

## GUIDE FOR RESUMING JURY TRIALS

*(Amended 12/20/2021) This plan has evolved over time and is a working document. In addition to Phase 3, the reader should also be familiar with the previous Phases 1 & 2 which are copied below Phase 3 for convenience. It's important to note that the committee cannot anticipate every potential issue that will come up. Flexibility and deviations from this plan will be necessary for the Judges to deal with issues as they arise in their trials.*

### *PHASE 3 – Three or more trials at a time; One Jury Trial in Courtroom 2000, others in Upstairs Courtrooms and other courts, Prioritizing Criminal Cases and Serious Violent Felonies<sup>1</sup>*

#### SUMMONING THE JURORS

- When jurors are initially summoned, they will receive a letter from the Court, signed by all the Judges, that expresses how much they are appreciated and appeals to their sense of civic duty to report for jury duty. The letter will assure the jurors that the Court understands their concerns for safety. An insert will accompany the letter, explaining the steps taken to ensure their safety.
- Jurors will be instructed to confirm their jury attendance through an online form. The online form will include their contact information (name, address, cell phone, and email), juror information, and statutory qualification questions.
- Once the jurors submit their information, they will receive a confirmation email explaining the reporting process, a link to the health and safety video, and the juror orientation video. This process will assist in keeping a precise count of jurors reporting.
- The Local Committee on Jury Trials recommends updating the health and safety video so that jurors expectations are in line with the most recent Order concerning courthouse safety guidelines.
- Jurors who do not have internet access or a device to check-in online will be instructed to call Jury Administration and staff will assist them over the phone with all this information.

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<sup>1</sup> It is recommended to set civil cases as backup to criminal cases for jury trial resolution.

## JUROR CHECK-IN

### THE WEEK BEFORE REPORTING

- The Friday before the jurors report for service, Jury Administration will communicate with the jurors via email and via text messaging, with the goal of placing those that are not needed “on call” based on the response numbers collected during the online and telephonic check-in process described above.
- Jurors who are not placed “on call” will receive further parking and check-in instructions.

### THE NIGHT BEFORE REPORTING

- When jurors check the initial reporting message the night before, as they are instructed to do on their summons, the message will include two COVID-19 questions. If they answer “yes” to either question, the juror will be instructed to email Jury Administration, or contact the Jury Administration office by phone, and Jury Administration will follow up to reschedule the juror. It will be made clear that this does not excuse them from jury service altogether; their service will be deferred to a later date. Jury Administration will keep a record of the deferred jurors, and those individuals will be referred to the assigned Judge should Jury Administration receive the same response to the COVID-related responses when they are re-summoned.

### THE DAY OF SERVICE – SAFETY PRECAUTIONS JURORS WILL ENCOUNTER

- Expanded Reporting Window - Jurors will be instructed in their reporting message to report to the Haynes/Lawrence Street entrance. They will be given an extended report time from 8 a.m. – 8:45 a.m. Jurors will be given staggered reporting times on their summons so they don’t all arrive at the same time. They will be screened through a daily thermal scanning process to check their temperatures when checking in at the jury assembly room.
- Masks – All visitors are required to wear masks to enter the courthouse, and the mask must remain in proper position over 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. Jurors may be provided with clear masks if requested by any party or the court. If not requested they may leave on the mask they entered the courthouse with.
- Social Distancing – The Jury Assembly Room (JAR) has been set up with a reduced capacity with chairs being socially distanced. Chairs may not be rearranged by the jurors. The seating area outside the JAR doors has capacity for a additional jurors to sit while maintaining the recommended social distancing. Social distancing signage will be prominently displayed.
- Physical Barriers – Plexiglass shields will be installed at the check-in desks in the JAR.
- Touchless Scanning – There will be two check-in stations where jurors will scan their summons. There will be no exchange of documents, and social distancing will be maintained. Following check-in, jurors will be directed to their seats.
- Disposable Badges – At check-in, each juror will receive a disposable badge, rather than the clip-on badges used in the past. The color scheme will remain the familiar blue badges for jurors that have been summoned and red badges for those selected to serve on a petit jury.
- Hand Sanitization Stations – There are several hand sanitization stations strategically placed between the entry points to the courthouse and to the JAR.

- Courthouse HVAC Modifications –A needlepoint bipolar ionization (NPBI) air-purification system has been installed in the courthouse HVAC system.
- Courtroom HEPA Filtration – In addition to the HVAC modifications, each courtroom, the JAR, and deliberation room will also have multiple HEPA filtration units operating.
- Nightly Deep Cleaning of Jury Assembly Room and Jury Deliberation Rooms – Property Management will sanitize the JAR and any deliberation room that was used each evening.
- Health and Safety Video – All of the above-mentioned safety precautions will be highlighted in the insert received by jurors with their summons, and also on a video that they can view following their confirmation email from Jury Administration. The insert will provide a QR code link to play this video. Lastly, this video will be played again on the morning of their service, along with the jury orientation video.

## THE IMPANELING PROCESS

- To accommodate three or more simultaneous trials, Jury Administration will have jurors available who will report from 8 a.m. – 8:45 a.m. They will be sworn, statutorily qualified, and are set in panels. Each Judge will be assigned one or morning panels of 15 jurors to begin jury selection.
- Another judge will go down and for the afternoon session at approximately 12:45-1:15 and repeat the process for the additional jurors available to repeat the process and get one more panel for each judge. Flexibility will necessary in assigning panels for each judge to conduct jury selection at an appropriate pace. The afternoon jurors will be instructed to call in at 11:00 to see if they are need for their afternoon service.
- Jurors will be placed “on call” and released, subject to re-call. Jurors placed “on call” will be instructed to report on one-hour notice and will receive reporting instructions by telephone, text, and email. They will also be instructed that if they are not contacted by Jury Administration by 4:30 PM, they must call the voicemail or check the website at 6 p.m. for instructions. These jurors, even if not called back, will be checked-in for attendance purposes and given verification of attendance for their employers.
- The Judge will come down to the JAR, swear in the jurors, and qualify the jurors again (even though they already answered these questions online).
- Once they are present, qualified, and finished with orientation, Jury Administration will notify the courtroom clerk that the jurors are ready and have been divided into panels of 15.
- Jury Administration will also be assigned a bailiff to provide support for the courtroom bailiffs in any of the procedures outlined herein (e.g., elevator rides and waiting for jurors at the temperature check points).

## VOIR DIRE - EACH PANEL REPORTS SEPARATELY TO COURTROOM 2000 & THE OTHER JURY TRIAL COURTROOMS

- Panel “A” reports to their respective courtroom for trial, and the Judge will provide reporting instructions to Jury Administration for Panels “B,” “C,” and “D” (if necessary).
- Panel “A” will go up the escalator or elevators with the bailiffs. Social distancing will be maintained except where impossible on the short elevator rides where everyone will remain masked.
- The Judge should re-qualify the jurors when they arrive to the courtroom, in the presence of the defendant and on the record.

- Although each Judge and each case may necessitate variations to this process, 45 minutes per panel per side, would be 1.5 hours per panel. For example, if Panel “A” is at 10:00 a.m., that panel can be completed before lunch. Panel “B” can report at 1:00 p.m. Panel “C” can report back at 2:30 p.m.
- For a one-day jury selection, each panel will be excused for the day after being questioned. Jurors would call in at 8:00 p.m. to see if they were selected for the jury and will report back the following morning for service on the case for which they were selected.
- More complex cases may not lend themselves to the exact times described above, and jury selection may take two days. However, these procedures can be easily modified by the Judge and Jury Administration, with appropriate communication to the jurors.
- Strikes for cause should be taken up panel-by-panel, before that panel is released.
- At least two alternate jurors are recommended for each case and long trials may necessitate more.
- Any panels still physically present in the building would not be brought back into the courtroom while the lawyers exercise their strikes. See *Martin v State*, 205 Ga. App. 591 (1992).

## TRIAL PROCEDURES

### GENERAL CONSIDERATIONS

- Judges should require mandatory pretrial conferences with all lawyers participating in the cases called for trial. At a minimum, said conferences should take place the week before trial to make sure both sides are clear on all of the changes that COVID-19 has necessitated. At the conference, the Judge should try to handle as many pretrial issues as possible, so that they do not delay the jurors reporting to the courtroom on the morning of trial. During the pretrial conferences, the lawyers and the Judge will discuss the number of witnesses and timing for their appearance in the courthouse, as well as where each party’s witnesses will wait until called to testify. To the extent possible, the lawyers should stagger witness report times, but should only do so after a consultation with the Judge and the other side to ensure that jurors are not left waiting around for witnesses to arrive. Discuss the rule of sequestration and make sure both sides instruct their witnesses on it. It is also important to make sure both sides are familiar with the technology, especially the digital presentation of evidence.
- Judges, court staff, bailiffs, lawyers, parties, defendants, and jurors will all wear masks during the trial when not speaking.
- Defendants reporting from the jail for trial will undergo a COVID-19 test early enough to have the results by the morning of trial. They will also have temperature screenings each day.
- Judges should be on the bench at 8:00 AM or 8:30 AM with the lawyers reporting at that same time. There are too many issues that arise at the last second, like motions or guilty pleas. The Court should avoid having anxious jurors sitting in the JAR while taking care of routine matters that could have been handled days or hours before they arrived.
- Judges may remove, and permit counsel and jurors to remove their masks while speaking.
- Witnesses may testify without a mask. Upon request of either side, a witness shall testify without a mask.
- Due to difficulties guiding the jurors throughout the courthouse, it is anticipated that trials will necessitate the use of three bailiffs.

