

**IN THE SUPERIOR COURTS
APPALACHIAN JUDICIAL CIRCUIT
STATE OF GEORGIA**

IN RE: COVID-19 Public Health
Emergency

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Date: September 21, 2020

**ORDER APPOINTING COMMITTEE MEMBERS
TO DEVELOP GUIDELINES FOR THE RESUMPTION OF JURY TRIALS**

On September 10, 2020, Georgia Supreme Court Justice Harold D. Melton entered the SIXTH ORDER EXTENDING DECLARATION OF STATEWIDE JUDICIAL EMERGENCY, which directed each Chief Superior Court Judge to form a committee of judicial system participants to develop detailed guidelines for the resumption of jury trials utilizing the recommendations of the Judicial COVID-19 Task Force, “Guidance for Local Committees on Resuming Jury Trials,” published on September 10, 2020, attached as Exhibit “A,” and “Guidance for Resuming Jury Trials,” published on September 21, 2020, attached as Exhibit “B.” The following individuals are hereby appointed to the committee for the Appalachian Judicial Circuit:

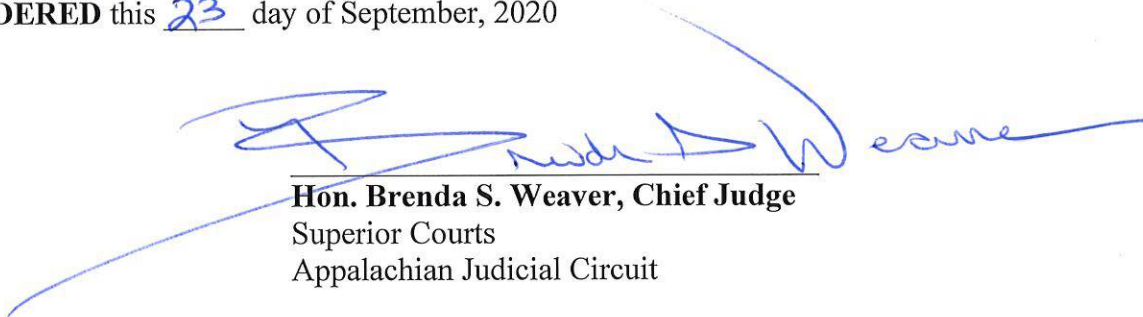
- Superior Court Chief Judge Brenda S. Weaver
- Superior Court Judge John E. Worcester
- Superior Court Judge Mary E. Priest
- District Attorney B. Alison Sosebee
- Circuit Public Defender Clinton Hooker
- Attorney Kayann H. West, President of the Appalachian Bar Association
- Attorney John Luke Weaver, Vice-President of the Appalachian Bar Association
- Attorney Michael Ray
- Pickens County Sheriff Donnie Craig
- Fannin County Sheriff Dane Kirby
- Gilmer County Sheriff Stacy Nicholson
- Fannin County Clerk of Court Dana C. Chastain
- Pickens County Clerk of Court Jennifer E. Jordan
- Gilmer County Clerk of Court Amy E. Johnson

- Judicial Law Clerk Cami Fowler
- Gregory Goldman, Systems Engineer
- Investigator Travis Greene,
Pickens County District Attorney's Office
- Investigator April Killian,
Gilmer County District Attorney's Office
- Investigator Steven Whitley,
Fannin County District Attorney's Office
- Dr. Zachary Taylor, MD, MS, District Health Director,
North Georgia Health District
- A representative from the Pickens, Gilmer, and
Fannin County Commissions are encouraged to
participate in the discussions.

Once developed, the local guidelines will be announced and made available to the public on the Appalachian Judicial Circuit website (<https://www.appalachiancourts.com>), Appalachian Judicial Circuit Twitter feed (<https://twitter.com/AppalachianCt>), Administrative Office of the Courts website (<https://georgiacourts.gov/covid-19-court-operating-guidelines/>), and the offices of the Clerk of Superior Court and all courthouse entrances.

The meeting will occur by remote videoconferencing on October 23, 2020, 10:00 a.m. The appointees will be sent meeting information.

IT IS SO ORDERED this 23 day of September, 2020



Hon. Brenda S. Weaver, Chief Judge
Superior Courts
Appalachian Judicial Circuit

GUIDANCE FOR LOCAL COMMITTEES ON RESUMING JURY TRIALS

The resumption of jury trials in the midst of the pandemic presents an especially challenging task for the judiciary. Every jurisdiction is unique with respect to accommodations within courthouses, the availability of alternative facilities, technological needs, potential public reluctance to serve as jurors, and the level of COVID-19 infection within the community. Protective measures that might be prudent in one jurisdiction may be unnecessary in another. For this reason, the Chief Judge of the superior court of each judicial circuit shall convene a **local committee** of participants in the judicial system for each county within the circuit, who will develop a detailed and locally tailored plan to resume jury trials in that county. Each local committee's plan shall be consistent with the Chief Justice's Order Declaring Statewide Judicial Emergency, as extended, any local judicial emergency order, and the Judicial COVID-19 Task Force's Guidelines, and shall seek to ensure the health, safety, and constitutional protections of all participants in the judicial system, including jurors and potential jurors, litigants, witnesses, lawyers, judges, court personnel, and the public, after considering and inspecting the local court facilities and infrastructure.

