

GUIDELINES
FOR RESUMING JURY TRIALS
IN FULTON COUNTY'S
TRIAL COURTS

FILED BY CHIEF JUDGE
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SUPERIOR COURT OF FULTON COUNTY

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FULTON COUNTY JURY TRIAL GUIDELINES

Pursuant to the Statewide Judicial Emergency Order, as extended, and the Guidance for Local Committees on Resuming Jury Trials, the Fulton County Courts have prepared these guidelines for safely resuming jury trials in Fulton County. These Guidelines are the product of the work of the Courts and the Local Committee formed here in Fulton County, and represent a collaborative effort aimed at safely resuming necessary jury operations. While our courts have not closed during the present pandemic, their operations have been hampered by the inability to hold jury trials in the face of the dangers of COVID-19. As the requirements of safety and public health allow, the courts of this County, and across Georgia, will resume jury operations. These Guidelines are intended to provide a framework for safely resuming jury operations in Fulton County. These Guidelines will be submitted to the Administrative Office of the Courts as required by the Statewide Judicial Emergency Order, as extended.

In providing guidance on safely resuming jury operations, these Guidelines address three broad areas of activity: summoning and selecting jurors, trial operations, and public outreach. These areas are addressed in detail, below.

PRE-TRIAL PHASE

It is the intention of Fulton County Courts to commence in-person jury operations with criminal trials, beginning with cases where the Defendant has been in custody (and ideally starting with cases where the Defendant has been in custody for the longest period of time). Our Courts are also currently developing a procedure for virtual jury selection in civil cases, with the selected jury reporting for actual jury service in person directly to the presiding judge's courtroom.

Summoning of Jurors

Before the most recent moratorium on jury trials, Fulton County had begun summoning jurors in anticipation of returning to in-person jury trials in January 2021. The juror summons is accompanied by an informational insert addressing COVID-19 concerns. The insert details sanitizing measures in place (including frequent cleaning of areas where jurors gather), staff precautions, and social distancing measures - all to bolster juror confidence. Fulton County has also prepared a video message from its Chief Judge regarding its efforts to protect jurors, which is available on the Court's website (fultoncourt.org/jurors). A second summons insert provides jurors a procedure by which they may request deferral of jury service if they are at heightened risk of complications from COVID-19.

Managing the Number of Prospective Jurors

Through the efforts of our Jury Clerk, Fulton County Courts are limiting the number of jurors summoned so as to yield approximately 70-90 jurors actually appearing for jury duty. Accurately predicting jury yield is challenging in the time of COVID, in that present yields may not correlate to prior experience based on historical reporting trends. Although a slightly reduced yield was noted when we summoned prospective jurors to seat a grand jury in November 2020, we did not experience a substantial decrease in summons responses or reporting. Thus, we believe that we can predict juror yield to a reasonably accurate degree, permitting jury operations to commence without resulting in too large a group of reporting jurors.

Reporting and Assembly

Prior to entry into the Courthouse, jurors will be pre-screened with temperature checks and brief questions regarding COVID exposure, symptoms, or diagnosis. Potential jurors who register a high temperature, who have recently had a COVID exposure, or who have recently experienced COVID-like symptoms will be directed to return home and will not be permitted to enter the Courthouse.

Everyone entering the Courthouse must wear a mask. Upon entry, jurors will be directed to locations that can accommodate necessary juror numbers while maintaining social distancing and without unnecessary elevator use. Hand sanitizer stations have been placed throughout the courthouse. Sanitary barriers

have been installed, *inter alia*, at juror check-in desks, and all staff will be wearing PPE. A member of the County's maintenance team will visit the courtrooms where jurors are assembled to conduct regular sanitization of courtroom spaces throughout the course of jury operations.

Once jurors report for jury duty, they will be seated altogether in Assembly Hall in the Fulton County Government Center or divided into two groups in two adjoining courtrooms. If jury selection occurs in two adjacent courtrooms, Fulton County Courts anticipate the use of video-conferencing technology for the conduct of judge introductions and initial general voir dire across both courtrooms, if necessary. Jurors will then be individually questioned in groups of twelve, with those jurors not being questioned released for break or allowed to remain quietly in the courtroom. After individual questioning is complete, jurors will be notified that they will be contacted with reporting instructions if chosen for the jury. Prospective jurors may then be temporarily excused. Counsel and the Court will then select a jury and selected jurors will be informed of their selection and provided reporting instructions for the commencement of trial.