- Each time jurors report back to the courthouse, they will enter through the Haynes Street entrance.
- Bailiffs will meet the jurors, at the designated time and escort the jurors to the jury. It will take two to three bailiffs to escort the jurors to the 4<sup>th</sup> floor jury rooms and other rooms designated for jury deliberation. One bailiff will be on the 4<sup>th</sup> floor with the jurors getting off the elevator, and one on the ground floor with the jurors waiting to board. Any jurors capable of taking the stairs—who desire to do so—will be directed to the stairwell and they may take the stairs to the 4<sup>th</sup> floor.
- Joining issue will occur the way it always has, on paper. Hand sanitizer is available.
- Jury Verdict will be on paper and in writing.
- What to do in the event of a close contact exposure or positive test during a trial? In the event of a close contact exposure or positive test during trial, the Committee suggests recessing the trial for the necessary amount of time and then reconvening, rather than declaring a mistrial and starting anew with jury selection.
- **When conducting three trials at a time, it is recommended that one trial be confined to courtroom 2000 and the other two trials be on two separate floors with overflow viewing.**

#### COURTROOM LAYOUT

- In Courtroom 2000, for *voir dire* AND for seating during the trial, all designated seats have clear sightlines to the witness stand, the Judge’s bench, and the courtroom monitors.
- In the regular courtrooms, for *voir dire* AND for seating during the trial, all designated seats have clear sightlines to the witness stand, the Judge’s bench, and the courtroom monitors. Having the jury in the gallery has the potential to bring the upstairs courtrooms to capacity and there may not be extra space in the trial courtroom for the family members of the defendant, victims, or the public. If that happens, court administration will make arrangements for overflow viewing via broadcast into another courtroom where all of those people will be able to see and listen to the entire trial.
- For all courtrooms where jurors are seated in the gallery and the public has access to the courtroom, the jurors shall have their own side of the courtroom and the public will not sit among the jurors. Public access must be on the other side of the gallery.
- Jurors may be moved to accommodate hearing or vision issues.
- Care should be taken to accommodate those jurors with hearing or vision impairments and place them in the jury box for the closest proximity to the witness stand.
- Courtroom audio-visual technology will be employed so that the witnesses may be seen and heard from all areas of the courtroom. Jurors will be instructed to let the Judge know if they are having any difficulty hearing or seeing.
- HEPA filtration units will be positioned throughout the courtroom.
- Seating will be prohibited in the two rows in front of the jurors in the gallery and those rows will be blocked off.
- The marked seats on the left side of Courtroom 2000 (or the upstairs courtroom if the jury can be seated in the jury box and one side) will be reserved for the defendant’s immediate family members, victims and their immediate family, general public, and media. If the marked seats are

full, anyone else wishing to view the proceedings will be directed to another area of the courthouse designated for public viewing.

- In all courtrooms, a deputy will be positioned between the jurors seated in the gallery and the public area to ensure safety and courtroom decorum.
- If a Rule 22 request is received and approved by the Court, the Judge should discuss camera angles and the unusual seating arrangement of the jurors with the covering news agency to ensure that no jurors are shown in the coverage.
- If you are requesting that the courtroom furniture or counsel tables be oriented in any different direction, please make that request of your assigned judge at the pretrial conference so appropriate arrangements can be made if the request is approved.

#### PRESENTATION OF EVIDENCE

- Courtroom evidence should be displayed to the jurors in a digital manner where possible.
- There are also likely going to be pieces of evidence that are not easily viewable and some videos that require proprietary software and codecs to play the file. Lawyers are directed to be prepared to play those from their device and to submit the evidence (and their required files/codecs to be played) on a new or re-formatted USB drive to the courtroom clerk after it is admitted.
- For document/photograph intensive cases it is acceptable to show them to the witness and tender them like used to be done pre-pandemic.
- Publishing the evidence will be by document camera, or digital presentation from a computer utilizing courtroom technology. Evidence will not be passed around from juror to juror in the courtroom without gloves and hand sanitizer. They may be passed around with the permission of the Judge with gloves and hand sanitizer available.
- The microphones at the witness stand and the lectern will be wiped down by a bailiff after each use. Removable and disposable microphone covers will be provided to the attorneys to cover the microphone while they are speaking.
- The witness stand and chair will also be wiped down by a bailiff after each witness finishes his/her testimony and before the next witness is called.
- Attorneys will present their case from the lectern. Attorneys will seek permission from the Court before moving freely about the courtroom. Otherwise, they will remain at counsel table and the lectern. Attorneys will be provided wipes and will be responsible for wiping down the lectern, and anything else they touched before returning to their table.
- Witnesses being asked to step down and demonstrate something in the courtroom shall put their mask back on before leaving the witness stand. At all times, best efforts shall be made to have 6 feet of social distancing between the witness, counsel, and others.

#### OTHER TECHNOLOGICAL CONSIDERATIONS

- Lawyers utilizing laptops and other devices in trial should come to court with a privacy screen to keep individuals seated behind them from seeing their screens
- All courtroom video inputs are HDMI connectors. If your laptop or device utilizes something other than and HDMI video connection, please come with an adapter.

- Lawyers should be contacting their assigned Judge’s office or court administration to arrange for any necessary technology training.

#### BENCH CONFERENCES

- It will be difficult to usher the jury in and out of the courtroom for routine arguments that normally happen outside of their presence.
- Bench conferences between the Judge and lawyers are encouraged.
- Pursuant to *Zamora v State*, 291 Ga 512 (2012), a defendant has a right to be present at a bench conference. However, that right is waivable. Have a discussion on the record, before the start of trial, to see if the defendant will waive his/her right to be present at bench conferences.
- Unless directed by the Judge, since a bench conference will necessarily take place less than three feet from the microphone on the bench, all parties to the conference should wear their masks while taking care to speak directly at the bench microphone for the benefit of the court reporter.

#### RECESSES, BREAKS, MEALS, AND DELIBERATIONS – JURY ROOMS

- Regular jury rooms will not be utilized for deliberations due to the social distancing space restrictions. Instead, the bailiffs will take the jurors to a larger designated room on the 4<sup>th</sup> floor.
- The tables and chairs in the jury room will be positioned in a large square layout. Chairs will be socially distanced.
- At the discretion of the trial judge, the committee recommends letting jurors be permitted to go out for lunch on their own.
- Jurors may bring any non-alcoholic drink they choose in a clearly marked thermos with their name on it.
- The bailiff will have a supply table on the back hallway behind the jury room. This table will provide extra disposable masks, hand sanitizer, paper towels, gloves, juror pads and pencils, bottled water, individually wrapped disposable cutlery, disinfecting spray, and paper menus.
- Any food ordered in for the jurors during trial shall comply with the following protocol:
  - Paper menus will be used with instructions to the jurors to mark their order on the menu.
  - Court Staff will collect the paper menu while wearing gloves.
  - Court staff will use the gloves when passing out the food and individual cans of soda or bottled water.
  - Jurors will abide by “social distancing guidelines” requirements when consuming the food.
  - Since jurors will be unmasked while eating, the additional large jury room (if not in use) will be used as an additional eating area for the jurors. In this event, the bailiffs will divide the group in half and allow them to spread out further during lunch. Deliberations cannot continue until the entire group is back together.
- Each Juror will be given his/her own dry erase marker for use on the whiteboards that have been installed. Disposable cloths/towels will be used to erase the board.
- Bailiffs will be stationed outside of each door to the jury room and shall keep the area secure. Bailiffs will escort jurors to the closest restrooms.
- Each jury room will have a hand sanitization station.

- Jury rooms will be cleaned nightly. Jury restrooms will be cleaned at lunch and nightly. Cleaning wipes and sprays will also be available in the restrooms for juror use to clean before and after use.
- The 4<sup>th</sup> floor will be sectioned off by barriers and signage that separates the law library side from the jury room side. The signage will read “Trial Jurors Only. No Public Access Beyond This Point”. A bailiff or deputy will be located outside the jury room any time it is occupied by jurors and it will remain locked and secured when the jury room is unoccupied.
- At the discretion of the Judge, jurors may be provided breaks during the proceedings in a designated space outside of the courthouse for jurors to remove their masks for fresh air while remaining properly distanced from others.
- In order to limit the congregating of jurors around an evidence table, jurors will have multiple ways to review the evidence.
  - They will have the original evidence.
  - They will have a document camera and screen for the original evidence.

