



PANDEMIC JURY TRIAL PLAN FOR BELL-FORSYTH JUDICIAL CIRCUIT

April 8, 2021

COMMITTEE MEMBERS:

Chief Judge Jeffrey S. Bagley, Superior Court, Chair
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Hon. Philip C. Smith, Superior Court
Hon. T. Russell McClelland, State Court
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Robin Rooks, Circuit Court Administrator
Norman Cuadra, Defense Attorney
Melissa Banker, Defense Bar President
Ron Freeman, Forsyth County Sheriff
Dr. Zachary Taylor, Director District 2 Public Health
Connie Brooker, Indigent Defense Administrator

By Administrative Order entered July 7, 2020, Chief Judge Jeffrey S. Bagley established and appointed a COVID-19 Jury Committee to assist the courts with conducting jury trials. The Committee was charged with seeking to ensure the health and safety of all persons involved in the court system, while protecting constitutional and statutory rights for defendants, witnesses, and victims. The Committee was expanded with additional appointments by Order entered July 20, 2020.

The Bell-Forsyth Judicial Circuit is committed to resuming jury trials. Upon review of the guidelines for resuming jury trials and other relevant material listed in the Appendix of the Thirteenth Order, and upon consideration of the facilities available for use in Forsyth County and the circumstances particular to the county, the Jury Committee has developed the present plan for the resumption of jury trials.

A. ACCESS TO THE FORSYTH COUNTY ADMINISTRATIVE BUILDING AND FORSYTH COUNTY COURTHOUSE

Anyone coming to the Forsyth County Administrative Building and the Forsyth County Courthouse to attend any jury empaneling or court proceeding will be required to submit to a screening at the entrance to both buildings. The screening will include questions as to whether the person is experiencing fever, shortness of breath, persistent cough or sore throat, or any other symptoms of respiratory infections. The visitor will also be asked questions concerning their travel and possible exposure to COVID-19 within the last fourteen days and whether they are currently awaiting the results of a COVID test. Each person entering the building will also have their temperature taken electronically. Should concerns be raised as a result of this screening, the Court will be immediately notified, and a decision made as to whether the person will be allowed in the building.

With regard to court personnel, isolation of any person with known or suspected COVID-19 and quarantine of any person with COVID-19 exposure likely to result in an infection is required. When there is reason to believe that anyone who works in or has visited the Board of Commissioners meeting room in the County Administration Building or the Forsyth County Courthouse has been exposed to COVID-19, the Public Health Department shall be notified and notification of persons who may have been exposed shall occur as directed by the Public Health Department.

B. EMPANELING JURORS

A written questionnaire will be sent with the juror summons to identify high-risk populations and symptomatic persons so that they can be excused or deferred in advance to eliminate the

requirement of their ever appearing at the courthouse. Jurors in the COVID-19 “high risk” category based on a valid note from a treating physician will be given strong consideration for excusal from jury service for hardship. This should be done prior to appearing in person.

All persons will have their temperature checked before entering either the Forsyth County Courthouse or Forsyth County Administration Building. The Board of Commissioner’s large meeting room can accommodate up to 50 persons with social distancing and will be used to assemble potential jurors. Everyone is required to wear masks.

The courtrooms in the Forsyth County Courthouse will also be used for holding and selecting jurors. Jurors will be questioned in staggered panels with compulsory social distancing enforced. The number of jurors in each panel and the number of panels necessary to choose a jury pool will be determined by each judge depending on the size of the courtroom being used as well as the nature of the case being tried. The Forsyth County Facilities Department will thoroughly clean between each juror panel.

Three bailiffs will be scheduled to provide support in all of the procedures outlined relating to the management of jurors.

At least three Sheriff’s Deputies will provide security for jury empaneling, the jury trial courtrooms and each deliberation area.