TRIAL PROCEDURE AND OPERATIONS

Pretrial Hearing

Sufficiently well in advance of trial, the court should hold a pretrial hearing to review the logistics of conducting the trial under these pandemic procedures and, for criminal trials, to obtain the defendant's consent, on the record, to going forward with a trial under these parameters. A proposed checklist for the court's use during this pretrial hearing is attached as Exhibit One. Any pretrial motions should be heard prior to the first day of voir dire.

Courtroom Setup and Layout for Trial

To facilitate social distancing inside the courtroom, empaneled jurors will be seated in the gallery rather than the jury box. As a result, the following changes to the courtroom should be made to accommodate the jurors' and the parties' ability to see and hear what is going on in the courtroom.

Counsel tables should be turned perpendicular to the gallery and bench to allow the parties to comfortably see the jurors, the bench, and the witness stand. Witnesses will testify from the witness stand. To help jurors see and hear the witness when the jurors are seated in the gallery, a camera on the witness stand will stream the witness's image to a large screen near the gallery of the courtroom. This will also allow witnesses who are testifying remotely to be viewed. An additional screen near the gallery will display images of the digital evidence that is

published to the jury. Computer monitors on the witness stand, on counsel tables, at the judge's bench, and on the podium will all show the same image that appears on the monitors facing the jury.

Prior to the start of evidence, the court should confirm that all jurors and parties are able to see the testifying witness (through direct line of sight and closer up on a monitor) and hear the testimony.

Because the jury will occupy a large portion of the gallery and to comply with social distancing requirements, there may be few seats for spectators inside the courtroom. If there are insufficient seats in the courtroom for spectators, the trial proceedings shall be streamed or broadcast to either an alternative location inside the courthouse or on an online platform. The court must be cognizant of potential violations of the Rule of Sequestration if a live feed of the trial is available outside of the courtroom.

Jury Room

Because social distancing cannot be accomplished in the normal jury rooms, the court must designate an alternative plan for the jurors during trial. If possible, a nearby empty courtroom will be used throughout the trial as the jury room. Empaneled jurors will be able to use this empty courtroom as they would a standard jury room, including gathering there prior to the start of trial each day, storing their personal belongings there, retiring to this courtroom for breaks and the

lunch recess, and deliberating in this courtroom at the conclusion of the trial.

Jurors will maintain social distance while inside this courtroom. Jurors will have the exclusive right to use the bathrooms that are attached to this courtroom's actual jury room. Deputies will escort jurors between the trial courtroom and the substitute jury room, pursuant to the court's direction.

In the event that an empty courtroom is not available to serve as the substitute jury room, jurors will have a designated, cordoned off area in the hallway outside the trial courtroom where jurors can retire when they must be excused from the courtroom for proceedings outside of their presence. This area will permit social distancing and will be guarded by deputies to prevent any improper contact with the jurors. A hallway bathroom will be designated for the jurors' sole use. Jurors may use the trial courtroom to gather in the morning, for the lunch recess, and for deliberations. When the defendant on trial is in custody, the trial court must ensure that jurors are excluded from the courtroom when the defendant is being moved. The court must also consider how the parties and witnesses enter and exit the courtroom if the jurors are using the hallway outside the courtroom.

Juror Safety

The court will make every effort to protect the health, safety, and comfort of the empaneled jurors. Jurors will have their temperatures checked upon each entry into the Courthouse.

Jurors will be seated in the courtroom gallery at designated, socially distant markers. Jurors must retain the same seat throughout the day, but may change seats on different days. Each juror will be assigned his or her own tote bag with a seat cushion, note pad, and pencil that he or she will use throughout the trial.

Jurors will maintain social distance during breaks and recesses, be assigned separate areas to retire, and will be assigned a dedicated bathroom to limit exposure. Jurors will not have access to shared appliances (coffee pot, refrigerator, etc.) and will need to bring non-perishable lunches or purchase lunch outside the courthouse. Jurors will have access to gloves and hand sanitizer inside the courtroom.

During the period of Judicial Emergency, the Court has conducted Grand Jury proceedings wherein a Grand Jury was convened and in session during the November/December 2020 Term of Court. The Court is using this practical experience as a guide and to assure potential trial jurors that service is not only necessary to administer our justice system, but is also safe for all involved.

Changes to Courtroom Procedure

Bench conferences and/or sidebars will not be allowed if they cannot be safely accommodated. The Court and parties will designate alternative methods of communicating about procedural issues outside the hearing of the jury without having to send the jurors out of the trial courtroom.

