which some jurors sit in the eastern, right-side jury box and others sit in first rows of the gallery on the eastern half or the right side of the courtroom may be implemented.

5. Jury Room: For all breaks in which the jury is to retire to the jury room and for deliberation at the appropriate time, the current “jury pool room” (on the third floor) shall be configured as a jury deliberation room with a large set of tables in the middle and an appropriate number of chairs arranged and distantly placed around the table. Care shall be taken when the jury moves between Courtroom 1 and the now-jury deliberation room to avoid unnecessary interaction with others.



Jury pool room to be used as jury deliberation room (not yet set up for deliberation).

6. Public forum: Courtroom 1 should accommodate anticipated “audience” needs, especially from family and support persons for victims, defendants, and other involved parties. During jury selection, of course, concerned parties and others will need to be separated from potential jurors not just for proper trial procedure but to avoid a higher density situation. Fortunately, Courtroom 1 has a balcony which should allow the expected “gallery” members to observe proceedings separate from the jury pool and others in the courtroom. If necessary, some of the jury pool could be moved to a separate courtroom (4 or 5) pending individual *voir dire* of a randomly called juror.

Special arrangements for a “high profile” trial in which large numbers of people have interest in the proceedings will have be considered and resolved through pre-trial coordination. Courtroom 1 does not presently have specialized audio and video equipment for remote viewing, but a Webex or similar set-up could be utilized as necessary.

Our system of justice calls for our courts generally to be “open forums” and reasonable efforts should be made to preserve this important protocol. Under NC law, public health and similar considerations do permit a presiding judge to exercise reasonable discretion in limiting public access.

7. The trial shall be otherwise conducted pursuant to normal and appropriate trial procedure. Concern has been raised that a mask worn by a witness during testimony may hinder observation by the jury of the manner and demeanor of a witness. In the discretion of the presiding judge, with consideration in criminal trials of confrontation issues, a witness may be permitted or required to testify without a mask. A Plexiglas surround may be set up as necessary around the witness stand and, as discussed above, the jury should be positioned to facilitate observation of a witness.
8. Resumption of jury trials will require the cooperation of all persons involved. Consultation should be made to the “Best Safety Practices for Jury Management and Jury Trials” in the NCAOC COVID-19 Field Guidance, as such guidance may be amended.

(<https://www.nccourts.gov/documents/publications/ncaoc-covid-19-field-guidance-to-local-judicial-officials>)

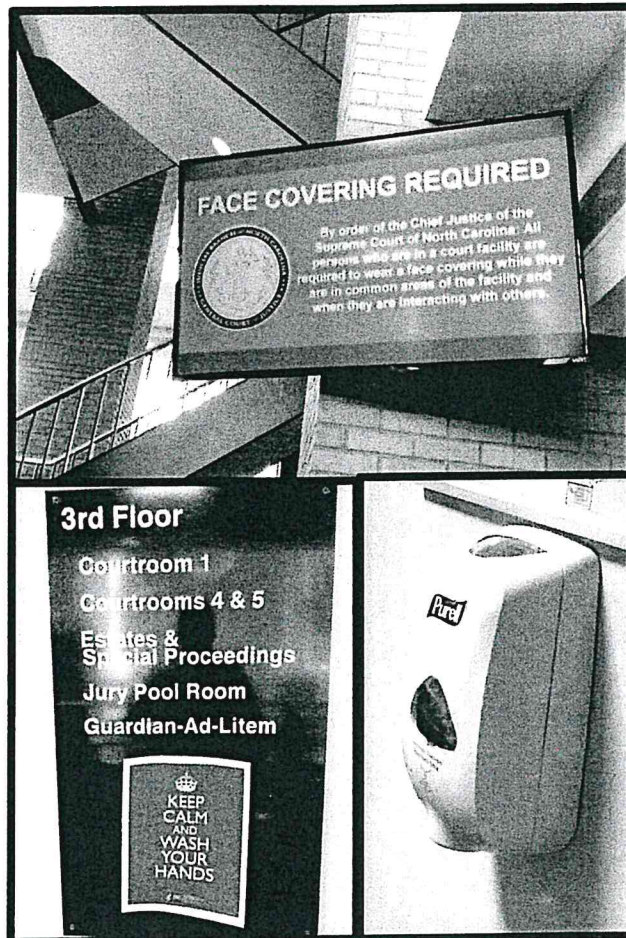
This plan provides a framework from which all persons must work in good faith to provide constitutionally and statutorily fair and safe trials for all concerned. As effective practices are developed and realized, they should be incorporated into the trial protocol. Ongoing attention should be given to successful methodologies in other jurisdictions.

