

CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT

PLANS FOR RESUMPTION OF JURY TRIALS

Preface

The Judges of the Ninth Judicial Circuit preside in nine counties and two cities. Several of the counties are rural counties and others more metropolitan. The two cities are included in the Circuit Court for the County where the City is adjacent in location. The Judges of the Ninth Circuit, upon taking our oath of office, pledged to uphold the rights of individuals to include but not limited to the right to request a trial by jury.

Each Judge recognizes that each courthouse in the Ninth Circuit is different and unique. Therefore, pursuant to the Sixth Order Extending Declaration of Judicial Emergency from the Virginia Supreme Court, dated June 22, 2020, the Judges of the Ninth Circuit submit the following plans for each county or county/city for the resumption of jury trials to provide for the protection of individuals rights to request a jury trial but also for the protection of everyone's health and safety.

Contents

- I. Criteria considered
- II. *[New Kent County]**
- III. *[Charles City County]**
- IV. *[King and Queen County]**
- V. *[King William County]**
- VI. *[Williamsburg/James City County]**
- VII. *[Poquoson/York County]**
- VIII. Gloucester County
- IX. Middlesex County
- X. Mathews County

Plans

I Statement of Criteria Considered

The Judges met in person and via telephone conference calls and discussed the guidelines and suggested criteria set out in the Virginia Supreme Court's "Guidance and Considerations for the Resumption of jury Trials", dated June 29, 2020, as well as guidelines from the Department of Labor and Industry, guidelines from the Centers for Disease Control and Prevention and guidelines from the Virginia Department of Health.

* Plans for these Courts may be found at http://www.vacourts.gov/news/items/covid/rjt_list.pdf.

Each Judge has received input on resuming jury trials during this pandemic from County Administrators, Commonwealth Attorneys, Clerks, County maintenance departments and the Sheriff and staff for each jurisdiction. In addition, the Judges have sought comments from the local and regional health departments and civil and criminal attorneys.

The criminal defendants, whose speedy trial issues are critical, will be given preference on the docket, which may result in civil matters being continued.

VIII. Gloucester County

This plan was developed based upon recommendations and guidelines developed by the Virginia Department of Health, the Center for Disease Control, and the Virginia Department of Labor and Industry Emergency Temporary Standard Regulations.

All persons entering the Gloucester courthouse will be subject to the screening protocol set forth below for jurors. Any person, including jurors, answering "yes" to the screening questions will be prohibited from entry. If a person answering "yes" is a necessary party or witness, the Court will attempt to make accommodations for said person through video appearance by Polycom or WebEx, or by granting a continuance.

A. Facilities Used

1. Courtrooms. The Gloucester courthouse has three floors and a basement. Each floor has one courtroom. Only the courtroom on the third floor and the basement courtroom are available for use in jury trials. The remaining 2 courtrooms are used by the district courts.
 - a. Basement Courtroom. The basement courtroom has a jury box and a large deliberation room, but a small gallery with benches. It can easily hold 30 persons while also maintaining a 6' separation. The basement jury deliberation room has a unisex bathroom that serves 1 person at a time. The room includes a water fountain.
 - b. Third-floor Courtroom. The third-floor courtroom is the primary courtroom used by the circuit court. The judge's bench is on the back wall. From the viewpoint of the judge, the clerk's bench is to the right of the judge, and the witness chair is to the left. The jury box is on the left wall, and the gallery is on the back wall opposite the bench. Counsel tables face the bench and are in between the bench and the gallery. The court-reporter sits in front of the judge's bench. Plexiglass separation is not utilized in the courtroom. For jury trials, the Courtroom will be modified as follows:
 - i. Jury Box. The jury box has seating for 15. With spacing of 6', the jury box will hold 8 jurors. 7 chairs will be placed in front of the jury box and spaced 6' apart. This revised jury "box" will now accommodate 15 jurors.
 - ii. Counsel tables. To make room for the jury box changes, the counsel tables will be turned approximately 45 degrees and moved side-by-side to the corner of the wall on the right side of the courtroom (from the judge's viewpoint) and the half wall on the right side of the gallery. Counsel will now be to the right of the judge and facing the jury at an angle. If seated at each end of the table, counsel and the parties are

sufficiently distanced. The tables will be positioned such that all parties will be able to see the testifying witness.