The committees should generally consist of at least one representative from each of the following sources:

- Each class of court within the county that is authorized to conduct jury trials.
- The District Attorney and the Solicitor General, if applicable.
- The Circuit Public Defender or an experienced criminal defense attorney designated by the county's indigent defense coordinator.
- One or more attorneys designated by the local bar association, if one exists, or one or more attorneys who regularly handle jury trials in the county designated by the Chief Judge.
- The Sheriff.
- The clerk of each class of court that is authorized to conduct jury trials.
- One or more jury administration officials.



- Court administration official(s) of each class of court that is authorized to conduct jury trials.
- Court information technology (IT) officials.
- A designee of the local department of health or its equivalent.
- Any other person the Chief Judge deems helpful to the development of the plan.

Each local committee is also encouraged to include a representative of the local county commission in its discussions.

The local committee's plan shall include the following:

- Identification of facilities for jury assembly, voir dire, and jury trials, including the identification of rooms within the courthouse that are suitable for these functions and alternative locations where necessary.
- Development of written public health and safety guidelines consistent with public health guidance, including sanitization procedures, face-covering requirements, social distancing protocols, etc.
- Development of a notification procedure for alerting stakeholders when courthouse personnel or visitors to the courthouse have tested positive for COVID-19.
- Protection of constitutional and statutory rights for litigants, witnesses, victims, and observers.
- Notification to potential jurors, the public, and parties of public health precautions being taken by the court, including information on sanitization procedures, face-covering requirements, social distancing protocols, etc., and identification of the most effective means to ensure that information is provided.

The Chief Judge of each court that conducts jury trials will decide whether to fully adopt or amend the portions of the committee's recommended plan that are applicable to his or her court and will then incorporate a final jury trial plan into the court's written operating guidelines for in-person proceedings that have been developed pursuant to the statewide judicial emergency order as extended. Because of the

extensive preparations required to resume the jury trial process, the updated operating guidelines should be submitted to the Administrative Office of the Courts at <https://georgiacourts.gov/covid-19-court-operating-guidelines-form/> for posting as soon as possible and before the jury trial process begins.

Guidance Issued September 10, 2020

This guidance is based on recommendations made by the Criminal Law Subcommittee of the Judicial COVID-19 Task Force.

GUIDANCE FOR RESUMING JURY TRIALS

Jury trials are critically important to public safety as well as the effective operation of our civil and criminal justice systems. Resuming in-person civil and criminal jury trials and initiating virtual jury trials during the COVID-19 pandemic requires extensive planning and preparation. Most notably, a significant number of jury trials in Georgia involve criminal offenses, and due to the inability to conduct jury trials since the initial Order Declaring Statewide Judicial Emergency (Order) on March 14, 2020, many criminal defendants are awaiting trial, some of whom are incarcerated. Many civil litigants have not been able to exercise their constitutional right to have their cases decided by a jury. This guidance presents protocols and planning points to assist trial courts in rethinking the stages of the jury trial process to help courts create detailed plans to safely resume jury proceedings while protecting the health of the various individuals compelled to attend those proceedings.

Preliminary Considerations

Jury trials should proceed only after the local committee of judicial system participants established by the Chief Judge of the superior court has approved a plan for safely resuming jury trials in the county and submitted the jury trial plan to the Administrative Office of the Courts (AOC) as required by the Chief Justice's September 10, 2020 Sixth Order Extending Declaration of Statewide Judicial Emergency. The plan for conducting jury trials should be consistent with the Order, as extended, with these guidelines, and with the Judicial COVID-19 Task Force bench card entitled "Georgia Court Reopening Guide."

As set out by the Order, as extended, it is critical that all courts continue to conduct proceedings, remotely or in-person, in compliance with public health guidance, applicable statutes and court rules, and the requirements of the United States and Georgia Constitutions, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom.



The location of the trial is also critical, because some courthouses will provide social distancing challenges. If space limitations make the regular courthouse unfit to meet social distancing requirements, courts should include in their local plans options to utilize auxiliary space in other buildings in the county such as auditoriums, gymnasiums, theaters, and ballrooms. Issues with acoustics, lighting, security, and availability may be impediments to using these facilities. Courts should review OCGA §§ 38-3-61 (c), 15-6-17 (b), 15-6-18; and Uniform Superior Court Rule 45 to ensure selected alternative locations are appropriate and have been properly designated.

Because of constitutional speedy trial requirements, criminal cases should receive priority scheduling. It is suggested that the first trials in a county be cases that involve one defendant, few lay and no out-of-town witnesses, straightforward evidentiary issues, and limited physical evidence that may need to be handled by the jury. The lessons learned from those initial trials will help inform incorporating more complex litigation into the trial schedule.

Jury trials can be conducted safely when following new protocols designated to protect the health of all participants. These protocols will include retooling the flow of individuals through the common areas of a courthouse, reconfiguring courtroom and jury deliberation spaces to allow for social distancing by the participants, the consistent use of masks or other face coverings such as transparent face shields, installation of plexiglass barriers, checking prospective jurors and other trial participants for health vulnerabilities or COVID-19 exposure, reliance on technology, and constant sanitization of rooms and often-touched surfaces. The following are recommended as best practices for that process.

Courthouse Physical Space Preparation

General Protocols

- Ensure that the county's cleaning policy will be adequate when the courthouse and courtrooms are reopened to more public use.

