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December 11, 2020

The Honorable Michael R. Doucette, Judge
Nelson County Circuit Court
P. O. Box 10
84 Courthouse Square, 1st Floor
Lovingston, VA 22949-0010

Dear Judge Doucette:

A panel of three Justices in consultation with the Office of the Executive Secretary has approved your plan for the resumption of jury trials in the Nelson County Circuit Court. You may begin jury trials effective today, provided the jury trial is consistent with and in reasonable conformity with the plan. This approval is subject to a change in circumstances including failure to carry out the plan you have submitted.

The Supreme Court is aware that communities in Virginia are different and more importantly, courthouses are different. As we have reviewed proposed plans, our concerns were that major issues have been addressed and that users of the courthouse have knowledge of what is expected of them. An undertaking of this magnitude is likely to require changes to the plan as participants discover that some practices do not work well and need further consideration. Of course, the plans cannot be subject to significant changes every time there is a jury trial. Furthermore, the plan cannot recite the solution to every problem that may arise. We are now learning that "strict conformity" with the plan should not be expected in all of the details.

We also know that the plans will need to have some room for adjustments as we learn about how certain aspects of the plans work or don't work. This letter is not an Order. The various emergency orders forbidding jury trials until a plan is submitted to and approved by the Supreme Court are clearly orders. As we have learned, from time to time there will be deviations from strict conformity to the plan. If and when this is so, it is the presiding judge who must make the decision. If the deviation is substantial and is likely to reoccur, the locality may need to resubmit a plan for approval.

The Honorable Michael R. Doucette, Judge
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The presiding judge must and does have the authority to make decisions that must be made to effectuate a trial. Should there be changes made to the plan that have long term significance, the plan should be modified and resubmitted.

Sincerely,



Donald W. Lemons

cc: The Honorable Michael T. Garrett, Chief Judge

NELSON COUNTY CIRCUIT COURT JURY TRIAL PREPAREDNESS PLAN

This jury trial preparedness plan has been developed by Michael R. Doucette, Judge, the Nelson County Circuit Court’s presiding judge, in consultation with: the judges of the 24th Judicial Circuit; Lisa Bryant, Clerk of the Nelson County Circuit Court; Sheriff David Hill and Major Larry Cindrick of the Nelson County Sheriff’s Office; Daniel Rutherford (CA) and Eric Laub (Chief Deputy), of the Commonwealth’s Attorney’s Office for Nelson County; members of the Nelson County Bar; Steve Carter, Nelson County Administrator; Paul Truslow, Public Works Supervisor for Nelson County (Building Maintenance); Dr. Denise Bonds MD, MPH, District Health Director, Virginia Department of Health, Thomas Jefferson Health District; and the courthouse’s third-party HVAC service provider, G. J. Hopkins, Inc.

This plan incorporates and shall comply with the following authorities:

Supreme Court of Virginia Orders of Judicial Emergency in Response to COVID-19 Emergency:
<http://www.courts.state.va.us/news/items/covid/scvemergencyorders.pdf>

Virginia Governor Ralph S. Northam’s Executive Orders: <http://www.virginia.gov/coronavirus/>

16 VAC 25-220 EMERGENCY TEMPORARY STANDARD – Infectious Disease Prevention:
SARS-CoV-2 Virus that Causes COVID-19

Guidance Document for Judges and Clerks Re: Standard Adopted by the Safety and Health Codes Board of Labor and Industry

Online Guidance of the Virginia Department of Health:
<https://www.vdh.virginia.gov/coronavirus/>

Online Guidance of the Centers for Disease Control and Prevention:
<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

Centers for Disease Control and Prevention (CDC) Definition for “close contact.”
<https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#contact>

Guidance and Considerations for the Resumption of Jury Trials Memorandum

http://oesinet.courts.state.va.us/courtadmin/emergency_prep/covid19/2020_0629_guidance_resuming_jury_trials.pdf

DOLI Guidance Document of Judges and Clerks

http://oesinet.courts.state.va.us/courtadmin/emergency_prep/covid19/2020_0729_guidance_doli.pdf

COVID-19 Reporting and Return to Work Policy

http://oesinet.courts.state.va.us/courtadmin/emergency_prep/covid19/2020_0804_reporting_return_policy.pdf

What to Do if an Employee Tests Positive

http://oesinet/courtadmin/emergency_prep/covid19/2020_0407_employee_tests_positive_procedure.pdf

Pandemic Flu Leave Policy FAQs

http://oesinet/courtadmin/emergency_prep/covid19/2020_0330_hr_faqs_pandemic_flu_leave.pdf

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I. General Requirements Before Resumption of Jury Trials

The following have been considered in developing the Nelson County Circuit Court's plan to resume jury trials:

(1) The health, safety and comfort of all participants in a jury trial, including the jurors, litigants, witnesses, attorneys, bailiffs, clerks, judges, and other Court employees as well as other members of the public accessing the courthouse. This will be accomplished through prescreening, use of personal protective equipment (PPE), proper social distancing, cleaning and disinfecting surfaces, and maintaining air quality;

(2) The constitutional and statutory rights of the parties, including but not limited to the right to a jury trial, the right to a speedy trial, the right to a public trial, the right to confrontation, and the rights of crime victims;

(3) The parties' opportunity to fairly and fully litigate the case in as normal a fashion as possible; and

(4) The comfort of jurors and other participants as to the Court's health and safety measures and any necessary modifications so that the jurors are not distracted and can fully focus their attention on the case.

