

COMMONWEALTH OF VIRGINIA  
FOURTEENTH JUDICIAL CIRCUIT

L.A. HARRIS, JR., JUDGE

JAMES S. YOFFY, JUDGE

RICHARD S. WALLERSTEIN, JR., JUDGE

JOHN MARSHALL, JUDGE

RANDALL G. JOHNSON, JR., JUDGE



CIRCUIT COURT OF HENRICO COUNTY

GOVERNMENT COMPLEX  
4309 E. PARHAM ROAD

MAILING ADDRESS:

P.O. BOX 90775  
HENRICO, VA 23273-0775

TELEPHONE: (804) 501-4750  
FACSIMILE: (804) 501-5505

August 13, 2020

The Honorable Donald W. Lemons  
Chief Justice  
Supreme Court of Virginia  
100 North 9<sup>th</sup> Street  
Richmond, VA 23219

Re: Jury Trial Plan

Dear Mr. Chief Justice Lemons:

Please find enclosed the Jury Trial Plan for the 14<sup>th</sup> Judicial Circuit. This plan includes the revision requested by your Law Clerk.

Hopefully, it will meet your approval.

Very truly yours,

James S. Yoffy  
Chief Judge

Enclosure

cc: Kristen Mynes, Law Clerk  
Sharon Abernathy, Assistant

JSY/dms

## Fourteenth Judicial Circuit Jury Trial Plan During Covid-19 Pandemic

In accordance with the Sixth Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency (“the Sixth Order”) coupled with the June 29, 2020 Guidance and Considerations for the Resumption of Jury Trials Memorandum, the following constitutes the plan of the Fourteenth Judicial Circuit for resumption of jury trials.

### Opening Statement

The judges of the Fourteenth Judicial Circuit are of the opinion that jury trials can resume thirty (30) days after written approval of our plan by the Supreme Court of Virginia. The Court has considered the multi-faceted aspects of empanelling a jury and conducting a jury trial. While it cannot guarantee the safety of jurors, it feels as though it has implemented elevated precautions beyond what might be encountered in the non-courthouse general public. This is because jurors are summonsed to appear, as opposed to being invitees in public places. The Court also believes that the enhanced precautions may help alleviate undue concerns about jury service which will allow those chosen to render fair and impartial verdicts without health concerns. Additionally, by providing the resources & strategies listed below, the Court is hopeful that the broadest pool of jurors will be assembled, from which the empanelled jury is ultimately drawn.

### Criteria

The following criteria was considered and decided affirmatively:

- Whether jurors could be effectively socially distanced;
- Whether adequate PPE could be provided, both to the entire jury pool and those ultimately called to sit;
- Whether PPE other than opaque face masks could be utilized to allow the prospective juror’s full facial expressions to be observed, while still providing PPE protection;
- Whether PPE other than opaque face masks could be utilized for criminal defendants to alleviate implicit bias;
- Whether reasonable precautions could be undertaken to sanitize jury assembly rooms between the time the pool is assembled and the jury is ultimately seated, as well as at the conclusion of the day;
- Whether procedures are in place to educate potential jurors of the protocols and safety measures implemented, and to respond to concerns and requests to be excused;
- Whether jurors could be provided lunch in a proper and sanitized area;
- Whether the Court has adequately balanced the rights of the accused with the concerns of respiratory etiquette;
- Whether the Court has conferred with the appropriate stakeholders and given their input the appropriate weight in making its determination;

- Whether the Court has partnered with its local government in developing and implementing its plan;
- Whether appropriate screening procedures have been implemented to reasonably triage potentially infected persons;
- Whether adequate restroom facilities exist to accommodate a jury and whether adequate sanitization procedures are in place;
- Whether the plan constitutes as a good faith effort to abide by the Virginia Safety and Health Codes Board of the Virginia Department of Labor and Industry (“DOLI”) Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19 (“Emergency Temporary Standard” (ETS)); and
- Whether an appropriate balance has been struck between the press’ and public’s right of access to voir dire and jury trials, and the space constraints of the courthouse.