- Confirm HVAC system air flow will be optimized and that air filters will be cleaned or replaced regularly.
- Prominently display mask and face covering, social distancing, and other protocols. Masks or other face coverings should be worn in the courthouse at all times except when directed by the court for case-specific reasons or by security personnel or as otherwise provided below.
- Place social distancing directional markers around the courthouse, at the counter check-in area, in elevators, and in stairwells. The markers should encourage using the stairs as an alternative to elevators.
- Install automatic hand sanitizer dispensers at courthouse entrances, near security checkpoints, and in every room where trial participants or the public will be present.
- Create witness waiting rooms or areas where courtroom proceedings cannot be seen or heard.
- Install physical barriers (such as plexiglass) between court personnel and visitors.
- Consider which restrooms should be used by jurors and other trial participants during breaks, especially given challenges to social distancing when many people try to use the bathroom at the same time. Plan to clean and disinfect restrooms after breaks and at the end of the day.
- Make disinfectant products available in the jury room and the restroom.

Courtroom

- Use markers or tape to delineate proper socially distanced seating in the courtroom.
- In criminal cases, courtroom seating should be prioritized for the defendant's immediate family members, victims and their immediate family, and at least some space for members of the general public and the media. If space is limited, plan for those who cannot sit in the courtroom to observe the trial by livestreaming the proceedings into a

nearby room. Install plexiglass barriers as appropriate to separate the judge, staff, parties and their counsel, witnesses, and jurors.

- If jurors will be placed in the jury box, install plexiglass barriers between seats and assign juror seating.
- Ensure that each juror, party, and counsel can see and hear the proceedings from their places around the courtroom.
- Alternate courtrooms between trials, if necessary, to deep clean the room, including the HVAC filters, with particular attention to sanitizing the jury seating area, the jury room, and party seating areas.
- Plan for public access to court proceedings, including setting up areas where the public can watch remotely from within the courthouse in compliance with Uniform Superior Court Rule 22.

Security

- Meet with courthouse security and create a screening plan.
- Arrange for security personnel or court staff at building entrances to use a predetermined set of questions to determine each visitor's COVID-19 status. See CDC screening tool:
<https://www.cdc.gov/screening/index.html>.
- Especially in criminal cases, plan for additional deputies to handle juror management, transport and monitoring of in-custody defendants, and transport and monitoring of in-court witnesses.
- Establish procedures to notify the presiding trial judge of information about any trial participant turned away for COVID-19 exposure reasons.
- To the extent possible, provide masks or other face coverings at the entrance for anyone who does not have one.
- Consider a sign-in sheet, which may be useful for contact tracing.
- Consider how security will accommodate individuals who cannot wear a mask for Americans With Disabilities Act (ADA) reasons and how to handle individuals who refuse to wear a mask.

Jury Trial Scheduling and Pretrial Conferences

Jury Trial Scheduling

- Schedule fewer cases for a given trial term in accordance with maximum capacity guidelines for courtroom space.
- Prepare a “master calendar” for all judges in the courthouse who will be holding jury trials to avoid scheduling conflicts.
- When feasible, restrict or eliminate other in-person court calendars during jury selection to limit the number of people coming into the courthouse; use remote calendar calls as an alternative.

Pretrial Conferences

- Consider the efficiencies of conducting pretrial conferences in all but the most routine cases before scheduling cases for jury trials.
- Conduct the conference remotely instead of in-person; if in-person, schedule specific times for each case.
- Provide written proposed protocols for jury selection and trial to the parties and solicit questions and objections on the record.
- Consider options and develop a plan for the admission of exhibits:
 - Encourage parties to stipulate to the authenticity or admissibility of exhibits and to compile one unified set of exhibits to minimize handling of duplicates.
 - Use digital exhibits where feasible to reduce the handling of paper or physical evidence in the courtroom. The court and/or the parties can develop a protocol for the exchange of digital evidence, including the software platform to be used, naming protocol for documents, etc. See Appendix A for a sample order. When it is necessary for jurors to handle physical exhibits, provide hand sanitizer for use after handling or gloves that are discarded immediately after use to avoid cross-contamination.

- During deliberations, encourage jurors to take socially distanced turns reviewing exhibits placed on a table rather than handing around the exhibits.
- Direct the parties to advise the court promptly and on an ongoing basis if any trial participants associated with the party (including litigants, counsel, and witnesses) are individuals at increased risk for severe illness from COVID-19,¹ have tested positive for or are exhibiting symptoms of COVID-19, have had recent exposure to COVID-19, or otherwise may not be able to attend trial proceedings.

Summoning Jurors

- Jurors should be summoned only for a specific term of court.
- Courts should summon considerably more jurors than normal in anticipation that fewer jurors will report due to pandemic-related vulnerabilities or hardships such as being in a health or age-related risk category for COVID-19, lacking childcare, or holding a job in an essential industry.
- Courts should issue summonses considerably earlier than normal to ensure that requests for hardship excusals or deferments are timely received and reviewed.
- The notice that accompanies the summons should include language regarding the public health emergency and the specific steps the court

¹ Individuals who are at increased risk for severe illness from COVID-19 are generally defined by the Centers for Disease Control and Prevention as individuals who are over age 65 and individuals of any age with serious underlying health conditions, such as cancer, chronic kidney disease, chronic obstructive pulmonary disease, obesity, serious heart conditions, sickle cell disease, and type 2 diabetes mellitus, and individuals in an immunocompromised state from solid organ transplant. Those persons who live with or care for an individual who is at increased risk for severe illness from COVID-19 may also need accommodations, including alternatives to in-person court appearances and avoiding the need to travel to the courthouse. See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html

is taking to ensure the jurors' safety, including designated parking, security screening measures, the provision of food and drinks for jurors (or information about whether jurors can bring their own drinks, snacks, or lunches), the facilities designated for jury assembly and deliberation, and similar information.