## TRAINING AND EDUCATION

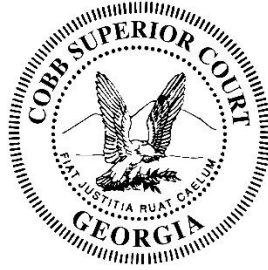
### TRAINING FOR BAILIFFS

- A comprehensive re-training of bailiffs will be necessary.
- Bailiffs will be briefed on the new trial procedures applicable to trials in Courtroom 2000.
- Bailiffs will be issued appropriate PPE and are to use it at all times when cleaning the witness stand after testimony.
- Bailiffs will receive training on proper use of PPE and strict social distancing requirements.
- Bailiffs will receive training on the logistics of working in teams to get the jurors around the courthouse.
- Bailiffs will receive training on best practices surrounding food and lunches.
- Bailiffs will be equipped to instruct jurors on how to properly use and take off gloves when they handle tangible evidence.

### TRAINING FOR THE BAR

- Court Administration, in cooperation with the Judges, will host the bar in small groups for in-person training on the new courtroom technology.
- Technology training will focus on the use of Citrix ShareFile, Mondopads, laptops connected to the courtroom AV system, and the use of disposable microphone protectors.
- Other training will focus on other trial procedure variations brought about by the pandemic.
- During pretrial conferences, the Judge should inquire whether counsel have received the training or have questions on how to present digital evidence and use the courtroom technology.





## GUIDE FOR RESUMING JURY TRIALS

*(Amended 5/31/2021) This plan has evolved over time and is a working document. In addition to Phase 2, the reader should also be familiar with the updated Phase 1 Jury Trial last amended on April 12, 2021, which has been copied below Phase 2 for convenience. Most of the Phase 1 plan will remain in effect and this document will attempt to highlight the changes and modifications from the Phase 1 trials. It's important to note that the committee cannot anticipate every potential issue that will come up. Flexibility and deviations from this plan will be necessary for the Judges to deal with issues as they arise in their trials.*

***PHASE 2 – Two trials at a time; One Jury Trial in Courtroom 2000, One Jury Trial in Upstairs Courtrooms, Prioritizing Criminal***

**SUMMONING THE JURORS – *(Removed online COVID questionnaire in favor of questions at the courthouse)***

- When jurors are initially summoned, they will receive a letter from the Court, signed by all the Judges, that expresses how much they are appreciated and appeals to their sense of civic duty to report for jury duty. The letter will assure the jurors that the Court understands their concerns for safety. An insert will accompany the letter, explaining the steps taken to ensure their safety.
- Jurors will be instructed to confirm their jury attendance through an online form. The online form will include their contact information (name, address, cell phone, and email), juror information, and statutory qualification questions.
- Once the jurors submit their information, they will receive a confirmation email explaining the reporting process, a link to the health and safety video, and the juror orientation video. This process will assist in keeping a precise count of jurors reporting.
- Jurors who do not have internet access or a device to check-in online will be instructed to call Jury Administration and staff will assist them over the phone with all this information.

**JUROR CHECK-IN – *(No Changes)***

**THE WEEK BEFORE REPORTING**

- The Friday before the jurors report for service, Jury Administration will communicate with the jurors via email and via text messaging, with the goal of placing those that are not needed “on

call” based on the response numbers collected during the online and telephonic check-in process described above.

- Jurors who are not placed “on call” will receive further parking and check-in instructions.

#### THE NIGHT BEFORE REPORTING

- When jurors check the initial reporting message the night before, as they are instructed to do on their summons, the message will include two COVID-19 questions. If they answer “yes” to either question, the juror will be instructed to email Jury Administration, or contact the Jury Administration office by phone, and Jury Administration will follow up to reschedule the juror. It will be made clear that this does not excuse them from jury service altogether; their service will be deferred to a later date. Jury Administration will keep a record of the deferred jurors, and those individuals will be referred to the assigned Judge should Jury Administration receive the same response to the COVID-related responses when they are re-summoned.

#### THE DAY OF SERVICE – SAFETY PRECAUTIONS JURORS WILL ENCOUNTER

- Expanded Reporting Window - Jurors will be instructed in their reporting message to report to the Haynes/Lawrence Street entrance. They will be given an extended report time from 8 a.m. – 9 a.m. Jurors will be given staggered reporting times on their summons so they don’t all arrive at the same time. They will be screened through a daily thermal scanning process to check their temperatures..
- Temperature Screening - Any potential juror who reports with a 100.4 degree temperature or higher must give his/her name and contact information to the employee overseeing the thermal scanning. Jury Administration will receive the potential juror’s information, and contact the juror to be rescheduled. As with all visitors to the courthouse, any person with a reading above the threshold will be given a fifteen-minute cool-down period and will be re-tested, before being excused.
- Masks – All visitors are required to wear masks to enter the courthouse, and the mask must remain in proper position over 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.
- Social Distancing – The Jury Assembly Room (JAR) has been set up with a reduced capacity of approximately 48 jurors. Chairs have been placed 6 feet apart. Chairs may not be rearranged by the jurors. The seating area outside the JAR doors has capacity for an additional 12 jurors to sit while maintaining the recommended social distancing. Social distancing signage with CDC recommendations will be prominently displayed.
- Physical Barriers – Plexiglass shields will be installed at the check-in desks in the JAR.
- Touchless Scanning – There will be two check-in stations where jurors will scan their summons. There will be no exchange of documents, and social distancing will be maintained. Following check-in, jurors will be directed to their seats.
- Disposable Badges – At check-in, each juror will receive a disposable badge, rather than the clip-on badges used in the past. The color scheme will remain the familiar blue badges for jurors that have been summoned and red badges for those selected to serve on a petit jury.
- Hand Sanitization Stations – There are several hand sanitization stations strategically placed between the entry points to the courthouse and to the JAR.

- Courthouse HVAC Modifications –A needlepoint bipolar ionization (NPBI) air-purification system has been installed in the courthouse HVAC system.
- Courtroom HEPA Filtration – In addition to the HVAC modifications, each courtroom, the JAR, and deliberation room will also have multiple HEPA filtration units operating.
- Nightly Deep Cleaning of Jury Assembly Room and Jury Deliberation Rooms – Property Management will sanitize the JAR and any deliberation room that was used each evening.
- Health and Safety Video – All of the above-mentioned safety precautions will be highlighted in the insert received by jurors with their summons, and also on a video that they can view following their confirmation email from Jury Administration. The insert will provide a QR code link to play this video. Lastly, this video will be played again on the morning of their service, along with the jury orientation video.

## THE IMPANELING PROCESS – (*Changes highlighted below*)

- To accommodate two simultaneous trials, Jury Administration will have 60 jurors available who will report from 8 a.m. – 9 a.m. They will be sworn, statutorily qualified, and are set in panels. Each Judge will be assigned two panels of 15 jurors to begin jury selection in the morning.
- Another judge will go down and for the afternoon session at approximately 12:15-1:15 and repeat the process for 36-42 additional jurors available to repeat the process and get one more panel for each judge.
- Jurors will be placed “on call” and released, subject to re-call. Jurors placed “on call” will be instructed to report on one-hour notice and will receive reporting instructions by telephone, text, and email. They will also be instructed that if they are not contacted by Jury Administration by 4:30 PM, they must call the voicemail or check the website at 6 p.m. for instructions. These jurors, even if not called back, will be checked-in for attendance purposes and given verification of attendance for their employers.
- The objective is to have 60 jurors in the JAR in the morning and an additional 36-42 in the afternoon. The overflow area in the lobby outside of the JAR will be used to accommodate these numbers.
- The Judge will come down to the JAR, swear in the jurors, and qualify the jurors again (even though they already answered these questions online).
- Once they are present, qualified, and finished with orientation, Jury Administration will notify the courtroom clerk that the jurors are ready, and have been divided into three panels of 15.
- Jury Administration will also be assigned a bailiff to provide support for the courtroom bailiffs in any of the procedures outlined herein (e.g., elevator rides and waiting for jurors at the temperature check points).

## VOIR DIRE - EACH PANEL REPORTS SEPARATELY TO COURTROOM 2000 & THE SECOND JURY TRIAL COURTROOM

- Panel “A” reports to their respective courtroom for trial, and the Judge will provide reporting instructions to Jury Administration for Panels “B,” “C,” and “D” (if necessary).
- Panel “A” will go up the escalator or elevators with the bailiffs. Social distancing will be maintained except where impossible on the short elevator rides where everyone will remain masked.

- The Judge should re-qualify the jurors when they arrive to the courtroom, in the presence of the defendant and on the record.
- Although each Judge and each case may necessitate variations to this process, 45 minutes per panel per side, would be 1.5 hours per panel. For example, if Panel “A” is at 10:00 a.m., that panel can be completed before lunch. Panel “B” can report at 1:00 p.m. Panel “C” can report back at 2:30 p.m.
- For a one-day jury selection, each panel will be excused for the day after being questioned. Jurors would call in after 7:00 p.m. to see if they were selected for the jury and will report back the following morning for service on the case for which they were selected.
- More complex cases may not lend themselves to the exact times described above, and jury selection may take two days. However, these procedures can be easily modified by the Judge and Jury Administration, with appropriate communication to the jurors.
- Strikes for cause should be taken up panel-by-panel, before that panel is released.
- At least two alternate jurors are recommended for each case and long trials may necessitate more.
- Any panels still physically present in the building would not be brought back into the courtroom while the lawyers exercise their strikes. See *Martin v State*, 205 Ga. App. 591 (1992).

