

**A REPORT TO THE JUDICIAL BRANCH COVID-19 TASK FORCE
LESSONS LEARNED AND SUGGESTED PRACTICES
FROM THE FIRST RESUMPTIONS OF JURY TRIALS
IN NORTH CAROLINA**

Re: Jury Resumption Executive Summary

Date: February 21, 2021

Compiled by the North Carolina Judicial Fellowship for use by the Judicial Branch
COVID-19 Task Force

This report summarizes jury trial resumption trends, considerations when preparing for jury trials, aspects of conducting jury trials with added safety protocols, and examples of impediments to resuming jury trials.

A. Jury Trial Resumption Trends

In a December 2020 survey of North Carolina judges, only 32% of respondents reported that they were scheduled for jury trial sessions following the Chief Justice's order of October 16, 2020, authorizing the resumption of jury trials. Most jury trials were scheduled in superior court, with only one having been scheduled in district court.

Of the survey respondents who were scheduled to conduct jury trials, 68% managed to impanel juries. Of the cases in which juries were impaneled, all were in superior court, 83% were criminal, and 17% were civil. The counties in which juries were impaneled include Ashe, Beaufort, Brunswick, Buncombe, Burke, Caswell, Clay, Craven, Cumberland, Davie, Duplin, Guilford, Haywood, Henderson, McDowell, Mecklenburg, New Hanover, Pasquotank, Robeson, Stokes, and Wake.

B. Best Practices in Preparing for Jury Trials

Judges across the state have taken various measures designed to allow for the safe and orderly resumption of jury trials during the COVID-19 pandemic.¹ The steps taken include:

- Organizing and requesting feedback from community stakeholders (district attorneys, public defenders, bailiffs, clerks, trial court coordinators, court reporters, local public health officials);
- Holding jury trial dry runs that simulate a juror's experience from courthouse entry all the way through jury deliberations in order to test the impact of COVID safety measures on the ability of jurors to see and hear the entire proceeding;
- Performing sound checks to ensure that COVID-based alterations do not create comprehension issues;

¹ References made throughout this report to judges' specific strategies and considerations in conducting jury trials during COVID are derived from the responses of participants who attended the virtual Jury Trial Resumption Debrief on January 27, 2021. Participants included twelve judges across the state with direct experience conducting jury trials during the COVID-19 pandemic, faculty members from the UNC School of Government, and representatives from NCAOC.

- Constructing a new witness box to ensure that jurors can hear testimony;
- Constructing plexiglass shields around the bench, witness stand, clerk area, and other stationary points;
- Training courtroom personnel on COVID protocols and training bailiffs to direct the movement of jurors at each stage of the trial and during breaks;
- Providing each juror with his or her own paper, pens, face covering, face shield, and hand sanitizer;
- Explaining to prospective jurors the efforts taken by courthouse personnel to decrease the risks of COVID transmission;
- Requesting feedback from jurors through formal or informal questionnaires with respect to questions, concerns and suggestions as to safety protocols used; and
- Consulting resources such as the American Board of Trial Advocates' (ABOTA) [Guidance for Conducting Civil Jury Trials During the COVID-19 Pandemic](#)

Additional measures include moving court proceedings to large off-site facilities where jury selection may be conducted, such as local churches, auditoriums, and even school gymnasiums. The use of off-site facilities can be particularly helpful in counties that do not have courtrooms large enough for proper social distancing. However, judicial officials should consider security concerns when contemplating off-site locations. It is important to involve security personnel in site selection discussions to obtain the benefit of their perspective with respect to security issues.

C. Conducting Jury Trials with Added Safety Protocols

Some counties have implemented COVID screening questionnaires and temperature checks to identify at-risk prospective jurors before they report for service. In at least one county, jurors are given a COVID-19 screening questionnaire as they pass through security. There is some concern as to whether court personnel or county health and human services personnel should conduct screenings or temperature checks. Additionally, the screening process has resulted in long lines outside of the courthouse and could potentially delay trial start times.

The necessity of increased safety protocols during trial has prolonged the time it takes to conduct jury trials, and in some cases, has even doubled the typical length of jury trials. Of the judges who impaneled juries between October 16, 2020, and December 16, 2020, 87% reported that the length of the trial, from juror orientation to resolution, was 2-3 days. Nine percent reported that the trial lasted 4-5 days, and 4% reported that the trial lasted 1 day or less.

Most of the jury trials that took place between October 16 and December 16, 2020, were resolved without a mistrial, with 74% being resolved by a jury verdict. Roughly 9% ended in mistrials for reasons unrelated to COVID, and 9% ended in mistrials due to a juror or party having been exposed to or testing positive for COVID. Four percent of the jury trials were postponed because the defendant reported symptoms of COVID after the presentation of evidence was underway. Another 4% were resolved by a plea, dismissal, or other non-mistrial resolution after a jury was impaneled but before the verdict.

D. Impediments to Jury Trial Resumption

Of the judges scheduled for jury trials between October 16 and December 16, 2020, 32% did not impanel a jury, but only 9% indicated that the problem was an insufficient number of jurors reporting for duty (although a number of judges reported a significantly lower reporting rate for jurors and suggested that the Clerks keep that factor in mind when determining the number of jurors to summon). Most of the obstacles were COVID-related, however. In particular, survey respondents identified the following as challenges to seating juries:

- The exponential increase of COVID cases in some counties with scheduled trials, leading county health directors to advise against proceeding;
- The presence of active COVID cases in the courthouse resulting in cancellation of the jury pool;
- Attorneys who had traveled out of state, and, therefore, could not comply with COVID certification;
- The court's determination that jurors should not be brought in because the COVID trend was heading in the wrong direction;
- Jurors who tested positive for COVID during jury selection; and
- Jurors with spouses who tested positive for COVID, which resulted in a continuance.

In other instances, juries were not impaneled for reasons unrelated to COVID, such as resolution by guilty pleas or dismissals.

Some attorneys have objected to jury trials by arguing that their fear of contracting COVID would prevent them from representing their clients effectively. These objections have been raised even where a sufficient number of jurors have expressed their willingness to serve.

Attorneys have also pointed out that prison and jail COVID protocols make it difficult to meet with their clients in-person prior to trial. While virtual methods do exist to facilitate attorney-client communication, attorneys and defendants are often uncomfortable meeting virtually due to confidentiality concerns. A similar issue has been raised by attorneys with respect to meeting with defendants in holding cells. In one location, the court addressed this issue by making a smaller courtroom available for the attorney and defendant to meet.

Finally, the safety protocols required for a safe jury selection process present the potential for pre-trial motions raising constitutional claims, including fair cross-section claims and motions questioning the constitutionality of requiring criminal defendants to wear clear face shields for in-court identification purposes. At least one fair cross-section motion has been heard in North Carolina since jury trials resumed in October 2020.