

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.

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- 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.

Each Judge has received input on resuming jury trials during this pandemic from County Administrators, Commonwealth Attorneys, 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.

VI. York County / City of Poquoson

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 Courthouse will be subject to the screening protocol set forth below for jurors. Any person answering “yes” to the screening questions will be prohibited from entry, which shall include jurors. If a person answering “yes” is a necessary party or witness, the Court will attempt to make accommodations for said person(s), through WebEx or Video Conferencing. The Court will be liberal in granting continuances.

A. Selection of Jurors

1. Number: Pre-Covid, the York / Poquoson Circuit Court realized a jury yield of approximately 85%. That is, 50 jury summonses would be expected to yield approximately 42 people reporting for jury duty. However, because York and Poquoson have a significant number of citizens 65 and older who are among the group at greatest risk (16.6% for York and 11.6% for Poquoson according to census data) and that we expect many other citizens to request exclusion due to childcare or health issues, we expect a yield of approximately 40%. The Clerk of Court shall consult with the Court to determine the appropriate number of jurors to be summoned for each Term of Court. Factors to be considered will include the number of juries scheduled; the nature of the case; the anticipated length of the trial; the current prevalence of Covid-19 cases in the community and any evidence of community spread or “hot spots”; and any data obtained with regard to appearance rates and requests to be excused from prior terms of Court. Based on all of the above information, the Court will direct the clerk to summons the appropriate number of jurors in order to yield a sufficient jury pool.
2. Content: The 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 York / Poquoson 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 70 years old may be excused by contacting the Clerk’s Office.

3. Juror summonses will also include a list of screening questions listed in B2 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, chronic kidney disease, heart conditions, 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?

Potential jurors who wish to be excused are instructed to contact the Clerk's Office either by phone or the online portal. Persons over 65 who seek to be excused will be excused without further inquiry. The jurors are instructed to submit their request to be excused in writing, and each request will be reviewed by the Judge. Failure to appear will not be issued unless there is an insufficient number of potential jurors failing to appear. This is another factor for determining the number of potential jurors to be summoned.

B. Arrival of Jurors / Screening Protocols

1. The sheriff's office will continue to use the procedures in place since early in the pandemic regarding entry in the courthouse for anyone including jurors. Masks are required for anyone entering the Courthouse. Anyone without a mask will be provided with one.

2. Jurors will check in at the front door, have their temperatures taken with the thermal camera kit affixed to the metal detector, and 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?
- Within the last 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 or their temperature is 100.3 or above, they will be advised to leave the courthouse area and to contact the court on the next business day. This information will be documented on the jury sign in sheet and the head bailiff of Circuit Court will be notified by radio of the juror's name. Summons for jurors will have COVID-19 infection control practices attached to the summons.

3. Jurors will show ID and sign in on the jury sign in sheet. If a jury member does not have proper ID they will be directed to the Circuit Clerk's Office and then report back to the check-in area after speaking with a clerk.

4. Jurors will be provided with a Jury Badge or Bracelet.

5. Jurors will be provided with a mask before entering the courthouse, if they do not have one. If a juror is medically exempt from wearing a mask or refuses to wear a mask, then that juror will be excused.

6. Upon completion of the Covid-19 screening and jury sign in, jurors will be directed to the appropriate staging area maintaining social distancing (six feet apart).

7. There are multiple hand sanitizer stations located in the courthouse lobby and corridors, by each courtroom, and in the areas designated for jury assembly and deliberations.