Using this configuration, all participants will be at least 6' apart. In particular, the witness chair is at least 6' from the closest juror. The bailiffs will have room to move about the courtroom as needed, but will be able to maintain a safe distance from other persons. The gallery remains open to limited seating for the public.

2. Jury Deliberation Room. The jury deliberation room is adjacent to the third-floor courtroom. By moving chairs against the wall, there is sufficient room to seat 15 persons, spaced 6' apart. The room has two unisex bathrooms that each serve 1 person at a time. The room includes a water fountain, sink, and coffee maker.
 3. Safety precautions.
 - a. Courthouse and Courtrooms. Signs have been posted throughout the courthouse pertaining to masks, social distancing and hand hygiene. There are hand sanitizer stations located outside each courtroom and in both jury deliberation rooms. Cleaning staff will clean and/or disinfect the high-touch areas of the courtroom, jury assembly room and jury deliberation room, including jury bathroom, approximately every two hours, or when instructed by the presiding judge. In addition, on the day of jury selection, courtroom bailiffs or cleaning staff will clean and/or disinfect the seats in the jury box and the jury deliberation room as each time slot of jurors changes locations. The jury deliberation room will also have cleaning supplies available for the jurors should they wish to use them.
 - b. Jurors. There are times the jurors will need to move about the courthouse without the supervision of bailiffs or other court personnel. Jurors are expected to assist in providing for their own safety. They will be required to wear face covering while in the courthouse and are expected to maintain a safe distance while moving throughout the courthouse. As adults, the Court expects they will follow the signs and other instructions during those times they are not being escorted by a bailiff.
 4. HVAC. The third-floor courtroom does not have outside windows, but the maintenance staff has been advised to check and/or replace air filters on the HVAC system on a regular basis.
- B. Summoning jurors
1. General Procedure.
 - a. Jurors are sent an initial letter shortly before the term begins advising them of their jury duty for the upcoming term (2 months). The letter gives them instructions on what to bring to court, how the trial is conducted, and the procedure to request to be excused. (A written request with documentation is made to the clerk's office. The presiding judge then determines whether the juror is excused. Persons over 65 who seek to be excused will be excused without further inquiry).

- b. Later, if selected for jury duty, the jurors are served a summons for the specific trial date. Jurors will be instructed to call the clerk's office within 3 days of receiving the summons. The clerks will attempt to get a good contact number for each juror.
2. Time Slots. Jurors will be summoned for different time slots. Approximately 25 jurors will be summoned to arrive at hourly blocks: 9:00 a.m., 10:00 a.m., and 11:00 a.m. Additional slots of 1:00 p.m., 2:00 p.m. and 3:00 p.m. may be used depending on the size of the jury pool needed.
3. Contents. The summonses will advise the jurors to enter the courthouse no earlier than 15 minutes prior to their scheduled time slot. The initial letter and summonses will also include COVID-19 infection control practices and advise that face coverings are required. The initial letter and summons will also direct prospective jurors to an online copy of this plan and include the following statement in conspicuous bold typeface:

We are following strict guidelines for health and safety due to COVID-19. Please review the Gloucester County Circuit Court Plan for Resumption of Jury Trials at [*website to be added*]. Please specifically review the questions we will ask and the steps we are taking to ensure your safety. We encourage you to self-monitor for symptoms throughout your reporting period. Contact the Clerk's Office if you have any symptoms. Upon request, all citizens over 65 years old may be excused by contacting the Clerk's Office.

