

# SUPREME COURT OF VIRGINIA

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GAIL WARREN

February 16, 2021

The Honorable Clark A. Ritchie, Chief Judge  
Page County Circuit Court  
116 South Court Street  
Suite A  
Luray, VA 22835-1200

Dear Chief Judge Ritchie:

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 Rockingham County Circuit Court in the Twenty-Sixth Judicial Circuit. 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 Clark A. Ritchie, Chief 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,

A handwritten signature in blue ink, appearing to read "Donald W. Lemons". The signature is fluid and cursive, with the first name "Donald" being the most prominent.

Donald W. Lemons

# Rockingham County Plan to Resume Jury Trials

## INTRODUCTION

This Court has been operating under numerous Judicial Emergency Orders. The purpose of this document is to outline how the Rockingham County Circuit Court will resume jury trials, effective upon the approval of this plan by a panel of three Virginia Supreme Court Justices in consultation with the Office of the Executive Secretary.

This Court has been conducting in-person court appearances and has developed protocols to ensure that a minimal number of people are present throughout the day. The implementation of jury trials will add additional numbers of individuals in the courthouse. The sanitation, masking, and screening protocols described herein have been developed on an on-going basis since mid-March 2020. The Court also incorporates herein by reference the Emergency Temporary Standard passed by the Safety and Health Codes Board of the Virginia Department of Labor and Industry and approved by Governor Northam, which went into effect on July 27, 2020.

The Rockingham County Circuit Court plan intends to make full use of the fact that this courthouse has three (3) separate courtrooms. One of the courtrooms will be used as a Jury Deliberation Room to enable jurors to socially distance and avoid being in close contact with each other. In addition, an off-site juror assembly area has been procured. During trial, a large portion of the trial courtroom will be designated as the “jury box” and only the jurors can sit in that area, with at least six feet between them while they hear the case. Counsel tables will be rearranged to allow the attorneys and parties to see the jury seating area during trial. The trial courtroom measures approximately 55 feet by 35 feet—it is a large room. Its height is over twenty feet.

Because of the size of the courtrooms and layout, and the ability to maintain social distancing of at least six feet, together with the use of masks, the judges believe the activity contemplated herein falls within the “lower” risk level of exposure, as set forth in the Guidance on Department of Labor and Industry Regulations effective July 27, 2020, and provided by the Virginia Supreme Court.

The judges of this court will monitor the data for Harrisonburg and Rockingham County to determine if there is any abrupt change in positive cases, hospitalizations, or deaths, which may warrant the presiding judge to cancel a particular jury trial at the judge’s discretion. The judges track the course of the pandemic in Harrisonburg and Rockingham County on a daily basis. The judges note that approximately 25,000 college students will return to the area in each August and January, which may contribute to an increase in infections. Additionally, as the public schools follow a gradual reopening plan, some students will again be in proximity with each other. The local schools are already overcrowded, and many children reside in homes with multigenerational families, often exposing older family members (often potential jurors) to enhanced risks.

## OFF-SITE PROTOCOLS

This Court shall have a Juror Assembly Area off-site. (This area has been identified with a lease starting date of February 1 at Court Square Theater, a vacant, unused movie and live-entertainment theater. The location will be provided in the notice to the jury as referenced in Special Rules for Jurors, noted below under the heading Jury Trial Protocols.) To ensure social distancing this Court will also implement an Off-Site Viewing Area so the public may have access to the trial. These areas will be subject to, and the Court will enforce, all protocols applicable to the Courthouse and Courtroom A, including, but not limited to sanitation, marking of seats, social-distancing, and masking. Janitorial staff and the Clerk's office will provide cleaning in these areas. The Sheriff's Office will provide security at each location and enforce the same masking and other protocols as for the Courthouse and Courtroom A. The Court emphasizes that each of these areas will also have marked seating to enforce social distancing.

In addition to other protocols established in this plan, the Juror Assembly Area, including, but not limited to restrooms and hallways, will be cleaned after each panel or at a minimum of every ninety minutes, whichever is shorter. The bathrooms here will be single-person, and again follow the protocols below. The Off-Site Viewing Area will also be cleaned every ninety minutes during the recesses in the trial provided for herein. The Off-Site Viewing Area is in the County of Rockingham Administrative Center and has public restrooms cleaned by janitorial staff.

### COURTHOUSE SANITATION MEASURES & ADDITIONAL CONSIDERATIONS FOR THE JURY DELIBERATION ROOM

Each day before opening, the courthouse janitorial staff wipes down all touchable surfaces with an EPA-approved List N disinfectant. During trial, jurors will return to the same seat/spot after recesses; nevertheless, each spot will be disinfected in their absence. Additionally, the entire courthouse will be cleaned daily and, as recommended by the CDC, high touch surfaces will be cleaned every two hours. High touch surfaces include, but are not limited to:

- a) Witness boxes
- b) Chairs
- c) Photographs and non-paper exhibits
- d) Doors to the building, restrooms (and stalls), court rooms, and jury deliberation rooms
- e) Tables
- f) Handles in stairwells and elevators
- g) Elevator buttons
- h) Other areas as outlined in guidance from the Supreme Court of Virginia.