- The notice should also include a phone number or a link to a website that will provide additional safety information, including, when possible, a video showing the COVID-19 safety precautions undertaken by the court.
- The notice should include easy-to-read contact information and the process for accommodating individuals who are deaf, hard of hearing, or have English-language difficulties. (Individuals with language difficulties may have challenges in interpreting complex or lengthy written material and are more prone to show up at the courthouse to seek clarification).
- Consider including a questionnaire, either written or electronic, to identify individuals at increased risk for severe illness from COVID-19, and persons with known or suspected exposure to or symptoms of COVID-19 so that they can be excused or deferred in advance without requiring them to appear at the courthouse. The questionnaire may also include general questions that may expedite voir dire, such as: "What is your employment?" "Do you know or think you may know any of the following judges? If so, please provide details." "Do you know or think you may know the district attorney or anyone who works in his or her office? If so, please provide details?" If a written questionnaire is used, provide an envelope with postage prepaid to return it.
- Any notices should clearly communicate that excusal from or deferral of jury duty other than upon proof of a statutory exemption shall be at the discretion of and upon approval of the judge.
- Courts should use their discretion in reviewing requests for excusal or deferment from jurors who submit medical forms and relevant documentation indicating that they are at increased risk for severe illness from COVID-19, have tested positive for or are exhibiting symptoms of COVID-19, or have had recent exposure to COVID-19. This excusal or deferment shall occur without the individual juror appearing at the courthouse and may include conducting a virtual

interview of the potential juror before rendering a decision on excusal or deferment.

- If there is a possibility of remote impaneling or remote trial proceedings:
 - Modify the summons notice to advise jurors not to report to the courthouse and that if called for a “hybrid trial” (with remote selection and/or in-person proceedings), public health guidelines will be followed for the in-person service.
 - Consider including a written or electronic questionnaire regarding the juror’s internet connectivity, use of on-line technology, and ability to have a quiet place from which to participate remotely. Similarly, consider partnering with local libraries or other public entities to provide “remote rooms” equipped with devices maintained by the court for those prospective or selected jurors who do not have devices or connection speeds that will allow them to meaningfully participate as jurors.
 - Consider including information about or links to information regarding the on-line platform to be used (i.e., Zoom² or WebEx).

Juror Arrival and Assembly

- Stagger juror arrival time — jury calls may need to be spread over several days to assure that qualified jurors can be selected.
- Mark off a specific juror parking area; provide signage to guide foot traffic to the proper courthouse entrance and COVID-19 screening station; place signs on the street at the approaches to the courthouse and throughout the courthouse to guide jurors. (Consider placing security personnel at the designated juror parking area, at the parking elevator to assure social distancing, in the outer lobby for temperature checks and COVID-19 screening, at the post-security elevator/stairwell lobby for social distancing travel to the designated courtroom).

² See Appendix B for sample Zoom protocol information.

- At check-in, staff members should have a jury assembly room seating chart to direct jurors to the room and where to sit.
- Use a room large enough to accommodate the number of jurors with appropriate social distancing.
- Separate chairs or seating in benches with enough distance to allow for social distancing between each juror.
- Consider impaneling extra alternate jurors consistent with OCGA §§ 9-11-47 and 15-12-169.1 to guard against delays or mistrials if regular jurors must be excused.
- Consider allowing jurors to report by phone or electronically each morning of trial to confirm that court will be in session and that the juror has not experienced any symptoms of or had exposure to COVID-19. If a juror reports symptoms or exposure, the juror should not be allowed to come to the courthouse. Make a plan for if a juror experiences symptoms of COVID-19 while at the courthouse.

Impaneling and Qualifying of Jurors³

In-person

- Use transparent face shields to accommodate hearing-impaired or language-challenged jurors.
- Consider having jurors wear a face shield rather than a mask while answering individual voir dire questions.
- Use separate podiums, if possible, for the attorneys for questioning jurors and clean microphones and podiums between each user, or allow attorneys to conduct voir dire from counsel tables.

³ Especially in criminal cases, consider limiting virtual jury selection to cases where the parties expressly consent until further guidance is provided. OCGA § 15-12-163 (a), relating to felony jury trials, provides: “When each juror is called, he shall be presented to the accused in such a manner that he can be distinctly seen.” This language can be read to require the physical presence of prospective jurors before the defendant prior to the jurors being selected, seated, and accepted in court for individual voir dire.

- Socially distance the jurors for questioning. Conduct specific individual juror follow up questioning immediately after general voir dire.
- Question jurors in smaller panels of no more than 12 at a time in staggered sets with thorough cleaning between each panel (e.g., 12 jurors at 9 a.m.; 12 jurors at 12 p.m.; 12 jurors at 3 p.m.).
- Modify the traditional method of numbering jurors by designating the seating location for each juror with a numbered sign corresponding to the juror's juror number, with the number on the sign visible to the juror, the court, and counsel. That is, the seating location for juror number 1 in the first panel of 12 should be designated with a sign displaying the number 1 with the same seating accommodations appropriately spaced for jurors 2 through 12; once that panel has been examined and excused for voir dire of the next panel, disinfect the seating area and prepare for the second panel by designating the seat for juror number 13 with a sign displaying the number 13 with the same accommodations for the socially distanced seating areas for jurors 14 through 24; and so forth for additional panels.
- Consider dealing with challenges for cause either immediately as grounds for the challenge arise or after the entire panel of 12 has been examined and prior to being excused for examination of the next panel. This will allow for the prompt excusal of unqualified jurors.
- To streamline the process, consider implementing an electronic or written questionnaire prior to the court date by soliciting proposed questions from attorneys in advance of trial as described above in the "Summoning the Jury" subsection, or encourage counsel to present general questions on a screen where the entire panel can see the question.
- Unless seating the panel in the jury box is specifically requested by a party, prospective jurors can be placed in the courtroom gallery for questioning. OCGA § 15-12-131 requires that the court place a panel of 12 in the jury box only "upon the request of either party."
- Encourage the parties to excuse panels while they are conducting strikes. Courts should inform the attorneys in advance regarding the procedures for striking without bringing the entire panel back as a group.

