

## PLAN FOR JURY TRIALS IN THE PORTSMOUTH CIRCUIT COURT

### I. COURTHOUSE CLEANING & SAFE CONDUCT PROCEDURES

- a. Any individual entering the Portsmouth Circuit Court is required to have a facemask. Additionally, temperatures are taken by security before anyone is allowed to enter. If an individual presents with an elevated temperature, he or she is refused entry into the courthouse. As recommended by the CDC, an elevated temperature is 100.4 degrees or above. If the individual is a litigant or witness, their name and telephone number is taken and given to the appropriate courtroom clerk. Further, security asks the questions on the Health Safety Questionnaire (a copy is attached) before anyone is allowed entry. Auto-dispensing hand sanitizers (a photo is attached) are available at each entrance (there are two entrances to the courthouse). Facemasks are required to be worn at all times while in the building except as set forth below. If an individual comes to the courthouse without a facemask, security will provide one. Auto-dispensing hand sanitizers will be placed at the entrance to each courtroom, in the jury assembly room, and in the two jury deliberation rooms (the units have been received and are being installed).
  - i. People responding "yes" to the screening questions or who have an elevated temperature will be denied entry. If the person responding "yes" is a necessary party or witness, the court will make accommodations through Polycom, WebEx, or continuances without allowing the person into the courtroom.
- b. After conversations with the city's manager for properties management, all disposable air filters in the HVAC system have been upgraded to "HEPA 13." The Court was advised this was the highest grade of filter the city could obtain. These filters are to be changed every 3-4 months. At present, "air flow" is at 15%. According to the HVAC contractor, an increase above this level could result in mold growth, a problem the Court has dealt with previously.
- c. At present, all common areas in the courthouse (including stair rails, common surfaces, doorknobs, etc.) are wiped down daily with an appropriate disinfectant. This will increase to two times per day when jury trials resume (the city's manager for properties management stated the disinfectants to be used are approved by the CDC and last 24 hours [a photo of the disinfectants is attached]). Signs are posted throughout the courthouse, including at the elevators, pertaining to masks, social distancing and hand washing. The public restrooms will be cleaned at least twice per day. Two deputies are assigned to patrol the halls to ensure compliance.

### II. CONDUCT OF JURY TRIALS

- a. The Portsmouth Circuit Court has five (5) courtrooms available. However, only two of the courtrooms are suitable for a jury trial while maintaining the appropriate social

distancing. Courtrooms 1 and 4, under normal circumstances, seat 143 people. This number is reduced to 27 when social distancing is introduced. Jurors will be seated in the jury box with Plexiglass partitions between each seat. (The Plexiglass has been ordered and is to be installed in the next few weeks. No jury trial will take place until installation is complete).

- b. Prospective jurors who are high-risk individuals or who have concerns should contact Lili Meiring, Jury Coordinator, at 757-393-8671, extension 5207. High-risk individuals are those with a chronic condition that puts them at higher risk for COVID-19 (such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, liver disease, chronic kidney disease, heart conditions, etc.), those who are over the age of 65, those who care for or live with someone at higher risk, and those who interact with high-risk people for work or work in a long-term care facility or other healthcare environment. The public or people who are sole caretakers, have childcare issues, or other concerns can also use this contact information.
- c. Jury selection will take place using smaller groups drawn from the larger venire. The smaller groups will be directed to appear at the courthouse at staggered times (e.g. 9:00 a.m., 10:30 a.m., 1:00 p.m.) The smaller groups will consist of no more than 25 potential jurors (14 in the jury box and 10 in the gallery with appropriate social distancing). Each of the smaller groups will be directed to the jury assembly room upon their arrival to the courthouse, entering through one of the two main entrances (the jury assembly room is large enough to maintain social distancing). There would be no contact with the public from that point forward during court hours. The group will then be brought into the courtroom and voir dire will proceed. Only strikes for cause will be entertained during this phase. Historically, juror attendance has not been an issue.
- d. Once the Court has a jury pool of 24, no further jurors shall be brought before the Court for voir dire.<sup>1</sup> Those jurors selected as part of the 24 will be given further instructions as to when to return to begin the trial. The final jury selection (preemptory strikes) will be made at that time.
- e. The jury summons will direct the potential juror to the clerk's website ([www.portsmouthva.gov](http://www.portsmouthva.gov)) for a detailed explanation of the safety measures and a copy of the Health Safety Questionnaire. Hand sanitizers (individual bottles) will be given to each juror. Face shields (in addition to masks) will be available for each juror should the juror wish to wear one. The courtroom will be cleaned with a suitable disinfectant several times each day. The witness stand will be cleaned after each witness. Each juror will be questioned by the Court as to any possible exposure to COVID-19 health risks, or other reasons why they should be excused from jury service. Initially, only one jury will be heard at a time. The Sheriff has purchased an antibacterial air purifier which will be used each evening to sanitize the courtroom (a photo of the air purifier is attached).