Trials will be conducted in the largest courtroom, Courtroom A. The Jury Deliberation Room will be in either Courtroom B or Courtroom C – with Courtroom B as the default choice as it is alone on the same floor with Courtroom A, and within feet of it. Both Courtrooms B and C can satisfy the social distancing and other requirements of this plan. The courtroom used for deliberations and for a waiting area during voir dire of additional panels (hereinafter referred to as the Jury Deliberation Room) will be cleaned prior to trial in the same manner as the rest of

the courthouse. The bathrooms associated with it are for jurors only and will also be cleaned before trial. A table with disinfectant wipes and hand sanitizer will be placed outside each bathroom to facilitate cleanliness. The Jury Deliberation Room itself is equipped with wipes, spray cleaner, paper towels, and hand sanitizer. The jurors will eat any meals in that area, and this will facilitate a sanitary dining area. The seating areas in the Jury Deliberation Room are marked with tape to ensure social distancing. Furthermore, the Court will order the jury to follow social distancing practices. Bailiffs will check in with the jury not less than every ninety minutes to ensure that social distancing practices are obeyed. The cleaning regimen outlined above will apply to the Jury Deliberation Room and bathrooms as well. In addition, janitorial staff will clean the Jury Deliberation Room before each panel enters during jury selection. They will also clean the area after any meals. Deliberation will be recessed every ninety minutes to ensure sanitation during deliberations.

Bailiffs and Clerks wipe down counsel table and the witness stand with disinfectant between each use by any individual. The witness stand, and all counsel tables, have individual antiseptic wipes, antiseptic hand cleaner, and spray bottles of antiseptic cleaner, together with paper towels, closely at hand.

#### COURTHOUSE VENTILATION – HVAC

The Courthouse is serviced by a HVAC system that is maintained by a contractor who is procured and overseen by Rockingham County. This contractor, Southern Air, has been providing preventative maintenance and repair service with Rockingham County for seven years. The HVAC has seven (7) air handling units with information for each unit provided in the following table:

Unit	1	2	3	4	5	6	7	
Fan CFM	4560	3000	3000	1930	2380	3180	3420	
Filter Type	PLtd Merv-13	PLtd Merv-13	PLtd Merv-13	PLtd Merv-13	PLtd Merv-13	PLtd Merv-13	PLtd Merv-13	
Sealed Filter Rack	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

The filters are changed at least every three months by the contractor to ensure they are within service life considering the increased usage outlined below and that they are appropriately installed. As noted in the table, these filters are MERV-13 filters that are in sealed filter racks and are approved by the American Society of Heating and Refrigeration and Air-conditioning Engineers (ASHRAE). Demand-controlled ventilation will be disabled. Outdoor dampers will be opened as high as possible to reduce or eliminate recirculation. In mild weather the dampers may be opened to as much as 100%. The systems will run 24/7 to enhance air exchanges in the building space. The contractor has confirmed that the HVAC systems have been and continue to be maintained according to equipment manufacturer specifications. The systems have been installed to the standards set forth by ASHRAE. In addition, the contractor recently installed new Aerisa Model 8000 Bi-Polar Ionization Units within the supply ducts to provide

further air purification. The court shall be guided by CDC recommendations on ventilation and ASHRAE HVAC Standards if other provisions were not specifically mentioned herein.

Further ventilation will be provided in specific areas of the courthouse. The trial courtroom and Jury Deliberation Area windows are operable and will be opened to provide for cross-ventilation. Fans will be added in the witness waiting area.

#### MASKING, PERSONAL HYGIENE, AND SANITATION MEASURES

Any person entering the courthouse without a mask will be provided a mask and face shield as needed. (See also Special Masking Protocols below). All persons, including witnesses and jurors, will be required to wear face coverings. The witness stand is sufficiently distanced (10 feet) from any other person in the courtroom to allow the witness to take the face covering down and testify with their face exposed. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to re-cover his or her face before allowing the approach. Masks may only be removed in limited, exceptional circumstances. If face coverings impair the ability of a lawyer to communicate with a witness or 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 away from other persons in the courtroom. A criminal defendant may be asked to remove his or her face covering during voir dire to ensure that prospective jurors can see him and indicate whether any know him or recognize him. Criminal defendants may also be asked to lower their face coverings briefly for the purpose of enabling a witness to see his face and answer whether the witness can identify the defendant. If face coverings impair the ability of a lawyer and his or her client to communicate at counsel table (and alternative 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 their co-counsel or clients at all times and counsel tables will be extended to ensure this distance. 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 proper social distancing of at least 10 feet from all other persons. Sidebars may be conducted at the bench, with a plexiglass shield separating the judge from the lawyers, or alternatively in Courtroom B or C. If a mask must be removed for any reason, the distance between the unmasked person and all others shall be more than 10 feet, for any person and any area, as recommended by the Virginia Department of Health (VDH).

As noted, the jury bathrooms each have a one-person capacity, and disinfectant and cleaning supplies are provided as set forth above. Individual jurors will be provided box lunches, with access to cleaning items. Gloves will be provided for jurors in the jury room for use in handling exhibits, as needed. Use of gloves shall be pursuant to instructions of the VDH and those written instructions will also be supplied to the jury. Trial will be recessed every ninety minutes to allow for hand washing by all participants and cleaning of the juror areas.

Special Masking Protocols: The CDC does not currently recommend the use of face shields as a substitute for masks. However, the use of a mask may not be feasible in certain situations, e.g. persons who are deaf, disabled, or have a legitimate medical condition that prevents them from safely wearing a mask. If a face shield must be used instead of a mask, the face shield will

either be hooded or one that wraps around the sides of the wearer's face and extends below the chin. Persons wearing face shields must wash their hands before and after removing the face shield. Reusable face shields will be cleaned and disinfected according to the manufacturer's instructions or CDC guidelines. Disposable face shields will be used once and then disposed of according to the manufacturer's instructions. A juror or other person with a legitimate condition or reason that prevents them from wearing a mask and who is unwilling to wear a face shield instead of a face mask due to it not being recommended by the CDC will not be required to serve or attend as determined by the presiding judge. This is subject to the accommodation for necessary parties and witnesses noted above.

