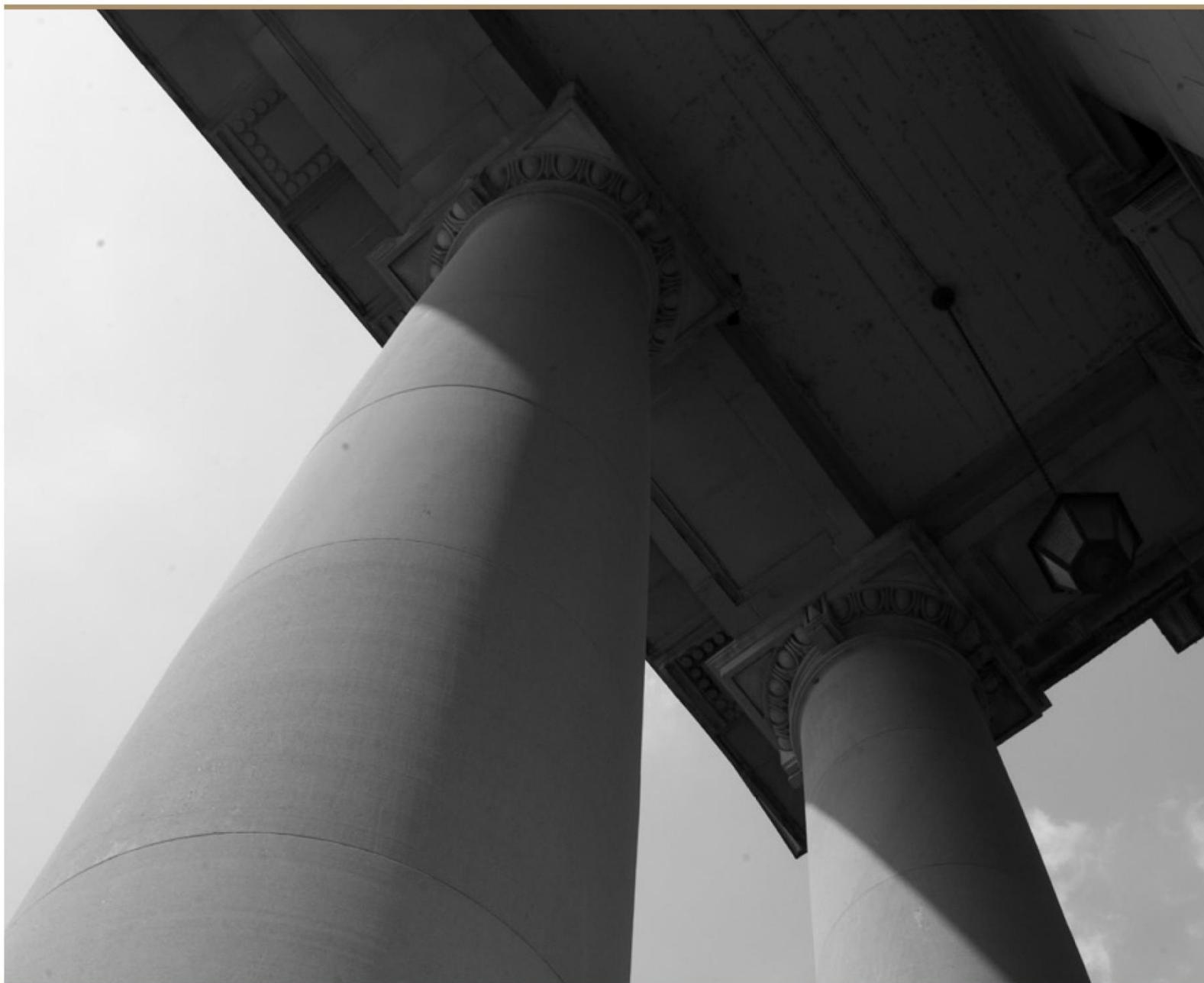




# 10<sup>TH</sup> JUDICIAL DISTRICT JURY TRIAL RESUMPTION PLAN

SEPTEMBER 30, 2020



# **Jury Trial Resumption Plan 10th Judicial District**

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## **I. PREFACE**

This plan for the resumption of jury trials in the 10th Judicial District is established in conformity with the Orders of the Chief Justice of the North Carolina Supreme Court. This plan sets out the baseline for the resumption of jury trials; policies implementing the measures set out herein will continue to be reviewed and adjusted by the Wake County Court Emergency Response Team, in consultation with state and local health officials.