### Grand Jury

Henrico Circuit Court successfully empanelled Grand Juries on May 18 and July 13, 2020 by implementing strategies designed to ensure the attendance of the Grand Jurors while minimizing the actual number of Grand Jurors attending. Twice the number of potential grand jurors were randomly drawn than those anticipated who would serve. The Court Management Specialist telephoned the pool to inquire whether they were willing to serve, and answered any questions. For those willing to serve, the Court mailed a letter (Attachment 2) outlining the safety precautions. The protocol was followed, and the Grand Juries functioned well. The Court anticipates including the document entitled “CORONAVIRUS (COVID-19) HEALTH SCREENING QUESTIONNAIRE” [“Self-Checker”] to the letter. (Attachment 1)

### Petit Jury

Since the Declaration of a State of Judicial Emergency Due to Novel Coronavirus COVID-19, the Henrico courts, in conjunction with the Henrico County Manager’s Office, has been developing and implementing strategies to provide services to the citizens. These have included, but are not limited to utilizing signage, developing a safety video, social distancing the courthouse and courtrooms, providing pre-entry screening, (including asking CDC guideline questions, taking everyone’s temperature, requiring face coverings (with limited exceptions)), and implementing robust sanitization protocols.

As we begin the task of resuming jury trials, the Court has consulted with health officials, Henrico General Services, architects, construction personnel, the sheriff’s office, attorneys, the Clerk and a host of other stakeholders to obtain input. Specifically, on June 29, 2020, the then Chief Judge convened and attended a meeting to discuss the framework of a plan and to solicit comments,

questions, and suggestions. Those in attendance included the Deputy County Manager for Public Safety, a representative of the Henrico Health Department, a representative of the Virginia Department of Health (via telephone), representatives of the Henrico Sheriff's Department, the Henrico Commonwealth's Attorney and Chief Deputy Commonwealth's Attorney, two attorney representatives of the criminal defense bar; a plaintiff's bar attorney; a defense bar attorney, a construction representative, a supervisor from the Circuit Court Clerk's Office, a courtroom clerk, and the Henrico County Court Management Specialist. We have also consulted CDC resources and guidance, as well as guidance by OES. In addition, after consultation with the Director of the Department of General Services, the courthouse HVAC runs continuously 24/7. That is, the air handlers constantly move air throughout the courthouse. Filters are changed quarterly, and currently the heavier/thicker filters are in the majority of the courthouse building (including 3 courtrooms), and there is a present plan to upgrade the remaining courtrooms to a "13 or 14" rated filter. Finally, the Court has reviewed the Emergency Temporary Standard Adopted by the Safety and Health Codes Board of the Virginia Department of Labor and Industry, effective July 27, 2020 ("DOLI Standards") view. With the protections implemented we view jurors as falling into the "lower risk" group.

The following is submitted as our response to paragraph 16 of the Sixth Order:

i. PPE

Face coverings and face shields are provided by Henrico County. Electronic signage is in place at each entrance to the complex indicating that "COURTS ARE OPEN/ FACE COVERING REQUIRED/ MUST SOCIAL DISTANCE". There is exterior signage which directs persons entering the Courthouse to the appropriate entrance. Circuit Court has a separate entrance from General District Court, and PPE is available for anyone who does not have his/her own PPE. Clear face shields will be provided to criminal defendants & veniremen during voir dire. Chosen jurors will have the option of wearing masks and/or face shields during the jury trial. For felony juries, jurors will be seated in the jury box with Plexiglass partitions between each seat, and a Plexiglass panel between the rows. Sightlines and audio needs were considered in designing and installing the partitions. For misdemeanors, or civil cases, the jurors can be socially distanced without the Plexiglass. Felony juries will be tried in the two courtrooms with the partitions, and misdemeanors/civil juries in the non-retrofitted courtrooms. It is important to have two courtrooms available to try criminal felony juries in order to have redundancy should one courtroom need to be closed, kept undisturbed and sanitized prior to re-opening.

ii. Questionnaire:

The Court will engage in a two part screening process. First, prior to coming to court, potential jurors will be introduced to, and educated on “self-screening”. This is accomplished by distributing the attached letter (Attachment 3), with the “Self-Checker” questions. (See Attachment 1) In addition, all witness subpoenas, whether Clerk or attorney issued, must include the “Self-Checker” questions. Moreover, a copy of the “Self-Checker” will be posted on the County’s Circuit Court website.