The costs and budgetary effects of the acquisition of masks, gloves, sanitizers, and additional cleaning products. Sufficient supplies have been and can be obtained by the Nelson County Administration and the Nelson County Sheriff's Office using CARES funding and will not impact local budgets.

II. General Information and Protocols

A. The Courthouse

The Nelson County Circuit Court is located in Lovingston, Virginia at 84 Courthouse Square. The courthouse was originally built in 1809 and the first court was held on February 26, 1810. During the first several decades, the courthouse also served as a church. Court has been held here continuously since 1810 with the exception of short periods of repair, additions and renovations, mainly in 1940 and 2017.¹

¹ Nelson County Chamber of Commerce Business Directory, 2018-19, page 8.

The Circuit Courtroom is unusual in its design with the jury sitting below and in front of the judge facing the witness stand, the attorneys' tables and the spectators' gallery. The spectators' gallery is quite small, consisting of only five benches separated by a center aisle. While there is a spectators' balcony, the public is not permitted there for safety reasons. Therefore, due to its historical significance, small size, and tight quarters, the Circuit Courtroom is not adaptable to jury trials in the time of COVID-19. **Exhibit C.** As discussed below, the plan will be to hold jury trials in the more modern and spacious general district courtroom.

The entire building houses not only all three branches of trial courts but also the Commonwealth's Attorney's Office, the Sheriff's Office, and many of the County Administration offices. The newer part of the building (where the general district courtroom is located) consists of multiple levels. Access to these levels is gained by using wide ramps or staircases. There is one elevator in the building that is accessible to the public. That elevator will be marked by a sign saying that it is only for use by a handicapped person and that person's aide. **Exhibit D.**

There is one public entrance into the courthouse building. This entrance is easily accessible from the public parking lot and is handicapped accessible.² This entrance is equipped with a security station at which deputies with the Nelson County Sheriff's Office are stationed. **Exhibit E.** There are signs at the entrance and throughout the courthouse alerting entrants that: 1) masks are required upon entry to the courthouse; 2) social distancing must be maintained; 3) to immediately notify a bailiff if they begin to feel ill. Sheriff's deputies have been instructed to question all entrants regarding potential exposure to COVID. These questions mirror the COVID screening questionnaire included as **Exhibit A.** Failure to answer these questions or providing an answer that confirms a risk of exposure, results in entrance to the courthouse being denied. Further, anyone scanned by a deputy that shows a temperature of 100.4 or higher is denied entry to the courthouse. Signs at the entrance doors communicate these policies to the public.

Any person who is refused entry into the building by reason of a COVID-related risk will receive written instructions about how to contact the Court or the office with which he or she had business to inform the Court or office of the situation. If a necessary party or witness is denied

² Very occasionally, persons in wheelchairs will complain that the ramp to the public entrance is too steep. There is a second private entry to the building that is next to the handicapped parking spots. **Exhibit E.** Once through the door, one would be in a remote hallway in the Sheriff's Office. A handicapped person can gain entry by ringing a buzzer and being admitted by a sheriff's deputy. Once admitted, such persons will be screened in the same fashions as someone coming through the public entrance. However, this door will not be marked with outside signs to encourage entry through the main entrance.

entry, Polycom or WebEx will be used to allow them to attend remotely. This is discussed below in the sections relevant to evidence and witnesses.

Masks or face coverings are required for anyone entering the courthouse. Masks must be worn at all times in the courthouse unless specifically excused by a judge in accordance with the specific policies contained herein. When such permission is given, the person removing his or her mask will be asked to move more than 10 feet away from others before removing the mask in order to comply with proper distancing. If someone does not have a mask or face covering, one is provided to them at the courthouse entrance. Jurors who are unable to wear masks for medical reasons, or who refuse to do so, will be dismissed or deferred, depending on their specific medical issue.

There are strategically placed sanitization stations around the courthouse building that provide access to hand sanitizer. **Exhibit K.** In addition, replacement masks are available to all courthouse visitors and trial participants upon request to a bailiff. Jurors and all participants in a jury trial will always have access to restrooms in the courthouse where they can safely wash their hands. Jurors will have private restrooms that only they have access to as discussed herein. Jurors will be permitted to bring a small individual bottle of hand sanitizer and keep it on their person throughout the trial as well.

The courthouse entrance and corridors have floor markings at least 6 feet apart to ensure proper social distancing. **Exhibit I.** In addition, sheriff's deputies will direct, oversee, and monitor the flow of traffic in the corridors to ensure proper distancing.

Seating outside the courtroom in the courthouse corridor is spaced to ensure social distancing of at least 6 feet can be maintained. **Exhibit J.**

Signage are located in the courthouse lobby and in each of the two corridors reminding visitors of the requirement to wear masks and the need to observe physical distancing. **Exhibit H.**

B. The Courthouse's HVAC System

The entire courthouse building's HVAC system is served by twenty-seven air handlers. All conditioned air is pulled through pleated MERV 8 filters, which are replaced every nine days per a service plan with the Court's third-party HVAC service provider, G. J. Hopkins, Inc. The County is investigating the practicability of installing UV lights in the air handlers for additional filtration.