On March 13, 2020, North Carolina Chief Justice Cheri Beasley declared under N.C.G.S. § 7A-39(b)(2) that catastrophic conditions resulting from the public health threat posed by COVID-19 existed in all counties of this state, and ordered, in Emergency Directive 1, that all Superior Court and District Court proceedings, including jury trials, be rescheduled. Emergency Directive 1 was extended by subsequent orders.

On May 21, 2020, Chief Justice Beasley ordered, in Emergency Directive 10, that “no jury trials shall be convened in the district or superior courts of this State for the next thirty (30) days.” Emergency Directive 10 was extended by subsequent orders.

On July 26, 2020, Chief Justice Beasley, while maintaining Emergency Directive 10 in effect, ordered, in Emergency Directive 22, that each judicial district establish a plan for the resumption of jury trials. Emergency Directive 22 reads as follows:

*Each senior resident superior court judge shall, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for the district court is warranted, the chief district court judge shall, in consultation with other local officials, craft a plan for the resumption of district court jury trials in his or her judicial district.*

*The Jury Trial Resumption Plan shall ensure that all court operations are in compliance with each of the Chief Justice's emergency directives and shall be informed by the Best Safety Practices distributed by the North Carolina Administrative Office of the Courts.*

*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.*

*Before jury summonses are issued, and before promulgating the plan to the public, the senior resident superior court judge shall submit a copy of the Jury Trial Resumption Plan to the Chief Justice, which shall bear a signature indicating approval of the plan by each of the following officials in the county in which jury trials are to be conducted:*

- a. the chief district court judge;*
- b. the clerk of superior court;*
- c. the district attorney;*

- d. *the public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;*
- e. *the sheriff; and*
- f. *the public health director.*

*The Jury Trial Resumption Plan shall be promulgated either by local rule or administrative order no later than 1 September 2020 and may become effective after the date on which Emergency Directive 10 expires. The local rule or administrative order shall be submitted to the North Carolina Administrative Office of the Courts and thereafter posted to the NCCourts.gov website.*

On August 24, 2020, the Chief Justice modified Emergency Directive 22 and extended the required date for the adoption and submission of the Jury Trial Resumption Plan to September 30, 2020. This plan will be promulgated by administrative order and remain in effect until further order of this Court.

## **II. EARLY PLANNING & PRELIMINARY DECISIONS**

### **A. Identifying Appropriate Cases for Trial**

#### **1. Criminal Trials**

The District Attorney shall identify criminal matters that are ready for trial and place those matters on a criminal trial calendar. The following factors shall be considered and balanced, by the District Attorney, when determining appropriate criminal cases for trial.

- The extent to which a jury trial of the case can be conducted with safety for the health of all participants;

- The readiness of the case for trial, as determined by counsel for each party;
- The age of the case;
- Whether or not the defendant remains in custody pending trial;
- Whether or not defense counsel has had access to an in-custody defendant to adequately prepare for trial;
- The complexity, number of parties and counsel, and expected length of the trial;
- The consent, or lack thereof, of the defendant and defense counsel to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from special precautions involved in the court proceeding;
- The consent, or lack thereof, of the victims to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from special precautions involved in the court proceeding; and
- The extent, if any, that the State's case and victims will be prejudiced by further delay.

## 2. Civil Trials

The Trial Court Administrator shall identify civil matters that are ready for trial and place those matters on a civil trial calendar. No civil matter shall be calendared for a jury trial until the later of January 1, 2021 or until at least 30 days have elapsed since the resumption of criminal jury trials, unless a jury has previously been selected and impaneled in a case.<sup>1</sup> The following shall be considered and balanced by the Trial Court Administrator when determining appropriate civil cases for trial.