Second, prior to entry into the courthouse, the attached “Coronavirus (COVID-19) Health Screening Questionnaire” (Attachment 4) will be asked of all individuals (without exception). As stated, all persons desiring to enter the courthouse are asked the CDC questions and his/her temperature is digitally taken as part of the triage process. In testing our procedures, we also asked for, and received feedback from our Grand Jurors who sat on May 18 and July 13 regarding the protocol and implementation of the procedures, and any concerns or questions they had. Importantly, a You Tube Safety Video (<https://henrico.us/ccjudges/>) has been created to demonstrate the layout of the courtroom and Jury Assembly Room. This is posted on the County’s website and referenced in the letters. The Chief Judge will individually consider any requests to be excused from jury service.

iii. Juror Travel Pathways:

Jurors will park on a designated level of the parking deck in the complex and will be asked to remain in his/her car until approached by a deputy. The person’s identity will be verified, and CDC screening questions will be asked. The juror will exit the vehicle and will be directed to the nearby vestibule where another deputy will check his/her temperature, and socially distance the jurors. Yet another deputy will escort the socially distanced jurors in groups not exceeding 10 to the designated jury pool staging room.

iv. Arrival Time:

Jurors will be summonsed to appear at least 15 minutes earlier than before COVID-19. Given the remain-in-the car procedure, coupled with the socially distancing and escorting of small groups, staggering arrival times will not be necessary.

v. Jury Assembly Areas:

Depending upon the type of case, coupled with COVID-19 concerns, the court will be summonsing a larger jury pool than was historically typical. The additional pool needed to seat the Grand Jury, coupled with the nature of the case, will be factors in determining the number of potential jurors to be called. All jury pool staging areas

have been socially distanced. Chairs have been marked with labels which state "SIT HERE". The Jury Assembly Room is the first choice, followed by the cafeteria which is closed to the public at the present time. The tertiary area is the Henrico Board of Supervisors Auditorium.

The case will be called, roll will be announced, and the drawing of the veniremen will take place in the presence of parties & counsel. Those chosen will be escorted to the courtroom, fitted with clear face shields and placed in the jury box, at which time the preliminary oath will be administered & jury selection will begin as provided by statutes & the Rules of the Supreme Court of Virginia. The same procedure will be implemented for any necessary additional veniremen.

It is extremely important for jurors (and potential jurors) to feel reasonably comfortable and safe. Toward that end, those summonsed will be required to wear PPE. Any potential juror who refuses to wear PPE is subject to being excused. Anyone who declines to wear PPE in the Courtroom is subject to being denied entry.

Once the jury is selected, those not chosen will be excused, and escorted in a socially distanced fashion to their cars.

vi. Selected Juror Accommodations and Precautions

The selected jury will depart in a socially distanced fashion to a cleaned, sanitized and distanced Jury Assembly Room or Jury Deliberation Room, at which time each will make a lunch selection. At the appropriate time, lunches provided by the County will be delivered to the courthouse and jurors will eat lunch in the Deliberation Room which has been socially distanced and marked accordingly. Adequate restroom facilities are provided. Deputies will ensure jurors are socially distanced when using the restroom and cleaning supplies will be placed in the restrooms. The custodial staff will clean the restrooms every two (2) hours.

Cleaning supplies will be provided for high touch areas, including but not limited to restrooms, jury deliberation rooms, counsel tables, courtroom podium and witness stand, and those using the areas will be invited, but not required, to clean the area after use (e.g. disinfectant wipes).

Jurors will be socially distanced each time jurors enter and exit the courtroom. At each adjournment, or resumption of the trial, the

courtroom deputy will direct the jurors to depart, or enter, in a socially distanced manner.

There will be mandatory breaks for the jury every two (2) hours to permit proper cleaning and handwashing.

Jury rooms, and courtrooms are cleaned and sanitized at the conclusion of the jury trial, or overnight, whichever first occurs. During scheduled breaks in the trial, the high touch areas of the courtroom will be cleaned by the custodial staff, or courtroom deputies.

vii. Unique Trial Issues

Illnesses of judges, court staff, jurors, parties or witnesses, will be handled as they have in the past; that is, continuances, mistrials, or agreement among counsel for the continuation of the trial with fewer jurors (civil juries only) are options for the court. The Virginia Criminal Benchbook for Judges and Lawyers and the Virginia Civil Benchbook for Judges and Lawyers serve as references for handling unforeseen events. Should the court become aware of someone testing positive, the Health Department will be contacted for advice and potential contact tracing.

viii. The Right to Access

Consistent with constitutional and decided case law, victims, the public and press have the right of access to voir dire and jury trials.