C. Courthouse Cleaning Protocols

Public areas in the courthouse, including common areas, restrooms, courtrooms, witness rooms, and jury rooms, are cleaned regularly throughout the day and every evening. Courtroom bailiffs or the Court Administrative Assistant will clean the witness stand, including the microphone, with disinfectant between each witness. Additional cleaning staff will be available for all jury trials, with instructions to clean all high-touch surfaces at least every two hours. The courtroom, witness rooms, restrooms, common areas, and jury room will be cleaned in the morning, during the lunch break, and in the evening. After the evening cleaning, the courtroom will be sealed until the following morning. Mid-trial cleaning procedures are further discussed in the “Recess and Meal Breaks” section below. Each courtroom is equipped with cleaning sprays, sanitizing wipes, masks, and gloves.

D. Jury Lists and Summonses

In appropriate civil cases, and in an effort to lessen the length and the number of jurors required for trial, the court may discuss the availability of three-person jury trials as contemplated by Va. Code § 8.01-359(D) and summary jury trials as contemplated by Va. Code § 8.01-576.2.

Currently, the Court sends out approximately 50 summonses a term.³ For various reasons, that total is pared down through individual excuses to a pool of approximately 40 potential jurors. This is a yield of approximately 80%. This yield is anticipated to decrease under post-COVID conditions to approximately 50%. It is anticipated that the number of summonses sent to potential jurors will increase to prevent the jury pool from being too small. Only one jury trial will be conducted at a time in order to mitigate the effect of the lower juror yield and to ensure that proper social distancing of at least 6 feet and cleaning is practicable. All jury trials will commence on Mondays.

The summonses will include information as to the steps the Court has taken to mitigate the risk to the public, litigants, and employees, including but not limited to the requirement to wear masks and to maintain proper social distancing of at least 6 feet. The summonses will recommend that jurors “self-screen” by completing and responding to an additional screening questionnaire, consistent with the “COVID-19 Screening Questionnaire” and “COVID-19 Risk Factors Assessment,” attached as **Exhibit A** and **Exhibit B**, respectively. Finally, a URL to this plan will

³ Because Nelson County has a small population and caseload, the average is one jury trial per term. If there are multiple jury trials in a term, additional summonses are sent out. At this time, we are not anticipating a great increase in jury trial numbers.

be included. Excuses will be liberally granted to jurors, and jurors may defer service to a later date if they are in a high-risk category or take care of someone who is in a high-risk category.

Approximately one day prior to trial, each juror will be contacted by phone by Sheriff's Office personnel to notify them of their appearance and to follow-up on the COVID-19 Screening Questionnaire" and "Risk Factors Assessment." Sheriff's Office personnel will direct any juror who answered "yes" to any question on either, or who expresses concern with jury service, to call the Clerk's Office. The Sheriff's Office personnel will report all screening results to the Clerk. The Clerk will instruct any juror whose answers indicate a current health risk not to report. Those jurors will be replaced by the next juror to be summonsed.

E. Pretrial Conferences

A mandatory pretrial conference will be held by telephone or video conferencing the Friday prior to each scheduled jury trial. At a minimum, the Court will address this jury plan, courtroom protocols, the use of alternate jurors, the screening and scheduling of witnesses, and the handling of exhibits and jury instructions. In addition, the Court will ask if there are any last-minute pretrial motions that need to be raised.

Counsel are expected to have conferred prior to this conference to discuss stipulations, agreed exhibits, and any outstanding pretrial issues. Counsel are also expected to have screened their clients and witnesses using questions that mirror the COVID-19 Screening Questionnaire and the COVID-19 Risk Factors Assessment. All parties will be required to certify at the pretrial conference that the case is ready for trial, that all sides have made every good faith effort to resolve the case, that they have considered alternatives to a jury trial, that they have screened their clients and witnesses, and that they have read this plan. This will mitigate the risk of a last-minute settlement or continuance and forestall the need to bring in a group of potential jurors only to have the case not move forward.

III. Trials

A. Trial Scheduling

Due to space limitations, and in order to minimize interactions between prospective jurors, jury trials will each be allotted at least 2 days to permit adequate time to conduct proper *voir dire* with multiple panels of 8 potential jurors in order to comply with social distancing.⁴

The Court shall hear a maximum of 1 jury trial per week. All jury trials shall begin with jury selection on Mondays. The old Nelson Supervisors' Board Room shall be used, as needed, as a holding area for the panels summonsed. **Exhibit F.** Should the trial run over to Wednesday, the Nelson County General District Court⁵ shall hold proceedings in the circuit courtroom.

No jury trial will begin until any other jury is concluded and jurors, counsel, etc. have left the courthouse. A thorough cleaning of all relevant areas, including the courtroom, witness rooms, all high touch areas, the jury room, and juror bathrooms will be completed before any additional jury trial.

B. Jury Arrival/Assembly/Departure

The first panel of 8 shall be summoned for 8:30 a.m. and after entrance shall report directly to the General District Courtroom conference/witness rooms where they shall be seated in pre-marked chairs apart. The conference room can hold 4 socially distanced people and the two witness rooms can hold 2 socially distanced people, in seats that are pre-marked and placed 6 feet apart. **Exhibit M.** The second and third panels (if necessary) shall report at 9:30 and 11 a.m. respectively. If the preceding panel is still in the courtroom, the subsequent panel shall be convened in the old Nelson Supervisors' Board Room until the preceding panel is done and seated in pre-marked seats that are 6 feet apart.⁶

The first panel of jurors shall arrive at the courthouse by 8:30 a.m. in order to ensure compliance with all precautionary measures and to segregate prospective jurors from members of the general population. The bailiffs at the door will identify those members of the jury panel and give them priority screening through the metal detector.