- Maintain a contingency plan in advance for COVID-19 issues arising during jury selection and instruct the potential jurors about the plan at the beginning of jury selection. The protocol should include providing jurors with a point of contact if potentially exposed to COVID-19 or experiencing symptoms of COVID-19 during the voir dire process.
- Provide breaks during the proceedings in designated space outside of the courthouse for jurors to take off masks to get fresh air while remaining distanced from others.

Remote Voir Dire⁴

- The notice sent with the summons should include questions regarding the juror's internet connectivity, use of technology, and ability to have a quiet place from which to participate remotely.
- Consider partnering with local libraries or other public entities to provide "remote rooms" equipped with computers and maintained by the court for those prospective or selected jurors who do not have devices or connection speeds that will allow them to meaningfully participate as jurors.
- Question jurors in smaller panels of no more than 12 at a time in staggered sets (e.g., 12 jurors at 9 a.m.; 12 jurors at 12 p.m.; 12 jurors at 3 p.m.) as it could be difficult to have more than 12 to 15 potential jurors on screen at once.
- Consider creating different breakout rooms for each panel with different meeting IDs and passwords. Prior to each session, consider creating breakout rooms to assist with the following technology issues: interpretation/language issues, private conversations, and side bars.
- Consider having a technology bailiff, possibly a member of the court's IT staff, to facilitate breakout rooms and assist jurors who are

⁴ As noted above, under OCGA § 15-12-163, remote impaneling may be inappropriate for felony criminal jury trials unless expressly consented to by the defendant.

unfamiliar with the software platform being used or who otherwise experience technological issues during remote proceedings.

- In the event of a break, consider adding a countdown clock to the screen to inform participants when they must return to their device.

Jurors Who Refuse to Appear

- Courts should prepare for the situation where jurors who do not meet the courts' standards for excusal or deferment refuse to participate.
- Those jurors should be excluded from the proceedings and placed on a calendar to appear before the court remotely or in person to show cause why they should not be held in contempt.

Seating the Jury and Conducting the Trial

- Place the jury in the courtroom gallery instead of jury box and place witnesses in the jury box to situate witnesses closer to the jurors. Ensure that each juror, party, and counsel can see and hear the witnesses.
- Remove unused chairs to promote social distancing.
- Allow the jury to deliberate in a larger room (vacant courtroom, jury assembly room, etc.).
- Remember to coordinate with other judges regarding trial scheduling, calling of jurors, and use of courtrooms needed for jury deliberations.
- Consider how to deal with self-represented litigants.
- Post guidelines for the use of restrooms and how jurors are to conduct themselves during breaks (maintain social distancing, directional arrows and six-foot markers, frequent handwashing or use of hand sanitizer, etc.).
- Any food or beverages provided to jurors should be individually packaged, and courts should consider loosening restrictions on jurors bringing in their own snacks and drinks.
- Have a supply of single-use notebooks and writing instruments on hand, or have jurors bring their own.
- Provide a jury room in an extra courtroom, grand jury room, or large conference room, if necessary, to accommodate social distancing.

Make sure all security cameras, recording devices, and microphones in the room used are disabled while the jury is present.

Presentation of Evidence

- Consider use of digital monitors in multiple parts of the room to enable jurors to view digital evidence, provide jurors with individual devices to view the digital evidence, or provide every juror with a copy of the evidence. Consider how to safely move physical exhibits between parties; one court staff member wearing a mask and face shield could be used as the primary individual transferring such exhibits between counsel and the witness.
- When it is necessary for jurors to handle physical exhibits, provide hand sanitizer for use after handling or gloves that are discarded immediately after use to avoid cross-contamination.
- During deliberations, encourage jurors to take socially distanced turns reviewing exhibits placed on a table rather than handing around the exhibits.
- Consider having certain witnesses in civil cases testify remotely via Zoom or a similar live-streaming platform with the “share screen” function to display and explain certain exhibits.

Handling Sidebar Conversations

- Courts should plan for how these separate discussions will occur.
- When possible, courts should provide litigants with a dedicated headset to hear what is said while remaining at the counsel table.

Managing Witnesses

- Courts should be mindful that witnesses may fear that a spectator watching the proceedings by remote broadcast may record the testimony and rebroadcast it on the internet.
- Courts should also consider how they will enforce the rule of sequestration under OCGA § 24-6-615.

- Witnesses should testify behind plexiglass without masks or wear face shields rather than masks so their demeanor can be fully evaluated. The judge should make sure that the jury's view of the proceedings and ability to hear is not obscured.
- On each day of trial, parties should confirm that witnesses are not exhibiting COVID-19 symptoms and have not had recent exposure to someone with COVID-19.