C. COURTROOMS

It was determined that for Superior Court cases, the courtrooms in the Forsyth County Courthouse are not suitable for the required 12-person jury because the jury box is not large enough to provide the appropriate social distancing currently recommended by the CDC. The Jury Assembly Room located on the first floor of the Forsyth County Courthouse was identified as a space large enough to ensure appropriate social distancing. The Public Health Department and the Forsyth County Risk Management Department was consulted to determine appropriate safety requirements. An architect was commissioned to design a temporary courtroom which could accommodate social distancing. Forsyth County Department of Facilities was enlisted to certify that HVAC modifications were made to ensure proper airflow requirements within the courthouse. This design will include plexiglass between juror’s chairs.

State Court courtrooms were approved for jury trials for cases that allow six jurors. Jury boxes in the State Court courtrooms were fitted with plexiglass that was approved by the

Department of Health and the Forsyth County Risk Assessment Department as providing appropriate social distancing for six jurors.

D. PUBLIC HEALTH AND SAFETY GUIDELINES

Sanitation

All public areas of the Forsyth County Courthouse, including courtrooms, hallways, bathrooms, and elevators shall be sanitized in accordance with current CDC guidelines.

All court facility sanitization procedures shall be provided and maintained by the appropriate personnel in coordination with the Office of Court Administration and Forsyth County Facilities Department. Sanitization of all touch surfaces and assembly areas shall be cleaned before court opens and again during the lunch recess in accordance with applicable guidelines.

The witness stand will be cleaned between each witness by the bailiffs. Attorneys will be responsible for the sanitization of the podium.

Face Covering Requirements

Face covering for personal health protection shall be worn at all times by all persons in the courtroom and throughout the courthouse, unless otherwise provided in this plan. The mask must remain in proper position over the nose and mouth, unless instructed by their assigned judge to remove it. All courthouse deputies, bailiffs, and other staff will remain vigilant and politely ask anybody in the courthouse seen without a mask to put it back on. Any jurors that arrive without a mask will be provided one as they enter the line for the checkpoint outside the courthouse.

Once a trial begins, every effort will be made to provide counsel, parties, witnesses, and members of the jury with transparent masks to assist in identification.

HVAC

All HVAC filters at the Forsyth County Courthouse that were not already MERV 13 were upgraded from MERV 8 to MERV 13 to improve HVAC systems filtration as recommended by CDC and ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers).

Use of outside air for all ventilation systems at the Courthouse has been increased as much as possible while still maintaining humidity and temperature levels. The CO2 monitoring system in the Jury Assembly Rooms was disabled as recommended by ASHRAE. This system increases the use of outside air with higher occupancy and CO2 levels. ASHRAE recommended disabling these types of systems and maximizing use of outside air where possible. HVAC systems for the Courthouse are now kept running 24/7 as recommended by ASHRAE.

E. TRIALS

Attorneys in the Courtroom

Attorney and client contact may be determined by attorney's and client's preferences for strict social distancing. Mask removal may be permitted temporarily only while at the counsel table.

Lawyers must maintain social distancing but may move about the courtroom at the discretion of the trial judge. Counsel must examine witnesses from the counsel table or podium and must not approach the witness without leave of the Court.

Trial Procedures

The normal procedures for conducting jury trials will be modified to some extent. The presiding judge, court personnel and litigating parties shall be mindful and considerate of the anxiousness of potential jurors who are kept waiting. Every effort shall be made to begin jury trials promptly at the time designated. If unexpected delays are encountered, jurors should be allowed to leave the courtroom and return at a designated time, rather than kept in the juror area.

Counsel tables will be arranged so that the jury can see and hear the witness.

Plexiglass shall be installed around the witness stand so that witnesses can remove facial coverings while testifying.

Counsel shall remain at the lectern when questioning witnesses but may otherwise move through the courtroom in the appropriately marked and designated areas to introduce evidence. Opening statements and closing arguments shall be conducted from the lectern, or from an area designated for counsel to stand. Counsel may not approach the jury or venture outside the designated area. These areas will be appropriately marked in advance of any jury trial proceeding.

Evidence Presentation

Attorneys will be asked to use their laptops or the courtroom's technology system to display photos, presentations, videos, or other documentary evidence so as to limit the number of documents being passed amongst jurors and parties and to limit the need to approach witnesses to identify evidence.