The initial letter and summonses will also include a list of the screening questions listed in Section C.2. (below) as well as information about and questions regarding COVID-19 high risk factors. Specifically, the following questions will be asked:

- 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 condition, etc.)
 - Are you over the age of 65?
 - Do you care for someone who is at higher risk?
 - Do high-risk people live in your household?
 - Are you a sole caretaker?
 - Is childcare available?
 - Do you interact with high-risk people for work? Do you work in a long-term care facility or other healthcare environment?
4. Number. The number of jurors summoned for each block may change based on the responses received. Normally, the court expects approximately 80% of the summoned jurors to actually appear. That is, 50 jury summonses would be expected to yield approximately 40 people reporting for jury duty. On the one hand, we have a meaningful number of citizens 65 and older who are among the group at greatest risk (20% according to Census data). On the other hand, we have not experienced a significant reduction in the number of jurors appearing for grand jury. However, now that school is back in session, but in many instances, conducted online,

childcare excuses may increase. Given all of these factors, the expected yield is 60%. As the goal is to have 15 jurors appear for each time slot, the court will start with 25 summonses, and adjust as the cases progress.

5. A Rule to Show Cause will be issued for any unexcused juror who fails to appear after receiving valid service.

C. Jury arrival

1. Jurors check in at the front door.
2. Jurors will be screened with the appropriate Covid-19 screening questions, specifically:
 - Within the past 14 days have you traveled internationally?
 - Are you currently experiencing, or have you experienced in the past 14 days, a fever, cough or shortness of breath?
 - In the past 14 days have you been in close proximity to anyone who was experiencing any of the above listed symptoms?
 - In the past 14 days have you been directed to quarantine, isolate or self-monitor?
 - In the past 14 days have you been diagnosed with, or had contact with anyone who has been diagnosed with COVID-19 or resided with anyone in the above categories?
 - Have you been tested for COVID-19 and are waiting to receive the results?

If the juror answers affirmative to any of the screening questions, they will be advised to leave the courthouse area and to contact the court on the next business day. This information will be documented by the front door security who will advise the jury clerk.

3. Jurors will show ID and sign in on the jury sign in sheet. If a juror does not have proper ID they will be directed to the Circuit Clerk's Office and to report back to the check-in area after speaking with the clerk.
4. Jurors will be given badges.
5. Jurors will be required to wear the appropriate face covering before entering the courthouse. Jurors without a face covering will be given a mask to wear. If a juror is physically unable to wear an appropriate face covering, the juror will be excused or deferred to a subsequent term.

D. Jury assembly and selection

1. The first 15 jurors for the first time slot will be sent to the jury deliberation room. In the event we achieve greater than 60% attendance and more than 15 appear for a time slot, those jurors will be asked to wait until the next time slot.