Attorney Communications with Client During Trial

- For criminal trials, starting at least 30 days before trial and then during the proceeding, the defense attorney should be provided confidential and safe access to any detained client to discuss trial proceedings. Doing so will ensure that scheduled trials can stay on schedule and the parties can be prepared to go forward as scheduled.
- In criminal and civil cases, the courts must ensure the opportunity for the attorney and client to communicate confidentially at all times during the trial proceedings.
- When available, courts should provide headphones and microphones for the attorney and client to confidentially and quietly communicate with one another.
- Handwritten notes may be shared between the attorney and client, which can then be destroyed by the attorney when the attorney leaves the courtroom.
- Courts should consider allowing the use of electronic devices, such as tablets or computers, for the attorney and clients to send text messages to one another.
- Courts may provide a room or space outside of the courtroom for the lawyer and client to communicate.
- Courts may allow the use of white noise machines to mask communications between the attorney and client.
- Courts should also be cognizant that an interpreter may also need to be included in these confidential communications.
- Courts should consider how to assure social distancing when the trial team consists of more than one attorney.

Guidance Issued September 21, 2020

This guidance is based on recommendations made by the Criminal and Civil Law Subcommittees of the Judicial COVID-19 Task Force.

APPENDIX

Appendix A: Sample Order Regarding Use of Exhibits

(Taken from Judge Leonard, Cobb County Superior Court)

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

Plaintiff,

CIVIL ACTION FILE NO.:

Defendant.

ORDER SETTING HEARING VIA ZOOM VIDEO CONFERENCE AND DIGITAL EXCHANGE OF EVIDENCE VIA CITRIX SHAREFILE

NOTICE: READ THIS ORDER CAREFULLY. IT CONTAINS SPECIFIC INSTRUCTIONS THAT IF NOT FOLLOWED, WILL PREJUDICE YOUR CASE.

Due to the high rate of COVID-19 cases in our community and the Orders Declaring Statewide Judicial Emergency pursuant to O.C.G.A. § 38-3-61 issued on March 14, 2020 (Order Declaring Statewide Judicial Emergency), April 6, 2020 (First Order Extending Declaration of Statewide Judicial Emergency), May 11, 2020 (Second Order Extending Declaration of Statewide Judicial Emergency), June 12, 2020 (Third Order Extending Declaration of Statewide Judicial Emergency), and July 10, 2020 (Fourth Order Extending Declaration of Statewide Judicial Emergency); the above-styled case is now hereby scheduled for a Special Set via Zoom Video

Conferencing (“Zoom Hearing”) on , 2020 at EST⁵ Time announcement of total. The parties will be sent a Zoom invitation contemporaneously with this Order. This is a mandatory court appearance and if counsel has a legal conflict, counsel shall send a conflict letter that complies with U.S.C.R. 17.1 to the Court by emailing the Court’s staff attorney, Mimi Scaljon, at mimi.scaljon@cobbcounty.org and administrative assistant, Michelle Jordan, at michelle.jordan@cobbcounty.org.

1.

If witnesses are necessary, the parties shall identify the witnesses and provide their names to the opposing party and the Court by emailing the Court’s staff attorney. Failure of a party to log on will be deemed to be a waiver of their presence for the hearing. Any non-party witness will be placed in a “waiting room” and only join the Zoom Hearing when called.

2.

If counsel/parties have evidentiary or demonstrative exhibits they intend to introduce, the parties are ORDERED to contact the Courtroom Clerk, Sandy Jones (sandy.jones@cobbcounty.org) at least **three (3) business days** prior to the hearing to request a link to the Court’s Citrix ShareFile evidence submission portal. The documents intended to be introduced as exhibits shall be pre-marked with exhibit stickers for ease of conducting the Zoom Hearing. Specific instructions as to required evidence format, file naming protocol, and ShareFile Link information are included in this Order as “Exhibit A.” All exhibits must be uploaded and named in accordance with Exhibit A, attached hereto. Exhibits that do not conform to this protocol will be rejected.

3.

The parties/counsel are responsible for timely uploading their exhibits and downloading the opposing side’s exhibits. After that has occurred, but at least **one (1) business day** prior to the hearing, the parties shall email the Court’s staff attorney to inform the Court if the exhibits that were exchanged are agreeable and will be stipulated to. If so, all Exhibits will be admitted at the start of the hearing and they may be referenced without laying foundations and formal introduction of each exhibit. However, if there are going to be objections to certain exhibits, those should be identified to the Court’s staff attorney at least **one (1) business day** prior to the hearing. All objections should state the grounds for the objection and the corresponding rule number from the Georgia Rules of Evidence. The Court will handle any objections that the parties failed to resolve during the hearing.

4.

⁵ The Court notes even though it is virtual, this is still a court session and all participants shall dress accordingly. The time provided by the Court is Eastern Standard Time.

The parties and any witnesses shall familiarize themselves with Zoom and all of its capabilities, including screen sharing, prior the hearing. Counsel shall assist their respective clients with downloading and operating Zoom, prior to the hearing. The court hearing should not be their first exposure to Zoom. The Court further ORDERS all counsel, parties, and witnesses to have any evidentiary exhibits available to them in such a format that they are able to review the exhibits during the video hearing (e.g. printed on paper, or in .pdf format on a separate monitor from the video hearing). To be of assistance to those that have not yet participated in a virtual court session, the Court has also distributed a document entitled "Preparing to Participate in a Zoom Court Session" with the Zoom invite. Please share it with your clients. This document may also be downloaded on the Court's bio page on the Superior Court website. The url is: <https://www.cobbcounty.org/courts/superior-court/judges/judge-robert-d-leonard>

5.