Counsel will question witnesses from counsel tables or the podium, and must strive to limit the number of times they approach a witness. The parties, especially defense counsel and the defendant, may require additional recesses outside the presence of the jury so they may confer while still social distancing. The court must be cognizant of and accommodate the defendant's need to communicate with counsel during trial within the context of appropriate social distancing and the proximity of the jurors. The Court will experiment with providing headsets to counsel and Defendant so that they may speak privately while socially distanced.

Presentation of Evidence

The presentation of evidence will be designed to limit the proximity of the trial participants and to maximize efficiency during the trial. The court will encourage the parties to confer prior to trial and determine the evidence and foundational issues, if any, to which they are willing to stipulate so as to expedite

the trial. If there are known disputes about the admissibility of evidence, these should be resolved prior to trial.

The parties will be required to digitize as much evidence as possible. Admitted exhibits in an electronic format will be published to the jurors via a large screen/monitor in the gallery. A member of the IT Department will be in on call to assist with the electronic presentation of evidence.

When physical evidence is to be published to the jurors, a courtroom deputy will display it to them. Evidence may not be passed around to the jurors in the courtroom. Printed copies of the digital evidence must be provided for the jurors for deliberation.

Health, Safety, and Sanitization

Our courts are responsible for ensuring that health and safety protocols are followed to protect all trial participants and spectators. Masks are required at all times in the courtroom and may only be briefly removed with court permission and under certain circumstances. Clear masks will be available upon request for witnesses to wear while testifying.

Disposable microphone covers will be used for each witness. After a witness testifies, he or she will remove the disposable microphone cover and wipe down the witness stand with a disposable, anti-microbial wipe. In addition to the

MERV-11 hospital grade filtration system in place, two large, mobile air purifiers will be running in the courtroom.

The courtroom will be thoroughly cleaned during the lunch recess and after court concludes at the end of each day. The substitute jury room will also be cleaned once during the day and at the end of the day.

If a person involved in the trial (juror, witness, lawyer, defendant, staff, deputy) tests positive for COVID-19 during the trial, the court will determine whether it is safe to continue with the trial, grant a continuance, or declare a mistrial.

PUBLIC INFORMATION

The Court has updated its website to reflect all measures taken to date to protect the health and safety of jurors and potential jurors. Please see:

<https://www.fultoncourt.org/jurors/>. The Court will continue to update this webpage with the most current information regarding all safety precautions.

Furthermore, all persons summoned for jury duty should check this website periodically for updates, including parking and shuttlebus updates, entry into the building, and general information for jury service.

EXHIBIT ONE

PRETRIAL HEARING CHECKLIST FOR JURY TRIALS DURING THE PANDEMIC

TIMING

Ideally, the pretrial hearing should be held at least a week before trial to provide the parties will sufficient time to prepare for trial in accordance with the Court's directives and rulings from the pre-trial hearing.

WAIVER

_____ Have the Defendant confirm on the record that he is consenting to having his trial under these parameters. After the pretrial hearing, have the Defendant again confirm his assent.

COURTROOM LOGISTICS

_____ Determine if a nearby courtroom is available for the jurors to use as their jury room. If not, discuss logistics of where jurors will gather outside the courtroom (for breaks and hearings outside of their presence) and which public restrooms will be designated for the jurors' use.

_____ If jurors are gathering in the hallway during breaks and using the hallway restroom, determine if the trial attorneys will use the restroom in the jury room or a different public restroom.

_____ Discuss how the parties will sit at counsel tables and if counsel tables will be turned perpendicular to the gallery.

_____ Determine if counsel will question witnesses from the podium or counsel tables.

_____ Determine how many people from each side will be present for trial, both at counsel table and in the gallery, and determine if there are sufficient seats, given social distancing requirements and jurors being seated in the

gallery. If there are insufficient seats, discuss who may be limited or if the trial will need to be live-streamed.

_____ Discuss how the defendant and defense counsel will communicate during the trial based on how they will be seated at the table and to avoid whispering/close contact. Determine if the defendant is able to effectively write notes to his/her attorney. Discuss how the defense attorney will signal to the Court if a recess is needed outside of the presence of the jury so that the defendant and his attorney can talk while maintaining social distancing.

