

SUPREME COURT OF VIRGINIA

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January 20, 2021

The Honorable William Revel Lewis, III, Judge
Accomack County Circuit Court
P. O. Box 126
23316 Courthouse Avenue
Accomac, VA 23301-0126

Dear Judge Lewis:

A panel of three Justices in consultation with the Office of the Executive Secretary has approved your plan for the resumption of jury trials in the Second Judicial Circuit, in the Counties of Accomack and Northampton. You may begin jury trials effective today, provided the jury trial is consistent with and in reasonable conformity with the plan. This approval is subject to a change in circumstances including failure to carry out the plan you have submitted.

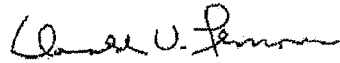
The Supreme Court is aware that communities in Virginia are different and more importantly, courthouses are different. As we have reviewed proposed plans, our concerns were that major issues have been addressed and that users of the courthouse have knowledge of what is expected of them. An undertaking of this magnitude is likely to require changes to the plan as participants discover that some practices do not work well and need further consideration. Of course, the plans cannot be subject to significant changes every time there is a jury trial. Furthermore, the plan cannot recite the solution to every problem that may arise. We are now learning that "strict conformity" with the plan should not be expected in all of the details.

We also know that the plans will need to have some room for adjustments as we learn about how certain aspects of the plans work or don't work. This letter is not an Order. The various emergency orders forbidding jury trials until a plan is submitted to and approved by the Supreme Court are clearly orders. As we have learned, from time to time there will be deviations from strict conformity to the plan. If and when this is so, it is the presiding judge who must make the decision. If the deviation is substantial and is likely to reoccur, the locality may need to resubmit a plan for approval.

The Honorable William Revel Lewis, III, Judge
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The presiding judge must and does have the authority to make decisions that must be made to effectuate a trial. Should there be changes made to the plan that have long term significance, the plan should be modified and resubmitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald W. Lemons". The signature is fluid and cursive, with the first name "Donald" being the most prominent.

Donald W. Lemons

cc: The Honorable Leslie L. Lilley, Chief Judge

PLAN FOR RESUMPTION OF JURY TRIALS DURING COVID-19 PANDEMIC/NORTHAMPTON COUNTY, VIRGINIA

Virginia has been under a State of Judicial Emergency pursuant to Va. Code §17.1-330 continuously since March 16, 2020. The current Declaration of Judicial Emergency extends to November 1, 2020 and prohibits the conduct of jury trials. Virginia Circuit Courts have been instructed to submit to the Chief Justice a plan for the safe conduct of jury trials which trials may only be resumed after acceptance of such plan. In accordance with the Orders Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency coupled with the June 29, 2020 Guidance and Considerations for the Resumption of Jury Trials Memorandum, the following constitutes the plan for the Accomack and Northampton County Circuit Courts for the resumption of jury trials.

The Chief Judge of the 2nd Circuit and the resident Eastern Shore judge who regularly presides in the Accomack and Northampton Circuit Courts are of the opinion that it is not possible to safely resume criminal jury trials in Accomack County at this time, that Accomack criminal jury trials be conducted in Northampton County and that Accomack and Northampton jury trials (criminal and civil) resume not sooner than one month after the approval of the plan. The underlying factors which serve to support this opinion are as hereinafter provided.

Criteria

The following criteria was considered:

- Whether jurors can be effectively socially distanced;
- Whether adequate PPE can be provided to prospective jurors and jurors;
- Whether PPE other than opaque face masks are available to allow full facial expressions to be observed;
- Whether areas in the courthouse that will be occupied will be periodically sanitized;
- Whether procedures are in place to advise and educate potential jurors of the protocols and safety measures implemented, and to respond to concerns and requests to be excused;
- Whether the jurors could be provided lunch in a sanitized area;
- Whether the rights of the accused or litigants has been adequately balanced with the concerns of respiratory etiquette;
- Whether the Court has conferred with the appropriate stakeholders and given their input the appropriate weight in making its determination;
- Whether the Court has partnered with local governments in the development and implementation of its plan;

- Whether appropriate screening procedures have been implemented to reasonably triage potentially infected persons;
- Whether adequate restroom facilities exist to accommodate a jury and whether adequate sanitization procedures are in place.

THE EASTERN SHORE OF VIRGINIA

Accomack and Northampton Counties comprise the Eastern Shore of Virginia and along with the City of Virginia Beach make up the 2nd Circuit of Virginia's Circuit Court System. Accomack's population is approximately 32,800 people and Northampton has approximately 11,710 people. As of 10/8/2020, there were 155,535 COVID cases in the Commonwealth which is 1.8% of the state's population. The number of reported cases in Accomack was 1,188 (3.6% of the population) and in Northampton was 311 (2.7%). There have been 19 deaths in Accomack (.05% of the population) and 31 deaths in Northampton (.26% of the population) compared to statewide total deaths of 3,328 (.04% of the population). The Eastern Shore has experienced significantly higher infection and death rates than the Commonwealth of Virginia as a whole. Due to the elevated rate of infection on the Eastern Shore, it is believed that there will be substantial difficulty in being able to seat a jury. In Accomack County, 20.7% of the population is under age 18 with 24.6% over 65. In Northampton County, 23.3% are under 18 with 21% over 65. A significant number of Eastern Shore full time workers are employed in the poultry plants in Accomack County which have contributed significantly to the much higher infection and death rates on the Eastern Shore.

The Resident Eastern Shore Judge has consulted with other judges in the 2nd Circuit and in other parts of the state, the Clerks of Court for Accomack and Northampton Counties, the Sheriffs of Accomack and Northampton Counties, personnel for the public works departments of each county, the Commonwealth's Attorney's Offices, defense attorneys, and the President of the Eastern Shore Bar Association.

The Grand Jury schedule in Accomack and Northampton Counties has not been altered on account of the COVID-19 pandemic. Grand Jurors who have asked to be excused from service have been excused. Grand jury deliberations have been conducted in the courtroom in each county with substantial social distancing and appropriate PPE. No other persons were in the courtroom except for witnesses for each indictment. Those persons who have so served appear to have been comfortable and each juror was screened prior to entering the courtroom.

JURY TRIAL RESUMPTION PLAN – NORTHAMPTON COUNTY
ACCOMACK CRIMINAL JURIES, NORTHAMPTON CRIMINAL AND CIVIL

The Northampton County Courthouse building was constructed in 2006. The first floor houses the General District courtroom and staff and judicial offices associated therewith, the Circuit Court Clerk's office, and the Commonwealth's Attorney's office and an expansive lobby area. The second floor houses the Juvenile and Domestic Relations courtroom and its staff and judicial offices, the Circuit courtroom with staff and judicial offices, the jury room, a law library, consultation rooms and a large lobby area. There is a public stairway and elevator available in the public lobby area as well as a rear stairway and elevator for staff use only. There is also an elevator available for inmates use and holding cells. The courtroom contains the gallery, the judicial bench, a large jury box, counsel tables, witness box, clerk's desk, and an area with audio/visual devices. The jury room, law library, lobby, and gallery provide ample space for jury assembly. Juror deliberations will be conducted in the law library.