- The extent to which a jury trial of the case can be conducted with safety for the health of all participants;
- The readiness of the case for trial, as determined by counsel for each party;
- The age of the case;
- Whether the parties will stipulate to a jury of less than twelve or other measures that would lessen the length of the trial or the number of individuals in the courtroom during trial. Cases where parties stipulate to a jury of six or eight may receive priority setting;

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<sup>1</sup> The combined number of general civil district and civil superior court cases disposed of by a jury trial verdict in the 10<sup>th</sup> Judicial District in FY 2018-2019 was seven (7) and in 2019-2020 was eight (8), representing 0.08% and 0.09% of the total number of general civil district and civil superior court cases disposed each year, respectively. (NC Judicial Branch Caseload Trends Database: <https://data.nccourts.gov/explore/>)

- The complexity, number of parties and counsel, and expected length of the trial; and
- The consent, or lack thereof, of the parties and counsel to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from special precautions involved in the court proceeding.

#### **B. Planning of Court Calendars to Take into Account Jury Safety Protocols**

- The starting time for the first day of jury trials shall be staggered (e.g., 9:30 a.m., 11:30 a.m. and 2:30 p.m.) so that at any given time, only one pool of prospective jurors is arriving at the courthouse at a time. If a single trial is anticipated to require more prospective jurors than the maximum allowable occupancy<sup>2</sup> of the jury lounge will permit, prospective jurors for a single trial may, by random selection, be given staggered reporting times (e.g., 8:45 a.m., 10:45 a.m., or 1:45 p.m.).
- The trial court administrator, district attorney, elected clerk, and jury clerk shall collaborate on the scheduling of criminal and civil

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<sup>2</sup> The “maximum allowable occupancy” used throughout this document refers to Chief Justice Beasley’s Emergency Directive 12, in which she ordered that “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.”

juror (including the Grand Jury) reporting times and priorities of court sessions to which the jurors will report.

- After orientation, all efforts shall be made to promptly escort the jury pool to the trial courtroom so as to minimize waiting time in the jury lounge. As such, to the extent possible, pre-trial matters that require more than a brief hearing should be scheduled before the trial judge at a time prior to the start of trial.

### **C. Deferrals and Excusals**

- The jury summons shall include clear information regarding how to contact the court if the juror has safety concerns, such as a recent exposure to COVID-19, up to and including the day of jury service, to prevent a juror from appearing in-person who may have been recently exposed and not within the local court's deadline to request an excuse or deferral. Jury summonses shall also include information about the safety protocols that are in place in the judicial facilities and during jury trials to reduce the chances of exposure to COVID-19.
- The chief district court judge or her designee, pursuant to N.C.G.S. § 9-6(b), will revise the district's excusal or deferral policy to include the following:

- Allowing for remote or telephonic requests for excusal or deferral to reduce the number of people who must appear in-person to make such a request;
- Granting deferrals rather than excusals where appropriate;
- Allowing for collateral consequences of the COVID-19 pandemic to be considered, such as parents who are home-schooling;
- Allowing more flexibility for excusing / deferring individuals who may not be able to serve due to COVID-19 risks, taking into account the [Center for Disease Control guidance](#) regarding persons who are high-risk or who may live with or act as a caregiver for someone who is high-risk, and include this information in the jury summons;
- Allow more flexibility for excusing / deferring individuals who are at heightened risk of contracting COVID-19 and transmitting it to others, such as essential workers in the health or service industry;
- Allow more flexibility regarding the issuance of show cause order for persons who fail to appear (e.g., if a person does not appear, resend summons rather than issuing show cause).

### **III. REPORTING FOR DUTY, ASSEMBLY, AND ORIENTATION**

- Jury summonses shall instruct jurors to call the jury message line after 5:30 p.m. on the day prior to their report date to determine whether they are required to report.
- Counsel in civil and criminal trials should communicate with each other and the Court in advance of trial to ensure that if a case will be resolved without trial, prospective jurors do not needlessly travel to and enter the judicial facilities.
- Individuals reporting for jury duty shall report to the Wake County Justice Center.
- Prior to initial entry into the Wake County Judicial Facilities, and each day thereafter, prospective jurors and empaneled jurors will undergo a COVID-19 screening process, to be administered by Wake County.
- In accordance with judicial facility policy, masks / face coverings are always to be worn, with limited exceptions.
- In accordance with judicial facility policy, social distancing is enforced.
- Upon entry into the Wake County Justice Center, prospective jurors shall report to the jury lounge on the 3rd floor. No more than 50 prospective jurors will be admitted into the jury lounge so as to ensure that the maximum allowable occupancy of 61, as determined by Wake County, will not be exceeded at any time. The jury clerk should contact the Clerk of Superior Court and the COVID-19 coordinator for assistance if he / she

expects the number of individuals in the jury lounge to exceed the maximum allowable occupancy.