There will be certain items that cannot be displayed in a digital format. When it is necessary for jurors to handle physical exhibits, gloves shall be provided that are discarded immediately after use to avoid cross-contamination.

Attorneys will be provided sanitizing wipes and will be asked to wipe down the podium and any items touched before returning to counsel table.

Attorney Client Communications

For criminal trials, starting at least 30 days before the trial and then during the proceeding, the defense attorneys should be provided confidential and safe access to any detained clients 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.

Attorneys and clients wearing masks (particularly for brief communications) can speak quietly to each other while separated by a plexiglass barrier. Attorneys and clients can pass handwritten notes, which would be removed by the attorney when leaving the courtroom (and destroyed). The Court will allow the use of electronic devices, such as tablets or computers, for the attorney and client to send text messages to one another. The device will not be provided by the court.

A headset system will be available for the defendant and defense attorney to allow for private communications. The headsets will be wiped down and sanitized after use each day by a bailiff.

In limited circumstances, attorneys, and clients (with a Sheriff's Deputy) could relocate to a designated room for private conversations.

Sidebar Conversations

Consistent adherence to public health requirements remains critical to supporting the health and safety of all court users. At the same time, attorneys and clients must have appropriate methods to communicate with the judge privately during in-person court proceedings.

For sidebar communications, a headset system will be available that will allow the judge, attorneys, parties, and court reporter using the system to remain seated and socially distanced. Headsets will be wiped down and sanitized after use.

The judge may also elect to entertain discussions outside the presence of the jury. In such circumstances, the jury will proceed to the designated jury deliberation area that will be marked appropriately according to social distancing standards to accommodate jurors and juror alternates. Alternately, the judge may exercise discretion to meet outside the courtroom with counsel and the court reporter, in socially distanced manner, for any “bench conference.”

F. JURORS SELECTED FOR A JURY TRIAL

Juror Breaks

Jurors may leave the courtroom and go directly outside the courthouse when the judge advises that a break of 30 minutes or longer will be taken.

Jurors must practice social distancing and minimize talking while taking their break. Jurors are permitted to remove their mask outside as long as they are not speaking but remain at least six feet apart from any other person. Jurors are discouraged from roaming to other floors inside the courthouse.

Restroom Breaks

Each judge shall designate restrooms reserved for use by jurors when juries are being impaneled, trials are being conducted, and breaks during such legal proceedings. If a public restroom is designated, a bailiff will close the restrooms to the public while in use by jurors. Bailiffs will remind jurors that they are prohibited from communicating about the case during restroom breaks.

If a juror needs a restroom break during deliberations, they will knock on the door to alert the bailiff, and the bailiff will escort the juror to and from the restroom, adhering to six feet

physical distancing requirements. Jurors will be advised that they may not deliberate unless all individuals are present.

The Forsyth County Facilities Department will sanitize and disinfect bathrooms twice daily.

Water

All public water fountains in the Forsyth County Courthouse have been shut down to deter the spread of COVID-19. Instead, bottled water will be available to jurors throughout the day. Jurors will be instructed to lower their masks temporarily when drinking.

Juror Lunches

To avoid possible exposure with a lunch break away from the courthouse, lunch will be ordered in for jurors each day, at the Clerk of Court's expense. Superior Court jurors will have their lunch in Courtroom 502 while the Fourth-Floor Conference Room will be designated as the lunch room for State Court jurors. Jurors should remove their masks only when eating their lunch. Bailiff will be assigned to ensure compliance. Jurors will be instructed to use an alcohol-based hand sanitizer before and after eating lunch.

Jurors with dietary restrictions may need to bring their lunch. Bailiffs should confer with jurors each morning to determine how many lunches should be ordered.

Jury Deliberations

Trial jurors will deliberate in a designated area that will allow social distancing during jury deliberations. Guidance will be provided for the use of elevators for jurors arriving, entering, and leaving the courthouse. Security cameras in the courtroom will be disabled during the deliberations. The court will instruct jurors to maintain physical distancing and to keep masks on. The court will instruct the foreperson to ensure jurors comply with physical distancing and mask covering requirements and to report to the bailiff if any juror refuses to comply with these instructions. Jurors will be assigned a seat by the bailiffs and should use the same assigned seat in the deliberation room during the duration of the trial.