## TRIAL PROCEDURES – *(Changes Highlighted Below)*

### GENERAL CONSIDERATIONS

- Judges should require mandatory pretrial conferences with all lawyers participating in the cases called for trial. At a minimum, said conferences should take place the week before trial to make sure both sides are clear on all of the changes that COVID-19 has necessitated. At the conference, the Judge should try to handle as many pretrial issues as possible, so that they do not delay the jurors reporting to the courtroom on the morning of trial. During the pretrial conferences, the lawyers and the Judge will discuss the number of witnesses and timing for their appearance in the courthouse, as well as where each party’s witnesses will wait until called to testify. To the extent possible, the lawyers should stagger witness report times, but should only do so after a consultation with the Judge and the other side to ensure that jurors are not left waiting around for witnesses to arrive. **Discuss the rule of sequestration and make sure both sides instruct their witnesses on it.** It is also important to make sure both sides are familiar with the technology, especially the digital presentation of evidence.
- Judges, court staff, bailiffs, lawyers, parties, defendants, and jurors will all wear masks during the trial when not speaking.
- Defendants reporting from the jail for trial will undergo a COVID-19 test early enough to have the results by the morning of trial. They will also have temperature screenings each day.
- Judges should be on the bench at 8:00 AM or 8:30 AM with the lawyers reporting at that same time. There are too many issues that arise at the last second, like motions or guilty pleas. The Court should avoid having 48 anxious jurors sitting in the JAR while taking care of routine matters that could have been handled days or hours before they arrived.
- Judges may remove, and permit counsel and jurors to remove their masks while speaking.
- Witnesses may testify without a mask. Upon request of either side, a witness shall testify without a mask.

- The Court will have face shields on standby to accommodate unmasked speaking.
- Due to difficulties guiding the jurors throughout the courthouse, it is anticipated that trials will necessitate the use of three bailiffs.
- Each time jurors report back to the courthouse, they will enter through the Haynes Street entrance.
- Bailiffs will meet the jurors, at the designated time, at the thermal check station and escort the jurors to the jury room after they pass the thermal scanner and answer the two COVID-related questions. It will take two to three bailiffs to escort the jurors to the 4<sup>th</sup> floor jury rooms (4200 & 4500). One bailiff will be on the 4<sup>th</sup> floor with the jurors getting off the elevator, and one on the ground floor with the jurors waiting to board. Any jurors capable of taking the stairs—who desire to do so—will be directed to the stairwell and they may take the stairs to the 4<sup>th</sup> floor.
- Any returning juror who does not pass the temperature check or COVID screening questions will be brought to the trial Judge’s attention immediately. Meanwhile, the Jury Administration bailiff will wait with the juror until instructions are received from the trial Judge.
- Joining issue will occur the way it always has, on paper. Hand sanitizer is available.
- Jury Verdict will be on paper and in writing.
- Questions from the jurors will be in writing as well and scanned into ShareFile in the courtroom as a Court’s exhibit. Hand sanitizer is available.
- What to do in the event of a close contact exposure or positive test during a trial? In the event of a close contact exposure or positive test during trial, the Committee suggests recessing the trial for the necessary amount of time and then reconvening, rather than declaring a mistrial and starting anew with jury selection.

## COURTROOM LAYOUT

- In Courtroom 2000, for *voir dire* AND for seating during the trial, six jurors will be placed in the jury box at the marked seats. The remaining six to eight jurors will be spaced out in the first five rows of the right side of the courtroom (from the Judge’s perspective) in the marked seats. All of these seats have clear sightlines to the witness stand, the Judge’s bench, and the courtroom monitors.
- In the regular courtrooms, for *voir dire* AND for seating during the trial, four or five jurors will be placed in the jury box at the marked seats. The remaining jurors will be spaced out in the courtroom gallery on both sides of the courtroom in the marked seats. Having the jury in the gallery will bring the upstairs courtroom to capacity and there is no extra space in the trial courtroom for the family members of the defendant, victims, or the public. However, the proceedings will be streamed into another courtroom where all of those people will be able to see and listen to the entire trial.
- Jurors may be moved to accommodate hearing or vision issues.
- Care should be taken to accommodate those jurors with hearing or vision impairments, and place them in the jury box for the closest proximity to the witness stand.
- Courtroom audio-visual technology will be employed so that the witnesses may be seen and heard from all areas of the courtroom. Jurors will be instructed to let the Judge know if they are having any difficulty hearing or seeing.
- HEPA filtration units will be positioned throughout the courtroom.

- Seating will be prohibited in the two rows behind the jurors in the gallery and those rows will be blocked off in courtroom 2000.
- The marked seats on the left side of Courtroom 2000 will be reserved for the defendant's immediate family members, victims and their immediate family, general public, and media. If the marked seats are full, anyone else wishing to view the proceedings will be directed to another area of the courthouse designated for public viewing, most likely the Judge's regular courtroom that is trying the case.
- In courtroom 2000, a deputy will be positioned between the jurors seated in the gallery and the public area to ensure safety and courtroom decorum.
- If a Rule 22 request is received and approved by the Court, the Judge should discuss camera angles and the unusual seating arrangement of the jurors with the covering news agency to ensure that no jurors are shown in the coverage.
- If you are requesting that the courtroom furniture or counsel tables be oriented in any different direction, please make that request of your assigned judge at the pretrial conference so appropriate arrangements can be made if the request is approved.

#### PRESENTATION OF EVIDENCE

- Courtroom evidence should be displayed to the jurors in a digital manner where possible.
- There are also likely going to be pieces of evidence that are not easily viewable and some videos that require proprietary software and codecs to play the file. Lawyers are directed to be prepared to play those from their device and to submit the evidence (and their required files/codecs to be played) on a new or re-formatted USB drive to the courtroom clerk after it is admitted.
- For document/photograph intensive cases it is acceptable to show them to the witness and tender them like used to be done pre-pandemic.
- Publishing the evidence will be by document camera, or digital presentation from a computer utilizing courtroom technology. Evidence will not be passed around from juror to juror in the courtroom without gloves and hand sanitizer. They may be passed around with the permission of the Judge with gloves and hand sanitizer available.
- A plexiglass shield will be installed at the witness stand to ensure the witness may testify without a mask. Should this shield cause a glare, it will be removed and the witness will wear a face shield instead.
- The microphones at the witness stand and the lectern will be wiped down by a bailiff after each use. Removable and disposable microphone covers will be provided to the attorneys to cover the microphone while they are speaking.
- The witness stand and chair will also be wiped down by a bailiff after each witness finishes his/her testimony and before the next witness is called.
- Attorneys will present their case from the lectern. Attorneys will seek permission from the Court before moving freely about the courtroom. Otherwise, they will remain at counsel table and the lectern. Attorneys will be provided wipes and will be responsible for wiping down the lectern, and anything else they touched before returning to their table.
- Witnesses being asked to step down and demonstrate something in the courtroom shall put their mask back on before leaving the witness stand. At all times, best efforts shall be made to have 6 feet of social distancing between the witness, counsel, and others.

## OTHER TECHNOLOGICAL CONSIDERATIONS

- Lawyers utilizing laptops and other devices in trial should come to court with a privacy screen to keep individuals seated behind them from seeing their screens
- All courtroom video inputs are HDMI connectors. If your laptop or device utilizes something other than an HDMI video connection, please come with an adapter.
- Lawyers should be contacting their assigned Judge's office or court administration to arrange for any necessary technology training.

## BENCH CONFERENCES

- It will be difficult to usher the jury in and out of the courtroom for routine arguments that normally happen outside of their presence.
- Bench conferences between the Judge and lawyers are encouraged.
- Pursuant to *Zamora v State*, 291 Ga 512 (2012), a defendant has a right to be present at a bench conference. However, that right is waivable. Have a discussion on the record, before the start of trial, to see if the defendant will waive his/her right to be present at bench conferences.
- Since a bench conference will necessarily take place less than six feet from the microphone on the bench, all parties to the conference should wear their masks and face shields while taking care to speak directly at the bench microphone for the benefit of the court reporter.

## RECESSES, BREAKS, MEALS, AND DELIBERATIONS – JURY ROOMS

- Regular jury rooms will not be utilized for deliberations due to the space restrictions. Instead, the bailiffs will take the jurors to a larger designated room on the 4<sup>th</sup> floor.
- The tables and chairs in the jury room will be positioned in a large square layout. Chairs will be placed six feet apart.
- Jurors will be provided with single-use notebooks and writing instructions, and bailiffs will have extras available if needed.
- Jurors will receive a tray at their designated chair in the jury room. They will keep their water bottles, notepads, pens, pencils, dry erase marker etc. in the trays. The jurors' seat assignments will remain unchanged until the conclusion of the trial.
- At the discretion of the trial judge, the committee recommends letting jurors be permitted to go out for lunch on their own.
- There will be no community refrigerator or microwave available for jurors. Jurors with dietary restrictions, or who prefer to bring their own food, may do so in a personal size soft-sided cooler bag which will remain in the jury room.
- Jurors may bring any non-alcoholic drink they choose in a clearly marked thermos with their name on it.
- The bailiff will have a supply table on the back hallway behind the jury room. This table will provide extra disposable masks, hand sanitizer, paper towels, gloves, juror pads and pencils, bottled water, individually wrapped disposable cutlery, disinfecting spray, and paper menus.
- Any food ordered for the jurors during trial shall comply with the following protocol:
  - Paper menus will be used with instructions to the jurors to mark their order on the menu.