- Prospective jurors will be provided extra mask(s) and other safety materials, when available, and instructions to follow in the event the juror becomes ill or has a close contact with a COVID-19 positive individual. Safety protocols shall also be provided on the recorded jury message line, by signage posted in the jury lounge, and on the AOC website for [Wake Juror Information](#).
- The jury lounge and doorways shall have floor and seat markings to designate appropriate social distances for queuing and seating.
- The jury lounge shall be cleaned according to local health guidelines and recommendations.
- The direct exchange of documents and other items with jurors (e.g., photo identification and parking vouchers) should be limited.
- Hand-sanitizer, tissues, and lined trash cans shall be readily accessible in areas of the jury lounge where jurors will convene.
- Shared amenities in the jury lounge, such as books and magazines, shall be removed.
- Pens / pencils should not be reused without proper cleaning between use.
- Juror oaths shall be administered by affirmation so that jurors are not required to share the Holy Bible. Prospective jurors should be notified in

their summons that if they wish to be sworn on a holy book rather than affirmed, they should bring their personal copy.

#### **IV. JURY SELECTION PROCESS**

Jury trials may be conducted in the following courtrooms. Other courtrooms may be used for jury trials only upon approval of the Senior Resident Superior Court Judge and the COVID-19 Coordinator.

Courtroom	Maximum Allowable Occupancy
WCJC 701	26
WCJC 704	13
WCJC 401	26
WCCH 10C	12

- When the jury pool exceeds the maximum allowable occupancy for a courtroom, a randomly selected group of the pool shall be seated in an adjacent courtroom or a specified seating area outside of the courtroom. Where feasible, the jury selection process will be live streamed into the adjacent space.
- Prospective jurors shall be seated in the gallery area of the courtroom for voir dire and, when randomly called for questioning, shall move to a seat in the first several rows.
- Prospective jurors shall wear masks / face coverings. If available, counsel may request that clear face shields or face masks with a clear

window be worn. In the discretion of the presiding judge, and with the consent of the prospective juror(s), clear face shields may be used for short periods of time - bearing in mind that face shields are not considered by health experts to be as effective as masks / face coverings to prevent the spread of COVID-19. The judge should consider the safety of all court personnel, including the court reporter and court interpreter, when making this determination. If the judge approves of the use of a clear face shield, all others in the courtroom should be located at least 6 feet away at all times (or the current social distancing guideline at the time) and shall wear a mask / face covering.

- The presiding judge shall incorporate into the orientation instructions the procedure by which a juror who becomes ill or is exposed to a significant risk of COVID-19 should contact court personnel during the course of the trial.
- For recordation purposes, the presiding judge should ensure that prospective jurors are speaking loudly enough to be heard by all involved, including the court reporter.
- The presiding judge should consider empaneling more alternate jurors than usual to account for individual jurors who may become anxious or ill during the course of the trial and wish to be relieved of their duty.
- High touch areas of trial courtrooms shall be cleaned in accordance with Center for Disease Control recommendations.

## V. LOGISTICS OF THE TRIAL

### A. Disputes about which cases are selected for trial

- Once a criminal matter has been calendared for jury trial by the District Attorney, any motions for COVID-19 or non COVID-19 related issues, including motions to continue, must be filed in writing and served upon opposing counsel, as soon as possible, but no less than ten (10) business days prior to trial.
- If at all practicable, the motions to continue should be heard by the trial judge.
- When considering a motion to continue in a criminal action, the judge shall perform a balancing test considering the same factors as the District Attorney did for scheduling trial dates as listed in Section II.A.1. of this document, in addition to any other relevant factors.
- Once a civil matter has been calendared for jury trial by the Trial Court Administrator, any motions for COVID-19 related issues, including motions to continue, shall be submitted in accordance with local rules and current court operations policies posted to the [Wake County COVID-19 Updates webpage](#).

