

Carroll County Plan for Resuming Jury Trials

This order shortens and improves jury trial procedures with emphasis on the subpoena/excusals process, pre-trial planning, voir dire, and conducting the jury trial. Courtroom C and the Jury Assembly Room of the Carroll County Courthouse, and the Historic Courtroom of the Historic Courthouse are the courtrooms and jury boxes authorized for Superior Court Jury Trials.

Courthouse Physical Space Preparation

General Protocols

- The county will create a detailed cleaning plan to ensure safety for public use.
- All HVAC system airflow will be optimized and air filters will be cleaned or replaced regularly.
- Mask and face covering, social distancing, and other protocol signage will be prominently displayed. Masks or other face coverings shall be worn in the courthouse at all times except when directed by the court for case-specific reasons or by security personnel. All individuals shall maintain a six foot distance from other people at all times.
- Social distancing directional markers are placed 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.
- Automatic hand sanitizer dispensers shall be installed at the entrance and prominently on each floor of the courthouse where trial participants or the public will be present.
- A plan shall be created for designating restrooms for jurors and other trial participants.
- Soap and paper towels will be available in all restrooms. Hand sanitizer will be located in every jury room.

Courtroom

- The courtrooms will be marked for social distancing.

- Public viewing of court proceedings will be broadcast to a room or location separate to the trial courtroom in compliance with Uniform Superior Court Rule 22.
- Plexiglass shall be installed on the front and sides of the witness box to allow testimony to occur without a mask. The witness area shall be cleaned after each witness testifies.
- Each juror, party, and counsel shall be able to see and hear the proceedings from their places around the courtroom.

Security

- Security personnel or court staff at building entrances shall 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>.
- The presiding trial judge shall be notified of any trial participant turned away for COVID-19 exposure reasons.
- Masks or other face coverings shall be provided at the entrance for anyone who does not have one.

Jury Trial Scheduling and Pretrial Conferences

Jury Trial Scheduling

- The judges shall coordinate calendars to give precedence to criminal jury trials.
- A “master calendar” for all judges in the courthouse who will be holding jury trials will be developed to avoid scheduling conflicts.
- When feasible, the judges shall restrict or eliminate other in-person court calendars during jury selection to limit the number of people coming into the courthouse; judges may use remote calendar calls as an alternative.

Subpoenaing Jurors:

- Jurors should be subpoenaed bearing in mind that 160 subpoenas produced 40 to 50 jurors for our recent Grand Jury.
- Jurors shall be required to call the clerk to discuss requests for excusal. The assigned judge shall frequently review the requests for excusal and make decisions for excusal or deferral pursuant to O.C.G.A. § 15-12-1.1. The judge shall also maintain a list of all excusals/deferments that will be summarized in an order titled: Order on Juror Excuses. The clerk and the judge shall execute a plan for having jurors report in small groups at 30 minute intervals. O.C.G.A. § 15-12-131.
- A letter will be sent with the subpoena that includes language regarding the public health emergency and specific steps the court is taking to ensure jurors' safety. The letter will also include a link to a *Google Form* survey. This survey will seek answers to the standard questions all prospective jurors are asked during voir dire (see the survey section below). Any juror that cannot complete the survey electronically shall call the clerk and supply that information over the telephone. The letter will also require all prospective jurors to call the clerk regarding the following information:
 - Determine possible excusal/COVID questions;
 - Preliminary Juror Survey; and
 - Scheduling arrival time in small groups at 30 minute intervals.
- The completed Preliminary Juror Survey *Google Form* data will be downloaded into a *Microsoft Excel* spreadsheet and shared with the attorneys before trial.

Preliminary Juror Survey

While questions asked in the survey may vary, the following are suggested questions based on past experience.

- Full legal name (Last, First)
- Age
- Address

- Gender
- Occupation
- Name of Employer
- Marital Status
- Spouse's Occupation
- Spouse's Name of Employer
- Do you have children? If so, how many?
- Have you served on a jury before? If so, were you the foreperson? If so, did the jury reach a verdict?
- Are you a post certified sheriff's deputy, police officer, correctional officer, or with any other law enforcement agency?
- Do you have any relatives who are employed in law enforcement? If so, how many relatives are employed in law enforcement?
- Do you know any law enforcement officers?
- (May include information required for juror pay)

Pretrial Conferences:

- Pretrial conferences will occur for all cases remotely or in person.
- A *Microsoft Excel* spreadsheet of Preliminary Juror Survey data will be shared with the attorneys.
- All voir dire questions shall be submitted to the trial judge at the pretrial conference. Any objections will be placed on the record. The judge will create the voir dire questions from the lists and will ask all voir dire questions at trial.¹
- Give notice that jurors will leave after questioning with notice of procedure for return of those selected to serve at trial.
- Schedule all motions for hearing.