During deliberations, jurors will be encouraged to take socially distanced turns reviewing exhibits placed on a table rather than handing around exhibits. Alternatively, the trial judge may, in consultation with the attorneys and/or parties, provide each jury with their own physical copy of all admitted trial exhibits in a notebook or folder for use during deliberations.

Each juror will be given a bag marked with their name that will contain a note pad, pens, disposable masks, gloves, and hand sanitizer. A bailiff will distribute the bags at the beginning of the jury trial. A bailiff will collect the bags each evening and distribute them again the next day of trial. Jurors are responsible for maintaining their own items, so as to prevent sharing and cross contamination.

Additional alcohol-based hand sanitizer will be readily available in the deliberation room for juror use.

Jury deliberations will be limited to two hours at a time with 15-minute breaks to go outside into fresh air and/or separate from each other. Jurors should not deliberate for more than eight hours a day.

G. HEALTH OR SAFETY BREACH

The judge will immediately excuse and advise any juror who becomes symptomatic while at the courthouse to seek medical attention. The areas used by the symptomatic juror must be promptly disinfected by the court's contracted cleaning resource.

In the event of a positive COVID-19 diagnosis of a juror, defendant, attorney, witness, court personnel, or judge, the presiding judge will inform jurors that a positive COVID-19 has been reported and that this information has been provided to the Director of the Regional Public Health Department.

If it is determined by the Public Health Department that certain individuals involved in any jury trial proceeding was considered a close contact, the Public Health Department will directly contact those individuals.

Once notified of a possible COVID-19 exposure, the safety of the jurors will be top priority of the judge. This may include but is not limited to, a review of the legal options for the trial with the attorneys and/or conduct individual voir dire with each juror to determine their ability to fairly and impartially continue with the trial.

At the commencement of all jury trials, contact tracing information will be collected from all those in attendance for use by the Public Health Department if an exposure event occurs. The Public Health Department shall delineate what information the Court will collect to assist with contact tracing.

H. CONSTITUTIONAL RIGHTS TO BE OBSERVED

Public attendance at jury trials will be permitted if possible consistent with social distancing requirements. If there is not sufficient room available for persons wishing to view the proceedings, the trial shall be made available through audio visual livestreaming to another courtroom.

I. BAILIFF TRAINING

A comprehensive re-training of bailiffs on the new trial procedures will be initiated by the Court Manager. Bailiffs will receive training on the proper use of PPE and social distancing requirements. The Court Manager will also instruct bailiffs on the logistics of working in teams and moving jurors safely through the courthouse.

Bailiffs will be issued appropriate PPE and are to use it at all times when cleaning the witness stand after testimony.

J. INHERENT POWER

Nothing in this proposed plan shall be construed to limit the inherent power of the court. Each assigned judge may direct and control their respective cases and those persons before them in their courtroom as they deem necessary for the administration of justice. It is the goal of the Bell-Forsyth Circuit to operate in a manner which instills public trust and confidence in the court system.

This plan will remain in effect as least as long as the Judicial Emergency Order exists. The length and degree of restriction may also depend on what is deemed necessary in the Bell-Forsyth Judicial Circuit and allowed by statute (See O.C.G.A. §§ 38-3-61 and 38-3-62.)

This plan may be amended as need arises, or as information regarding COVID-19 protocol changes.

COVID-19 SPECIFIC JURY INSTRUCTIONS

As you know from jury selection, specific procedures have been put in place to ensure the safety of all the participants in the trial process and to address health-related concerns resulting from COVID-19. The court's intent in implementing these safety procedures is to ensure that the defendant receives a fair trial and to ensure that you and other participants in the trial are protected from the spread of COVID-19. All safety measures in place are consistent with recommendations from the Centers for Disease Control and the Georgia Department of Public Health.