The Court's court reporter will also be present during the Zoom hearing to take down the hearing, if the parties want the hearing reported. The takedown fee is \$43.31 per hour, and the parties will need to make arrangements with the court reporter for payment. The parties shall email the court reporter at Louise.Thijssen@cobbcounty.org at least one (1) day prior to the hearing to let her know whether the hearing will be taken down and to make payment arrangements.

6.

The parties may email the Court's staff attorney with any issues or questions prior to the Zoom Hearing.

7.

If this hearing is being held on a day when the courtroom cannot be opened for public access, the parties are hereby notified that the Zoom Hearing will be "livestreamed" on YouTube for public access. However, once the hearing has ended and the live-streaming is stopped, there will be no video recording of the hearing remaining on YouTube.

8.

The Clerk shall add this hearing to a published calendar.

SO ORDERED, this ___ day of _____ 2020.

CERTIFICATE OF SERVICE

This is to certify that I have this day served all interested parties in the within and foregoing matter by emailing a copy of the **Order** via PeachCourt electronic service as follows:

This ___ day of _____ 2020.

EXHIBIT A

(Updated July 22, 2020)

As a result of the COVID-19 pandemic, Cobb County Superior Court has adopted a “no touch” policy for documents. This policy is designed to reduce the need to pass evidence between multiple people in the courtroom and to allow for proper social distancing during in person evidentiary hearings. The pandemic has also caused Cobb County Superior Court to routinely conduct nonjury hearings via video conferencing. In video hearings, evidence must be available to multiple participants at different physical locations. As a result, the Court now requires all exhibits and evidence to be made available in electronic format in advance of the hearing.

Please read and follow the evidence protocol below in advance of any evidentiary hearing.

ShareFile Link from Courtroom Clerk to Attorney/Party

The Clerk of Superior Court maintains custody and control of evidence admitted in cases pending in Cobb County Superior Court. Courtroom Clerks will continue with this responsibility using the Citrix ShareFile secure document storage program.

At least 3 business days prior to the hearing date, attorneys/parties should contact the Courtroom Clerk, Sandy Jones at sandy.jones@cobbcounty.org if they have evidence to present at the hearing. The Courtroom Clerk will email the attorney/party a link to access ShareFile. Create a ShareFile account using that email address.

Required Evidence Format

All evidence should be submitted as a .pdf file and **marked with an exhibit sticker or the digital equivalent**. If you are unable to submit your evidence as a .pdf file, you should contact the Courtroom Clerk ASAP for further instructions.

File Name Protocol for All Evidence

In video hearings, and as part of the evidence storage process, multiple people will view the evidence from different computers. It is very important that uploaded files are named in a consistent manner. All evidence should be submitted as a .pdf file and named as follows:

- *In criminal cases*, the file name for all evidence submitted by the state should be “S-1, S-2, S-3, etc.” The file name for all evidence submitted by a defendant should be “D-1, D-2, D-3, etc.” If there are multiple defendants, the file name should begin with defendant’s last name. For example, in State v. John Doe and Brian Smith, the defendants would name their files as “Doe-1, Doe-2, Doe-3” or “Smith-1, Smith-2, Smith-3.”
- *In civil cases*, the file name for all evidence submitted by the plaintiff/petitioner should be “P-1, P-2, P-3, etc.” The file name for all evidence submitted by a defendant/respondent should be “D-1, D-2, D-3, etc.” If there are multiple parties, the file name should begin with the party’s last name or company name. For example, in ABC Inc. & Acme Co. v. John Doe & Brian Smith, the plaintiff would name their files “ABC-1, ABC-2, ABC-3” or “Acme-1, Acme-2, Acme-3.” The defendants would name their files as “Doe-1, Doe-2, Doe-3” or “Smith-1, Smith-2, Smith-3.”
- For *both criminal and civil cases*, it is permissible to add a descriptive title to the file name, so long as the above-referenced file naming protocol is complied with at the beginning of the file name. For example, “P-1 - Husband’s Wells Fargo Statements” is permissible and helpful.

If you do not name your files correctly, the Courtroom Clerk will notify you to resubmit.

Upload the evidence file into the appropriate folder for review by the Deputy Courtroom Clerk.

Upload Evidence

Once an account is created, click on “Shared Folders” in the left column.

Click on the folder for the case, and then click on the subfolder for the party submitting evidence. Within each case folder, there is a subfolder designated for each party.

Click on the blue “+” symbol to select a file to upload. Either drag a file to the box or select “Browse files” to select navigate to where file is saved on your computer. The selected file should appear in the box.

Click on the blue “Upload” button in the lower left corner of the screen. Once uploaded, the file will show in the folder with the creator and upload time.

Download Evidence

Each side will be able to view and download evidence uploaded by other parties. Because ShareFile is a web-based storage platform, at times the program may run slow. To prevent any delay during a hearing, attorneys should download all evidence in advance.

To download, click on the box to the left of the selected file(s) and then click on the Download button at the top.

Questions?

If you have questions or are unable to upload evidence, contact the Courtroom Clerk or Judge Leonard’s staff at 770-528-1837 (Michelle Jordan, Administrative Assistant, michelle.jordan@cobbcounty.org or Mimi Scaljon, Staff Attorney, mimi.scaljon@cobbcounty.org).

Appendix B: Sample Order on Zoom Protocol

(taken from Judge McClelland, State Court of Forsyth County)

YOU HAVE BEEN ORDERED TO APPEAR BEFORE THE STATE COURT OF FORSYTH COUNTY, VIA THE ZOOM MEETING APP. You must follow these instructions and appear for your hearing. Failure to appear may result in your claims being denied, or opposing claims granted against you, up to and including a default judgment. If you a defendant in a criminal case, failure to appear may result in the issuance of a bench warrant for your arrest and a forfeiture of your bond.