⁴ When the term "social distancing" is used in this plan, it means a distance of 6 feet or more.

⁵ The Nelson County General District Court convenes only on Wednesdays.

⁶ Before each panel begins the *voir dire* process, a deputy circuit court clerk will collect the driver's licenses or some other suitable form of identification from each venireman for the purposes of documenting their attendance and to see that they are sent their jury service remuneration. At the end of the *voir dire* process, the deputy clerk will return the identification cards.

When prospective jurors arrive at the courthouse, they will be asked a series of questions that mirror the screening questionnaire (**Exhibit A**) to determine if they or someone they have come in close contact with has been exposed to the COVID-19 virus. Their temperature will also be taken at this time. As with all courthouse visitors, entry shall be denied to any prospective juror with a temperature exceeding 100.4 degrees. As discussed above, masks will be required, and they will be provided for those who do not have one. Refusal or inability to wear a mask will result in dismissal or deferment, as is appropriate under the circumstances.

Upon excusal from the trial or upon excusal for the day, jurors will be directed by Sheriff's deputies to depart the courtroom through the main courtroom doors and down the corridor to the main entrance. Sheriff's deputies will clear all non-jurors from the hallway before the jurors enter the corridor. They will be directed to exit the courthouse through the main entrance. In the event that there is congestion outside the entrance, Sheriff's deputies will ask those members of the public to briefly step back. At all times, the Sheriff's deputies will monitor the jurors as they exit to ensure that they maintain proper social distancing of at least 6 feet.

C. Voir Dire

During *voir dire*, to comply with proper social distancing guidelines, no more than 8 veniremen shall be present in the courtroom. Each venireman will be assigned a seating number.

The *voir dire* process itself will take place in the normal fashion, but with the potential jurors located in the courtroom in the seat that corresponds with their assigned number. All courtroom gallery seats are marked at 6-foot intervals to ensure social distancing. **Exhibit G.**

Because of limited available space in the building, for those members of each panel who are not struck for cause, they will be excused for the day with instructions to report the next day (Tuesday) by 8:45 a.m. Should a pre-peremptory strike panel be completed before the end of the workday, the parties will be excused until the next day at 9:00 a.m. Should a pre-peremptory strike panel not be completed before the end of the workday, the previous excused veniremen will be contacted by phone and notified of a new time to report.

To balance judicial efficiency with the need for precautionary measures, the court will select at least one alternate juror for every trial or have counsel stipulate, in civil trials, that if a juror must later be excused for reasons not related to COVID-19, the trial will continue with one less juror.

In felony jury trials, after obtaining a panel of 23 jurors who have not been struck for cause, each side will exercise 5 peremptory strikes. In accordance with the Code of Virginia, one alternate juror will be selected by lot but will not be advised of his status as the alternate juror until the conclusion of the closing arguments and the final submission of the case. A similar process will be followed in civil (VA Code § 8.01-359) or misdemeanor (VA Code § 19.2-262) jury trials. If a case is likely to be unusually lengthy, additional alternate jurors will be selected. (VA Code § 8.01-360).

This method of conducting *voir dire* will allow the Court to ensure that the process remains open to the public. Free spaces in the gallery will be made available to the public. If necessary, the proceeding will also be streamed to the other courtroom in order to allow for additional members of the public to attend. Public access is discussed in greater detail herein.

D. Trial

Counsel tables in the courtrooms will remain in their current positions as depicted in **Exhibit G**. Counsel for the defendant will be seated at one end of the table, and counsel for the Commonwealth/plaintiff will be seated at the other end, at least 10 feet from each other. Clients and any co-counsel will be seated in chairs located at least 6 feet from counsel table. The court will require counsel to maintain social distancing with co-counsel and his or her client at all times. Counsel and his or her client will be permitted to communicate at counsel table and/or employ alternate methods of communication. The Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication.

Once the trial begins, the Court will direct that all attorneys and witnesses restrict their movement in the courtroom to maintain social distancing at all times. Absent express permission from the judge, attorneys will not be permitted to approach witnesses, opposing counsel, the jurors, or the judge. However, given the unique set-up of the general district courtroom for jury trials, counsel will question the witness from a stationary lectern so the witness will be facing both the questioner and the jury. This way, the jury will be able to see the witness's face/demeanor.

While a person is testifying, that socially distanced (at least 10 feet from anyone else) witness will remove his or her facemask so the jury can see the witness' face. 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 at a proper social distance of 10 feet from other persons.

Brief sidebars, arraignments, motions, arguments as to objections, and other matters to be taken up outside of the presence of the jury will be conducted in the judge's chambers in order to ensure that social distancing is maintained.⁷ The judge's chamber is sufficiently large enough to ensure proper social distancing of at least 6 feet by the judge, the attorneys and the court reporter. After each sidebar or other matter held in chambers, and every morning and evening, the judge's desk, chairs, and high-touch areas in chambers will be cleaned. The court reporter will be present for all sidebars, arraignments, motions, arguments as to objections, and other matters to be taken up outside of the presence of the jury.