8. Signs have been posted at the courthouse pertaining to masks, social distancing and hand hygiene.

C. Staging and selection of Jury Members

1. The Court will utilize time slots staggered every 45 minutes commencing at 9:00 a.m. Jurors will arrive per the time slot noted on the jury summons, and 15 jurors will be summoned per time slot. The first 15 jurors and each subsequent group of jurors will be sent to the jury assembly room and shown a juror video. At approximately 9:15 a.m. the first time slot jurors will be brought into the courtroom and seated in marked locations in the gallery thereby ensuring proper social distancing. (Jury trials including voir dire will be conducted in Courtroom #1 and will be televised through videoconferencing in Courtroom #5 so as to be open to the public, press and other interested persons while maintaining proper social distancing).
2. Voir dire will be conducted for the first group. During voir dire, jurors will be allowed to remove their face covering if answering specific questions and the mask makes it difficult to breathe and communicate.
3. Jurors who are not struck for cause after voir dire will be escorted to another empty courtroom or sufficiently sized multipurpose room on the first floor of the courthouse by a deputy. Jurors will have access to bathrooms, sinks and hand sanitizer all the while maintaining physical distancing and wearing masks.
4. Once the first slot of jurors have left the Courtroom #1, the second slot jurors will be brought into the courtroom for voir dire. The process will be repeated until the appropriate number of jurors are assembled. The Court will keep at least one to two alternates depending on the expected length of the trial and nature of the case.
5. Jurors who are struck for cause or by peremptory challenges will be thanked by the Court and directed to leave the Courthouse while maintaining appropriate social distancing. Those additional time slot jurors who were not needed and arrived at the Courthouse will not be brought into Courtroom #1 but rather a clerk will read to them from preprinted statement thanking them and directing them to exit the Courthouse while maintaining appropriate social distancing. Those additional time slot jurors who have not arrived to the Courthouse will be instructed by text updates from the clerk's office that they are not needed for that particular jury trial and do not need to come to the Courthouse.
6. Bailiffs will monitor the use of the elevator as well as the use of the stairwell to minimize any cross traffic. Any potential juror, desiring to use the restroom, will be escorted to the restroom. Restrooms will be cleaned every two hours.
7. All courtrooms and common areas are marked to maintain the required social distancing and each area in use will have a bailiff / deputy present to maintain this requirement. The areas marked off are done in a manner to minimize contact with anyone else entering or exiting the courthouse building.

D. Jury Trials

1. General. 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. Marked seats will be made available for members of the public, press and victims in accordance with the 15th Judicial Emergency Order.

2. As you enter Courtroom #1, the gallery will be used as the jury box with marked seating able to accommodate up to 15 jurors while maintaining appropriate social distancing. A deputy will be positioned by the door limiting entry to the Courtroom to necessary parties and witnesses. Marked seating for the public, press and other interested persons allowing them to view and listen to all incidents of the trial including but not limited to voir dire by videoconferencing will be in Courtroom #5. Counsel tables will be positioned “in the well” facing what is typically known as the jury box. Such locations will allow proper social distancing between counsel and their respective parties. Witnesses will testify from the jury box so as to be visible and audible to the parties, counsel, the jurors, the judge as well as viewers seated in Courtroom #5. The Clerk will be on one side of the bench and the Court Reporter on the other side, all socially distanced from each other and all others in the courtroom. Bailiffs will be at the door of the courtroom and in other areas of the court. All individuals will be stationed in a manner to maintain appropriate social distancing. Witnesses will be staged in areas outside of the courtroom and will be socially distanced from each other with bailiffs present. The Court will conduct pre-trial conferences with attorneys to determine if witnesses’ arrival need to be staggered. The court will take mandatory breaks every two hours or as needed to permit jurors and participants to wash their hands.
 1. 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.
 2. Counsel will be required to question witnesses and address jurors and the judge from counsel table or the podium thereby maintaining proper social distancing.
 3. Sidebar conferences will be discouraged. If the court needs to hear an issue outside the presence of the jury, the jury will remain in the courtroom and the pertinent parties will report to the jury room to address the issue. Pertinent parties include the judge, bailiff, clerk, court reporter, Commonwealth’s Attorney, defense counsel and defendant.
 4. The courtroom, jury deliberation room, jury assembly room and bathrooms will be disinfected approximately every 2 hours or when instructed by the presiding judge.
 5. Jury breaks and deliberations will take place in the jury room for civil juries and criminal misdemeanors as there will be sufficient space for appropriate social distancing. Jury breaks and deliberations will take place in the jury assembly room for felony criminal trials which will allow for appropriate social distancing. A Deputy will be stationed outside of either the jury room or the jury assembly room to assist the jury with communications with the court. The jury room is equipped with bathrooms, and the jury assembly room is in close proximity to bathrooms available only to courthouse personnel. Both the jury assembly room and jury room as well as all bathrooms will be disinfected approximately every two hours or as needed.