- Court Staff will collect the paper menu while wearing gloves.
- Court staff will use the gloves when passing out the food and individual cans of soda or bottled water.
- Jurors will abide by “social distancing guidelines” requirements when consuming the food.
- Since jurors will be unmasked while eating, the additional large jury room (if not in use) will be used as an additional eating area for the jurors. In this event, the bailiffs will divide the group in half and allow them to spread out further during lunch. Deliberations cannot continue until the entire group is back together.
- Each Juror will be given his/her own dry erase marker for use on the whiteboards that have been installed. Disposable cloths/towels will be used to erase the board.
- Bailiffs will be stationed outside of each door to the jury room and shall keep the area secure. Bailiffs will escort jurors to the closest restrooms on the 4<sup>th</sup> floor.
- Each jury room will have a hand sanitization station.
- Jury rooms will be cleaned nightly. Jury restrooms will be cleaned at lunch and nightly. Cleaning wipes and sprays will also be available in the restrooms for juror use to clean before and after use.
- The 4<sup>th</sup> floor will be sectioned off by barriers and signage that separates the law library side from the jury room side. The signage will read “Trial Jurors Only. No Public Access Beyond This Point”. A bailiff or deputy will be located outside the jury room any time it is occupied by jurors and it will remain locked and secured when the jury room is unoccupied.
- For brief morning and afternoon restroom breaks during the trial, the restrooms behind courtroom 2000 attached to the jury room will be utilized in conjunction with the two restrooms down the back hall.
- At the discretion of the Judge, jurors may be provided breaks during the proceedings in a designated space outside of the courthouse for jurors to remove their masks for fresh air while remaining properly distanced from others.
- In order to limit the congregating of jurors around an evidence table, jurors will have multiple ways to review the evidence.
  - They will have the original evidence.
  - They will have a document camera and screen for the original evidence.
  - The court will not use iPads for digital evidence or jury charges in deliberations going forward.

## TRAINING AND EDUCATION – *(No Changes)*

### TRAINING FOR BAILIFFS

- A comprehensive re-training of bailiffs will be necessary.
- Bailiffs will be briefed on the new trial procedures applicable to trials in Courtroom 2000.
- Bailiffs will be issued appropriate PPE and are to use it at all times when cleaning the witness stand after testimony.
- Bailiffs will receive training on proper use of PPE and strict social distancing requirements.
- Bailiffs will receive training on the logistics of working in teams to get the jurors around the courthouse.



- Bailiffs will receive training on best practices surrounding food and lunches.
- Bailiffs will be equipped to instruct jurors on how to properly use and take off gloves when they handle tangible evidence.
- It is recommended that bailiffs be assigned to one Judge for their service. Bailiffs working in pools that travel from courtroom to courtroom have been discouraged by our public health partners. To the extent possible, bailiffs should be assigned to one courtroom and should not work in multiple courtrooms.

#### TRAINING FOR THE BAR

- Court Administration, in cooperation with the Judges, will host the bar in small groups for in-person training on the new courtroom technology when it is installed.
- Technology training will focus on the use of Citrix ShareFile, Mondopads, laptops connected to the courtroom AV system, and the use of disposable microphone protectors.
- Other training will focus on other trial procedure variations brought about by the pandemic.
- Additional online training and instructional videos will be created and hosted on the Superior Court website.
- During pretrial conferences, the Judge should inquire whether counsel have received the training or have questions on how to present digital evidence and use the courtroom technology.



## GUIDE FOR RESUMING JURY TRIALS

*(Amended 4/12/2021) This plan has evolved over time and is a working document. Newer modifications are at the end of the document so it is important to read it in its entirety.*

### *PHASE 1 – Jury Trials in Courtroom 2000, Prioritizing Criminal*

#### INTRODUCTION

On March 14, 2020, the Honorable Harold D. Melton, Chief Justice of the Supreme Court of Georgia, declared a statewide judicial emergency due to the global Coronavirus/COVID-19 pandemic. This emergency included the suspension of all jury trials. Initially, many believed that the emergency would resolve quickly and courts could return to business as usual. That did not happen.

The Cobb Superior Court has continued to provide essential functions throughout the judicial emergency, and quickly pivoted to a video-conferencing platform for many matters. Jury trials, however, remained on hold.

In the Fifth Order Extending Declaration of Statewide Judicial Emergency, entered on August 11, 2020, the Chief Justice recognized that the “broad prohibition [on all jury proceedings] cannot last too much longer, even if the pandemic continues, because the judicial system, and the criminal justice system in particular, must have some capacity to resolve cases by indictment and trial.”

A month later, on September 10, 2020, the Chief Justice directed “each county to establish a local committee of judicial system participants to develop detailed guidelines for the resumption of jury trials in the county utilizing the safe jury trial guidelines being developed by the [Judicial COVID-19] Task Force.” On October 10, 2020, the Chief Justice authorized “the Chief Judge of each trial court, in his or her discretion, to resume the jury trial process if local conditions allow and the Chief Judge, in collaboration with the local committee, has developed and issued a final jury trial plan.”

Early in the pandemic, then Chief Judge Reuben Green appointed a committee consisting of Superior Court Judges C. LaTain Kell, Robert D. Leonard II, and Ann B. Harris to develop plans and guidelines for how Superior Court would operate during the pandemic and how Superior Court would resume full operations. As a result, even before the Chief Justice’s directive to establish a local committee, Cobb Superior Court already had invested many hours in analyzing the logistics of how to safely resume a variety of judicial functions, including jury trials.

Pursuant to the Chief Justice’s directive, on September 14, 2020, Chief Judge Green entered an Administrative Order forming a local committee to explore procedures and develop a plan to safely resume jury trials in the Cobb Judicial Circuit. In his Order, Chief Judge Green appointed Judge Leonard as Chairperson and the following key community stakeholders as members:

- Lisa Crossman, Deputy Director, Cobb & Douglas Public Health
- Joyette Holmes, District Attorney
- John Pursley, Chief Assistant District Attorney
- Carlos Rodriguez, Criminal Defense Attorney & Secretary of the Cobb County Bar Association
- Randy Harris, Circuit Defender
- State Court Judge John Morgan (Div. I)
- State Court Judge Eric Brewton (Div. II)
- Barry Morgan, Solicitor General
- Rebecca Keaton, Clerk of Superior Court
- Maj. James Petrie, Cobb County Sheriff’s Office – Court Security
- Robin Bishop, Clerk of State Court
- Wendy Portwood, Superior Court Jury Administrator
- Cherie Crider, State Court Jury Administrator
- Tom Charron, Superior Court Administrator
- Donna Tschappat, State Court Administrator
- David Tyler, Superior Court IT System Administrator
- Ann Harris, Superior Court Judge
- C. LaTain Kell, Superior Court Judge

Using the ideas and plans initially created by Judges Kell, Leonard, and Harris as a framework, the local committee developed this “Phase 1” of its Guide for Resuming Jury Trials. Through its work on the Phase 1 plan, the local committee vetted each and every process from the perspective of judges, trial attorneys, court administration, court security, clerk, and department of public health. Each member provided valuable input and insight, all of which is reflected in the plan. The committee members, through their Phase 1 plan, have demonstrated a commitment 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. Cobb County Superior Court deeply appreciates the contributions from all of the committee members.

Our Phase 1 plan incorporates the guidance provided by the Supreme Court’s Statewide COVID-19 Taskforce, and Phase 1 complies with recommendations from the Centers for Disease Control and Prevention. Importantly, the Phase 1 plan has been approved by our local public health experts at Cobb Douglas Public Health.

Before the first potential jurors enter the judicial campus, Superior Court will hold a “mock trial” to test and refine the logistics of the Phase 1 plan. If adjustments or modifications are needed, the local committee will revise the plan.

Finally, after Phase 1 starts and jury trials resume, the local committee will reconvene to develop a Phase 2 plan, which will have the benefit of the successes and lessons learned from Phase 1. Phase 1 will remain in effect until the committee finalizes and the Chief Judge approves a Phase 2 plan.

## SUMMONING THE JURORS

- When jurors are initially summoned, they will receive a letter from the Court, signed by all the Judges, that expresses how much they are appreciated and appeals to their sense of civic duty to report for jury duty. The letter will assure the jurors that the Court understands their concerns for safety. An insert will accompany the letter, explaining the steps taken to ensure their safety.
- Jurors will be instructed to confirm their jury attendance through an online form. The online form will include their contact information (name, address, cell phone, and email) along with a COVID-19 questionnaire, juror information, and statutory qualification questions.
- Once the jurors submit their information, they will receive a confirmation email explaining the reporting process, a link to the health and safety video, and the juror orientation video. This process will assist in keeping a precise count of jurors reporting.
- Jurors who do not have internet access or a device to check-in online will be instructed to call Jury Administration and staff will assist them over the phone with all this information.