¹ This requirement is supported by Wilkins v. State, 246 Ga. App. 667, 541 S.E.2d 458 (2000) (holding that trial judge may require the parties to submit all voir dire questions in writing before voir dire is conducted); Kerdpoka v. State, 314 Ga. App. 400, 724 S.E.2d 419 (2012) (holding that a judge is authorized to ask all questions at trial so long as the questions are designed to elicit individual responses from potential jurors).

- Maryland v. Brady: The court expects the attorneys to be familiar with every state and federal case related to Maryland v. Brady and to outline affirmative measures that are undertaken to comply with Brady.
- Discuss any technology issues that may be encountered. Trial runs using the technology shall occur prior to trial.
- Ensure that all witnesses are scheduled to be present and ready to testify when called.
- Plan for the admission of exhibits:
 - Attorneys shall prepare to have all exhibits marked before trial. Attorneys are encouraged to stipulate into evidence photos, documents, and other exhibits.
 - Digital exhibits shall be used where feasible. *One Drive* or *Citrix* are considered good platforms for retention of documents. The clerk shall be responsible for maintaining the evidence and assisting electronic presentation of evidence. The clerk shall be involved in the pretrial meeting to assist with the evidence retention and presentation plan.
 - When it is necessary for jurors to handle physical exhibits, hand sanitizer and gloves will be provided. Gloves will be discarded immediately after use. If it will be necessary for jurors to physically handle evidence, the safe handling of such evidence shall be discussed in the pretrial conference.
 - During deliberations, jurors are encouraged to take socially distanced turns reviewing exhibits placed on a table rather than handing around the exhibits.
- Parties will plan logistics for the jury strike process, conducting sidebar discussions, and confidentially consulting with their clients during the course of the trial.
- Parties are required to notify 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, 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.
- A Pretrial Order is suggested to create a record of the Pretrial Conference.

Juror Arrival and Assembly

- Juror arrival times shall be staggered.
- Sheriff department personnel shall screen entrance to the courthouse for COVID-19 using the standard questions and the taking of temperature of each person.
- The jury assembly room and all courtrooms shall be marked to display proper social distancing of no less than six feet in every direction.
- The trial judge shall conduct court and jury proceedings only in rooms that allow for proper social distancing.
- 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. O.C.G.A. § 15-12-131 requires that the court place a panel of 12 in the jury box only “upon the request of either party.” Because our court is operating in a COVID-19 emergency, the trial judge is authorized to designate the part of the courtroom which serves as the jury box.^{2,3}
- The Court shall inform the attorneys in advance regarding the procedures for striking without bringing the entire panel back as a group.
- A contingency plan for COVID-19 issues arising during jury duty will be shared detailing the appropriate point of contact for reporting concerns.

² “Jury selection is a vital and extremely important part of the trial process and should be treated as such by all concerned. The court's duty to place the jurors in the box is triggered upon a request by either party that he do so. The statute does not provide for judicial discretion in the matter.” Lett v. State, 160 Ga.App. 476, 287 S.E.2d 384 (1981). The denial in this instance, however, did not cause the appellant any harm. Immediately after the trial judge refused to put the jury in the box, he called for a recess. After the 15-minute recess the record indicates that the jurors were placed in the boxes on the sides of the courtroom and the voir dire continued without any further objection by appellant's counsel. Any harm caused by the judge's refusal to put the jury in the jury box upon request was cured by calling a recess and placing the jurors in the boxes along the sides of the courtroom. We find no reversible error.” Raven v. State 256 Ga. 366 (1986)

³ In Mathis v. State, the court affirmed when the judge refused to place the jurors in panels of 12 for the voir dire process; however, the court only affirmed because there was overwhelming evidence of guilt. Mathis v. State 176 Ga. App. 362 (1985)
Jones v. State was likewise a case of overwhelming evidence of guilt. In Jones the prospective jurors were seated in a panel of 12 in the box and 12 on the seats behind the defense table. The defense counsel was allowed to question the jurors in panels of 12 and was not required to ask questions en masse, therefore there was no error. Jones v. State 217 Ga. App. 722 (1995)

- A designated space shall be arranged for breaks outside of the courthouse for jurors to take off masks to get fresh air while remaining distanced from others.