2. Jurors in the jury deliberation room will be shown the juror video.
3. At approximately 9:30 a.m. the first time slot jurors will be brought into the courtroom and seated in the jury "box."
4. *Voir dire* will be conducted for this first group.
5. The jurors who remain after *voir dire* will be escorted to the basement courtroom using the judges' elevator. This elevator opens to a small room behind the judge's bench in the basement courtroom. A bailiff will stand by the elevator at the third floor to assist them going to the basement, and a second bailiff will be in the basement to assist them in getting to the basement courtroom. To maintain proper distancing, they will be sent in groups of 2 or 3. The jurors will be advised they may sit either in the basement courtroom itself or the basement jury deliberation room, and they will be instructed to remain masked and maintain the 6' distance.
6. While the first slot jurors are in the courtroom for *voir dire*, any leftover first slot jurors and a sufficient number of the second slot jurors to total 15 will be sent to the jury deliberation room at their appointed time.
7. Once the remaining first slot jurors have left the jury room to go to the basement, the second slot jurors will be brought into the courtroom for *voir dire*. Once finished, the jurors remaining after the second slot *voir dire* will be sent to the basement.
8. The process will be repeated until the appropriate number of jurors are assembled in the basement. For criminal felony trials - 20 if no alternates are used, 23 if one alternate is used, and 26 if two alternates are used. For civil or criminal misdemeanor trials – 13 if no alternates are used, 16 if one alternate is used, and 19 if two alternates are use. The number of alternates will be determined based on the nature of the case, and the expected length of trial and deliberations.
9. In the event that the second (or subsequent) slot jurors are still in the jury deliberation room waiting for *voir dire* and the third (or subsequent) slot jurors have arrived at their appointed time, those jurors will be asked to wait outside until the prior slot jurors have entered the courtroom for *voir dire*.
10. Once the necessary number of jurors are assembled in the basement, counsel will exercise their peremptory strikes. Due to space limitations, the requirement that the public have access to the jury trial and *voir dire*, and the additional time required to bring all the necessary jurors back up the elevator from the basement to the courtroom, counsel will not have the jurors in front of them when exercising strikes.
11. Jurors selected for the trial will then be escorted from the basement courtroom to the third-floor courtroom or jury deliberation room in groups of 2 or 3 using the judges' elevator.
12. In lieu of returning to the courtroom, jurors not selected for the trial will be read a preprinted statement thanking them for their service and advising that they may be called again later in the term. They will then be directed to exit the courthouse using either the elevator or the stairs while maintaining proper social distancing. Jurors summonsed for time slots that have not yet

occurred will be contacted by the clerk's office and advised that they do not need to appear but they may come to the clerk's office if they wish to be paid.

E. Trial conduct

1. Consistent with constitutional and decided case law, victims, the public and press have the right to access to *voir dire* and jury trials. Therefore, the right to a public trial will be preserved. Designated areas will be marked for the public and seats will be marked to provide social distancing. Members of the same household may be seated together.
 2. All participants (jurors, counsel, witnesses, parties) will maintain required face covering throughout the trial, except:
 - a. In a criminal case, the 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.
 - b. If face coverings impair the ability of a lawyer 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 physically distant from other persons in the courtroom.
 - c. 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.
 - d. Witnesses may be directed to remove face covering while testifying if it interferes with their testimony or if requested by a criminal defendant. 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 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.
 - e. Jurors will wear face coverings at all times, but when communication is impaired, the Court may permit individual jurors to lower the cover briefly if requested by counsel.
- If a mask must be removed for any reason (*voir dire*, identification, etc.), the distance between the unmasked persons and all others should be more than 10 feet.
3. Counsel will be directed to confer in advance of trial to attempt to streamline cases by stipulating facts or non-critical witness testimony, and to determine if witness arrival may be staggered.

4. Counsel will be required to question witnesses and address the jurors from counsel table or the podium. They will maintain at least 6' from the jurors at all times. Document transfer will be conducted by the bailiffs only.
5. Exhibits displayed to the jury will be limited.
 - a. Exhibits may not be published by passing to the jurors. With permission of the presiding judge, the bailiff may pass one copy of documents to each juror provided counsel has prepared the copies in advance.
 - b. Exhibits may be displayed on the computer/projector that allows videos and documents to be projected onto a large screen on the wall across from the jurors as follows:
 - i. In a criminal case, once a suitable additional video display visible from counsel tables is obtained.
 - ii. In a civil case, the opposing counsel and the party may relocate to a designated location sufficiently distanced from the jurors.
6. Sidebar conferences will be discouraged. If needed, counsel will be encouraged to write the information on paper, pass it to opposing counsel, and have the bailiff provide the writing to the presiding judge for a ruling. If the writing option is not practicable, the jury will be directed to return to the jury deliberation room while the issue is addressed.
7. Breaks/Cleaning. The court will take breaks throughout the trial as needed.
 - a. Generally, breaks will occur approximately once every 2 hours. During the breaks, cleaning outlined in Section A.3.a. (above) will occur, and jurors will have an opportunity to wash their hands.
 - b. Trial will break for approximately 1 hour for lunch. Lunch will not be provided. The jurors may bring their lunch and eat in the jury deliberation room, or they may leave the courthouse (either by the stairs or the main elevator) and obtain lunch nearby. Those jurors leaving the courthouse for lunch will be re-screened when they return.
 - c. Courtroom bailiffs or cleaning staff will clean and/or disinfect the witness stand between each witness.
 - d. Cleaning staff will also clean and/or disinfect the courtrooms, jury deliberation room, and jury bathrooms in the evening after court is adjourned.
 - e. All trial participants will be reminded to practice social distancing and proper hand and respiratory sanitation during meal breaks or overnight recesses and to immediately report any change in their health status.
- F. Illness or presentation of symptoms. The presiding judge and/or the judge's staff will collect from each juror and alternate a mobile telephone number and email address for use if the Court needs to contact jurors during any evening recess. If events develop that cause the trial to be discontinued, the Court will notify each juror personally with the contact information provided.