## JUROR CHECK-IN

### THE WEEK BEFORE REPORTING

- The Friday before the jurors report for service, Jury Administration will communicate with the jurors via email and via text messaging, with the goal of placing those that are not needed “on call” based on the response numbers collected during the online and telephonic check-in process described above.
- Jurors who are not placed “on call” will receive further parking and check-in instructions.

### THE NIGHT BEFORE REPORTING

- When jurors check the initial reporting message the night before, as they are instructed to do on their summons, the message will include two more COVID-19 questions. If they answer “yes” to either question, the juror will be instructed to email Jury Administration, or contact the Jury Administration office by phone, and Jury Administration will follow up to reschedule the juror. It will be made clear that this does not excuse them from jury service altogether; their service will be deferred to a later date. Jury Administration will keep a record of the deferred jurors, and those individuals will be referred to the assigned Judge should Jury Administration receive the same response to the COVID-related responses when they are re-summoned.

### THE MORNING OF SERVICE – SAFETY PRECAUTIONS JURORS WILL ENCOUNTER

- Expanded Reporting Window - Jurors will be instructed in their reporting message to report to the Haynes/Lawrence Street entrance. They will be given an extended report time from 8 a.m. – 9 a.m. Jurors will be given staggered reporting times on their summons so they don’t all arrive at the same time. They will be screened through a daily thermal scanning process to check their temperatures. The general public will still enter through the 32 Waddell Street entrance.
- Temperature Screening - Any potential juror who reports with a 100.4 degree temperature or higher must give his/her name and contact information to the employee overseeing the thermal scanning. Jury Administration will receive the potential juror’s information, and contact the juror to be rescheduled. As with all visitors to the courthouse, any person with a reading above the threshold will be given a fifteen-minute cool-down period and will be re-tested, before being excused.

- Masks – All visitors are required to wear masks to enter the courthouse, and the mask must remain in proper position over 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.
- Social Distancing – The Jury Assembly Room (JAR) has been set up with a reduced capacity of approximately 48 jurors. Chairs have been placed 6 feet apart. Chairs may not be rearranged by the jurors. The seating area outside the JAR doors has capacity for an additional 12 jurors to sit while maintaining the recommended social distancing. Social distancing signage with CDC recommendations will be prominently displayed.
- Physical Barriers – Plexiglass shields will be installed at the check-in desks in the JAR.
- Touchless Scanning – There will be two check-in stations where jurors will scan their summons. There will be no exchange of documents, and social distancing will be maintained. Following check-in, jurors will be directed to their seats.
- Disposable Badges – At check-in, each juror will receive a disposable badge, rather than the clip-on badges used in the past. The color scheme will remain the familiar blue badges for jurors that have been summoned and red badges for those selected to serve on a petit jury.
- Hand Sanitization Stations – There are several hand sanitization stations strategically placed between the entry points to the courthouse and to the JAR.
- Courthouse HVAC Modifications – A needlepoint bipolar ionization (NPBI) air-purification system has been installed in the courthouse HVAC system.
- Courtroom HEPA Filtration – In addition to the HVAC modifications, each courtroom, the JAR, and deliberation room will also have multiple HEPA filtration units operating.
- Nightly Deep Cleaning of Jury Assembly Room and Jury Deliberation Rooms – Property Management will sanitize the JAR and any deliberation room that was used each evening.
- Health and Safety Video – All of the above-mentioned safety precautions will be highlighted in the insert received by jurors with their summons, and also on a video that they can view following their confirmation email from Jury Administration. The insert will provide a QR code link to play this video. Lastly, this video will be played again on the morning of their service, along with the jury orientation video.

## THE IMPANELING PROCESS

- For each trial, Jury Administration will attempt to have 60 jurors available who will report from 8 a.m. – 9 a.m. After the first 48 jurors are statutorily qualified and are set in panels, the remaining 12 will be placed “on call” and released, subject to re-call. Jurors placed “on call” will be instructed to report on one-hour notice and will receive reporting instructions by telephone, text, and email. They will also be instructed that if they are not contacted by Jury Administration by 4:30 PM, they must call the voicemail or check the website at 6 p.m. for instructions. These jurors, even if not called back, will be checked-in for attendance purposes and given verification of attendance for their employers.
- The objective is to have 48 jurors in the JAR, with any extras in the 12-person overflow area in the lobby outside of the JAR.

- The Judge will come down to the JAR, swear in the jurors, and qualify the jurors again (even though they already answered these questions online).
- Once they are present, qualified, and finished with orientation, Jury Administration will notify the courtroom clerk that 48 jurors are ready, and have been divided into four panels of 12.
- Jury Administration will also be assigned a bailiff to provide support for the courtroom bailiffs in any of the procedures outlined herein (e.g., elevator rides and waiting for jurors at the temperature check points).

## VOIR DIRE - EACH PANEL REPORTS SEPARATELY TO COURTROOM 2000

- Panel “A” reports to courtroom 2000, and the Judge will provide reporting instructions to Jury Administration for Panels “B,” “C,” and “D.”
- It is anticipated that Panel “A” will go up the escalator with the bailiffs, while maintaining social distancing, at approximately 10:00 a.m.
- The Judge should re-qualify the jurors when they arrive to the courtroom, in the presence of the defendant and on the record.
- Although each Judge and each case may necessitate variations to this process, 45 minutes per panel per side, would be 1.5 hours per panel. For example, if Panel “A” is at 10:00 a.m., that panel can be completed before lunch. Panel “B” can report at 1:00 p.m. Panel “C” can report back at 2:30 p.m. If things are on schedule, Panel “D” can report in at 4:00 p.m. With this schedule, it would be possible to pick a jury by 6:00 p.m.
- For a one-day jury selection, each panel will be excused for the day after being questioned. Jurors would call in after 7:00 p.m. to see if they were selected for the jury and will report back the following morning for service on the case for which they were selected.
- More complex cases may not lend themselves to the exact times described above, and jury selection may take two days. However, these procedures can be easily modified by the Judge and Jury Administration, with appropriate communication to the jurors.
- Strikes for cause should be taken up panel-by-panel, before that panel is released.
- At least two alternate jurors are recommended for each case and long trials may necessitate more.
- Any panels still physically present in the building would not be brought back into the courtroom while the lawyers exercise their strikes. See *Martin v State*, 205 Ga. App. 591 (1992).

## COURTROOM 2000 TRIAL PROCEDURES

### GENERAL CONSIDERATIONS

- Judges should require mandatory pretrial conferences with all lawyers participating in the cases called for trial. At a minimum, said conferences should take place the week before trial to make sure both sides are clear on all of the changes that COVID-19 has necessitated. At the conference, the Judge should try to handle as many pretrial issues as possible, so that they do not delay the jurors reporting to the courtroom on the morning of trial. During the pretrial conferences, the lawyers and the Judge will discuss the number of witnesses and timing for their appearance in the courthouse, as well as where each party’s witnesses will wait until called to testify. To the extent possible, the lawyers should stagger witness report times, but should only do so after a consultation with the Judge and the other side to ensure that jurors are not left waiting around

for witnesses to arrive. It is also important to make sure both sides are familiar with the technology, especially the digital presentation of evidence. \*\*See notes below on training for the bar.\*\*

- Judges, court staff, bailiffs, lawyers, parties, defendants, and jurors will all wear masks during the trial when not speaking.
- Defendants reporting from the jail for trial will undergo a COVID-19 test early enough to have the results by the morning of trial. They will also have temperature screenings each day.
- Judges should be on the bench at 8:00 AM or 8:30 AM with the lawyers reporting at that same time. There are too many issues that arise at the last second, like motions or guilty pleas. The Court should avoid having 48 anxious jurors sitting in the JAR while taking care of routine matters that could have been handled days or hours before they arrived.
- Judges may remove, and permit counsel and jurors to remove their masks while speaking.
- Witnesses may testify without a mask. Upon request of either side, a witness shall testify without a mask.
- The Court will have face shields on standby to accommodate unmasked speaking.
- Due to difficulties guiding the jurors throughout the courthouse, it is anticipated that trials will necessitate the use of three bailiffs.
- Each time jurors report back to the courthouse, they will enter through the Haynes Street entrance.
- Bailiffs will meet the jurors, at the designated time, at the thermal check station and escort the jurors to the jury room after they pass the thermal scanner and answer the two COVID-related questions. Due to elevator capacity of two people, it will take two to three bailiffs to escort the jurors to the 4<sup>th</sup> floor jury rooms (4200 & 4500). One bailiff will be on the 4<sup>th</sup> floor with the jurors getting off the elevator, and one on the ground floor with the jurors waiting to board. Any jurors capable of taking the stairs—who desire to do so—will be directed to the stairwell and they may take the stairs to the 4<sup>th</sup> floor.
- Any returning juror who does not pass the temperature check or COVID screening questions will be brought to the trial Judge’s attention immediately. Meanwhile, the Jury Administration bailiff will wait with the juror until instructions are received from the trial Judge.