Arrival at and Entry into the Building

1. The public entrance and exit for everyone but court staff will be the main front entrance and exit of the courthouse. The entrance and exit doors are not the same. This will include jurors and potential jurors, attorneys, parties, witnesses, the media, and other members of the public. Court staff (the judge and his administrative assistant, Clerk's Office staff, and Sheriff's Office staff) may enter and exit by a separate rear entrance or by the main front entrance. Use of these entrances, exits, and stairways shall be monitored to ensure that no one using the stairway will encounter another person face to face going the opposite way. Tape or other markings will be placed on the floor to show the path of travel in and out of the building.
2. The public entrance and exit shall be marked by adequate signage. In addition, signage shall clearly note the requirements of social distancing (6 feet outside, 10 feet inside), the wearing of masks, and hand-sanitizing and frequent handwashing.
3. The Sheriff's Office shall set up a checking station on the front porch/landing on the east side of the courthouse. This is a large covered area where people can be socially distanced. At least 6 persons can be on this roofed landing with each at least 6 feet from any other person, in addition to the bailiffs at the checking

station. Additional persons can stand on a designated portion of the patio/apron in front of the courthouse and porch with 6 feet distance between them, connected with a tented waiting area (paragraph 9, below), which should be able to shelter several more persons. The floor of the porch and apron areas shall be marked with spots for persons to stand waiting to be checked to enter the building, which will be 6' apart. The front door shall remain open for a touchless entrance and air flow.

4. There is a separate exit route off the porch for those not admitted into the building that does not cross the path of those coming up to or waiting for the checking station.
5. At the checking station potential jurors and others seeking entrance will have their temperature checked, and will be asked the following questions:
 - a. Have you traveled outside of the United States in the last 14 days?
 - b. Have you in the last 14 days been directed, instructed, or required by any medical professional or agency or any governmental authority to quarantine or isolate?
 - c. Have you in the last 14 days tested positive for or been diagnosed with the COVID-19/coronavirus?
 - d. Have you, in the last 14 days, experienced a fever, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting or diarrhea?
 - e. Are you feeling ill at the present time (even if not diagnosed), or have you within the previous 14 days experienced a persistent headache, sore throat, other body aches, or respiratory problems?
 - f. Have you in the last 14 days resided with or been in close contact with any person in any of the above four categories?
 - g. Have you been tested for COVID-19 and are waiting to receive test results?
 - h. Do you have a condition that makes you at higher risk for the COVID-19 virus? (Such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, liver disease, severe obesity, chronic kidney disease, heart conditions, etc.?)
 - i. Are you over the age of 65?
 - j. Do you care for someone who is at higher risk?
 - k. Do high-risk people live in your household?
 - l. Are you a sole caretaker?
 - m. Is childcare available?

- n. Do you interact with high-risk people for work? Do you work in a long-term care facility or other healthcare environment?

The Court will be informed of anyone answering yes to any of these questions, or whose temperature is above 100.4°. Such person will not be allowed in the building until the Court determines if any further inquiry need be made, after consulting with counsel. If not, they will be turned away and not allowed in the building. If the person is a party or necessary witness or attorney, their case will be continued upon request.

6. The bailiff shall also refuse to admit anyone who appears to be ill or is exhibiting any of the above symptoms. If the Court or Clerk's Office staff becomes aware of someone exhibiting such symptoms they shall bring that to the attention of the bailiff immediately. All such excluded persons shall be excused from appearing for their cases, and if they are parties or necessary witnesses, continuances will be granted upon request.
7. Those not approved for entry will be asked to leave and directed to return to their vehicles via a designated path that avoids any face to face contact with other persons.
8. Once approved for entry, each person must apply hand sanitizer, which will be provided at the checking station. No one will be admitted without a mask covering their mouth and nose. If they do not have a mask, one will be provided them. If a person refuses to wear a mask, even if they have a physician's letter or other obvious reason why they should be excused from this rule, they will not be allowed to enter. If any excluded person is a necessary witness, the party calling that person must make arrangements for the witness to be appear by Polycom, WebEx, or similar platform or system.
9. A waiting area shall be in the grass to the right of the front entrance steps (when facing the courthouse from the parking lot). A large canopy or open tent shall be set up, with chairs for distanced seating. In inclement weather or excessively cold temperatures, potential jurors shall be permitted to wait in their vehicles until called.
10. Persons shall wait, at a spacing of 6 feet, on the patio/apron and in the tent waiting area. Spots will be marked on the patio/apron, 6 feet apart, where persons can stand. Chairs shall be placed in the tent waiting area 6 feet apart.

11. Once in the building, potential jurors shall be directed by the bailiffs into the courtroom and seated in the gallery and jury box at least 6 feet from each other, at spots marked by the bailiffs.(FIRST GROUP) Masks shall be worn in the building at all times unless leave is granted by the court to remove them while testifying or arguing a case, or to communicate with counsel, or for medical reasons, as set forth below.
12. Once the courtroom is full, with socially distanced seating, potential jurors shall be seated in the law library, and then in the designated area of the lobby, maintaining social distancing and wearing masks.(SECOND GROUP) Chairs will be spaced at least 6 feet apart in the law library and lobby.
13. Parties or witnesses may wait in the consultation rooms, or in other lobby/foyer areas of the courthouse, or in the other courtrooms, if available. Social distancing (6 feet) must be maintained. If there is no room, they will have to wait outside until summoned by the court or the attorneys. Only court staff will use the elevator except for medical or security reasons, as approved or directed by the bailiffs or Court and no more than 2 persons shall simultaneously use the elevator.
14. Once the aforesaid areas are filled, other jurors shall wait outside at the required distance from each other.(THIRD GROUP) Jurors may be asked to remain in their vehicles until called.
15. Jurors will be given staggered reporting times-for example, having 20 jurors appear at 9:00, 20 more at 9:20, and another 20 at 9:40, or the like-so as to eliminate too large a crowd at one time at the check-in station, and to minimize close contact between potential jurors, or too long wait times.

Voir Dire and Jury Selection

1. Voir Dire and jury selection shall take place in the courtroom. Questions shall be asked of the entire group who can be safely seated in the courtroom gallery and jury box. The jury panel plus alternates will be drawn by the Clerk and those persons selected shall be identified. Should any person selected not be in the courtroom but waiting in another area, that person shall be seated in the place of a prospective juror who was not selected to be on the initial panel and such person shall leave the courtroom and be seated in the waiting area.

2. Should any member of the panel or alternates be stricken for cause, then such person shall be excused and voir dire of the replacement juror shall be conducted in the courtroom.
3. If there needs to be individual voir dire, it can take place in the jury deliberation room, on the record.
4. Those jurors found qualified from the first group shall remain in the courtroom. If there are not 20 qualified jurors and alternates remaining in the courtroom, after voir dire of the initial group in the courtroom and the group in the law library and lobby, a new group of potential jurors from the third group shall be brought in from the front porch area or vehicles and seated in the courtroom, and the process repeated.
5. Jurors excused from the courtroom shall exit the courtroom and then proceed down the stairs and exit the courthouse through the exit door. Such exit shall be monitored so that there is no face to face contact with any person traveling in the opposite direction and that those exiting maintain 6 feet apart from each other.
6. Tape or other markers will be placed on the floor to show the paths of travel into and out of the courtroom, and down the stairs and out of the building.
7. Once 20 (or 13) qualified jurors-or more if alternates are needed-are obtained, they will be seated in the expanded jury box and gallery of the courtroom and the attorneys shall exercise their peremptory strikes. They will sit either where they sat during voir dire, or where the bailiff instructs them to sit, but no one shall sit in a seat where another juror has sat before it is cleaned.
8. Once the chosen jurors are sworn in, they shall be seated in the jury box and area adjacent thereto and the remaining jurors waiting in the downstairs courtroom, the lobby, or outside on the porch, sidewalk, or tent shall be excused.
9. The Court will summon at least twice as many jurors as we usually do, being 60-80 instead of 30-40 for criminal cases and 30-40 for civil cases (and possibly three times as many depending on the case).
10. The Court may also consider on a case by case basis, after conferring with counsel, having juror selection on the day preceding the commencement of the trial.