#### COURTHOUSE SIGNS, FOOT TRAFFIC, CLERK AS POINT-OF-CONTACT FOR COMMUNICATIONS, AND ENTRY-WAY MANAGEMENT

Signs/Markings/Foot Traffic/Elevators/Enforcement by Bailiffs: Signs are placed throughout the courthouse, including the entryway to individual courtrooms, requiring social distancing, masks, and hand hygiene. This includes signage required by the Supreme Court of Virginia's Emergency Orders. There is hand sanitizer placed at the entrance. Entrants will be advised that social distancing will be required at all times. To facilitate and enforce social distancing, the courthouse will have signs and floor markings to both direct foot traffic and maintain social distancing. The courtrooms and seating arrangements are marked to ensure jurors and others present remain at least six feet apart. Bailiffs will enforce social distancing throughout the courthouse.

A sign posted prominently at the entrance to the courthouse states that individuals are not to enter if they are having COVID-19 symptoms, have been exposed, or have traveled outside of the country. Signage will advise of common symptoms of COVID-19, per the Centers for Disease Control and Prevention (CDC): fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Signage will be continually updated to meet amendments to the guidelines required by the CDC, VDH and Supreme Court of Virginia.

There will be single door entrances and exits to and from the courthouse with jurors given precedence on entry and exit. Hallways and stairwells will have arrows to direct foot traffic ensuring social distancing. There are no common areas available for use or congregation, and bailiffs will ensure that the hallways are clear of people to ensure social distancing. The elevator will have signage limiting occupancy to two and the floor of the elevator will be marked to maintain social distancing. All restrooms are single occupant. Seats in the courtroom, the Jury Deliberation Room, and Juror Assembly Area are marked to ensure social distancing.

Entry to Courthouse – Screening/Clerk as Point-of-Contact for Communications: When entering the courthouse, each individual entering will undergo temperature screening with the technology already in place and additional hand-held, no-touch temperature readers as back-ups. Per directive of the Emergency Coordinator for Rockingham County and the VDH, there will be no entry for any individual with a temperature of 100.4 degrees or more. Each individual is also specifically, questioned by court security officers pursuant to the VDH **and as most recently outlined in the Supreme Court's Fifteenth Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency.** (This includes, but is not limited to, symptoms,

exposure to sick or symptomatic individuals, or out-of-country travel. Individuals will be asked whether they are suffering any COVID-19 symptoms, including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea, or diarrhea. Additionally, all individuals will be asked if they traveled internationally in the last 14 days, if they have been in close proximity to anyone experiencing the previously listed symptoms in the last 14 days, if they have been diagnosed with, or had contact with anyone else who has been diagnosed with COVID-19 or resided with someone in the above categories, and if they have been tested for COVID-19 and are awaiting test results.) Individuals answering “yes” to any of the above-listed symptoms or questions will be refused entry. They will be provided with the phone number of the Clerk, Chaz Haywood, 540-564-3111, who will communicate with the judge. These individuals will also be instructed to contact their physician or the VDH for instructions on testing and self-isolation procedures. The trial judge will individually consider any juror requests to be excused. If a necessary party or witness replies “yes” the court will determine accommodations such as testimony by Polycom, Webex or continuances.

Website: Additionally, the Court’s website will provide the phone number and email of the Clerk, Chaz Haywood, for individuals to contact if they develop symptoms, have been exposed, are high-risk, or other concerns prior to reporting.

#### SICKNESS DURING TRIAL

If a presiding judge gets sick during trial and cannot continue, one of the other resident judges will take over and finish the trial. If counsel or a client/defendant gets sick and cannot continue, the Court will consider the options available, including mistrial, or recessing the trial. If a juror gets sick, the Court will use the alternate(s) present if the facts of the exposure and factors listed below would allow the case to continue. If the situation is such that there has been exposure of jurors in a manner that the trial cannot go forward, the Court will consider recessing to allow for an appropriate quarantine time, possible mistrial, or other remedy/solution advocated by counsel. If the Court determines that jurors have been or may have been exposed to the virus, the Clerk will advise them electronically or by phone as soon as possible and within 24 hours. The Clerk uses email and texting to communicate with jurors. Once a jury is empaneled, the contact information for the jury will be confirmed and readily available.

All participants, including lawyers, parties, court reporters, and jurors in multi-day trials will be encouraged before adjourning for the day to continue monitoring themselves for symptoms, to take their temperatures, and to not return to the courthouse – but rather contact the Clerk with the contact information provided to them in advance – if they have any symptoms. Likewise, if they feel that they have developed symptoms during the day as the trial is ongoing, they are to notify the presiding judge immediately.

If any person associated with a multi-day trial develops symptoms during the trial, that person will be immediately directed to leave the courtroom. That person will be escorted out of the building via a secure stairway accessible from the courtroom and not traveled by other jurors, the public or courthouse personnel. Court Security will be immediately notified to provide the escort in suitable protective equipment. The Clerk will contact that person after court adjourns for the day and request that he/she notify the Court of any positive COVID-19 result.