Removal of Masks:

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 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 at least 10 feet apart from all 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.

Sidebars may be conducted at the bench, with a plexiglass shield separating the judge from the lawyers, or alternatively in the jury deliberation room immediately behind the courtroom.

If a mask must be removed for any reason, (voir dire, identification, etc.), the distance between the unmasked person and all others will be a minimum of 10 feet per VDH Guidelines

Breaks / Cleaning

There will be mandatory breaks for the jury every two hours to permit proper cleaning, sanitizing of surfaces and hand sanitation. 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.

A designated cleaner(s) for the jury trial has been secured. This person(s) will clean the jury assembly room when jurors are in court. A designated cleaner will be present during the trial to clean the witness area after each witness. When the jury is in recess, a designated cleaner will also clean the courtroom, bathrooms and other common use areas within the courthouse with an Electrostatic Sprayer using an EPA-approved disinfectant for use against Covid-19.. Such cleanings will take place approximately every two hours or sooner if needed.

E. Lunch

Trial will break for approximately 1 hour for lunch. Jurors may bring their lunch and eat in the jury assembly room or jury room, or they may leave the courthouse and obtain lunch from a nearby establishment.

F. Exhibits

Technology will be used when possible and in addition, the Court will request copies be made for each individual juror. If necessary, disposable gloves will be made available to any juror to examine exhibits. Any disposable gloves used by a juror will be disposed of based upon the recommendations and guidelines developed by the VHD, CDC and Virginia Department of Labor and Industry Emergency Temporary Standard Regulations.

G. 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 next to the courtroom. The Courthouse Captain 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 Deputies that 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 discuss with the lawyers in advance of trial whether they agree to proceed with fewer than 12 jurors should a juror drop out. In cases where counsel do not consent, 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.

H. Courthouse and Courtroom

The York-Poquoson Courthouse was constructed in 1997 and therefore has a relatively modern HVAC Variable Air Volume System Design. Air is circulated throughout the building via redundant 30,000CFM air handlers. A minimum of 5,000 CFM of outside air is mixed into the recirculated building air. The HVAC control system monitors indoor air quality from three locations within the building and purges building air based on those sensors. The air handler filters are a cotton and synthetic media blend and provide medium grade ASHRAE performance. These are the highest rated filters recommended for the equipment. The filters are monitored monthly and are changed a minimum of every three months. The circuit courtrooms do not have outside windows, but the maintenance staff has been advised to monitor the HVAC system and air quality on a regular basis.

- I. Point Person - In the event that any member of the public, litigant, ~~juror~~, witness or attorney becomes ill during the course of any trial, or prior to entry into the Courthouse, said person shall contact Captain Alan Sadler or one of his designates with the York County Sheriff's Office at (757) 890-4195. **All inquiries or concerns relative to jury service shall be made through the Clerk of this Court by utilizing the jury portal at <https://eapps.courts.state.va.us/ejury/york> or via jury (telephone) hotline at (757) 890-3636.*

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. 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 TEMPORARY STANDARD REGULATIONS AND / OR ORDERS OF THE GOVERNOR OF VIRGINIA, THE SUPREME COURT OF VIRGINIA OR ANY OTHER APPLICABLE GOVERNING AGENCY.

J. Conclusion

The York County Circuit Court respectfully requests that jury trials may resume on June 1, 2021. The court has impaneled grand juries with similar precautions implemented and each session has been successfully completed. All the stakeholders understand the situation may change daily but each of us are ready to change and adapt to make any necessary changes.