#### COURTROOM LAYOUT

- For *voir dire* AND for seating during the trial, six jurors will be placed in the jury box at the marked seats. The remaining six to eight jurors will be spaced out in the first five rows of the right side of the courtroom (from the Judge’s perspective) in the marked seats. All of these seats have clear sightlines to the witness stand, the Judge’s bench, and the courtroom monitors.
- Once jurors receive a seat assignment, they will remain in their assigned seat for the duration of the trial unless they need to be moved due to a hearing or vision issue.
- Care should be taken to accommodate those jurors with hearing or vision impairments, and place them in the jury box for the closest proximity to the witness stand.
- Courtroom audio-visual technology will be employed so that the witnesses may be seen and heard from all areas of the courtroom. Jurors will be instructed to let the Judge know if they are having any difficulty hearing or seeing.

- Three HEPA filtration units will be positioned throughout the courtroom. The first will be placed by the witness stand and Judge's bench. The second will be placed in the well of the courtroom. The third will be placed in the courtroom gallery.
- Seating will be prohibited in the two rows behind the jurors in the gallery and those rows will be blocked off.
- The marked seats on the left side of Courtroom 2000 will be reserved for the defendant's immediate family members, victims and their immediate family, general public, and media. If the marked seats are full, anyone else wishing to view the proceedings will be directed to another area of the courthouse designated for public viewing, most likely the Judge's regular courtroom that is trying the case.
- A deputy will be positioned between the jurors seated in the gallery and the public area to ensure safety and courtroom decorum.
- If a Rule 22 request is received and approved by the Court, the Judge should discuss camera angles and the unusual seating arrangement of the jurors with the covering news agency to ensure that no jurors are shown in the coverage.

#### PRESENTATION OF EVIDENCE

- Courtroom evidence should be displayed to the jurors in a digital manner where possible. The Court will order the use of Citrix ShareFile for viewing PDFs, photos, and other similar file formats that are easy to display. There will be certain items that cannot be displayed in a digital format and the attorneys are directed to seek guidance from their Judge, and be prepared to disseminate gloves before passing around any tangible evidence in the courtroom. There are also likely going to be pieces of evidence that are not easily viewable in the evidence platform described above. Some videos that require proprietary software and codecs to play the file. Lawyers are directed to be prepared to play those from their device and to submit the evidence (and their required files/codecs to be played) on a new or re-formatted USB drive to the courtroom clerk after it is admitted. **\*\*See section below on training for the bar.\*\***
- For last-minute or unexpected exhibits, the attorneys may have the courtroom clerk scan an exhibit and upload it to ShareFile for them. Such last-minute uploading is strongly discouraged as it delays the proceedings.
- A plexiglass shield will be installed at the witness stand to ensure the witness may testify without a mask. Should this shield cause a glare, it will be removed and the witness will wear a face shield instead.
- The microphones at the witness stand and the lectern will be wiped down by a bailiff after each use. Individual clip-on microphones may be provided to counsel. In the alternative, removable and disposable microphone covers will be provided to the attorneys to cover the microphone while they are speaking.
- The witness stand and chair will also be wiped down by a bailiff after each witness finishes his/her testimony and before the next witness is called.
- Attorneys will present their case from the lectern. Attorneys will seek permission from the Court before moving freely about the courtroom. Otherwise, they will remain at counsel table and the lectern. Attorneys will be provided wipes and will be responsible for wiping down the lectern, and anything else they touched before returning to their table.



## BENCH CONFERENCES

- It will be difficult to usher the jury in and out of the courtroom for routine arguments that normally happen outside of their presence.
- Bench conferences between the Judge and lawyers are encouraged.
- Pursuant to *Zamora v State*, 291 Ga 512 (2012), a defendant has a right to be present at a bench conference. However, that right is waivable. Have a discussion on the record, before the start of trial, to see if the defendant will waive his/her right to be present at bench conferences.
- Since a bench conference will necessarily take place less than six feet from the microphone on the bench, all parties to the conference should wear their masks and face shields while taking care to speak directly at the bench microphone for the benefit of the court reporter.

## RECESSES, BREAKS, MEALS, AND DELIBERATIONS – JURY ROOMS

- Regular jury rooms will not be utilized for deliberations due to the space restrictions. Instead, the bailiffs will take the jurors to a larger designated room on the 4<sup>th</sup> floor.
- The tables and chairs in the jury room will be positioned in a large square layout. Chairs will be placed six feet apart.
- Jurors will be provided with single-use notebooks and writing instructions, and bailiffs will have extras available if needed.
- Jurors will receive a tray at their designated chair in the jury room. They will keep their water bottles, notepads, pens, pencils, dry erase marker etc. in the trays. The jurors' seat assignments will remain unchanged until the conclusion of the trial.
- To avoid possible exposure with a lunch break away from the courthouse, lunch will be ordered in for jurors each day, at court expense. All administrative assistants have been provided with current menus from local vendors and they will be responsible for securing the jurors' lunch selections and placing their orders. Box lunches are encouraged. Any buffet-style lunch is prohibited.
- There will be no community refrigerator or microwave available for jurors. Jurors with dietary restrictions, or who prefer to bring their own food, may do so in a personal size soft-sided cooler bag which will remain in the jury room.
- Jurors may bring any non-alcoholic drink they choose in a clearly marked thermos with their name on it.
- The bailiff will have a supply table on the back hallway behind the jury room. This table will provide extra disposable masks, hand sanitizer, paper towels, gloves, juror pads and pencils, bottled water, individually wrapped disposable cutlery, disinfecting spray, and paper menus.
- Any food ordered for the jurors during trial shall comply with the following protocol:
  - Paper menus will be used with instructions to the jurors to mark their order on the menu.
  - Court Staff will collect the paper menu while wearing gloves.
  - Court staff will use the gloves when passing out the food and individual cans of soda or bottled water.
  - Jurors will abide by "social distancing guidelines" requirements when consuming the food.
  - Since jurors will be unmasked while eating, the additional large jury room (if not in use) will be used as an additional eating area for the jurors. In this event, the bailiffs will divide

the group in half and allow them to spread out further during lunch. Deliberations cannot continue until the entire group is back together.

- Each Juror will be given his/her own dry erase marker for use on the whiteboards that have been installed. Disposable cloths/towels will be used to erase the board.
- Bailiffs will be stationed outside of each door to the jury room and shall keep the area secure. Bailiffs will escort jurors to the closest restrooms on the 4<sup>th</sup> floor.
- Each jury room will have a hand sanitization station.
- Jury rooms will be cleaned nightly. Jury restrooms will be cleaned at lunch and nightly. Cleaning wipes and sprays will also be available in the restrooms for juror use to clean before and after use.
- The 4<sup>th</sup> floor will be sectioned off by barriers and signage that separates the law library side from the jury room side. The signage will read “Trial Jurors Only. No Public Access Beyond This Point”. A bailiff or deputy will be located outside the jury room any time it is occupied by jurors and it will remain locked and secured when the jury room is unoccupied.
- For brief morning and afternoon restroom breaks during the trial, the restrooms behind courtroom 2000 attached to the jury room will be utilized in conjunction with the two restrooms down the back hall. Additionally, the break room (room 2043) will be unlocked and may be utilized by trial jurors, to avoid returning to the 4<sup>th</sup> floor on these breaks.
- At the discretion of the Judge, jurors may be provided breaks during the proceedings in a designated space outside of the courthouse for jurors to remove their masks for fresh air while remaining properly distanced from others.
- During deliberations, the jurors will receive an iPad that has been loaded with the evidence and the charge of the court. Each juror will maintain his/her own iPad, which will only have access to the Citrix Files application that will house the admitted exhibits for that particular case. This will eliminate the passing around of exhibits from juror to juror during deliberations.
  - The Judge will make a record, with input from the lawyers, regarding which exhibits will be loaded on the iPads.
  - Audio and video files will not be loaded on the iPads. Jurors will return to the courtroom for these items to be re-played.
  - All iPads will be loaded with the same exhibits by the courtroom clerk, with assistance from court administration.
  - The jurors will not have access to any other applications or the internet during deliberations.

## TRAINING AND EDUCATION

### TRAINING FOR BAILIFFS

- A comprehensive re-training of bailiffs will be necessary.
- Bailiffs will be briefed on the new trial procedures applicable to trials in Courtroom 2000.
- Bailiffs will be issued appropriate PPE and are to use it at all times when cleaning the witness stand after testimony.
- Bailiffs will receive training on proper use of PPE and strict social distancing requirements.
- Bailiffs will receive training on the logistics of working in teams to get the jurors around the courthouse.

- Bailiffs will receive training on best practices surrounding food and lunches.
- Bailiffs will be equipped to instruct jurors on how to properly use and take off gloves when they handle tangible evidence.
- It is recommended that bailiffs be assigned to one Judge for their service. Bailiffs working in pools that travel from courtroom to courtroom have been discouraged by our public health partners. To the extent possible, bailiffs should be assigned to one courtroom and should not work in multiple courtrooms.