Longer motions and arguments to be taken up outside the presence of the jury will be conducted in the courtroom. During such breaks, the jury shall use the Old Supervisors' Board Room as the jury break room. Jurors will sit in pre-marked seats 6 feet apart. All other persons shall clear the intervening hallways leaving only the jurors, so as to avoid jurors coming in close contact with the public during movement. At a minimum, every two hours the jury will have a long break to use the restroom and wash their hands. Unfortunately, however, there are no restrooms in the Old Supervisors' Board Room. During such a break, all jurors shall be given access to the individual restrooms in the original jury room⁸ and, if necessary, other restrooms restricted from use by the general public. Bailiffs will accompany any jurors needing the restrooms down the corridor and wait outside until they are done. Bailiffs will insure proper social distancing.

E. Evidence/Exhibits

During the trial, jurors will not be permitted to physically handle any exhibits. All documentary and photographic exhibits published to the jury during trial will be done so by electronic means (ELMO). Before any document is admitted into evidence, counsel will show the document, the photograph or the physical object to the witness, opposing counsel, and the judge. After an exhibit is admitted, the large screen behind the judge will be turned on so that it may be published to the jury.⁹

As to any exhibit that cannot be displayed via courtroom technology, a bailiff, wearing a mask and gloves, will approach to within 6 feet of the witness with the exhibit and maintain possession of the exhibit while giving the witness the opportunity to observe it. After the exhibit

⁷ The Old Supervisors Room, which will be used as the jury room to allow social distancing, is too distant by corridor to allow the jury panel to retire there for short interruptions.

⁸ The original jury room is too small to allow 12-13 people to social distance. **Exhibit L.**

⁹ Trial notebooks may only be used in the courtroom in limited circumstances if pre-trial permission is granted by the Court. The Court will require that all documents in any such notebooks are in plastic sleeves that have been sanitized.

is admitted, the bailiff will display the exhibit to the jury before placing the item on a table located in full view of all the jurors.

All potential exhibits are to be pre-marked by counsel. Plaintiffs/the Commonwealth will use numbers; defendants will use letters.¹⁰ As to the admission of exhibits, counsel may provide all the pre-labeled exhibits to the Court at the trial's commencement, or individual exhibits may be given to a bailiff, who will approach the bench wearing a facemask. For cases with numerous exhibits, pre-labeled exhibits provided to the Court at the commencement of trial are preferable but are not required.

F. Jury Deliberations

In order to comply with proper social distancing guidelines, the jury panel shall deliberate in Old Supervisors' Board Room. **Exhibit F.** Bailiffs shall monitor entry to the Old Supervisors' Board Room and direct any juror to a secured private restroom as necessary. In addition, the bailiffs shall immediately notify the Court when the jurors have a verdict or a question. Bailiffs will be strictly forbidden from listening to jury deliberations.

The jurors will be instructed to maintain proper social distancing of at least 6 feet and to wear masks during the deliberations. The seats in the Old Supervisors' Board Room will be pre-marked and assigned to assist the jury with maintaining proper social distancing of at least 6 feet.

Counsel will be instructed to have a complete set of documentary and photographic exhibits for each juror to have during jury deliberations so that jurors will not need to share exhibits.¹¹ At the conclusion of the trial, the bailiffs shall collect the jurors' copies of exhibits.

During deliberations, the jurors will be permitted to physically handle all other exhibits only if wearing gloves, which shall be provided, along with hand sanitizer. Bailiffs will provide training to the jurors as to the proper use of gloves, both in how to prevent cross-contamination and how to safely remove and dispose of them. A lined wastebasket will be provided for the jurors to safely and properly dispose of the gloves after use.

A complete set of jury instructions, as given, will be provided to each juror to have during deliberations so that jurors will not need to share the instructions. At the conclusion of the trial, the bailiffs shall collect the jurors' copies of the instructions.

¹⁰ Such numbers and letters need not be sequential so long as they are unique.

¹¹ Again, the Court will require that all documents in any such notebooks are in plastic sleeves that have been sanitized.

The Court will receive juror questions from the foreperson in writing. The foreperson will be directed to wear gloves while preparing the written question. The foreperson shall deliver the question to the bailiff standing outside the Old Supervisor's Board Room. The bailiff, while wearing gloves, will retrieve the written question and deliver it to the judge in chambers. The judge will wear gloves while handling the written question. After reading the question to counsel and the parties, the judge shall determine the response to the question. The jury will then be brought back into the courtroom to hear the judge's answer.

G. Face Masks

All persons, including witnesses, must wear face coverings. The witness stand, however, is sufficiently distant from any other person in the courtroom (more than 10 feet) to allow the witness to take the face covering down and testify with his or her face exposed. If a lawyer or bailiff needs to approach a witness for any reason, the Court will instruct the witness to replace his or her face covering before allowing the approach.

If face coverings impair the ability of an attorney to communicate with a 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 at least 10 feet from other persons in the courtroom.

A criminal defendant may be asked to remove his or her face covering during *voir dire* to ensure the prospective jurors can see the defendant and indicate whether any of them know the defendant or recognize the defendant. The defendant may also be asked to lower his or her face covering briefly for the purpose of enabling a witness to see the defendant's face and answer whether the witness can identify the defendant. The defendant shall remain more than 10 feet from other persons in the courtroom when removing his or her face covering.