11. The Court, after conferring with counsel, will select more alternate jurors than usual, as least one for a one day trial, and likely two or more for trials lasting two or more days.

Conduct of the Trial

1. The trial shall be conducted with the jury seated in the jury box as expanded. The jurors will occupy the same seats during the trial, but may move forward to hear or see better or may spread out more. The judge will be able to observe the jury and all of the parties and counsel from the bench. The witness stand faces the jury. Counsel tables will be to either side of the lectern. The court reporter shall be seated in front of the bench facing the witness stand and the lectern. The Court and counsel will have to take extra precautions and make efforts to be sure the witnesses and attorneys can be heard by the jurors. (See attached sketch)
2. A plexiglass panel shall be installed at the witness box, to provide a barrier between the jurors and the witnesses which shall be a two-sided panel to provide a barrier as to the attorneys, as well. Plexiglass panels shall also be installed on the lectern and counsel tables as well as the bench. Additional plexiglass panels shall be installed in between the rows of jurors. The attorneys will not approach the witness to less than six feet.
3. All exhibits shall be pre-marked in the anticipated order of presentation, but they do not have to be offered in that order. Copies of photographic or documentary exhibits, with the pre-marked numbers, shall be given to opposing counsel (or *pro se* party) at trial when such are offered, but counsel are encouraged to exchange such exhibits prior to trial by agreement.
4. Exhibits shall be presented to the jury electronically via a video screen or converted to enlarged blowups, where possible. If exhibits must be passed around to jurors, jurors will be provided with plastic or latex gloves by the proponent of an exhibit that is not presented by video or blow-up. Counsel shall work with the Sheriff's Office and Commonwealth's Attorney to obtain access to and be able to use the video equipment.
5. Witnesses may wait in the waiting areas, or in the lobby if the jury has already been selected when they arrive. If the such areas are being used or occupied by

parties or counsel, witnesses shall wait outside on the front porch, the steps, the sidewalk, or in the waiting tent. Witness arrival times should be staggered by the party calling that witness to best approximate when that witness will be needed and to minimize backup and overlap.

6. During the trial, if the court needs to confer with counsel, rather than having the jury leave the courtroom, the judge and counsel may retire to chambers or the back hallway area. The court reporter shall go with the court for the sidebar hearing, to record the proceeding, but if that is not possible the judge at some point in the proceedings, by agreement of counsel, will put on the record outside of the presence of the jury the matters raised, arguments put forth, and rulings made.
7. All persons, including witnesses, must wear face coverings. The witness stand, however, is sufficiently distanced from any other person in the courtroom to allow the witness to take the face covering down and testify with face exposed. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to recover his or her face covering before allowing the approach.

If face coverings impair the ability of a lawyers to communicate with the witness or with the Court, the Court may grant the attorney permission to remove his or her face covering as necessary, ensuring that the attorney remains socially distant from other persons in the courtroom.

A criminal defendant may be asked to remove his face covering during voir dire to ensure that prospective jurors can see him and indicate whether any know him or recognize him. He may also be asked to lower his face covering briefly for the purpose of enabling a witness to see his face and answer whether the witness can identify the defendant.

If face coverings impair the ability of a lawyer and his client to communicate at counsel table (and alternate methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.

Jurors will wear face coverings at all times, but the Court expects to permit individual jurors to lower the cover briefly if requested by counsel, while ensuring proper social distancing of at least 10 feet from all other persons.

8. Because of the priority of having good communication and working relationship between counsel and client, the Court will defer to the defendant and counsel as to whether they need to sit or confer less than 6 feet apart, or whether they need or wish to remove their masks for communication. But they may not do both. If they are masked, they may confer less than 6 feet apart. If they are closer than 6 feet, they shall be masked. If one of them removes their mask, they must remain 6 feet apart. A party will be allowed to communicate with counsel by electronic device during the trial, but with no one else, and if used for any purpose other than communicating with counsel or securing evidence, the device will be confiscated by the Court. The defendant and counsel may also be able to confer in the unused jury deliberation room.
9. Criminal defendants in custody shall be moved outside of the presence of the jury or in a manner so as not to reveal their custody status to the jurors. The jury may have to be removed to the lobby area or front porch area temporarily in order to accomplish this.

Jury Deliberation

1. At the conclusion of the trial, after instructions and closing argument, the jurors will retire to the law library where their chairs will be backed up against the perimeter of the room and socially distanced-not less than six feet apart. The jurors will be instructed to wear their masks during deliberation.
2. Any photos or documentary or other tangible evidence, may be placed on the table in the jury room at the beginning of deliberation, so that the jurors may approach the table to examine or review the evidence one at a time, if they so choose. However, so long as they remain masked, and use hand sanitizer and gloves upon request, the jurors will be allowed to handle the exhibits, and, if necessary, hand the exhibits to each other. Gloves will be provided and shall be worn by jurors when handing exhibits to another juror or handling exhibits for examination. When finished, the gloves shall be removed, pulling from the top of the glove farthest from the fingers, turning them inside out, and placing them in the trash can in the jury room. Hand sanitizer shall then be used immediately

after removal of the gloves. More than one set of jury instructions may be given to the jury upon request.

3. Hand sanitizer and disinfectant wipes shall remain available to the jurors in the courtroom and throughout jury deliberation. Jurors are encouraged to use such every hour.
4. A bailiff shall be outside of the jury room door and the foreperson shall knock on the door when the jury has reached a verdict, has a question, or needs other assistance.

Cleaning Procedures

1. All chairs, benches, tables, lecterns, counters, and other surfaces shall be cleaned and wiped down at the beginning of the day, before any jurors are admitted, as well as at the end of the day after the close of proceedings.
2. Frequently touched surfaces-door handles, railings, and the like-shall be cleaned and wiped down every two hours.
3. Restrooms shall also be cleaned thoroughly at the beginning of each day before any jurors arrive. Wipes, disinfectant, and gloves shall be available in the restrooms for use by jurors. Jurors, once selected, shall use only the restroom in the jury room off the courtroom. All other restrooms are to be used by only one person at a time. Signs shall be posted indicating that only one person may be in the restroom at a time, unless the two persons are residents of the same household (e.g., parent and child, or two siblings). Touchless restroom features are scheduled to be installed in the public restrooms in the courthouse.
4. Chairs, seats, benches, or other spaces where a potential juror has been seated shall be cleaned and wiped down before another juror or member of the public may sit there.
5. After a witness testifies, the witness chair, the railing of the witness stand, and the inside of the plexiglass shall be cleaned and wiped down before another witness testifies.
6. Any lecterns used will be wiped down before another person may use it.