9. Note as to alternate plans:

Use of the “courtroom gallery as jury box”: Other jurisdictions are considering and may implement a trial procedure in which the “gallery” (where the public usually sits) is used as the “jury box.” A “hybrid” system, discussed above, using a jury box and a portion of the gallery may be the best solution for Courtroom 1. After the jury has been selected, it may be possible to use the “gallery as a jury box” in courtrooms 4 and 5. (Those courtrooms are not large enough to accommodate the larger jury pool for jury selection.) Use of the gallery as the “jury box” could create a challenge for allowing interested parties to observe the trial, especially victims and family members of parties as well as the public. Other jurisdictions may be addressing this issue by sending a video feed to an adjoining courtroom, but this creates many technical and other logistical concerns. Initially, the Courtroom 1 plan is more feasible, but the “gallery as jury box” proposal may warrant additional consideration in some circumstances.

Offsite location: Setting up a temporary courtroom in a large warehouse, empty store, or convention center is a consideration, but is not presently economically, technically, or logistically viable. Such a facility is not currently known to be available.

10. During the course of a jury trial, all persons associated with the trial, including all parties, court personnel, jurors, witnesses, and others, shall be requested and directed to minimize contact with outside parties and to take pandemic-appropriate precautionary measures for the protection of themselves and others.



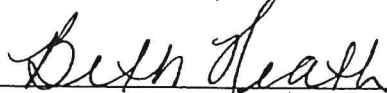
*Wear a mask. Wash hands.
Wait a safe distance apart.*

11. As stated throughout this plan, the presiding judge, in consultation with the parties and persons affected, may and should exercise discretion as deemed appropriate to facilitate a fair trial and to maintain and promote public health for all persons involved with the trial.

This jury trial resumption plan is promulgated on September 30, 2020, by the senior resident superior court judge as required by the Chief Justice of North Carolina and is approved by the undersigned. This plan will become effective 10 days after the expiration of the Chief Justice's Emergency Directive 10 and not prior to November 1, 2020.



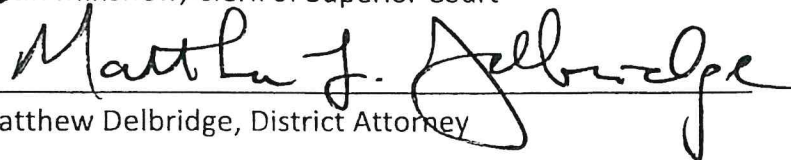
William W. Bland, Senior Resident Superior Court Judge



Elizabeth A. Heath, Chief District Court Judge



Justin Minshew, Clerk of Superior Court



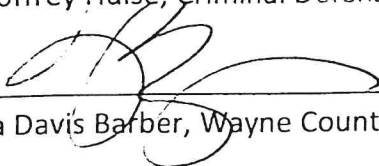
Matthew Delbridge, District Attorney

/s/ Gene Riddle

Gene Riddle, Civil Trial Attorney

/s/ B. Geoffrey Hulse

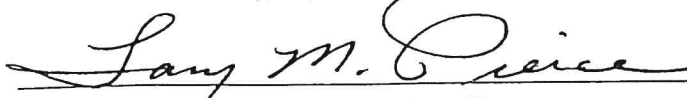
B. Geoffrey Hulse, Criminal Defense Trial Attorney



Tonya Davis Barber, Wayne County Bar President, Trial Attorney

/s/ C. Branson Vickory, III

C. Branson Vickory, III, Former DA, Private Practice Attorney



Larry Pierce, Wayne County Sheriff

/s/ Dr. Brenda Weis

Dr. Brenda Weis, Wayne County Public Health Director

Note: Any person whose signature above is "signed" with /s/indicated consent to this plan.