If face coverings impair the ability of a lawyer and his or her client to communicate at counsel table (and alternate methods of communication 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.

Jurors will always wear face coverings, except that the Court expects to permit individual jurors to lower the cover briefly if requested by counsel, while ensuring proper social distancing of more than 10 feet from all other persons.

If a mask must be removed by anyone for any reason, the distance between the unmasked person and all others shall be more than 10 feet.

H. Witnesses

Prior to the pretrial conference, attorney will screen their clients and witnesses using questions on the COVID-19 Screening Questionnaire and COVID-19 Risk Factors Assessment.

The first day of trial (*voir dire*), the parties will be required to have their witnesses arrive at the courthouse no later than 8:15 a.m.¹² On the other day(s) of trial, the parties will be required to have their witnesses arrive at the courthouse no later than 8:45 a.m. Bailiffs will direct the witnesses to designated socially distanced chairs in the corridor outside the courtroom before *voir dire* and in the witness/conference rooms during the trial itself.

Witnesses will be directed to seats that are located more than 6 feet apart. Conference and witness rooms have signs stating the room's capacity.¹³ The witnesses shall wear masks at all times except as otherwise provided herein. The witness rooms and chairs shall be cleaned every morning and every evening, as well as between uses and during breaks.

Witnesses will be called to the courtroom during *voir dire* and, depending on the number of prospective jurors, will be seated in marked spots in the gallery. During *voir dire*, prospective witnesses may be asked to remove masks for only as long as is necessary to determine if they are known by any prospective juror, so long as they are more than 10 feet from any other person.

While on the witness stand, which is distanced more than 10 feet from all other participants, the judge shall direct the witness to pull his or her mask down and testify with face exposed to aid the jury in making demeanor determinations about the witness. If a bailiff needs to approach a witness for any reason, the Court will instruct the witness to re-cover his or her face before allowing the approach.

The witness box and microphone will be cleaned after each witness. To the extent constitutionally permissible, the Court will continue to encourage the use of video depositions and/or remote testimony, via Polycom or WebEx, in an effort to limit the exposure of jurors to

¹² Unless the Court has previously granted permission for a witness, usually an expert, to report at a later time.

¹³ The conference room can hold 4 socially distanced people and the two witness rooms can hold 2 socially distanced people, in seats that are pre-marked and placed 6 feet apart.

COVID-19 from in-person witnesses. Necessary parties or witnesses that are denied entry to the courthouse due to answering “yes” to a COVID screening question will also be given access to Polycom and/or WebEx along with instructions pertaining to the use of the Polycom or WebEx technologies.

While at least 10 feet from all others, criminal defendants may be required to lower their masks briefly for the purpose of enabling a witness to see his or her face and answer whether the witness can identify the defendant.

I. Recesses and Meal Breaks

The Court will take a recess at least every two hours to allow cleaning and sanitizing of high-touch areas and juror areas, and to allow participants to clean and sanitize their hands. During such breaks, the jury shall utilize the Old Supervisors’ Board Room as the jury break room. **Exhibit F.** All other persons shall clear the intervening hallways leaving only the jurors, so as to avoid jurors coming in close contact with the public during movement.

Unfortunately, there are no rest rooms in the Old Supervisors’ Board Room. During such a break, all jurors shall be given access to the individual rest rooms in the original jury room and, if necessary, other restrooms restricted from use by the general public. Bailiffs will accompany any jurors needing the restrooms down the corridor and wait outside until they are done.

During breaks, jurors will be provided bottled water rather than water pitchers and cups.

Jurors shall utilize the Old Supervisors’ Board Room as the jury lunchroom. **Exhibit F.** Although jurors will be allowed to bring packed lunches in order to limit travel in-and-out of other public locations, the courthouse has no safe way to refrigerate them at this time. The Sheriff will be responsible for providing box lunches or pizza as well as sodas and bottled water. The bailiff will take lunch orders during the mid-morning break so that lunch will be available immediately upon the lunch break. Upon issuing the juror summonses, the sheriff shall inquire if any prospective jurors have any reasonable dietary constraints. Jurors will be directed to properly socially distance while eating.

J. Public Access

The right to a public trial, including *voir dire*, will be preserved. Members of the media will be permitted, including cameras if ordered, in accord with the First Amendment, Virginia

statutes, and the prevailing practice in this Court, so long as social distancing of at least 6 feet can be achieved and masks are worn. As provided herein, areas of the courtroom have been designated for the public and seats have been marked to provide social distancing of 6 feet. Members of the same household may be seated together.

In the demand for seats outpaces the supply, public access to trials shall be on a first-come basis. However, in the discretion of the Court, a reasonable number of seats may be reserved for any criminal victim(s), a small number of family members of the parties and members of the press

If the situation demands it, live video and/or audio streaming to the Circuit Courtroom is an option that may be ordered. Consideration will be given to the notoriety of a trial and the public interest generated by and the number of interested individuals such as victims and family members likely to attend.