First, visit zoom.us and create an account. You must use your real name in setting up your Zoom accounts. You should also download and install the app on your computer, tablet and smart phone. (You can do this by clicking Resources, and selecting Install Client or App). If you cannot figure out how to do it, just remember this -- when you attempt to host or join a meeting, it will ask you whether to open in the browser or open/install the Zoom app. *Instruct it to open in the Zoom app and allow it to install the program.* You may in the alternative, use the call-in information with a voice call, but while you will be permitted to participate, you will not be permitted to testify under oath unless you appear in camera in Zoom.

Witnesses who are not on camera will not be permitted to testify.

Dress codes: Parties and witnesses should dress "smart casual," which is best described as what someone would wear to a first date or at dinner with their parents. You are responsible for ensuring that your clients and witnesses are aware of and comply with this dress code.

Participating in the Zoom Virtual Courtroom:

1. You will join the virtual courtroom at the scheduled time by clicking the link in the e-vite.
2. When you join a virtual setting, you will be appear in a virtual waiting room with all other parties, attorneys and witnesses. There may be several cases set on the docket at that time. When your case is called, the court will bring you into the virtual courtroom.
3. Because the Zoom app works on all modern smart phones, tablets and computers, each attorney is expected to appear by video, rather than merely by voice.
4. When you enter the virtual courtroom, your video will automatically be on and your audio muted, until the hearing begins.
5. All criminal hearings will be on the record and taken down by the Court's Official Court Reporter. Civil hearings will be taken down by the Official Court Reporter upon request or agreement of the parties and upon making financial arrangements with the Court Reporter before the start of the hearing.

6. Witnesses will be called as in any case, and the court will bring them in one at a time from the waiting room. Remember, only people on video will be permitted to testify unless they are in the physical presence of a notary public.

7. You may "slip notes" to your lawyer, using the private chat feature, if available. To do so, hit the "CHAT" button, and at the bottom of the chat window, pull-down the recipient arrow and select your lawyer's name. However, you are not to communicate with your lawyer or anyone else while you are testifying. You are also prohibited from using the chat feature to communicate with witnesses. Witnesses are only permitted in the virtual courtroom while they are testifying. You are not to hold notes or paperwork in your hands while testifying, just as though you were on the witness stand.

8. You may, upon request, confer in private with your attorney. You should "slip a note" via chat feature to your lawyer, request a moment to confer. If your request is granted by the court, you will be moved into a confidential video room to confer for a few moments.

9. Exhibits and plea papers must be submitted to the Criminal Case Coordinator if a criminal hearing and the Court's Staff Attorney if a civil hearing prior to the hearing, at _____. The only formats that will be accepted are PDF for documents, JPG and PNG for images, and MP4 for videos. No DOC formats or executables will be accepted.

10. All exhibits should be named in this format: Case number and a short description, e.g., "20M1234B Plea Papers" or "20SC1234B Northside Hospital Bills". Any documents that require the judge's signature, such as the Waiver of Rights and Petition to Enter Plea of Guilty must be submitted as a separate document. Evidence not anticipated or submitted prior to the hearing may be submitted during the hearing through the Chat/File feature in Zoom.

Additional instructions will be given to you by the Court during the hearing.

So ordered.

Appendix C: Sample Six-Person Jury Trial Plan (from Judge Hanson, State Court of Bibb County)

State Court of Bibb County
Pandemic Six-Person Jury Trial Plan

Summons

1. A limited number of jurors will be summonsed for each day of the trial week. In other words, jurors will be summonsed for each trial, not for the entire trial week. (Misdemeanor trials can typically be completed in one day.) The Court expects 20 to 25 potential jurors to be present at one time. This number can be easily accommodated in the courtroom while social distance of six feet is maintained between potential jurors.
2. The Juror Summons will direct the potential juror to a website for information about jury service. The website includes the Guidelines implemented for all courts at the Bibb County Courthouse, as well as additional information about the protections being taken in State Court for jurors.
3. The website also includes a juror questionnaire to be completed by each juror so that voir dire can be expedited.
4. Potential jurors who contact the Court with a COVID-19 related request for excusal will be deferred or excused.

Arrival for Jury Service

1. Pursuant to the Guidelines, everyone entering the courthouse will be screened and required to wear a facial covering. Any potential jurors who do not have a facial covering will be provided a mask.
2. Upon arrival on the 5th Floor, a bailiff will greet potential jurors and provide hand sanitizer.
3. Potential jurors will check in at a window with a plexiglass barrier. Single direction traffic flow will be utilized to promote social distancing, and spacing is marked on the floor, if there is a line. The flow is directed one-way from the elevators to the check-in and then to the courtroom.
4. The Court has a large courtroom that seats approximately 130 people in normal times. With social distancing of 6 feet in all directions between each potential juror, this courtroom can accommodate 27 potential jurors. Generally, panels of 15 to 17 are used to pick a 6-person jury. Twelve is enough if there are no strikes for cause. Based on the limited number summonsed and the likely high rates of excuses and no-shows, the risk of having too few jurors is greater than the risk of too many.
5. Potential jurors will be directed into the large courtroom and will sit in a marked seat on one of the pews. (The pews and other surfaces are cleaned between each use of the courtroom.) This seat is their assigned seat for the duration, until they are selected or dismissed.