If any participant in the trial tests positive for COVID-19 during a trial, the Clerk will notify, within 24 hours, all persons who may have been exposed to the person known or suspected to be infected, consistent with the requirements of the Emergency Temporary Standard – Infectious Disease Prevention, promulgated by the Department of Labor and Industry (16 VAC 25-220). All notified persons will be urged to contact their healthcare provider or the VDH for further instructions.

The Court expects to discuss with the lawyers in advance of trial whether they agree to proceed with fewer than 12 jurors should a juror drop out. Nonetheless, the Court expects to seat alternate jurors for all trials. The determination of whether any symptom-related interruption to the trial should result in a brief continuance (a few days, resuming with the same jury panel), a mistrial, or other remedy will depend upon the consideration of several factors including: the availability of rapid-return test results, the use of alternates, the length of the prospective delay, the stage of trial and the continued availability of jurors and litigants. The Court will consult with the litigants, remotely if needed. The Court will also consult with the VDH about recommended measures for how and whether the trial could safely proceed when one or more participants has developed symptoms.

All cleaning protocols required by the VDH and established in the Emergency Temporary Standard will be followed in the event an infection develops during trial. This includes, where feasible, sealing affected areas for 24 hours and thereafter cleaning and disinfecting with products that satisfy the Emergency Temporary Standard. Should such cleaning render an affected courtroom unavailable for continuation or resumption of proceedings, the Court will address continuance, mistrial, or remedy immediately, as noted above. There are no other courtrooms available to allow movement of the trial courtroom to another area in order to proceed with trial.

#### JURY NOTICE OF TRIAL PROTOCOLS

All individuals entering the courthouse, including jurors, must wear a mask and abide by the rules outlined above under Masking, Personal Hygiene and Sanitation Measures. The mask will remain in place unless permission is given by the presiding judge to remove it. Should any juror indicate a medical condition whereby he or she cannot wear a mask, the Clerk will be immediately notified, and he will make inquiry and determine whether the individual can be accommodated. A clear face screen will be provided to those who cannot wear a mask for medical reasons, but the Clerk and the Court shall follow Special Masking Protocols above for these individuals.

Potential jurors will receive instructions regarding self-screening and will be instructed not to come to the courthouse if experiencing symptoms of COVID-19 (see below). The Court will liberally grant juror excuses related to the COVID-19 outbreak. The Court will allow deferral of service if the person is in a high-risk category or cares for someone who is high risk. To determine if an individual is high-risk, the Court will use the CDC's guidelines including age (over 65), or if the individual has one of the following conditions:

- a) Cancer
- b) Chronic kidney disease
- c) Chronic obstructive pulmonary disease (COPD)
- d) Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies

- e) Immunocompromised state (weakened immune system) from solid organ transplant
- f) Severe Obesity (BMI  $> 40 \text{ kg/m}^2$ )
- g) Pregnancy
- h) Sickle cell disease
- i) Smoking
- j) Type 2 diabetes mellitus

Additionally, the self-screening will inquire if the potential juror cares for someone who is at higher risk, if high-risk persons live in the individual's household, if the individual is a sole caretaker, if childcare is available, if the individual interacts with high-risk persons for work and if the individual works in a long-term care facility or other healthcare environment. The Court will not issue failure to appear notices for jurors who do not appear. The jurors will also go through the screening process that all people go through at the entryway to the courthouse. See that section for questions that they will be asked.

The Clerk will discuss the upcoming trial with the presiding judge to determine how many jurors need to be summonsed, adjusting as the judge deems necessary and taking into consideration estimates of juror availability. The Clerk and judges feel there will be a 75% attendance rate.

Notice Supplied to Jurors Prior to Trial - The protocol for the trial is set forth in the *SPECIAL RULES FOR JURORS DURING THE COVID-19 PANDEMIC*, as follows (this document is provided to jurors in advance):

*During the ongoing pandemic, it is still necessary to empanel juries to hear some cases. Because we want to do this in a manner that minimizes crowd size, and accommodates social distancing, we will be bringing in the jury panels **in separate groups for each trial**. Each group will consist of fifteen potential jurors. The areas where you are sitting will have been sanitized. Hand sanitizer will be available. The areas where you are seated, and areas of deliberation, are being expanded to keep jurors at least six feet apart.*

*If you are suffering any flu-like symptoms such as fever, chills, coughing or sneezing, weakness, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headaches, new loss of taste or smell, sore throat, congestion or runny nose, nausea, vomiting, or diarrhea, you should call the Clerk, Chaz Haywood, 540-564-3111 and so advise. You should also advise the Clerk if you have been diagnosed with COVID-19, or if you live or work in proximity with someone who has been so diagnosed or is exhibiting symptoms in the last 14 days, if you traveled internationally in the last 14 days, if you have been diagnosed with, or had contact with anyone else who has been diagnosed with COVID-19 or resided with someone in the above categories, and if you have been tested for COVID-19 and are awaiting test results.*

*The **first group** will be brought in at 8:30 AM the day of trial. Jurors will report to the Jury Assembly Area at Court Square Theater (address to be inserted). They will then be brought to the Courthouse and the courtroom. The lawyers, any defendant, and Judge will be present, and from this group several jurors will be selected. Those who are selected and are not struck for cause or otherwise found to be exempt from service, will wait in Courtroom B until it is time for trial.*

*The **second group** will also come in on the day of the trial (the Trial Day) but at 9:30 AM. They will also report to the Juror Assembly Area at Court Square Theater (address to be inserted), escorted to the courthouse and courtroom, and from this group a number of jurors who have not been struck for cause or otherwise found to be exempt, will be selected.*