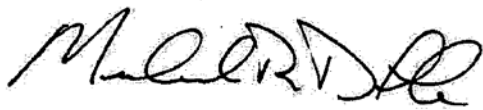
K. Illnesses Occurring During Trial

All trial participants, including a jurors, counsel, litigants, witnesses, bailiffs, clerks, and courthouse employees shall be instructed that if they become ill during trial, they should immediately notify the judge, or a bailiff who will have been instructed to immediately notify the judge. Immediate steps will be taken to either isolate the person until they can safely exit the building or have them isolate if they are out of the building when they become ill. All affected areas of the building will be vacated and thoroughly cleaned and disinfected before subsequent use. All persons who had close contact for an extended time, as defined by the Centers for Disease Control and Prevention, will be notified within 24 hours by phone call by Clerk's Office personnel of their possible exposure and urged to contact their health care provider or the Virginia Department of Health for further instructions. Sheriff's deputies will gather contact information from jurors, litigants, attorneys, and other trial participants in order to facilitate notification of those potentially exposed. These policies are believed to be consistent with the requirements of the Emergency Temporary Standard – Infectious Disease Prevention, promulgated by the Department of Labor and Industry (16 VAC 25-220), which this plan incorporates.

The Court will consult with litigants, remotely if necessary, to determine if a continuance or mistrial will be necessary. Among factors to be considered will be the availability of test results in a timely manner, the uses of alternates, the stage of the trial, the length of the delay, and the continued availability of the jurors, witnesses, and litigants.

IV. Constant Evaluation

The Court is aware that the current pandemic requires courts throughout the Commonwealth to adapt to recommended and required safety guidelines. Accordingly, we are prepared to update or modify this plan, as necessary, to comply with Orders of the Supreme Court of Virginia as well as any appropriate recommendations from health officials. Any plan updates or modifications will be submitted to the Supreme Court of Virginia for approval.



Michael R. Doucette, Presiding Judge
Nelson County Circuit Court



Michael T. Garrett, Chief Judge
24th Judicial Circuit

EXHIBIT A

COVID-19 SCREENING QUESTIONNAIRE

Anyone coming into the courthouse must complete this questionnaire. Please circle either “yes” or “no”. If you answer “yes” to any of these questions, you must **immediately** contact the Clerk of the Nelson County Circuit Court (434-263-7020) to report all affirmative answers.

Within the last 14 days

Yes No Have you had close contact, without the use of appropriate personal protective equipment, with someone who is currently sick with suspected or confirmed COVID-19?

Yes No Have you traveled outside of the country/internationally?

Have you experienced, or are you experiencing, any of the following (other than from a pre-existing non-COVID diagnosis):

Yes No Fever? **Yes No** Muscle or body aches?

Yes No Chills? **Yes No** Headaches?

Yes No New loss of taste or smell? **Yes No** Sore throat?

Yes No Congestion or runny nose? **Yes No** Diarrhea?

Yes No Shortness of breath? **Yes No** Cough?

Yes No Difficulty breathing? **Yes No** Nausea or vomiting?

Yes No Fatigue?

Yes No Have you been in close proximity to anyone who was experiencing any of the above listed symptoms?

Yes No Have you had a temperature at or above 100 degrees?

Yes No Have you experienced loss of taste or smell that you cannot attribute to another health condition?

Yes No Have you, or a co-worker, or a member of your immediate family been directed to quarantine, isolate, or self-monitor?

Yes No Have you been diagnosed with, or had contact with anyone who has been diagnosed with COVID-19, or resided with someone who has been diagnosed with, or had contact with someone who has been diagnosed with COVID-19?

Yes No Do you believe that your health or that of a relative or person with whom you reside may be endangered by you serving on a jury?

Yes No Have you been tested for COVID-19 and are awaiting results?

Please retain this form for future reference during your term of service as a juror!

EXHIBIT B

COVID-19 RELATED JUROR INSTRUCTIONS

In accordance with the COVID-19 Emergency, the Court asks that you familiarize yourself with the juror expectations and requirements set forth below. These measures are being taken to protect participants in the trial process, as well as, provide safety protocols and guidelines for both jury service and entry into the courthouse.

When you arrive at the courthouse, you will have your temperature taken, you will be asked a series of questions to determine if you or someone you have come in close contact with may have been exposed to the COVID-19 virus.

You will be required to wear a mask or face covering while in the courthouse unless you have a medical condition that prevents you from doing so.

Entry shall be denied to all prospective jurors with a temperature exceeding **100.4 degrees**.

Sanitation stations will be located throughout the courthouse, but you may bring your own small individual bottle of hand sanitizer.

All jurors leaving the courthouse **for any reason** shall be required to comply with all precautionary measures upon re-entry to the courthouse.

Social distancing measures will be implemented within the courthouse. The courtroom will be marked to ensure that prospective jurors can maintain social distancing of at least six (6) feet.

You will be asked to properly social distance while eating lunch and taking breaks as well.

Please contact the Clerk of the Nelson County Circuit Court (434-263-7020) in advance should you be aware of an inability to comply with all safety requirements related above.

COVID-19 RISK FACTORS ASSESSMENT

Our screening process also includes the following questionnaire. Your answers will help us better understand your health risks and needs. Please answer to the best of your ability by circling “yes” or “no.” If you answer “yes” to any of these questions, you must **immediately** contact the Clerk of the Nelson County Circuit Court (434-263-7020) to report all affirmative answers.

Yes No Are you over the age of 65?

Yes No Do you have a condition that makes you at higher risk for COVID-19 virus? (Including, but not limited to high blood pressure, chronic lung disease,

diabetes, obesity, asthma, liver disease, severe obesity, chronic kidney disease, heart conditions, etc.)