As you will see during the trial, all jurors, court staff, and attorneys will be required to wear facial coverings and will be required to maintain six feet of physical distancing from any other participants in the trial. This means that I will be wearing a facial covering, the clerk of court, bailiffs, and the lawyers will wear facial coverings. If you have any difficulty hearing or understanding me, the clerk, the bailiffs, or the lawyers during the trial as a result of these precautions, please let me know right away so I can address the issue. It is essential that you be able to clearly see and hear everything that happens during the trial.

The defendant and his/her attorney are permitted to sit close to each other and to briefly remove their masks from time to time to allow for proper communication, which is guaranteed by the Sixth Amendment to the Constitution. You must not consider the fact that the defendant and defense attorney remove their masks, or that they are permitted to sit together, as any evidence in this trial. Likewise, must not consider the fact that the State prosecutors remove their masks, as any evidence in this trial. As I will remind you throughout the trial, the only evidence you may consider is the testimony presented during the trial and the exhibits introduced into evidence.

The witnesses who testify will be required to wear a court-provided clear face covering during their testimony so that you may observe their demeanor in a protected manner. All witness testimony procedures have been approved by health experts consulting with the Court. At all times during the witness testimony, the witness will remain at the required social distance from all jurors.

When you use the restrooms, you will be required to use hand sanitizer before entering and after you use the restroom. The restrooms will be professionally cleaned daily. In addition, the

courtroom will be professionally cleaned at the beginning of each day and will not be used for any other proceedings except this trial.

Your temperature will be taken every time you enter the courthouse. If there are any issues that arise as a result of the health screening, you will receive further instructions.

If you are experiencing any COVID-19 related symptoms or have been exposed to a family member or any close contact who has been either diagnosed or exposed to COVID-19, it is your duty to inform the court.

You are instructed to give your full attention to the testimony and to assess the evidence according to the law that I will provide to you throughout the trial despite the fact that we have taken these measures to address COVID-19. If at any time you have concerns about your ability to pay careful attention to the opening statements, testimony, and closing arguments, do not hesitate to inform the bailiff.

Courthouse Preparations Checklist

- The courtroom and adjacent areas to be used by trial participants (e.g., jury deliberation room, restrooms, and conference rooms) have been rigorously evaluated for optimizing air quality. Adjustments to HVAC systems have been completed in accordance with the information contained in this jury trial plan.
- Cleaning services scheduled to be performed in the courtroom and restrooms during the lunch recess and after court recesses for the day.
- The witness box will be cleaned by bailiffs between witnesses.
- No other hearings will be held in the same courtroom where the trial will be held during the time of the trial.
- The court facility (including jury trial courtroom) is marked for seating and movement for proper six-foot physical distancing at all times before, during, and after the trial.
- COVID-19 safety-related signage is properly posted throughout the facility.
- Additional masks for witnesses, jurors, and others who require one will be available.
- Hand sanitizer and sanitizing wipes effective against the virus that causes COVID-19 are available throughout the courtroom and near restrooms.
- Jury seating in the gallery is appropriately marked to maintain social distancing.
- Staff, bailiffs, and other court personnel are fully trained in their respective roles during jury trials. Protocols and procedures are fully understood.

COVID-19 QUESTIONNAIRE

Dear Prospective Juror:

In light of the developing situation regarding COVID-19, you are required to answer the questions below on a daily basis. The purpose of this questionnaire is to aid the Court in maintaining the health and safety of the jurors throughout the remainder of this trial. Please truthfully answer the questions below, and do not discuss the contents of your questionnaire.

Sincerely,
Chief Judge Jeffrey S. Bagley, Superior Court
Bell-Forsyth Judicial Circuit

1. Have you been out of the country within the last thirty (30) days? If so, please provide details.

2. Have you been in contact recently with anyone who has tested positive for COVID-19?

3. Do you have any symptoms of COVID-19? If so, what symptoms?

4. Do you consider yourself to be in a “high risk” category for COVID-19? If so, please describe the “high risk.”

5. Do you live or work with anyone in a vulnerable population for COVID-19? If so, please describe?

6. If you answered yes to question 4, do you have, or can you provide the court with a physician's note that explains your "high risk" category? Do you wish to be excused from jury service because of your "high risk" category? Yes No

SIGNATURE

(PRINT NAME)

Juror Summons #