

Troup County Plan for Resuming Jury Trial

This order shortens and improves jury trial procedures with emphasis on the subpoena/excusal process, pre-trial planning, voir dire, and conducting the jury trial. All courtrooms in the Troup County Government Center including the jury assembly room and the Juvenile Courtroom are authorized for Superior and State 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.
- 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.
- Witnesses shall be placed in a safe place.
- 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 in 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 can 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 shall be required to call the jury 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 in 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.

Pretrial Conferences:

- Pretrial conferences will occur for all cases.
- Pretrial conferences will occur remotely or in-person.
- All voir dire questions may be submitted to the trial judge at the pretrial conference. Any objections will be placed on the record. The judge may create the voir dire questions from the lists, and may ask all voir dire questions at trial. This is supported by Wilkins v. State, 246 Ga. App. 667, 541 S.E.2d 458 (2000) (holding that trial judge may also 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).

- Schedule all motions for hearing.
- 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. We need to consider a software such as Citrix ShareFile for the retention of documents. 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.
- Plan for jury strike process shall be discussed at pretrial.
- 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.

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.□

□ *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)

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)

Because of concerns about O.C.G.A. □15-12-13, jury voir dire will be conducted in the jury assembly room and in the Historic Courtroom. There is no cordoned area in either of these locations that would indicate a jury box, therefore the entire room is designated as a jury box less the judge and attorney areas. Voir dire will be broadcast to a courtroom or appropriate place for public viewing.

- 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.
- 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

- O.C.G.A. □15-12-133. Right to individual examination of panel; matters of inquiry: In all civil cases, the parties thereto shall have the right to an individual examination of the panel of prospective jurors from which the jury is to be selected, without interposing any challenge.
- Rule 10.1. Voir dire: 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. Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.

- 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.
- 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).
- 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.
- Both prosecution and defense have the right to individually question potential jurors. O.C.G.A. § 5-12-133. 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). If either party thinks of questions that arise during the course of the voir dire, they may submit them in writing to the judge, who will ask them unless they are without merit.
- 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. § 5-12-164. Whittington v. State, 252 Ga. 168, 313 S.E.2d 73 (1984).

- 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 they feel are irrelevant or redundant. The judge may then ask the veniremen general voir dire questions, O.C.G.A. § 5-12-164, as well the surviving questions submitted by the parties. During voir dire attorneys may submit to the judge any additional questions that may arise, and the judge may ask the venire as a whole the question as long as the question will elicit an individual response.

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 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.

Handling Sidebar Conversations

- Courts should plan for how these separate discussions will occur.
- One recommendation is to use a group-chat feature where the presiding judge, the court reporter, and attorneys for both parties have access.
- When possible, courts should provide litigants with a dedicated headset to hear what is said while remaining at the counsel table.

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.