### B. Convening Jurors in a Courtroom

- Prior to convening jurors in a courtroom, all counsel must verify that they are not symptomatic. Counsel, like other persons entering

judicial facilities, are required to undergo a COVID-19 screening process, to be administered by Wake County.

- Disposable juror badges should be used, when feasible. If reusable badges are used, they shall be cleaned prior to distribution to the jurors and jurors shall be instructed to keep the same badge throughout the trial.

### **C. Seating Arrangements**

- Empaneled jurors and alternates are to be seated in the front several rows of the gallery in the courtrooms. Jurors must be seated at least six feet apart at all times during the trial and deliberations.
- Witnesses shall testify from within the jury box.
- Counsel tables shall be turned, depending upon the courtroom, either to face the jurors in the gallery or to face the jury box being used for witness testimony.

### **D. Configuration of Courtrooms**

- Courtrooms shall have an adequate supply of hand-sanitizer, tissues, cleansers, and lined trash cans, and shall be marked to delineate appropriate social distancing for seating and queuing.
- Priority for seating in the gallery shall be for jurors. If, in the discretion of the presiding judge, adequate seating is available in the gallery to safely seat a small number of family members, observers,

media, etc., the presiding judge may permit persons other than jurors to be seated in the gallery as well.

- Where inadequate space is available to seat persons other than jurors in the gallery, arrangements shall be made, if feasible, to live stream the trial into an empty courtroom or suitable space.
- Persons observing the trial in a separate room shall be required to abide by all safety and security protocols. Best efforts will be made by the trial court to provide space for viewing of jury trials by observers.
- Care should be taken when counsel approaches a witness, or makes opening statements or closing arguments, to ensure that a safe distance is maintained and that all individuals are appropriately masked.
- During the trial, clear face shields or face masks with a clear window if available, may, in the discretion of the presiding judge and upon the request of counsel, be provided to testifying witnesses and / or the criminal defendant. Caution should be exercised, however, because face shields are not considered by health experts to be as effective as face coverings in controlling the spread of COVID-19. The judge should consider the safety of all court personnel, including the court reporter and court interpreter, when making this determination. If the judge approves of the use of a clear face shield,

all others in the courtroom should be located at least 6 feet away at all times (or the current social distancing guideline at the time) and shall wear a mask / face covering. The health and safety consequences should be balanced against the importance of being able to observe facial expression and demeanor during trial.

- Counsel should be mindful of common areas and high touch areas, such as counsel table, microphones, and podiums, and should utilize available cleaning supplies to wipe down surfaces during trial, as well as maintaining a ready supply of hand sanitizer.
- Cleaning supplies will be available at the witness stand and the witness stand shall be cleaned consistent with local health guidelines and recommendations.

#### **E. Bench Conferences**

- Bench conferences must be conducted while observing social distancing and wearing a mask / face covering, while remaining outside of the hearing of jurors. This may require that the bench conference be conducted in chambers or another location close to the courtroom where safe social distancing may be practiced. In some instances, white noise generators available in some courtrooms may be adequate to allow for brief bench conferences at the bench.

## **F. Exhibits**

- Whenever possible, audio-visual technology available in the courtrooms should be used to manage, view, and publish exhibits.
- Exhibit notebooks and folders should not be shared. The presiding judge may require counsel / parties to provide individual exhibit notebooks to witnesses, jurors, the court reporter, the clerk and the judge.
- When documentary or photographic exhibits are published to the jury, enough copies must be available for all jurors, to reduce the risks of COVID-19 being spread while passing exhibits.
- If it is not possible to provide multiple copies of a published exhibit for the jurors, jurors should be instructed on the proper way to put on and remove gloves, prior to donning gloves to handle the exhibit; after handling the exhibit, jurors should properly remove and dispose of gloves and sanitize their hands, pursuant to the instructions provided.