7. The hand sanitizer used must be at least 70% alcohol or some other substance approved by the CDC.

What to Do in Case of Illness of a Juror, Attorney, Witness, or Court Staff

1. If during the trial any juror, party, attorney, witness, court staff, or member of the public associated with or involved in the trial becomes ill with COVID-19, that person will be excused from the case, and will not be allowed in the courthouse. If that person was a juror and there is an alternate, the trial shall proceed, unless upon questioning of counsel and the jurors by the Court and counsel, the court believes that the trial should not proceed and either a mistrial be declared or a recess and continuance granted. Anyone who has had close contact with that person (within 6 feet for at least 15 minutes) will have to be quarantined and isolated, and thus excused from the jury and courtroom. Note: if proper social distancing is maintained, this would mean that persons normally would not be within six feet of anyone else in the courtroom for 15 minutes, and therefore not in close contact.
2. The Court will attempt, discreetly, to do contact tracing, through the person testing positive (or exhibiting symptoms) or bailiffs or other court observers, and notify persons consistent with HIPAA regulations, as to persons testing positive or exhibiting symptoms who were involved in or associated with the conduct of the trial, or who have had close contact with someone involved in the trial. Other jurors will be notified by the Clerk's Office via email or telephone that one of their number has tested positive for or been diagnosed with COVID-19, or exposed to such. Whether the jury is notified that another person in the courthouse (not a juror or trial participant) has been diagnosed with or tested positive for COVID-19 will be left to the discretion of the Court, depending upon the circumstances, after consultation with counsel and the court clerk. As to persons not involved in or associated with the trial, who are located in a different part of the building, with no close contact with the trial participants, the Court will not require jurors or others notified unless there appears to be a specific reason to do so ("good cause"), but may raise such issue with counsel.
3. This highlights the importance of everyone behaving as if other persons of the courtroom have, or have been exposed to, the coronavirus. The Court will admonish all potential jurors, attorneys, parties, and others, to act as if the others in the courtroom do have the virus, in spite of having been permitted to enter the building.

4. When anyone, once voir dire has started, is found to have symptoms of the coronavirus (COVID-19) or tests positive, the Court will immediately confer with counsel to discuss appropriate action and whether the trial can continue or a mistrial should be declared. This may depend on who the person is that was infected or tested positive, who has been in contact with that person (if anyone), what stage of the trial we are in, and statements or thoughts of the remaining jurors, etc. There is no way to anticipate all possibilities, or be sure ahead of time what the proper action will be.

Other Miscellaneous Procedures and Matters

1. Jury trials will be able to be conducted with the jury seated in the jury box, with additional chairs to the side or a third row of seats. The Court will consult with counsel.
2. The Court will follow its usual procedures of taking a full hour lunch break, and taking a break every 90 minutes or so during the proceedings. The jurors will not leave the premises for lunch. They may bring their own, or the Court can order lunch for them. The jurors may use the law library for their lunch break or during recesses, and may go outside (maintaining social distancing), but may not leave the property.
3. During the lunch break and other recesses the high-touch areas in the courtroom shall be re-cleaned. Outside of the courtroom, door knobs and handles and other high touch areas shall be re-cleaned every two hours.
4. The public and the media will have access to voir dire as space allows. But priority will be given to maintaining the health and safety of the jurors, parties, witnesses, attorneys, court staff, and judge, and to a fair trial. Some interested persons (members of the public or media) may be able to be seated in the jury box during voir dire. Consistent with constitutional and decided case law, victims, the public, and media have the right of access to voir dire and jury trials.
5. Witnesses will be allowed to appear by video where both parties agree. In some cases, the Court may allow such video testimony over objection for health reasons or other good cause. The Court may allow appearance of a party by video if neither party objects. Depositions may be used in lieu of live testimony where agreed.

6. The court will use a pre-trial COVID jury questionnaire to try to spot ahead of time any concerns about a juror having had contact with or exposure to COVID or concerns by the juror because of COVID that might distract or detract from the juror's service (such as caring for an elderly parent, or a family member who is high-risk). The questionnaire will be sent out to jurors ahead of time to inquire into their past experience or contacts with COVID-19, their concerns, any high-risk family members, potential exposure through their jobs, etc. In addition, they will be told what questions they will be asked prior to entry, and will be asked to "self-monitor" between the date they receive the questionnaire and the trial date(s) regarding symptoms and precautions.
7. A summary of precautions being taken for COVID, including some of this plan, will be sent to the jurors either with their summons or with the questionnaire.
8. Any juror who asks to be excused for reasons related to COVID will be questioned and/or considered on an ad hoc, case by case basis. In keeping with the Court's normal practice, such juror may be deferred to another term of court.
9. When jurors are moved from one location to another in the courthouse, they shall maintain social distancing (at least 6 feet between them) and continue to wear their masks.
10. Should courtroom seating be insufficient to accommodate those persons who wish to attend, then arrangements shall be made to display the proceedings via video and audio to monitors situate in other rooms in the courthouse and all social distancing protocol shall be observed.
11. The air exchange rates in the courtroom range anywhere from 450 CFM to 1,850 CFM as the units are VAV or Variable Air Volume units. As such, the volume of air coming out at any given time varies depending on how much heating or cooling is needed in the room. The filters used are as recommended by the manufacturer of the system and are changed as recommended by the manufacturer. Upper air germicidal ultraviolet lights are scheduled to be installed in the courtroom and law library and bipolar ionization purifying devices will be installed in the ventilation systems on or before December 30, 2020.
12. Show causes for failures to appear may be issued if the juror did not contact the court or clerk's office ahead of time, or if, when contacted, they do not give a

good reason why they did not show up, particularly if it is not COVID-related.

13. The temperature of entrants is currently checked with a temperature “gun”.
14. This plan will be a work in progress and will be adjusted as time goes on, after we see how it works and what might work better.
15. This plan expressly makes reference to and adopts and incorporates the Virginia Department of Labor and Industry Emergency Temporary Standards.
16. Any person who becomes ill, tests positive with or without symptoms, or has had close contact with someone who has tested positive or is ill with symptoms of COVID, or who has other concerns or questions, shall call 757-678-0465. A copy of this plan shall be posted on the Circuit Court Clerk’s webpage, and made available to the County of Northampton, with a link to the Clerk’s Office webpage included. In addition, a copy of this plan shall be emailed to all jurors, and posted at the front of the courthouse. In addition, there will be an email address for jurors to send questions or concerns to.