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<sup>1</sup> The Court's intention is to have two alternates given the current situation. Further, given the lengthy selection process for the jurors, it is anticipated that all jury trials will take a minimum of two (2) days to complete.

- f. The Court's general policy has always been to break whenever a juror raises their hand and requests one. This will continue. The Court will also take breaks approximately every one to one and a half hours for jurors to wash their hands, etc.
- g. Jurors will be provided with gloves (proper use will be demonstrated by the courtroom deputy) when an exhibit is introduced and asked to be published to the jury. Counsel will be encouraged to use the "overhead projector" for exhibits. The jury box contains four screens for viewing exhibits (documents, photographs, and other "paper" exhibits) as well as a large screen monitor mounted in the courtroom. Also, an exhibit table will be placed six feet from the jury box for exhibits. Hand sanitizer will be placed on the table as well. The courtroom clerk will maintain control of the exhibits. Each juror will be given gloves for use in deliberations and handling jury instructions (again, hand sanitizer is available).

### III. TRIAL SAFETY PROCEDURES

- a. All witnesses will be separated and instructed to maintain the appropriate social distance. The jury will remain in the courtroom in their designated area at all times except for the aforementioned breaks and as follows. Two jury deliberation rooms will be used during the trial at times when the jury must be excused from the courtroom. The jury deliberation rooms are not large enough to accommodate 14 jurors maintaining social distance. However, seven jurors can sit in each of the jury deliberation rooms maintaining social distance. Each of these rooms has two bathrooms. Hand sanitizer is available in each room. At each break, the custodial staff or the bailiff will sanitize "high touch" areas in the courtroom.
- b. The jury will deliberate in the jury assembly room where they can maintain social distancing. Restrooms are available in the jury assembly room. Vending machines are also available.
- c. The Court will break for lunch and jurors can leave the building for lunch at nearby facilities. If a juror brings their lunch, the juror will be allowed to eat in the jury assembly room. The Court will adjourn between 4:30 and 5:00 each day so dinner will not be an issue. The jurors will be advised to follow CDC and Virginia Department of Health guidelines during their service and before they are excused each evening. Upon returning the next day, the jurors will follow the same health screening protocol as set forth for their initial entry into the courthouse.
- d. There will be seats available for the public during voir dire. The Court must maintain a suitable distance to separate the public from the jurors. Once the jury is selected, there will be additional seats available for the public. The Court will preserve and ensure the right to a public trial.

- e. All persons, including witnesses, must wear face coverings. The witness stand, however, is sufficiently distanced from any other person in the courtroom to allow the witness to take the face covering down and testify with face exposed. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to recover his or her face covering before allowing the approach. If face coverings impair the ability of a lawyer to communicate with the witness or with the Court, the Court may grant the attorney permission to remove his or her face covering as necessary, ensuring that the attorney remains physically distant from other persons in the courtroom. A criminal defendant may be asked to remove his face covering during voir dire to ensure that prospective jurors can see him and indicate whether any know him or recognize him. He may also be asked to lower his face covering briefly for the purpose of enabling a witness to see his face and answer whether the witness can identify the defendant. Jurors will wear face coverings at all times, but the Court expects to permit individual jurors to lower the cover briefly if requested by counsel, while ensuring a proper social distancing of at least 10 feet from all other persons. If a mask must be removed for any reason (voir dire, identification, etc.), the distance between the unmasked person and all others should be more than 10 feet, as recommended by the Virginia Department of Health.
- i. If face coverings impair the ability of a lawyer and his client to communicate at counsel table (and alternate methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.
  - ii. Sidebars may be conducted at the bench, with a plexiglass shield separating the judge from the lawyers, or alternatively in the jury deliberation room immediately behind the courtroom.
- f. If during a trial, a person involved in the trial or a person in the courthouse develops symptoms of COVID-19 or tests positive for COVID-19, the Court will contact the local health department and seek guidance. The Court will be guided by the local health department recommendations including any disinfection protocols. If any participant in the trial develops symptoms during the trial, that person will leave the courtroom and be isolated until they can leave the courthouse. The Court will ask the individual to secure a COVID-19 test and notify the Court of the results. If the results are positive, the Court will notify within 24 hours all participants in the trial that may have been exposed consistent with the requirements of the Virginia Department of Labor and Industry's Emergency Temporary Standard for COVID-19, which is incorporated by reference. Notification will be by text, email and/or telephone until notice is able to be given. All notified persons will be advised to contact their healthcare provider for further instructions. Whether the trial can continue or a mistrial declared will be determined by the Court based upon safety consideration of several factors including the availability of rapid-return test results, the use of alternates, the stage of the trial,