## **G. Notebooks and Writing Utensils**

- Jurors should be encouraged to bring their own pencils / pens; if the court provides pencils / pens, they should be new pencils / pens or properly cleaned prior to the juror's use.
- If juror notebooks are used, the court should provide instructions regarding where the notebooks are to be left or how they will be

safely gathered and stored to prevent cross-contamination during court recesses.

## **H. Recesses**

- Whenever possible, adjoining unused courtrooms should be made available for jurors during recesses, including lunch. Alternatively, jurors may be assigned several empty juror deliberation rooms for recesses, provided that no single room exceeds a maximum allowable occupancy.
- Jurors should be instructed to observe the three Ws (washing hands, waiting six feet apart, and wearing a mask) while outside and on breaks.
- Once jurors are called to a courtroom, they should not return to the jury lounge for any reason.

## **I. Deliberation**

- Jury deliberations should take place in a room of sufficient size to allow for proper social distancing among all jurors.
- When available, deliberations should take place in an adjoining unused courtroom. If necessary, jurors may use the trial courtroom, in which case counsel, courtroom personnel, and the judge shall exit, and all exhibits and counsel materials shall be removed as well. The presiding judge shall enter appropriate orders concerning the privacy of jury deliberations and station bailiffs to enforce those orders.

- Cleaning supplies shall be made available in areas where the jurors deliberate for cleaning of shared objects (e.g., dry-erase markers and tabletops), and jurors shall be instructed on the proper way to clean these shared objects.

VI. RESPONDING IN THE EVENT THAT A TRIAL PARTICIPANT TESTS POSITIVE FOR COVID-19, OR HAS A KNOWN EXPOSURE TO SOMEONE WHO HAS TESTED POSITIVE, DURING TRIAL.

- If a juror or other trial participant reports a positive COVID-19 test result, symptoms, or significant risk of exposure, the presiding judge shall notify the COVID-19 coordinator for the 10th Judicial District<sup>3</sup>. The COVID-19 coordinator shall implement established protocols as advised by local health officials.
- The presiding judge should be prepared to take appropriate measures, such as declaring a mistrial or suspending the trial, as may be required in the interests of justice and public safety.
- If a trial is suspended or terminated under such circumstances, jurors should be informed at the time of discharge of then-current health and safety recommendations, such as testing, self-isolation and monitoring for symptoms, and contact tracing conducted by local health officials. Inasmuch as local health and safety recommendations and protocols change from time to time, the COVID-19 coordinator shall advise the

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<sup>3</sup> The COVID-19 coordinator for the 10<sup>th</sup> Judicial District is Trial Court Administrator, Kellie Myers, who serves on behalf of Senior Resident Superior Court Judge Paul C. Ridgeway.

trial judge of then-current information as provided by local health officials.

- All participants and court officials should keep in mind that in disclosing the possibility of exposure to COVID-19, specific personal medical information must be safeguarded to the greatest extent possible, and the greatest care and discretion must be used so as to not directly or indirectly identify any person who has tested positive for COVID-19, pursuant to N.C.G.S. 130A-143. Moreover, public access to juror information shall be limited to the alphabetized list of names, pursuant to N.C.G.S. 9-4(b). Additional information, including addresses of prospective jurors, is confidential and not subject to disclosure without an order of the court.

The 10<sup>th</sup> Judicial District Jury Trial Plan has been reviewed and approved by the following individuals in Wake County, this the 30<sup>th</sup> day of September 2020.



Paul C. Ridgeway  
Senior Resident Superior Court Judge



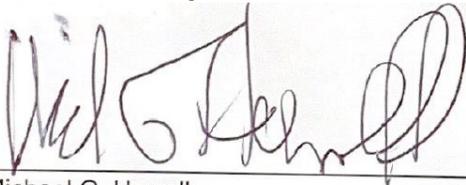
Debra S. Sasser  
Chief District Court Judge



Blair Williams  
Clerk of Superior Court



**N. Lorrin Freeman**  
District Attorney



Michael G. Howell  
Interim Public Defender



Deonte L. Thomas  
Incoming Public Defender



Gerald M. Baker  
Wake County Sheriff

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*Christopher Kippes*

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Wake County Medical Director & Deputy Director, Public Health Services Division