## Conclusion

The decision to resume jury trials on thirty days following written approval of the Plan is based upon a myriad of factors. Notwithstanding the Henrico School Board's decision to adopt total virtual learning for the first term of the school year, we are of the opinion that, with adequate notice, we may be able to seat jurors with school age children; thereby expanding the pool of jurors. We appreciate the guidance and support of OES and the Justices of the Supreme Court of Virginia as well as the unfailing support of Henrico County. Without question, we would not have been able to implement that which we have done to date, nor could we feel relatively comfortable in our beliefs that jury trials could resume in the absence of a vaccine. Those criminal defendants whose Speedy Trial timelines are most critical will be given preference on the docket, especially incarcerated defendants. We are aware that this may mean the forced

continuation of civil matters. Finally, the trifecta of protocols will be continually communicated: “wash your hands, wear a mask and practice social distancing”.

Thank you for your consideration of our plan, and we look forward to your response.



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JAMES S. YOFFY  
CHIEF JUDGE



**CORONAVIRUS (COVID-19) HEALTH  
SCREENING QUESTIONNAIRE  
“Self-Checker”**

1. Within 14 days of the trial date: have you had (or do you have):
  - a. Bluish lips or face?
  - b. Severe and constant pain or pressure in the chest?
  - c. Extreme difficulty breathing (such as gasping for air or being unable to talk without catching your breath)?
  - d. Severe and constant dizziness or lightheadedness?
  - e. New serious disorientation (acting/feeling confused)?
  - f. Unconsciousness or extreme difficulty waking up?
  - g. New or worsening slurred speech or difficulty speaking?
  - h. Seizures?
  - i. Signs of low blood pressure (too weak to stand, lightheadedness, feeling cold, or pale/clammy skin)?
  - j. Fever or chills?
  - k. Cough?
  - l. Shortness of breath or difficulty breathing (other than a pre-existing non-COVID diagnosis)?
  - m. Fatigue?
  - n. Muscle or body aches?
  - o. Headache?
  - p. New loss of taste or smell?
  - q. Sore throat?
  - r. Congestion or runny nose?
  - s. Nausea or vomiting?
  - t. Diarrhea?
2. Traveled Internationally?
3. Been asked to quarantine, isolate or self-monitor by any medical provider, health agency or hospital?
4. Been diagnosed with COVID-19, or had a positive COVID-19 test?
  - a. If yes, have you been symptom free with no fever, without fever-reducing medicine, for 72 hours; and
  - b. Has it been at least 10 days since the date your symptoms began or, if you were asymptomatic, 10 days since the date of your positive test?
5. Been in close contact with someone who has been diagnosed with COVID-19?

- If yes, were you wearing appropriate Personal Protective Equipment (PPE)?

**ATTACHMENT 1**

<DATE>

<Prospective Grand Juror>  
<Street Address>  
<City, VA zipcode>

Re: Grand Jury Service Monday, <Term Month Day, Year>

Dear <Prospective Grand Juror>:

Thank you for agreeing to serve as a Grand Juror for Monday, <Term Date, Month, Year>, beginning at 9:00 a.m. This letter will outline the conduct of the proceeding and hopefully answer many of your questions.

**COMMENCEMENT**

Pursuant to statute, you will shortly receive a summons for your appearance on <Term Date, Month, Year>, at 9:00 a.m. as a Grand Juror. A deputy sheriff will serve you at your residence.

Please arrive to the main courthouse by approximately 8:30 a.m. and proceed to the door marked Circuit Court. Kindly identify yourself to the deputies at the scanner and let them know you are serving as a Grand Juror. You will be asked a series of questions as recommended by the Center for Disease Control (CDC), and your temperature will be taken by handheld thermometer. Please bring any Personal Protective Equipment (PPE) you wish, as face coverings are required, with limited exceptions.

**GRAND JURY ASSEMBLY**

Please ascend to the second floor and proceed to the Jury Assembly Room at the end of the hall. A deputy will be posted to direct you. You will be checked in, equipped with PPE, and await the convening of Court. A lunch

selection form will be made available for your completion before Court convenes.

## **ATTACHMENT 2**

Prospective Grand Jurors  
Page Two

### **DELIBERATIONS**

At this time, we anticipate operating three grand juries of six people. The law requires a minimum of five(5) grand jurors per grand jury, so your attendance is extremely important in order to seat a valid grand jury. With that in mind, should anything change that would make it such that you should not or cannot attend, please contact our Court Administrator, Donna Sandefur at 501-4711 as soon as possible.

### **PRECAUTIONS**

Just prior to Grand Jury Day, please take the enclosed "Self-Checker" Questionnaire, and advise of any concerns. As stated, please feel free to bring whatever PPE you desire. We have also made arrangements to have N95 masks, gloves and sanitizer for each grand juror. The grand juries will be conducted in the Jury Assembly Room and/or other designated rooms to ensure social distancing. Each grand juror will be seated six feet apart. In addition, each witness who appears before the grand jury will be required to wear masks, and any other appropriate PPE.