- Yes No** Do you care for someone or people who are at higher risk?
- Yes No** Does someone or do people at higher risk live in your household?
- Yes No** Are you the sole caretaker of a child?
- Yes No** If yes, do you have childcare available to you?
- Yes No** Do you interact with high-risk people for work?
- Yes No** Do you work in a long-term care facility or other healthcare environment?

EXHIBIT C



Circuit Courtroom Bench & Jury Box



Circuit Courtroom Attorney Tables, Witness Stand & Gallery

EXHIBIT D



Courthouse Elevator



Courthouse Ramps & Corridors

EXHIBIT E



Main Courthouse Entry



Sheriff's Office Entry

EXHIBIT F



Old Nelson Supervisors' Board Room

EXHIBIT G



**GDC Courtroom Set-Up for Jury Trial
Jurors to Left/Attorney Lectern & Witness Chair Center/Counsel Table Right**



Bench/Lectern

EXHIBIT H

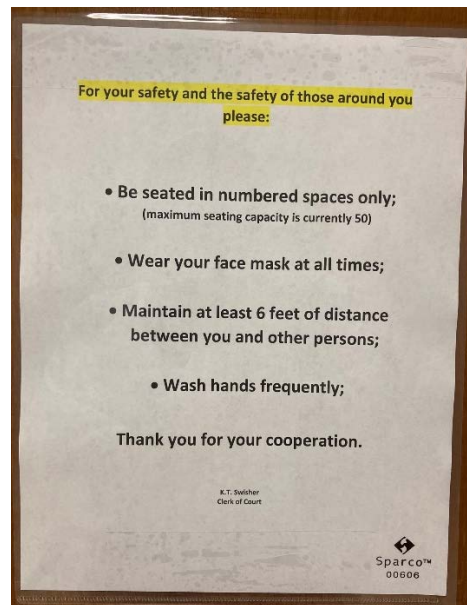
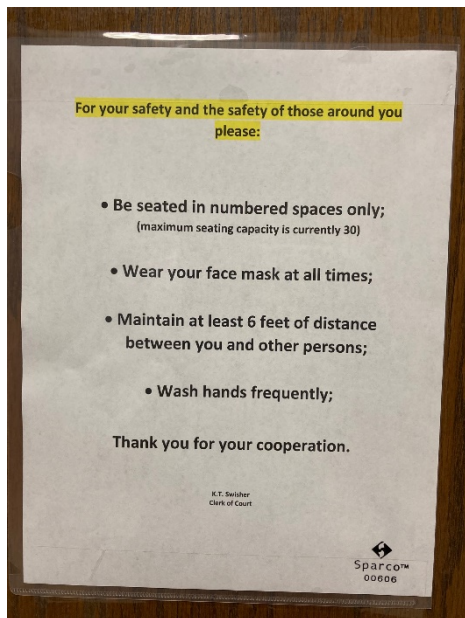


EXHIBIT I



EXHIBIT J

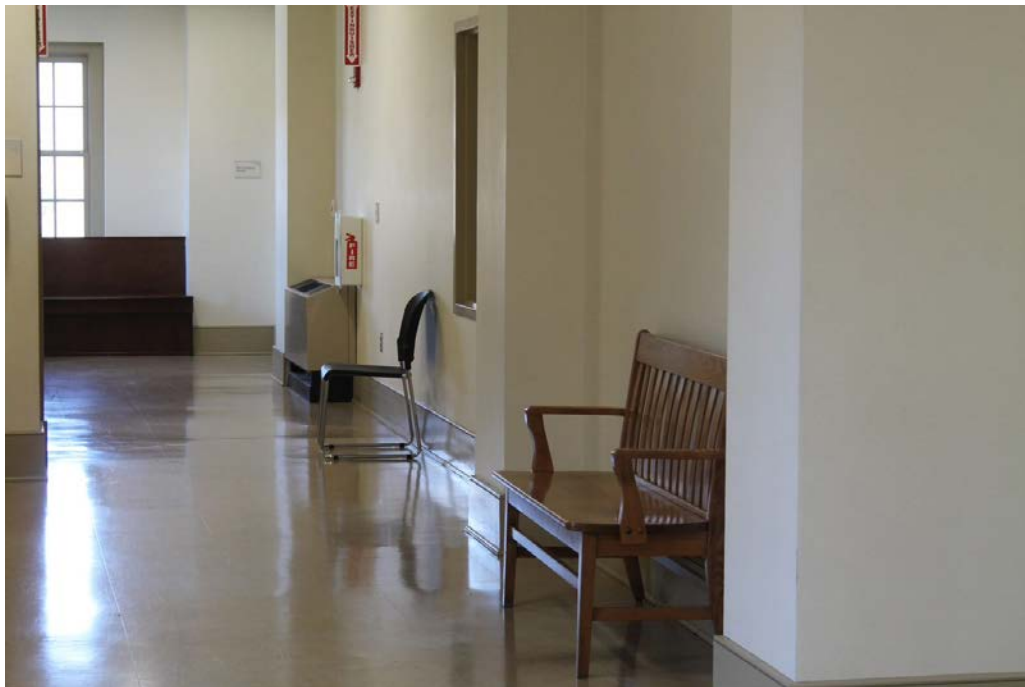


Exhibit K



Exhibit L



Regular Jury Room

Exhibit M



Large GDC Conference Room



One of Two Identical GDC Conference Rooms