*A **third group** will come in at 10:30 AM to the Jury Assembly Area at Court Square Theater (address to be inserted). Groups of fifteen will continue to arrive at the Jury Assembly Area, at Court Square Theater (address to be inserted) until we have enough jurors to make up the jury panel. Those selected from the multiple groups of fifteen will make up the jury panel for the trial. Once enough jurors have been selected, the Clerk will immediately notify the remaining jurors to advise them not to come to the Court Square Theater.*

*You will have received a list of trial dates. The evening before each trial date, you must call the Clerk's jury number 540-432-3340, and listen to the **complete** recording, after 5:30 PM. That recording will tell you if the next day's trial is going forward **and will identify the individual jurors who must appear at 8:30 AM, those who must appear at 9:30 AM, those who must appear at 10:30 AM, and so on. Listen to the complete recording!***

*If for some reason the trial has been canceled, you will be so advised when you call in. To view the plan this Court has implemented to prevent the spread of the COVID-19 virus, please visit this link: **URL will be posted once approved.***

*Here is an example of how this will work: Suppose trial is scheduled for a Wednesday. On Tuesday, **each** of you call in at 5:30 PM. Some of you are told to be present at Court the next morning at 8:30 AM, and some of you are told to be present the next morning at 9:30 AM, and some at 10:30 AM, and so on. The jurors chosen, as set forth above, will make up the jury panel from which the day's trial jury will be selected.*

### JURY SELECTION, SERVICE, AND THE TRIAL

At 8:30 AM, it is anticipated that approximately 15 jurors will be brought from the Jury Assembly Area to be present in Courtroom A – the trial courtroom. (The judges have determined that up to thirty potential jurors can be present safely by using Courtroom A, and by following all social distancing and other protocols in this plan. The judges will use the least number of jurors possible but never more than this number.) As jurors come into the courtroom, they will be directed to a marked spot on the benches, which marks have been placed there to insure optimal distancing of at least six feet. The Clerk will check attendance against a seating chart prepared in advance. For criminal trials, the defendant will have been arraigned in a separate proceeding beginning at 8:00 AM. The Judge will give the jurors preliminary instructions, voir dire will be conducted, and from this group a number of potential jurors will be selected. Those selected will remain in the Jury Deliberation Room until additional potential jurors are chosen from the 9:30 AM group, the 10:30 AM group, and any additional groups used. It is from this combined panel the attorneys will then exercise their preemptory strikes. The Court anticipates using at least one alternate juror for every trial. If we can select enough qualified jurors from the first (8:30 AM) and second (9:30 AM) group, there will be no need to use the third and subsequent panel(s).

The selected jurors will be arranged on both sides of the aisle leading from the front of the courtroom, and the area where the jurors will be sitting will be cordoned off. They will hear the evidence from that location, rather than from the traditional jury box. The jury will receive jury instructions in Courtroom A, prior to the commencement of their deliberations and their removal to the Jury Deliberation Room at the conclusion of final arguments. During recesses, the jury will be sequestered in the Jury Deliberation Room, and they will have the entire room with marked seating to ensure social distancing. During deliberations, they will use all of the Jury Deliberation Room with marked seating to ensure social distancing. This seating will also enable effective communication during deliberation. Potential jurors will be advised that they may bring a bag lunch not requiring refrigeration; otherwise the Court will provide box lunches or other food at lunchtime. To avoid delays, and in consideration of potential difficulty in finding a safe place to eat downtown, and to further avoid the exposure of jurors, the jurors will not be released for a lunch recess. The restrooms serving the Jury Deliberation Room will be reserved for juror use on trial days. They will be cleaned as set forth elsewhere in this document. *(Please refer to Courthouse Sanitation Measures above for information on sanitation, meals, and social distancing for the Jury Deliberation Room and restrooms during selection and deliberation.)*

Jury questions will require the jury to be returned from the Jury Deliberation Room to Courtroom A unless all counsel agree to use electronic communication such as Polycom or speaker phone for short questions and answers. (If electronic communication is used, then the Court will ensure that all jurors are present and able to hear any exchange.) As noted previously, the jurors will return to their assigned seats that have been sanitized in accordance with this plan. After the question is handled by the Court, they will return to the Jury Deliberation Room, and their seats that have been re-sanitized in accordance with this plan. The Jury Deliberation Room is mere feet from Courtroom A and the hallway will be vacant during travel between these areas.

No other individuals will be allowed in the courtroom, except members of the press or local reporting organizations, or victims who desire to be present. The Court understands that this may keep the public, friends, and acquaintances of litigants from observing proceedings in person, but it is necessary to conduct business in this manner so cases may be tried while keeping the litigants, attorneys, witnesses, jurors, bailiffs, and court personnel as safe as possible. A live video feed will be transmitted from the courtroom to an off-site location in the County Office Building, located within walking distance from the courthouse, where interested individuals may observe and hear the proceedings. The camera will not be directed toward the jurors except during voir dire. The number of off-site spectators will be limited by social distance requirements. All protocols for social distancing, screening, and masks in effect at the courthouse will be enforced at the off-site location and as noted above in the section titled Off-Site Protocols.