Voir Dire

In order to save time and to prevent court participants from being in the same room for a prolonged time, the judge should ask all voir dire questions; strikes for cause should be addressed after the conclusions of questions to the jury panel; and, jurors should be allowed to leave the building until the conclusion of the preemptive strikes. The court may propound, or cause to be propounded by counsel such questions of the jurors as provided in O.C.G.A. § 15-12-133; however, the form, time required and number of such questions is within the discretion of the court. The court may require that questions be asked once only to the full array of the jurors, rather than to every juror -- one at a time -- provided that the question be framed and the response given in a manner that will provide the propounder with an individual response prior to the interposition of challenge. Hypothetical questions are discouraged, but may be allowed at the discretion of the court. It is improper to ask how a juror would act in certain contingencies or on a certain hypothetical state of facts. No question shall be framed so as to require a response from a juror which might amount to a prejudgment of the action. Questions calling for an opinion by a juror on matters of law are improper. The court will exclude questions which have been answered in substance previously by the same juror. It is discretionary with the court to permit examination of each juror without the presence of the remainder of the panel.⁴

⁴ Rule 10.1 clearly gives the presiding judge discretion to control the voir dire process, especially where procedural efficiency is concerned. Legare v. State, 256 Ga. 302, 348 S.E.2d 881 (1986). In light of the current circumstances with COVID-19, it is imperative to conduct voir dire as efficiently as possible to reduce the time a large number of people are congregating in a single, enclosed space.

Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.^{5,6,7,8}

In summation, a judge may require that attorneys submit all questions to him before voir dire, and the judge may, at his/her discretion, omit questions that are irrelevant or redundant. The judge may then ask the veniremen general voir dire questions, O.C.G.A. §15-12-164, as well as the surviving questions submitted by the parties.

⁵ As a general matter, a trial court can exclude a question unless the exclusion of a question creates a risk that juror partiality would not otherwise be identified in voir dire. Slack v. State, 354 Ga. App. 727, 841 S.E.2d 231 (2020). The trial court is permitted to bar questions on topics that are irrelevant to the issue at hand, see Taylor v. State, 344 Ga. App. 439, 810 S.E.2d 333 (2018), unnecessarily repetitive, Willis v. State, 304 Ga. 686, 820 S.E.2d 640 (2018), are seeking technical legal answers, Collins v. State, 310 Ga. App. 613, 714 S.E.2d 249 (2011), or prejudgment of the case, Ellis v. State, 292 Ga. 276, 736 S.E.2d 412 (2013).

⁶ It is also permissible to limit the number of questions an attorney may ask during voir dire. Reynolds v. State, 334 Ga. App. 496, 779 S.E.2d 712 (2015). In Reynolds, the appellant argued that the trial court erred in limiting the number of his voir dire questions to no more than ten. Id at 501. The Court of Appeals disagreed and found that while a defendant must be “permitted to ask sufficient questions to determine the fairness and impartiality of prospective jurors,” it is within the discretion of the trial court to control the scope of questioning and the defendant holds the burden of showing an abuse of that discretion. Id at 501-502.

⁷ Both prosecution and defense have the right to individually question potential jurors. O.C.G.A. §15-12-133. However, this right may be satisfied by having attorneys submit any individual questions that may come up during voir dire to the presiding judge. The judge may pose the question to the entire venire so long as the question is phrased in such a way that it elicits individual responses from the jurors. Kerdpoka v. State, 314 Ga. App. 400, 724 S.E.2d 419 (2012).

⁸ There is no federal right to have defense counsel propound questions instead of the trial judge, as evident in the procedures used by Federal Courts and in Federal Case law. USCS Fed Rules Crim Proc R 24(a). United States v. Hill, 526 F.2d 1019 (10th Cir. 1975); United States v. Duke, 409 F.2d 669 (4th Cir. 1969). Allowing the trial judge to ask questions to the jurors can improve the efficiency of the voir dire process and does not deprive criminal defendants of their rights under the statute. Wilkins v. State, 246 Ga. App. 667, 541 S.E.2d 458 (2000). In fact, it is presumed that the judge will ask certain “usual questions” of the juror during voir dire under O.C.G.A. §15-12-164. Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984).

Presentation of Evidence

- Digital exhibits shall be used where feasible. *One Drive* or *Citrix* are considered good platforms for retention of documents. The clerk shall be responsible for maintaining the evidence and assisting electronic presentation of evidence. The clerk shall be involved in the pretrial meeting to assist with the evidence retention and presentation plan.
- When it is necessary for jurors to handle physical exhibits, hand sanitizer and gloves will be provided. Gloves will be discarded immediately after use. If it will be necessary for jurors to physically handle evidence, the safe handling of such evidence shall be discussed in the pretrial conference.
- During deliberations, jurors are encouraged to take socially distanced turns reviewing exhibits placed on a table rather than handing around the exhibits.

Handling Sidebar Conversations

- Some type of group-chat technology such as *Zoom* may be used where the presiding judge, the court reporter, and attorneys for both parties have access.
- The presiding judge, attorneys, and court reporter will handle sidebar discussions in the manner agreed upon in the Pre-Trial Order.

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.
- 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 may use 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 are cognizant that an interpreter may also need to be included in these confidential communications.
- Courts shall consider how to assure social distancing when the trial team consists of more than one attorney.