### **IN COURT PROCEEDINGS**

You will likely be seated in the audience of the Courtroom, sworn, and instructed. Following this, you will be escorted to the Jury Assembly Room or other designated rooms to receive testimony/evidence, deliberate, and vote. Following the completion of your work, you will return to the Courtroom in the same fashion as when Court convened. Lunch will be served in the room in which you deliberate.

### **SUMMARY**

Again, thank you for serving in this very important judicial system function. The grand jury ensures that there is probable cause to believe that an offense has occurred before an indictment may issue. We very much appreciate your willingness to serve, especially during this extraordinary time. Should you have any questions whatsoever, please contact our Court Administrator, or our Court Management Specialist, David Kinkel, at 399-5665.

Very truly yours,

< Name of >  
Chief Judge

RSW,JR./dms  
Enclosure – Self-Checker” Questionnaire

<Date>

<Prospective Juror>  
<Street Address>  
<City, VA Zipcode>

Re: Jury Service

Dear Prospective Juror:

You have been selected to potentially serve as a Juror during the term of <Date of Term>. This letter will outline the conduct of the proceeding and hopefully answer many of your questions. Additionally, a video has been created to allow you to view the precautions we have undertaken. To watch the video log on to the Henrico County website (<https://henrico.us/ccjudges/>) and click on the Covid-19 Safety video.

### **COMMENCEMENT**

If selected as a potential juror, you will be contacted by the Jury Officer who will provide you with the date(s) and anticipated length of the trial.

Please arrive to the main courthouse by approximately 9:00 a.m. Parking will be in a designated area of the parking deck near the Court Building at 4309 Parham Road. A deputy will meet you at your vehicle and assist you. You will be asked a series of questions as recommended by the Center for Disease Control (CDC), and your temperature will be taken by handheld thermometer. You will be required to wear face covering, subject to limited exceptions. Please bring your Personal Protective Equipment (PPE) with you.

### **JURY ASSEMBLY**

From the parking deck you will be taken in a socially distanced manner to the Jury Assembly Room, or another designated area. A deputy will be

### **ATTACHMENT 3**

Prospective Juror  
Page Two

posted to direct you. You will be checked in, equipped with additional PPE, as necessary, and await the convening of Court. Social distancing will be practiced.

#### **JURY SELECTION**

As you know, more potential jurors are summonsed than actually serve. The initial jury pool will be selected and those potential jurors will be escorted to the courtroom. You will be placed in the jury box or at designated areas of the courtroom for the question and answer portion of the jury selection process known as voir dire. Clear plastic panels have been installed between the jury seats when the necessary social distancing cannot be otherwise accomplished. Those jurors that are not selected will be returned to the assembly area to collect their belongings and discharged. The jury deliberation room will thereafter be disinfected. The jury selected will then return to that room or other designated jury rooms during breaks in the trial. The jury room will be cleaned and disinfected after the jury is discharged for the day.

The above procedures will be repeated each day for multiple day jury trials.

#### **PRECAUTIONS & ACCOMODATIONS**

Just prior to the day you are called to serve as a juror, please take the enclosed "Self-Checker" Questionnaire and advise of any concerns. As stated, please feel free to bring whatever PPE you desire. We have also made arrangements to have plastic face shields, gloves and sanitizer for each juror. Each juror will be socially distanced. If selected, you will be given a lunch menu from which to choose. Lunch is provided.

#### **IN COURT PROCEEDINGS**

If chosen to serve, you will be seated in the jury box wearing a face shield. The attorneys, parties, witnesses and court personnel may be wearing face covering, or plastic face shields and perhaps gloves, etc. There may also be the clear plastic panels (mentioned above) between the chairs in the jury box. You will be asked to wear face covering and/or plastic face shields throughout the trial. Please understand that this is only for protection, and the Court may instruct you further on this issue. Please let us know whether this will cause you to be unable or unwilling to serve.

#### **SUMMARY**

Again, thank you for serving in this very important judicial system function. Jury trials are the bedrock of our judicial system and each party is entitled to a fair and impartial jury. We very much appreciate your willingness  
Prospective Juror  
Page Three

to serve, especially during this extraordinary time. Should you be unwilling or unable to serve, or have any questions whatsoever, please contact the Jury Officer at (804)501-4812 or [ben@henrico.us](mailto:ben@henrico.us).

Very truly yours,

James S. Yoffy  
Chief Judge