#### TRAINING FOR THE BAR

- Court Administration, in cooperation with the Judges, will host the bar in small groups for in-person training on the new courtroom technology when it is installed.
- Technology training will focus on the use of Citrix ShareFile, Mondopads, laptops connected to the courtroom AV system, and the use of disposable microphone protectors.
- Other training will focus on other trial procedure variations brought about by the pandemic.
- Additional online training and instructional videos will be created and hosted on the Superior Court website.
- During pretrial conferences, the Judge should inquire whether counsel have received the training or have questions on how to present digital evidence and use the courtroom technology.

#### MOCK TRIAL

- After this plan has been finalized, and before the first actual trial, a mock trial will be conducted with volunteers and lawyers to test out the procedures spelled out herein.
- The Local Committee on Restarting Jury Trials will oversee the mock trials in both Superior and State Court.
- The Local Committee will recommend any necessary alterations to this plan.

#### DURATION OF PHASE 1

- Phase 1 will continue until the community conditions no longer necessitate the restrictive measures described above.
- During Phase 1, each trial week will be designated to a particular Judge. It is up to that Judge how many cases to call in, and which cases will be “on-call,” in case the “first out” case resolves. An “alternate trial Judge” will also be selected in the event that all of the designated Judge’s cases are resolved. Judges may start trials on Monday, Tuesday or Wednesday. On Thursdays and Fridays, the JAR will be utilized for Grand Jury proceedings
- The Court will consider moving to a “Phase 2” after learning lessons from “Phase 1” and making necessary adjustments to the plan.
- Similar procedures could be used to accommodate two trials by implementing a staggered reporting time for the jurors. We would still attempt to have 48 jurors in the JAR at any given time, but more jurors could check in for the afternoon while *voir dire* is in process upstairs. They would simply be divided between the two courtrooms.
- The “Local Committee on Resuming Jury Trials” will reconvene to more fully discuss necessary changes prior to finalizing a plan on “Phase 2.”

- The “Local Committee on Resuming Jury Trials” may recommend modifications to this plan and this document may continue to be updated.

## *POST MOCK TRIAL ADDENDUM/CLARIFICATION*

Following the November 18, 2020 Mock Trial, the local committee recommends the following changes and clarifications to the plan above:

- HEPA Filtration – 2 larger HEPA units with UV, rather than three smaller ones.
- No Water pitchers on the counsel table and witness stands. Bottles only.
- Install 12 inch removeable barrier on top of wall separating the gallery from the well of the court. This is tall enough to keep the jurors seated in the gallery from being able to see laptops at counsel tables, but is low enough not to obstruct sightlines to witness stand.
- Digital Evidence – counsel are permitted to present their exhibits locally through software such as Adobe Acrobat, rather than through the web-based Citrix ShareFile. This cuts the lag time and lets skillful lawyers more quickly move through their materials. However, the exhibits must still be loaded into Citrix and what is presented must be an exact copy of what was uploaded.
- Digital Evidence stickers are permissible.
- Attorneys must stay masked when questioning witnesses. The only exception to this is when a juror, court reporter or the Judge cannot hear the attorney. In that event, the Court should instruct counsel to speak up, and in extraordinary circumstances may permit counsel to remove their mask to speak.
  - Counsel are encouraged to invest in clear facemasks if they want their facial expressions to be seen in the courtroom.
- Clear facemasks have been ordered for jurors.
- Witnesses being asked to step down and demonstrate something in the courtroom shall put their mask back on before leaving the witness stand. At all times, best efforts shall be made to have 6 feet of social distancing between the witness, counsel, and others.
- Mandatory Pre-trial conferences:
  - Address how to handle refreshing recollection/impeachment material that may not be uploaded into ShareFile because it wasn't anticipated to be used in a case in chief. Material may be uploaded into ShareFile in the courtroom with the help of the clerk and the scanner. Low-tech options are still permissible to show the witness a hard copy.
  - Address whether or not the Defendant will waive his/her right to be present at bench conferences.
  - Both sides need to address the Rule of Sequestration with their witnesses and discuss where the witnesses will be kept and be mindful that jurors will be utilizing the main courtroom doors.
- Joining issue will occur the way it always has, on paper. Hand sanitizer is available.
- Jury Verdict will be on paper and in writing.
- Questions from the jurors will be in writing as well and scanned into ShareFile in the courtroom as a Court's exhibit. Hand sanitizer is available.
- What to do in the event of a close contact exposure or positive test during a trial? It was suggested, not to declare a mistrial and have to start selection all over again, just recess the trial for 2 or 3 weeks and reconvene in the Judge's assigned courtroom.
- What if a trial is not completed in a week? It will continue in the courtroom of the assigned Judge, with the video feed and public access in their trial partner's courtroom.

- Updated signage at security checkpoint for jurors to make it clear they can use that entrance.
- Updated social distancing signage in Jury Assembly Room by restrooms.
- Block off the water fountains in the secured hallways that jurors use.
- Installation foot openers on the restroom doors that jurors use.
- Additional trashcans for disposal of masks, gloves, sanitizing wipes by witness stand, lectern and counsel tables.

## ***APRIL 2021 AMENDMENTS TO THE PLAN***

Much has changed in our world since the beginning of the pandemic. We continue to learn more about the virus and our public health experts constantly update the guidance to the public. The local committee and the Chief Judge have tried to stay on top of the ever-changing recommendations as Cobb County’s resumption of jury trials gets closer. One of the biggest changes from when this plan was first authored is the mounting research that shows this virus is not as big of a threat for spread by touching a contaminated surface as originally thought<sup>2</sup>. The other major developments are driven by the fact that vaccines have been developed and become more widely available.

On February 26, 2021, Chief Judge Rob Leonard amended the makeup of the local committee to more closely reflect the current stakeholders. Judge Leonard continued to chair the committee and the makeup was amended as follows:

Lisa Crossman,	Deputy Director, Cobb & Douglas Public Health
Flynn Broady,	District Attorney
John Pursley,	Chief Assistant District Attorney
Carlos Rodriguez,	Defense Attorney—Cobb Bar Appointment
Randy Harris,	Circuit Defender
John Morgan,	State Court Judge, (Div. I)
Eric Brewton,	State Court Judge, (Div. II)
Barry Morgan,	Solicitor General
Connie Taylor,	Clerk of Superior Court
Maj. James Petrie,	CCSO—Court Security
Robin Bishop,	Clerk of State Court
Wendy Portwood,	Superior Court Jury Administrator
Cherie Crider,	State Court Jury Administrator
Christopher Hansard,	Superior Court Administrator
Donna Tschappat,	State Court Administrator
David Tyler,	Superior Court I.T. System Administrator
Ann Harris,	Superior Court Judge
C. LaTain Kell,	Superior Court Judge

The local committee met on March 30, 2021 to discuss further modifications to the jury trial plan and the following is a summary of what was agreed to.

### **PRESENTATION OF EVIDENCE**

- It was determined that mandating Citrix ShareFile in the manner previously described was too onerous on the lawyers and would impose undue hardships on practitioners.
- Citrix will not be mandated for use by the lawyers in presentation of evidence, but will still be available to the jurors in jury deliberations, so pre-marking and uploading exhibits remain recommended.

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<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

- For document/photograph intensive cases it is acceptable to show them to the witness and tender them like used to be done pre-pandemic.
- Publishing the evidence will be by document camera, or digital presentation from a computer utilizing courtroom technology. Evidence will not be passed around from juror to juror in the courtroom without gloves and hand sanitizer. They may be passed around with the permission of the Judge with gloves and hand sanitizer available.
- The clerk will be able to scan photos and other paper evidence in batches after each witness, but it is important for counsel to keep them in Order. For example, instead of 20 separate photograph files, it may be listed as “State’s 1-20” when uploaded to Citrix for the jurors.
- It remains mandatory for the lawyers and the Court to confer regarding what goes on the iPads before the evidence goes out to the jury and preferably before closing arguments so the iPads can be prepared for the jurors.

#### DELIBERATIONS

- In order to limit the congregating of jurors around an evidence table, jurors will have multiple ways to review the evidence.
  - They will have the original evidence.
  - They will have a document camera and screen for the original evidence.
  - They will also have a digital copy in Citrix on a locked iPad with only capability to view that evidence.

#### MASKS

- Masks remain required in the courtroom for everyone, vaccinated or unvaccinated.
- Judges may permit counsel to remove their masks when addressing the jury.
- By request, clear facemasks will also be made available to the Defendant.

#### OTHER TECHNOLOGICAL CONSIDERATIONS

- Lawyers utilizing laptops and other devices in trial should come to court with a privacy screen to keep individuals seated behind them from seeing their screens
- All courtroom video inputs are HDMI connectors. If your laptop or device utilizes something other than and HDMI video connection, please come with an adapter.
- Lawyers should be contacting their assigned Judge’s office or court administration to arrange for any necessary technology training.

#### OTHER COURTROOM CONSIDERATIONS

- If you are requesting that the courtroom furniture or counsel tables be oriented in any different direction, please make that request of your assigned judge at the pretrial conference so appropriate arrangements can be made if the request is approved.