Counsel should anticipate that trials may run longer than usual because of the pandemic and associated protocols. Trials that do not conclude by a reasonable time will be continued to the next day. Witnesses will continue to be sequestered in the large mezzanine waiting room, since experience has shown it is large enough to maintain appropriate social distancing. This area can safely seat seven witnesses while maintaining social distancing. The seats will be marked to ensure social distancing protocols and the bailiffs will ensure social distancing and masking outlined herein is practiced. This room will be cleaned with the same frequency as the courthouse and courtroom and under the same guidelines. In addition, each area that a witness

vacates will be cleaned. Parties will stagger the arrival of their witnesses so no more than four witnesses are present in the waiting area at any time. Should more witnesses arrive than the area can handle pursuant to these guidelines, the witness will be instructed to wait outside the courthouse until seating is made available. The parties, including the Commonwealth's Attorney who has a victim and witness coordinator on staff, will be responsible for maintaining contact with witnesses as the trial unfolds to ensure their prompt presence and staggered arrival.

All courtrooms have the capability to project exhibits via document camera and connections for electronic devices. Attorneys will be heavily encouraged to utilize this technology whenever possible. Attorneys who have exhibits that cannot reasonably be displayed electronically which they may wish to publish to the jury need to have ample copies available so each juror can have their own copy, to avoid passing the exhibits among themselves. For non-documentary exhibits, a table will be provided in the courtroom for the placement of such exhibits. When the jury requests the exhibits during deliberation, a table will also be available in the Jury Deliberation Room for the placement of such exhibits. Any person, including a juror, touching the exhibit will be required to use gloves that will be provided by the Court. When it will not damage the evidence, cleaning of the exhibit will occur, or it will not be touched. Use of gloves shall be pursuant to instructions of the VDH and those written instructions will also be supplied to the jury when they request to examine the exhibits during deliberations.

During a criminal trial the Clerk, Judge, and court reporter will be present. The arrangement and size of Courtroom A keeps them at least six feet apart, and over ten feet from counsel tables. Also present will be the defendant, defense counsel, the prosecutor, at least one bailiff, possibly an interpreter, possibly a victim, and the testifying witness. Under these circumstances, during a criminal trial, it is anticipated that the following would be in the courtroom during trial: Judge, Clerk, Court Reporter, 13 jurors, defendant, defense counsel, prosecutor, witness, victim, possibly a reporter, and at least one bailiff. Courtroom A can accommodate those 23 people in a safe manner. Please see the Attachments for a diagram of the courtroom.

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

Seating for the participants is outlined on a diagram in Attachment 5. Photographs in Attachment 5 are to provide an idea of dimensions of the courtroom only and where seats are marked for jurors. (Due to the lighting the photos do not accurately show the marked seats for the jurors that ensure social distancing.)

## AUTHORITIES

Guidelines from the Jury Task Force have been considered in articulating this protocol. Many topics addressed in those guidelines, such as policies for litigants, jurors, judges, and others who become sick, must be addressed in real time with the overriding concern providing for the safety of those present. The judges have conferred with the Clerk, Deputy Clerks, Facilities Manager for the County, the Emergency Coordinator for Rockingham County (who is the

COVID-19 compliance officer for the County), and this plan has been reviewed by a representative of the VDH, Central Shenandoah Health District. The jury trial protocol has also been vetted with the Resumption of Operations Committee, which was made up of judges, attorneys, bailiffs, clerks, and probation officers. The Court has also consulted the Guidance and Considerations for the Resumption of Jury Trials provided by OES and approved plans in other circuits.

#### ATTACHMENTS

Attachments are included of current areas in the courthouse. For the Courtroom and Jury Deliberation Room, photos show taped seating to ensure social distancing. Additional mobile seating shown in the Jury Deliberation Room photo will be removed on jury trial days to ensure social distancing. A diagram of the Courtroom is included as well to show the layout for jury trials. The tables and podium will be moved to ensure social distancing as outlined in this plan. Counsel tables will be extended to ensure social distancing as well.