Respectfully submitted,

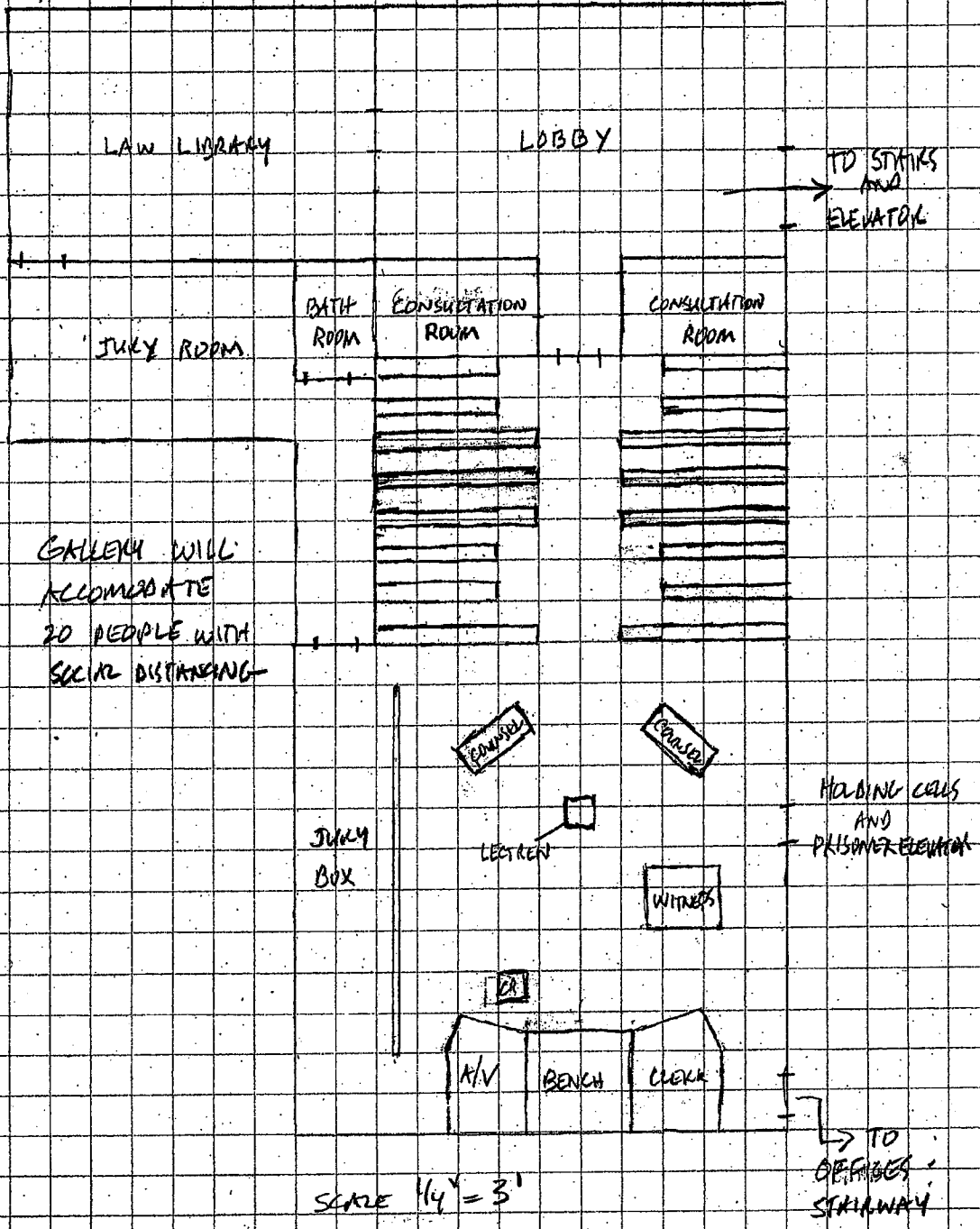


W. Revell Lewis, III

Resident Judge

December 17, 2020

NORTHAMPTON COUNTY CIRCUIT COURTROOM
AND APPURTENANT AREAS
FRONT OF COURTHOUSE



PLAN FOR RESUMPTION OF JURY TRIALS DURING COVID-19
PANDEMIC/ACCOMACK COUNTY, VIRGINIA

Virginia has been under a State of Judicial Emergency pursuant to Va. Code §17.1-330 continuously since March 16, 2020. The current Declaration of Judicial Emergency extends to November 1, 2020 and prohibits the conduct of jury trials. Virginia Circuit Courts have been instructed to submit to the Chief Justice a plan for the safe conduct of jury trials which trials may only be resumed after acceptance of such plan. In accordance with the Orders Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency coupled with the June 29, 2020 Guidance and Considerations for the Resumption of Jury Trials Memorandum, the following constitutes the plan for the Accomack and Northampton County Circuit Courts for the resumption of jury trials.

The Chief Judge of the 2nd Circuit and the resident Eastern Shore judge who regularly presides in the Accomack and Northampton Circuit Courts are of the opinion that it is not possible to safely resume criminal jury trials in Accomack County at this time, that Accomack criminal jury trials be conducted in Northampton County and that Accomack and Northampton jury trials (criminal and civil) resume not sooner than one month after the approval of the plan. The underlying factors which serve to support this opinion are as hereinafter provided.

Criteria

The following criteria was considered:

- Whether jurors can be effectively socially distanced;
- Whether adequate PPE can be provided to prospective jurors and jurors;
- Whether PPE other than opaque face masks are available to allow full facial expressions to be observed;
- Whether areas in the courthouse that will be occupied will be periodically sanitized;
- Whether procedures are in place to advise and educate potential jurors of the protocols and safety measures implemented, and to respond to concerns and requests to be excused;
- Whether the jurors could be provided lunch in a sanitized area;
- Whether the rights of the accused or litigants has been adequately balanced with the concerns of respiratory etiquette;

- Whether the Court has conferred with the appropriate stakeholders and given their input the appropriate weight in making its determination;
- Whether the Court has partnered with local governments in the development and implementation of its plan;
- Whether appropriate screening procedures have been implemented to reasonably triage potentially infected persons;
- Whether adequate restroom facilities exist to accommodate a jury and whether adequate sanitization procedures are in place.

THE EASTERN SHORE OF VIRGINIA

Accomack and Northampton Counties comprise the Eastern Shore of Virginia and along with the City of Virginia Beach make up the 2nd Circuit of Virginia's Circuit Court System. Accomack's population is approximately 32,800 people and Northampton has approximately 11,710 people. As of 10/8/2020, there were 155,535 COVID cases in the Commonwealth which is 1.8% of the state's population. The number of reported cases in Accomack was 1,188 (3.6% of the population) and in Northampton was 311 (2.7%). There have been 19 deaths in Accomack (.05% of the population) and 31 deaths in Northampton (.26% of the population) compared to statewide total deaths of 3,328 (.04% of the population). The Eastern Shore has experienced significantly higher infection and death rates than the Commonwealth of Virginia as a whole. Due to the elevated rate of infection on the Eastern Shore, it is believed that there will be substantial difficulty in being able to seat a jury. In Accomack County, 20.7% of the population is under age 18 with 24.6% over 65. In Northampton County, 23.3% are under 18 with 21% over 65. A significant number of Eastern Shore full time workers are employed in the poultry plants in Accomack County which has contributed significantly to the much higher infection and death rates on the Eastern Shore.

The Resident Eastern Shore Judge has consulted with other judges in the 2nd Circuit and in other parts of the state, the Clerks of Court for Accomack and Northampton Counties, the Sheriffs of Accomack and Northampton Counties, personnel for the public works departments of each county, the Commonwealth's Attorney's Offices, defense attorneys, and the President of the Eastern Shore Bar Association.

The Grand Jury schedule in Accomack and Northampton Counties has not been altered on account of the COVID-19 pandemic. Grand Jurors who have asked to be excused from service have been excused. Grand jury deliberations have been conducted in the courtroom in each county with substantial social distancing and

appropriate PPE. No other persons were in the courtroom except for witnesses for each indictment. Those persons who have so served appear to have been comfortable and each juror was screened prior to entering the courtroom.

JURY TRIAL RESUMPTION PLAN – ACCOMACK COUNTY

(CIVIL JURIES ONLY)

The Accomack County Courthouse was constructed in 1899. It is a two-story building that has undergone significant renovations in the 1960's and during the late 1990's. The first floor now consists of an entry lobby, public restrooms, offices soon to be occupied by Community Corrections and its staff, employee restrooms, a law library, a small jury assembly room, and hallways. The second floor has a lobby area, the courtroom (approximately half of the courtroom contains seating for the gallery and the other half contains the judicial bench, the jury box, counsel tables, lectern, witness stand, Clerk's desk, devices used for the audio and video display of evidence), the jury deliberation room, the judicial assistant's office and judicial chambers, men and women's restrooms (one person), and a breakroom. Access to the second floor is via the front stairway for public use along with an elevator. There is a back stairway that is used by staff and jurors after the trial has begun. There is also a prisoner elevator and holding cell.