VOIR DIRE

_____ Explain how voir dire will work:

- If jury selection is not occurring in Assembly Hall: A maximum of 36 prospective jurors will fit in the courtroom with the parties. While general voir dire (*i.e.*, questions from the judge answered simply by raising a numbered card) may eventually be possible in two courtrooms simultaneously (allowing for 48-60 jurors to be generally questioned together), initially voir dire will likely consist of two separate panels and the overall selection process may take two days.
- Prospective jurors will not be provided with clear face shields or clear face masks; they will be wearing masks and will not be permitted to remove their masks absent Court approval. If available, seated trial jurors will be given clear masks.
- Final jury selection will occur with no jurors present, as jurors will be excused from the courthouse as soon as they have been fully questioned.

_____ Determine the number of alternates that will be selected and confirm the ability to seat the total number of jurors and alternates in the gallery.

_____ Determine if a jury clerk or a member of the judge's staff will handle the striking of the jury. Also determine where this person will be seated in the courtroom.

_____ Discuss how the Court will handle "on call" prospective jurors if they do not return to court for voir dire or after being selected for the trial jury. For

example, will prospective jurors be told that they will be held in contempt if they do not return?

_____ Solicit any objections to the above procedure and any objections to proceeding with the current jury pool. (Some lawyers have objected to jury trials at this time, contending that the pool will somehow be less representative of the County due to COVID's disparate impact.)

TRIAL PROCEDURE

_____ Because bench conferences and sidebars cannot be safely accommodated, discuss alternatives to communicating with the Court without having to send the jury out of the courtroom, such as emails or notes. *Note recent decision by GA Supreme Court, Nesby v. State, 2021 Ga. LEXIS 4, S21A0207, January 11, 2021 (a defendant's absence from bench conferences dealing with legal or logistical issues does not violate his right to be present for court proceedings).*

_____ Determine whether jurors will be allowed to gather in the gallery prior to trial and/or eat lunch in the courtroom. Will jurors be required to remain in the courthouse for lunch or can they go out?

_____ Determine how the defendant, assuming s/he is in custody, will enter and exit the courtroom. If jurors will be remaining in the courtroom, will the entire defense team exit through the door to the holding cell or do all jurors need to depart the courtroom when the defendant needs to leave. Or will the deputies support having the defendant exit into the rear hallway?

_____ Determine if the jurors will deliberate in the trial courtroom or a nearby courtroom. Confirm with the Sheriff's Office that the security cameras will be turned off in the deliberation courtroom during deliberations.

WITNESSES

_____ Inquire if any witnesses will be testifying remotely. If so, does the opposite party object? If there is an objection from the defense, you likely will need to continue the proceedings. To avoid constitutional speedy trial concerns, enter a written order to that effect, noting the party who objected.

_____ Discuss how to limit the number of times the attorneys approach a witness while the witness is on the stand, such as utilizing electronic copies of exhibits or providing the witness with a folder containing all exhibits, rather than presenting one exhibit at a time.

_____ Discuss the procedure that will be used to refresh a witness's recollection.

_____ Discuss the parties' views as to masks/clear masks/plastic face shields for witnesses.

_____ If the trial is being streamed live, require the parties to instruct their witnesses that they are prohibited from watching the trial until released from their subpoenas. Counsel should affirm on the record at the start of trial that they have done so.

EVIDENCE

_____ Require the parties to digitize as much evidence as possible. Exhibits will ideally be presented electronically, visible to the jurors via large screens at the edges of the gallery.

_____ Require the parties to confer prior to trial and determine the evidence and foundational issues to which they are willing to stipulate. If there are known disputes about the admissibility of evidence, resolve these before trial.

_____ Determine the procedure for publishing physical evidence to the jurors. Will the bailiff walk among the jurors? Will a photo of the item be displayed? Evidence may not be passed around to the jurors in the courtroom.

_____ Discuss how the evidence will be provided to the jurors for deliberations. Parties must provide a printed copy of exhibits that were presented in electronic form during trial. Determine whether twelve copies of these exhibits will be provided for the jurors' individual use, or if jurors will have one copy that they can review following COVID-19 safety protocols.

TECHNOLOGY

_____ Review the role and use of technology during trial. (Separate memo to be provided by Court IT.) Offer to allow the attorneys to use the courtroom to practice using the equipment.

HEALTH & SAFETY MEASURES

_____ Determine if uniform or solid color masks will be required for all parties and witnesses, rather than “fashion” masks with logos or writing.

_____ Determine if a person who is speaking (attorney or witness) may remove his/her mask while speaking during trial.

_____ Determine if disposable microphone covers will be used for each witness.

_____ Discuss the cleaning of the witness stand between each witness and the schedule for cleaning the courtroom, such as at lunch or after court concludes for the day.

_____ Discuss the protocol if any person affiliated with the trial tests positive for COVID-19.