the length of the delay and the continued availability of witnesses, jurors and litigants. The Court will consult with the local health department about measures regarding how and whether the trial can safely proceed when one or more participants have developed symptoms. All cleaning protocols required by the Va. Dept. of Health and established in the Emergency Temporary Standard will be followed in the event an infection develops during the trial.

- g. Prospective jurors who are high-risk individuals or who have concerns can contact Lili Meiring, jury coordinator, at 757-393-8671, extension 5207. High-risk individuals are those with a chronic condition that puts them at higher risk for COVID-19 (such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, liver disease, chronic kidney disease, heart conditions, etc.), those who are over the age of 65, those who care for or live with someone at higher risk, and those who interact with high-risk people for work or work in a long-term care facility or other healthcare environment. The public or people who are sole caretakers, have childcare issues, or other concerns can also use this contact information. The jury coordinator can speak with the assigned judge or the duty judge concerning the potential juror. Depending on the reason, a juror can request serving in a different month. Approximately 14 % of the population in Portsmouth is age 65 or over. It is anticipated that larger jury pools will be required (previously, juror attendance has not been an issue). It is expected that 40-45 potential jurors will be summoned. At present, the Court is unable to project the number of potential jurors who will request to be excused, deferred or simply not show. The court will make a decision on issuing show causes for failures to appear depending on the reason given to the jury coordinator.
- h. With the jury seated in the gallery, sufficient distance will be maintained for all participants. Attached is a sketch showing the location and approximate distances of the courtroom layout (the sketch is not drawn to scale).
- i. In preparing this plan, the following stakeholders were consulted: the Building Maintenance Specialist, the manager for Properties Management, representatives from the Commonwealth's Attorneys' office and from the Public Defenders' office, the Clerk of Court, representatives from the Sheriff's Department (Courtroom Security), the City Manager, the Chief Information Officer (Department of Information Technology for the city), various courtroom clerks, a representative from the VADA and from the VTLA, the jury coordinator and the law clerk. Discussions also took place with other chief judges. Additionally, 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.

## Health Safety Questionnaire

Instructions: Circle YES or NO

1. In the past 14 days, have you traveled internationally?

**YES NO**

2. Are you currently experiencing, or have you experienced in the past 14 days, a fever, cough, or shortness of breath?

**YES NO**

3. Are you now experiencing or have you in the last two weeks experienced any of the following symptoms:

- Fever or chills
- Dry cough
- Unusual fatigue or tiredness
- Muscle or body aches
- Headache
- Sore throat
- Diarrhea
- Nausea or vomiting
- New loss of taste or smell
- Congestion or runny nose
- Chest pain or pressure
- Difficulty breathing or shortness of breath (other than a pre-existing non-COVID

**YES NO**

4. In the past 14 days, have you been in close proximity to anyone who was experiencing any of the above listed symptoms?

**YES NO**

5. In the past 14 days, have you been directed to quarantine, isolate, or self-monitor?

**YES NO**

6. In the past 14 days, have you been diagnosed with, or had contact with anyone who has been diagnosed with COVID-19 or resided with someone in the above categories?

**YES NO**

7. Have you been tested for COVID-19 and are waiting to receive test results?

**YES NO**