In consideration of these circumstances, presently, it has been determined that it is not possible to develop a plan for the resumption of criminal jury trials in Accomack County that would adequately and appropriately protect jurors, attorneys, clerks, judges, court staff, members of the press and others present from the spread of COVID-19 during jury trials. The Accomack Courthouse does not contain sufficient square footage to safely provide for jury assembly, jury selection, and jury deliberation. Additionally, discussions regarding alternate spaces have been had without resolution as concerns regarding courtroom and prisoner security would be compromised with respect to using any such alternate spaces in Accomack County. Consequently, it is recommended that temporarily, Accomack criminal jury trials be held in the Northampton County Courthouse in Eastville. Courtroom security would be provided by the Accomack County Sheriff's Office and all other Accomack personnel necessary for the conduct of a jury trial would also travel to Eastville, the Northampton County Seat, which is approximately a 35 to 40 minutes drive from Accomack, the county seat of Accomack County. Accomack County jurors will be reimbursed for additional mileage in addition to the per diem jury fee. Consequently, our plan is that the resumption of jury trials in Accomack and Northampton Counties will begin not less than one month after approval of the plan with Accomack criminal jury trials being held in Northampton County. Criminal defendants whose speedy

trial timelines are most critical will be given preference on the docket which may precipitate the continuation of civil matters.

Arrival at and Entry into the Building

1. The public entrance and exit for everyone but court staff will be the main front entrance of the courthouse. This will include potential jurors, attorneys, parties, witnesses, the media, and other members of the public. Court staff (the judge and his administrative assistant, Clerk's Office staff, and Sheriff's Office staff) may enter and exit by a separate rear entrance or by the main front entrance. All persons entering the building shall provide the bailiff with their name and contact information. Use of these entrances and the stairways shall be monitored to assure that no one using the stairway will encounter a person face to face going the opposite way. Tape or other markers will be placed on the floor to show the path of travel in and out of the building.
2. The entrances and exits shall be marked by adequate signage. In addition, signage shall clearly note the requirements of social distancing (6 feet outside, 10 feet inside), the wearing of masks, and hand-sanitizing and frequent handwashing.
3. The Sheriff's Office shall set up a checking station on the front porch on the main front entrance of the courthouse. A waiting area shall be established on the sidewalk and lawn adjacent thereto in front of the steps that lead to the porch. A tent or canopy shall be set up to provide cover for persons waiting to be checked. The floor of the porch, sidewalk, and apron areas shall be marked with spots for persons to stand waiting to be checked to enter the building, which will be 6' apart. The front door shall remain open for a touchless entrance and air flow.
4. At the checking station potential jurors and others seeking entrance will have their temperature checked, and will be asked the following questions:
 - a. Have you traveled outside of the United States in the last 14 days?
 - b. Have you in the last 14 days been directed, instructed, or required by any medical professional or agency or any governmental authority to quarantine or isolate?
 - c. Have you in the last 14 days tested positive for or been diagnosed with the COVID-19/coronavirus?
 - d. Have you, in the last 14 days, experienced a fever, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting or diarrhea?

- e. Are you feeling ill at the present time (even if not diagnosed), or have you within the previous 14 days experienced a persistent headache, sore throat, other body aches, or respiratory problems?
- f. Have you in the last 14 days resided with or been in close contact with any person in any of the above four categories?
- g. Have you been tested for COVID-19 and are waiting to receive test results?
- h. Do you have a condition that makes you at higher risk for the COVID-19 virus? (Such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, liver disease, severe obesity, chronic kidney disease, heart conditions, etc.?)
- i. Are you over the age of 65?
- j. Do you care for someone who is at higher risk?
- k. Do high-risk people live in your household?
- l. Are you a sole caretaker?
- m. Is childcare available?
- n. Do you interact with high-risk people for work? Do you work in a long-term care facility or other healthcare environment?

The Court will be informed of anyone answering yes to any of these questions, or whose temperature is above 100.4°. Such person will not be allowed in the building until the Court determines if any further inquiry need be made, after consulting with counsel. If not, they will be turned away and not allowed in the building. If the person is a party or necessary witness or attorney, their case will be continued upon request.

- 5. The bailiff shall also refuse to admit anyone who appears to be ill or is exhibiting any of the above symptoms. If the Court or Clerk's Office staff becomes aware of someone exhibiting such symptoms they shall bring that to the attention of the bailiff immediately. All such excluded persons shall be excused from appearing for their cases, and if they are parties or necessary witnesses, continuances will be granted upon request.
- 6. Those not approved for entry will be asked to leave by the ramped walkway off of the porch area.
- 7. Once approved for entry, each person must apply hand sanitizer, which will be provided at the checking station. No one will be admitted without a mask covering their mouth and nose. If they do not have a mask, one will be provided them. If a person refuses to wear a mask, even if they have a physician's letter or other obvious reason why they should be excused from this rule, they will not be

allowed to enter. If any excluded person is a necessary witness, the party calling that person must make arrangements for the witness to be appear by Polycom, WebEx, or similar platform or system.

8. A waiting area shall be in the grass to the right of the front entrance steps. A large canopy or open tent shall be set up, with chairs for distanced seating. In inclement weather or excessively cold temperatures, potential jurors shall be permitted to wait in their vehicles until called.
9. Persons shall wait, at a spacing of 6 feet, in the tent waiting area. Spots will be marked, 6 feet apart, where persons can stand. Chairs shall be placed in the tent waiting area 6 feet apart.
10. Once in the building, potential jurors shall be directed by the bailiffs into the courtroom and seated in the gallery and jury box at least 6 feet from each other, at spots marked by the bailiffs. (FIRST GROUP) Masks shall be worn in the building at all times unless leave is granted by the court to remove them while testifying or arguing a case, or to communicate with counsel, or for medical reasons, as set forth below.
11. Once the courtroom is full, with socially distanced seating, potential jurors shall be seated in the downstairs jury assembly room, maintaining social distancing and wearing masks. (SECOND GROUP) Chairs will be spaced at least 6 feet apart in the jury assembly room.
12. Parties or witnesses may wait on the first floor. Social distancing (6 feet) must be maintained. If there is no room, they will have to wait outside until summoned by the court or the attorneys. Only court staff will use the elevator except for medical or security reasons, as approved or directed by the bailiffs or Court and no more than 2 persons shall simultaneously use the elevator.
13. Once the courtroom and jury assembly room are filled, other jurors shall wait outside at the required distance from each other. Jurors may be asked to remain in their vehicles until called. (THIRD GROUP)
14. Jurors will be given staggered reporting times-for example, having 20 jurors appear at 9:00, 20 more at 9:20, and another 20 at 9:40, or the like-so as to eliminate too large a crowd at one time at the check-in station, and to minimize close contact between potential jurors, or too long wait times.