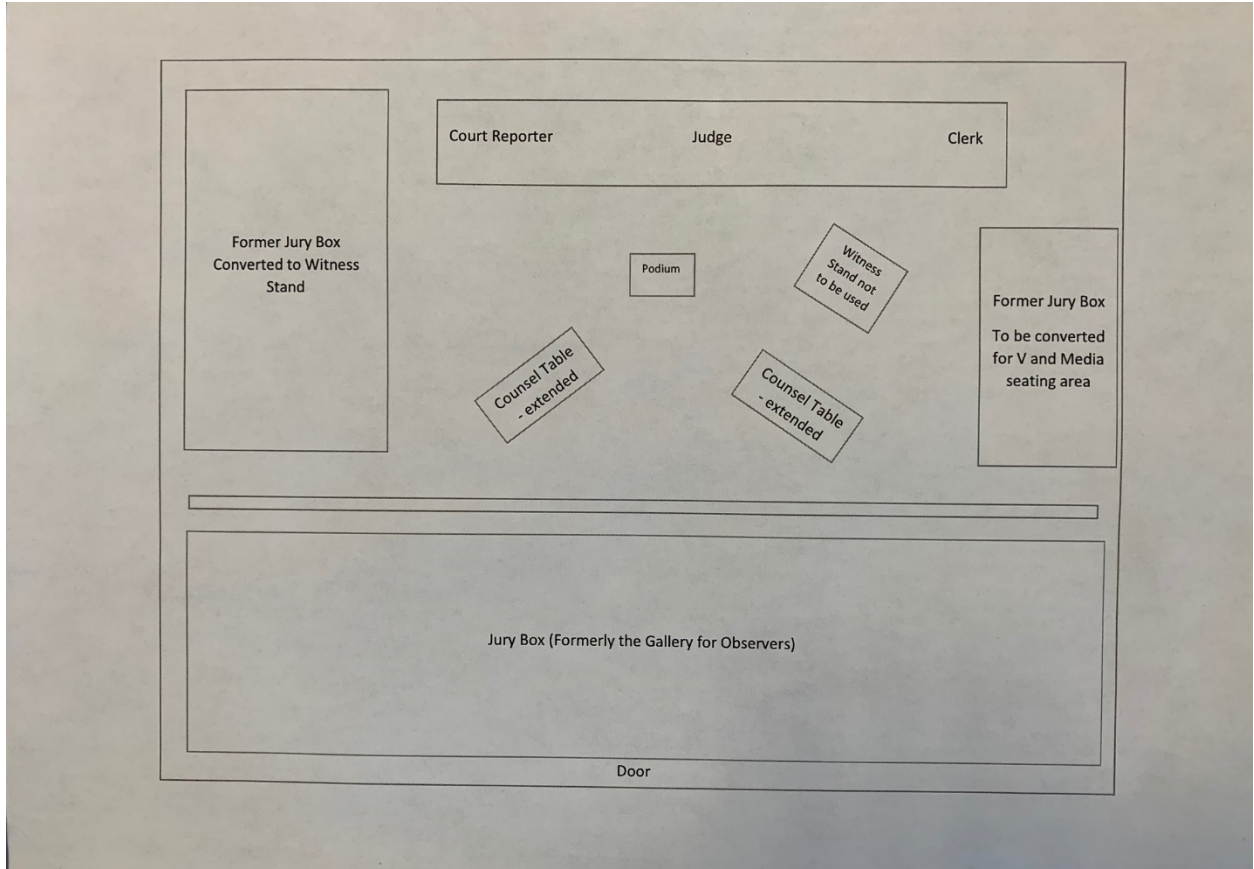
#### CONCLUSION

The judges of this Court respect the Coronavirus, understand that much remains unknown about its transmission, and realize adjustments may need to be made to these protocols as we move forward.

The judges believe that this plan may be implemented and that will provide for safe jury trials. As noted, in the Supreme Court's Fifteenth Order Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency, the judges will make determinations as to whether it is safe to proceed. This will be a daily determination based on the course of the pandemic, the plan, and all facts available to the judges.

The judges will implement all future dictates and guidance from the Supreme Court of Virginia immediately upon receipt. Jury trials shall resume no earlier than thirty days after approval by a panel of the Supreme Court of Virginia to ensure that implementation of the plan is complete prior to commencement.

## ATTACHMENTS



Trial Courtroom



Trial Courtroom -Jury Box During Trial and Voir Dire –

Blue Tape (some not visible due to lighting in photo) for Social Distanced Seating – 24 Available Seats