All participants, including lawyers, parties, court reporters, and jurors in multi-day trials will be encouraged before adjourning for the day to continue monitoring themselves for symptoms, to take their temperatures, and to not return to the courthouse—but rather contact the Court—if

they have any symptoms. Likewise, if any feel that they have developed symptoms during the day as the trial is ongoing, they are to notify the presiding judge immediately.

If any person associated with a multi-day trial develops symptoms during the trial, that person will be immediately directed to leave the courtroom and isolate alone in an adjacent conference room off the secure corridor behind the courtroom. The Sheriff will be immediately notified to provide an escort garbed in suitable personal protective equipment to escort that person from the courthouse, ensuring via radio communication with other Sheriff's deputies that an elevator is vacant and the corridors have been cleared to allow the person to pass. Court staff will contact that person after court adjourns for the day and request that he/she notify the Court of any positive COVID-19 test result.

If any participant in the trial tests positive for COVID-19 during a trial, the Court will notify within 24 hours all persons who may have been exposed to the person known or suspected to be infected, consistent with the requirements of the Emergency Temporary Standard – Infectious Disease Prevention, promulgated by the Department of Labor and Industry (16 VAC 25-220). All notified persons will be urged to contact their healthcare provider or the Virginia Department of Health for further instructions.

The Court expects to seat up to two alternates for all multi-day trials. The determination of whether any symptom-related interruption to the trial should result in a brief continuance (a few days, resuming with the same jury panel) or a mistrial will depend on consideration of several factors including: the availability of rapid-return test results, the use of alternates, the stage of trial, the length of the prospective delay, and the continued availability of jurors and litigants. The Court will also consult with the Virginia Department of Health about recommended measures for how and whether the trial could safely proceed when one or more participants has developed symptoms.

All cleaning protocols required by the Virginia Department of Health and established in the Emergency Temporary Standard will be followed in the event an infection develops during a trial. This includes, where feasible, sealing affected areas for 24 hours and thereafter cleaning and disinfecting with products that satisfy the Emergency Temporary Standard.

Point Person. In the event that any public attendee, litigant, witness, juror or attorney becomes ill during the course of any trial, or prior to entry into the Courthouse, said person shall contact the judge's assistant, Lisa Holland, at (804) 693-1358.

- G. Start Date. The Gloucester County Circuit Court anticipates resuming jury trials on May 3, 2021. This date corresponds with the beginning of the May term for the Gloucester Circuit Court and allows the clerk's office sufficient time (at least 21 days) to send out the initial letter advising prospective jurors of their jury duty for the upcoming term (2 months). It also allows the prospective jurors sufficient time to seek an appropriate excuse.
- H. Modification. This plan is subject to modification to comply with updated recommendations of the Virginia Department of Health, the Center for Disease Control, and the Virginia Department of Labor and Industry Emergency Temporary Standard Regulations and/or Orders of the Governor of Virginia, the Supreme Court of Virginia or any other applicable governing agency.