Voir Dire and Jury Selection

1. Voir Dire and jury selection shall take place in the courtroom. Questions shall be asked of the entire group who can be safely seated in the courtroom gallery and jury box. The jury panel plus alternates will be drawn by the Clerk and those persons selected shall be identified. Should any person selected not be in the courtroom but waiting in another area, that person shall be seated in the place of a prospective juror who was not selected to be on the initial panel and such person shall leave the courtroom and be seated in the waiting area.
2. Should any member of the panel or alternates be stricken for cause, then such person shall be excused and voir dire of the replacement juror shall be conducted in the courtroom.
3. Those jurors found qualified from the first group shall remain in the courtroom, and those found qualified from the second group shall join them in the courtroom. If there are not 13 qualified jurors remaining in the courtroom, after voir dire of the initial group in the courtroom and the second group in the jury assembly room, a new group of potential jurors from the third group shall be brought in from the tented area or from their vehicles and seated in the jury assembly room, and the process repeated.
4. Jurors excused from the courtroom shall exit the courtroom out the back of the courtroom, through the back hallway, down the back stairs and out the separate rear entrance. Those excused from the assembly room shall exit through the hallway and out the separate rear entrance. The exits shall be monitored to assure that no one exiting the building will encounter anyone coming into the building and that those exiting maintain 6 feet of separation from each other.
5. Tape or other markers will be placed on the floor to show the paths of travel into and out of the courtroom, and down the stairs, hallways, and out of the building.
6. Once 13 qualified jurors-or more if alternates are needed-are obtained, they will be seated in the gallery of the courtroom and the attorneys shall exercise their peremptory strikes. They will sit either where they sat during voir dire, or where the bailiff instructs them to sit, but no one shall sit in a seat where another juror has sat before it is cleaned.

7. Once the chosen jurors are sworn in, the remaining jurors waiting in the downstairs assembly room, or outside on the porch, sidewalk, or tent shall be excused and the chosen jurors shall take their seats in the jury box.
8. The Court will summon at least twice as many jurors as we usually do, being 40 instead of 20 (and possibly three times as many depending on the case).
9. The Court may also consider on a case by case basis, after conferring with counsel, having juror selection the day preceding the commencement of the trial.
10. The Court, after conferring with counsel, will select more alternate jurors than usual, at least one for a one day trial, and likely two or more for trials lasting two or more days.

Conduct of the Trial

1. The trial shall be conducted with the jury seated in and adjacent to the jury box. The jurors will keep their seats during the trial, but may move forward to hear or see better or may spread out more. The judge will be able to observe the jury and all of the parties and counsel from the bench. The witness stand faces the jury and lectern which is in between the counsel tables. The court reporter shall be seated in front of the bench, facing the witness stand with his/her back to the jury box. The Court and counsel will have to take extra precautions and make efforts to be sure the witnesses and attorneys can be heard by the jurors. (See attached sketch.)
2. A plexiglass panel shall be installed at the witness box, to provide a barrier between the jurors and the witnesses. Plexiglass panels shall also be installed on the lectern and counsel tables as well as the bench. Additional plexiglass panels shall be installed in between the rows of jurors. The attorneys will not approach the witness to less than six feet.
3. All exhibits shall be pre-marked in the anticipated order of presentation, but they do not have to be offered in that order. Copies of photographic or documentary exhibits, with the pre-marked numbers, shall be given to opposing counsel (or *pro se* party) at trial when such are offered, but counsel are encouraged to exchange such exhibits prior to trial by agreement.

4. Exhibits shall be presented to the jury electronically via a video screen or converted to enlarged blowups, where possible. If exhibits must be passed around to jurors, jurors will be provided with plastic or latex gloves by the proponent of an exhibit that is not presented by video or blow-up. Counsel shall work with the Sheriff's Office and Commonwealth's Attorney to obtain access to and be able to use the video equipment. Jurors will be provided information as to the proper method of the removal and disposal of the gloves.
5. Witnesses may wait in the waiting areas, or in the lobby or jury assembly room if the jury has already been selected when they arrive. If such areas are being used or occupied by parties or counsel, witnesses shall wait outside on the front porch, the steps, the sidewalk, or in the waiting tent. Witness arrival times should be staggered by the party calling that witness to best approximate when that witness will be needed and to minimize backup and overlap.
6. During the trial, if the court needs to confer with counsel, or needs to hear motions outside the presence of the jury, the jury shall recess to the jury room. If necessary, the judge at some point in the proceedings, by agreement of counsel, will put on the record outside of the presence of the jury the matters raised, arguments put forth, and rulings made out of the presence of the jury.
7. All persons, including witnesses, must wear face coverings. The witness stand, however, is sufficiently distanced from any other person in the courtroom to allow the witness to take the face covering down and testify with face exposed. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to recover his or her face covering before allowing the approach.

If face coverings impair the ability of a lawyers to communicate with the witness or with the Court, the Court may grant the attorney permission to remove his or her face covering as necessary, ensuring that the attorney remains socially distant from other persons in the courtroom.

A criminal defendant may be asked to remove his face covering during voir dire to ensure that prospective jurors can see him and indicate whether any know him or recognize him. He may also be asked to lower his face covering briefly for the purpose of enabling a witness to see his face and answer whether the witness can identify the defendant.

If face coverings impair the ability of a lawyer and his client to communicate at counsel table (and alternate methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.

Jurors will wear face coverings at all times, but the Court expects to permit individual jurors to lower the cover briefly if requested by counsel, while ensuring proper social distancing of at least 10 feet from all other persons.

8. Because of the priority of having good communication and working relationship between counsel and client, the Court will defer to the defendant and counsel as to whether they need to sit or confer less than 6 feet apart, or whether they need or wish to remove their masks for communication. But they may not do both. If they are masked, they may confer less than 6 feet apart. If they are closer than 6 feet, they shall be masked. If one of them removes their mask, they must remain 6 feet apart. A party will be allowed to communicate with counsel by electronic device during the trial, but with no one else, and if used for any purpose other than communicating with counsel or securing evidence, the device will be confiscated by the Court. The defendant and counsel may also be able to confer in the law library on the first floor of the courthouse.
9. Criminal defendants in custody shall be moved outside of the presence of the jury or in a manner so as not to reveal their custody status to the jurors. The jury may have to be removed to the lobby area or front porch area temporarily in order to accomplish this.

Jury Deliberation

1. At the conclusion of the trial, after instructions and closing argument, the jurors will retire to the jury deliberation room where their chairs will be backed up against the perimeter of the room and socially distanced-not less than six feet apart. The jurors will be instructed to wear their masks during deliberation.
2. Any photos or documentary or other tangible evidence, may be placed on the table in the jury room at the beginning of deliberation, so that the jurors may

approach the table to examine or review the evidence one at a time, if they so choose. However, so long as they remain masked, and use hand sanitizer and gloves, the jurors will be allowed to handle the exhibits, and, if necessary, hand the exhibits to each other. Gloves will be provided and shall be worn by jurors when handing exhibits to another juror or handling exhibits for examination. When finished, the gloves shall be removed, pulling from the top of the glove farthest from the fingers, turning them inside out, and placing them in the trash can in the jury room. Hand sanitizer shall then be used immediately after removal of the gloves. More than one set of jury instructions may be given to the jury upon request.

3. Hand sanitizer and disinfectant wipes shall remain available to the jurors in the courtroom and throughout jury deliberation. Jurors are encouraged to use such every hour.
4. A bailiff shall be outside of the jury room door and the foreperson shall knock on the door when the jury has reached a verdict, has a question, or needs other assistance.

Cleaning Procedures

1. All chairs, benches, tables, lecterns, counters, and other surfaces shall be cleaned and wiped down at the beginning of the day, before any jurors are admitted, as well as at the end of the day after the close of proceedings.
2. Frequently touched surfaces-door handles, railings, and the like-shall be cleaned and wiped down every two hours.
3. Restrooms shall also be cleaned thoroughly at the beginning of each day before any jurors arrive. Wipes and hand sanitizer shall be available in the restrooms for use by the jurors. Jurors, once selected, shall use only the restrooms in the back hallway as designated by the Court. All other restrooms are to be used by only one person at a time. Signs shall be posted indicating that only one person may be in the restroom at a time, unless the two persons are residents of the same household (e.g., parent and child, or two siblings).
4. Chairs, seats, benches, or other spaces where a potential juror has been seated shall be cleaned and wiped down before another juror or anyone else may sit there.