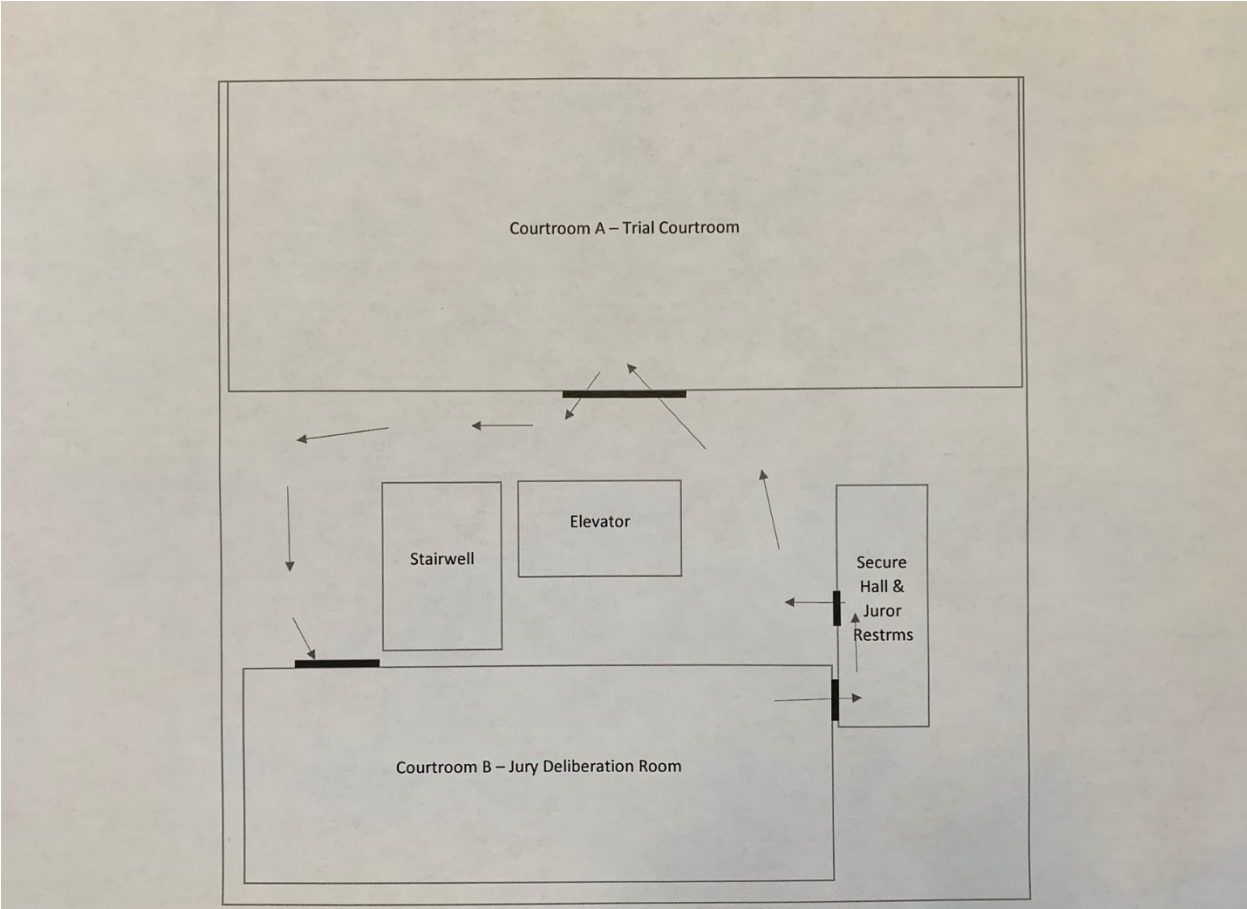




Trial Courtroom – Former Jury Box – Converted to Witness Stand



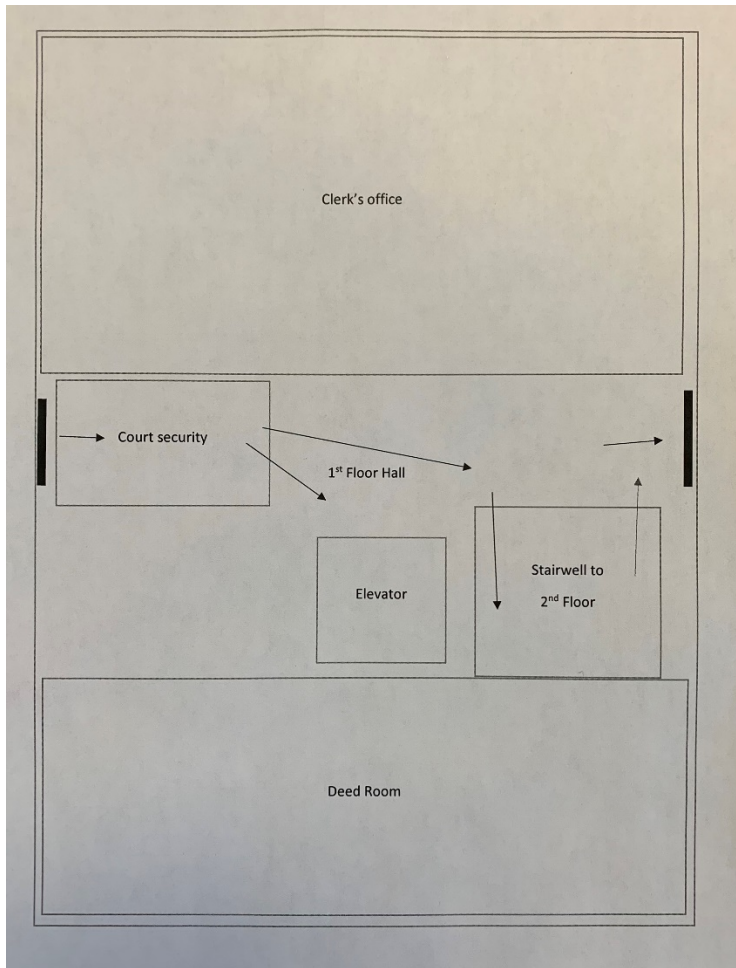
Trial Courtroom – Former Voir Dire Jury Box –  
Converted to Victim and Media Seating – 6 Seats



Jury Deliberation Room – Arrows Show One-Way Foot Traffic

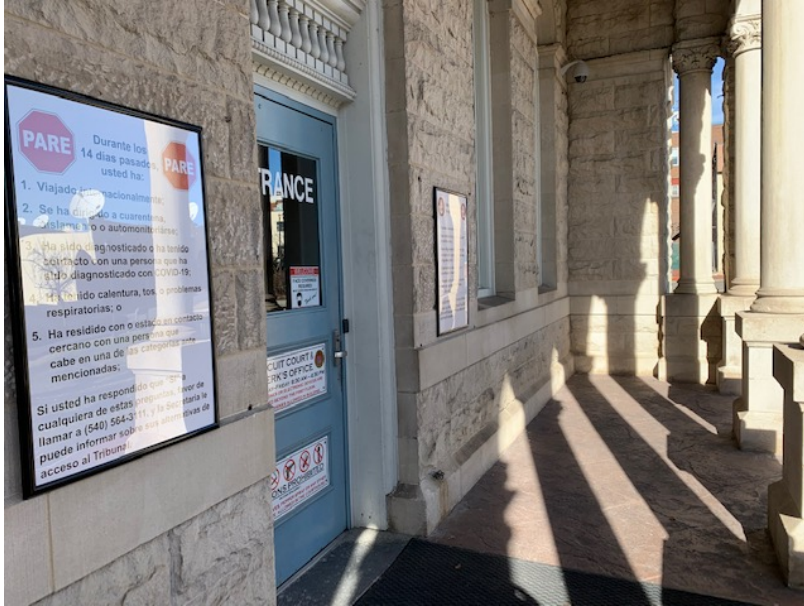


Portion of Jury Deliberation Room from Judge's Bench – Seating is Marked



Entry and Exit – First Floor of Courthouse





Courthouse Entrance COVID Signs – Spanish and English



No Touch Thermometer at Entrance – Also have back-up hand-held, no touch thermometers



Elevator Signs and Markings



Floor Markings for Foot-traffic Throughout Courthouse





Jury Assembly Area – Court Square Theater – No more than 15 Jurors, 2 Clerks, Bailiff  
Seating to be Marked