5. After a witness testifies, the witness chair, the railing of the witness stand, and the inside of the plexiglass shall be cleaned and wiped down before another witness testifies.
6. Any lecterns used will be wiped down before another person may use it.
7. The hand sanitizer used must be at least 70% alcohol or some other substance approved by the CDC.

What to Do in Case of Illness of a Juror, Attorney, Witness, or Court Staff

1. If during the trial any juror, party, attorney, witness, court staff, or member of the public associated with or involved in the trial becomes ill with COVID-19, that person will be excused from the case, and will not be allowed in the courthouse. If that person was a juror and there is an alternate, the trial shall proceed, unless upon questioning of counsel and the jurors by the Court and counsel, the court believes that the trial should not proceed and either a mistrial be declared or a recess and continuance granted. Anyone who has had close contact with that person (within 6 feet for at least 15 minutes) will have to be quarantined and isolated, and thus excused from the jury and courtroom. Note: if proper social distancing is maintained, this would mean that persons normally would not be within six feet of anyone else in the courtroom for 15 minutes, and therefore not in close contact.
2. The Court will attempt, discreetly, to do contact tracing, through the person testing positive (or exhibiting symptoms) or bailiffs or other court observers, and notify such persons consistent with HIPAA regulations, as to persons testing positive or exhibiting symptoms who were involved in or associated with the conduct of the trial, or who have had close contact with someone involved in the trial. Other jurors will be notified by the Clerk's Office via email or telephone that one of their number has tested positive for or been diagnosed with COVID-19, or exposed to such. Whether the jury is notified that another person in the courthouse (not a juror or trial participant) has been diagnosed with or tested positive for COVID-19 will be left to the discretion of the Court, depending upon the circumstances, after consultation with counsel and the court clerk. As to persons not involved in or associated with the trial, who are located in a different part of the building, with no close contact with the trial participants, the Court

will not require jurors or others notified unless there appears to be a specific reason to do so (“good cause”), but may raise such issue with counsel.

3. This highlights the importance of everyone behaving as if other persons of the courtroom have, or have been exposed to, the coronavirus. The Court will admonish all potential jurors, attorneys, parties, and others, to act as if the others in the courtroom do have the virus, in spite of having been permitted to enter the building.
4. When anyone, once voir dire has started, is found to have symptoms of the coronavirus (COVID-19) or tests positive, the Court will immediately confer with counsel to discuss appropriate action and whether the trial can continue or a mistrial should be declared. This may depend on who the person is that was infected or tested positive, who has been in contact with that person (if anyone), what stage of the trial we are in, and statements or thoughts of the remaining jurors, etc. There is no way to anticipate all possibilities, or be sure ahead of time what the proper action will be.

Other Miscellaneous Procedures and Matters

1. Civil juries may be able to be conducted with the jury seated in the jury box, with additional chairs in front of the jury box. The Court will consult with counsel.
2. The Court will follow its usual procedures of taking a lunch break, and taking a break every 90 minutes or so during the proceedings. The jurors will not leave the premises for lunch. They may bring their own, or the Court can order lunch for them. The jurors may use the jury room or the jury assembly room for their lunch break or during recesses, and may go outside (maintaining social distancing) via the rear stairway and rear entrance, but may not leave the property.
3. During the lunch break and other recesses the high-touch areas in the courtroom shall be re-cleaned. Outside of the courtroom, door knobs and handles and other high touch areas shall be re-cleaned every two hours.
4. The public and the media will have access to voir dire as space allows. But priority will be given to maintaining the health and safety of the jurors, parties, witnesses, attorneys, court staff, and judge, and to a fair trial. Consistent with

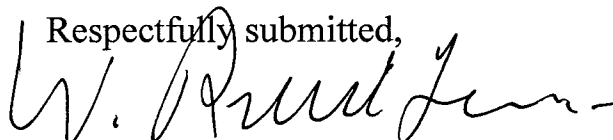
constitutional and decided case law, victims, the public, and media have the right of access to voir dire and jury trials.

5. Witnesses will be allowed to appear by video where both parties agree. In some cases, the Court may allow such video testimony over objection for health reasons or other good cause. The Court may allow appearance of a party by video if neither party objects. Depositions may be used in lieu of live testimony where agreed.
6. The court will use a pre-trial COVID jury questionnaire to try to spot ahead of time any concerns about a juror having had contact with or exposure to COVID or concerns by the juror because of COVID that might distract or detract from the juror's service (such as caring for an elderly parent, or a family member who is high-risk). The questionnaire will be sent out to jurors ahead of time to inquire into their past experience or contacts with COVID-19, their concerns, any high-risk family members, potential exposure through their jobs, etc. In addition, they will be told what questions they will be asked prior to entry, and will be asked to "self-monitor" between the date they receive the questionnaire and the trial date(s) regarding symptoms and precautions.
7. A summary of precautions being taken for COVID, including some of this plan, will be sent to the jurors either with their summons or with the questionnaire.
8. Any juror who asks to be excused for reasons related to COVID will be questioned and/or considered on an ad hoc, case by case basis. In keeping with the Court's normal practice, such juror may be deferred to another term of court.
9. When jurors are moved from one location to another in the courthouse, they shall maintain social distancing (at least 6 feet between them) and continue to wear their masks.
10. Should courtroom seating be insufficient to accommodate those persons who wish to attend, then arrangements shall be made to display the proceedings via video and audio to monitors situate in other rooms in the courthouse and all social distancing protocol shall be observed.
11. Air filtration—the courthouse has within the last year installed a new HVAC system consisting of 9 separate heat pumps, 4 of which serve the courtroom, and 1 of which serves the jury deliberation room, which means there is no circulation

of air in these rooms from other parts of the building. Upper air germicidal ultraviolet lights are scheduled to be installed in the courtroom and jury deliberation room. HEPA filter units have been installed in these rooms and the lobby area. These devices have been installed based upon recommendations and suggestions from ASHRAE (American Society of Heating, Refrigeration, and Air-Conditioning Engineers), Level A, evidence based action. These systems will run continuously before and during the trial.

12. Show causes for failures to appear may be issued if the juror did not contact the court or clerk's office ahead of time, or if, when contacted, they do not give a good reason why they did not show up, particularly if it is not COVID-related.
13. The temperature of entrants will be checked with a temperature "gun".
14. This plan will be a work in progress and will be adjusted as time goes on, after we see how it works and what might work better.
15. This plan expressly makes reference to and adopts and incorporates the Virginia Department of Labor and Industry Emergency Temporary Standards.
16. Any person who becomes ill, tests positive with or without symptoms, or has had close contact with someone who has tested positive or is ill with symptoms of COVID, or who has other concerns or questions, shall call 757-787-5776. A copy of this plan shall be posted on the Circuit Court Clerk's webpage, and made available to the County of Accomack, with a link to the Clerk's Office webpage included. In addition, a copy of this plan shall be emailed to all jurors, and posted at the front of the courthouse. In addition, there will be an email address for jurors to send questions or concerns to.

Respectfully submitted,



W. Revell Lewis, III
Resident Judge
December 17, 2020

ACCOMACK COUNTY CIRCUIT COURTROOM

