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August 13, 2020

The Honorable Mary Jane Hall, Chief Judge
City of Norfolk Circuit Court
150 St. Paul's Boulevard
7th Floor
Norfolk, VA 23510-2773

Dear Chief Judge Hall:

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 Fourth Judicial Circuit. You may begin jury trials no earlier than 30 days after the date of this letter. This approval is subject to a change in circumstances including failure to carry out the plan you have submitted.

Sincerely,

A handwritten signature in blue ink that reads "Donald W. Lemons".

Donald W. Lemons

CIRCUIT COURT FOR THE CITY OF NORFOLK: PLAN FOR RESUMPTION OF JURY TRIALS

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Plan

1. Statement of Criteria Considered

The judges have considered all criteria and guidelines set forth in the Virginia Supreme Court’s “Guidance and Considerations for the Resumption of Jury Trials,” dated June 29, 2020, including the guidelines published by the Centers for Disease Control and Prevention for prevention of the spread of coronavirus (“Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019, May 2020”) and by the Virginia Department of Health (“VDH Interim Guidance for Daily COVID-19 Screening of Patrons”).

The judges have received comments from the Sheriff of the City of Norfolk and his staff, the Clerk of the Norfolk Circuit Court, the Director of the Norfolk Department of Public Health, the Norfolk Departments of Public Works and General Services, the Norfolk Commonwealth’s Attorney, the Norfolk Public Defender, and several local lawyers who served on the Chief Judge’s Task Force for Restoration of Civil and Criminal Dockets during the Judicial Emergency.

2. Entry into the Courthouse

The Court issued an Order titled “In Re: Courthouse and Courtroom Safety In Response to COVID Emergency,” dated May 13, 2020, (1) prohibiting entry into the Courthouse by members of the public who present a risk of COVID transmission, (2) authorizing the Sheriff to question all entrants regarding potential exposure to COVID and ordering all members of the public to respond truthfully to such questions, and (3) mandating the use of face coverings and social distancing at all times within the building.

All such requirements remain in place and will apply to persons reporting for jury duty and jury trials. Any person who is refused entry into the building by reason of a COVID-related risk will receive instructions about how to contact the Court or the office to which he or she was headed, and Court personnel will accommodate such person as necessary.

The Courthouse is well-marked with signs limiting elevator occupancy to no more than four riders and reminding users that social distancing is required. The elevators have prominent signs about social distancing and hand hygiene, and the elevator floors are marked with four large decals of footprints directing users to stand atop the decals in each corner of the elevator. Elevator waiting areas on each floor have hand sanitizer dispensers.

Stairwells are well-marked, and security personnel routinely direct people to them. They are rarely used, especially for circuit courtrooms, which is situated on floors four through seven of the eight-story building.

3. Air Filtration and Ventilation

The Norfolk Courthouse opened in January 2015 and is thus a relatively new building. It is fully air-conditioned, and there are no windows that can be opened. The Court has consulted with the commissioning agent for the building HVAC installation regarding the issues surrounding proper air filtration and ventilation raised in the Supreme Court's "Guidance and Consideration for Resumption of Jury Trials." The commissioning agent has confirmed that the air handlers are being maintained at a full flow ventilation as designed, i.e., the required airflow per person at capacity, whether the building is at capacity or not. Additionally, the systems are not being turned off at night in order to maintain airflow through the building and "flush" any contaminants. The building is equipped with three large makeup air units on the roof to take in outside fresh air for use in the HVAC while simultaneously exhausting dirty air from inside the building. These units supply a combined rate of 30,000 cubic feet per minute of air into the building.

Further opening outdoor air dampers to reduce or eliminate recirculation is impossible during the warm and humid summer months in Norfolk, but Public Works and General Services plans to make such adjustments when weather conditions are more appropriate.

Air filters in use are close to the recommended Minimum Efficient Reporting Value of 13 and are the highest MERV rating that is recommended for the equipment. Filters are checked monthly and replaced when necessary. HVAC runs twenty-four hours per day to enhance air exchange in the building space.

4. Jury Summonses

A. Number: Pre-COVID, the Norfolk Circuit Court realized a jury yield of roughly 70%, *i.e.*, 50 jury summonses would be expected to yield approximately 35 people reporting for jury duty. The Court expects that yield to be lower post-COVID. Approximately 11.6% of Norfolk's population are persons aged 65 and older, the group at highest risk for COVID-19 and yet a reliable population for responding to jury summonses. We predict that most of that population segment will seek to be excused based on their risk of COVID exposure. We also

expect that other younger citizens will request to be exempted—or will fail to report—during the pandemic due to health concerns or childcare issues. We therefore project a yield of approximately 30% and intend to issue approximately 200 summonses in order to have 60 people report for two criminal juries.

B. Contents: The summons will direct prospective jurors to an online copy of this plan and include the following statement in conspicuous typeface:

We are following strict guidelines for health and safety due to COVID19. Please review the Norfolk Circuit Court Plan for Resumption of Jury Trials at [*website to be added*] or scan the QR Code above. Please specifically review the questions we will ask and the steps we are taking to ensure your safety. We encourage you to self-monitor for symptoms throughout your reporting period, including taking your temperature on the day of court before you leave your home; contact the Clerk’s Office if you have any symptoms. Upon request, all citizens over 70 years old may be excused by contacting the Clerk’s Office or through eJuror.

The Court’s experience with conducting grand juries during the judicial emergency period, in which it extended these assurances to prospective grand jurors, confirmed that participants took comfort in hearing and observing the Court’s COVID-19 procedures. Anecdotal reports from some grand jurors confirmed that they felt safe through the process.

The summons will refer prospective jurors to a list of symptoms and high-risk factors and ask prospective jurors to contact the Clerk’s office if they have any symptoms. The Clerk is instructed to permit such jurors to defer jury service to a month of their choosing. Persons over the age of 65 who seek to be excused will be excused without further inquiry.

The summons will instruct prospective jurors to register on the “eJuror” system, where they will be asked to answer the following questions regarding their risk factors for COVID-19:

- Do you have a condition that makes you at higher risk for the COVID-19 virus? (Such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, liver disease, severe obesity, chronic kidney disease, heart conditions, etc.)
- Are you over the age of 65?
- Do you care for someone who is at higher risk?
- Do high-risk people live in your household?
- Are you a sole caretaker?
- Is childcare available?
- Do you interact with high-risk people for work? Do you work in a long-term care facility or other healthcare environment?

Any positive responses will be considered when deciding whether to excuse the potential juror.

5. Jury Assembly

Jurors will report for voir dire on a rolling basis, with 30 persons summoned for 9:15 a.m., 11:00 a.m., and 1:30 p.m.; these times are scheduled around docket-reporting times for the other courts. Individual jurors will be checked in at the Jury Assembly Office on the fourth floor but will wait in groups of 15 in designated assembly areas in separate parts of the building. Each individual juror will be given an assigned seat in his designated assembly area, either in the Jury Assembly Room or in seating to be set up in the 4th Floor and 8th Floor Rotunda areas. All seating in these areas, and throughout the Courthouse, are spaced six feet apart, and sanitizer dispensers will be available.

For criminal jury trials, voir dire will be conducted with juror groups of 15, who will sit in the gallery area of the courtroom during examination. 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. All persons struck for cause but who might be eligible to serve for another case (*e.g.*, knows or has an opinion about the case that will be tried) will be sent back to the Jury Assembly area to be included in the next voir dire panel for one of the other courtrooms. Persons struck for cause for reasons that would prevent them from serving on any of the panels will be excused.

When the lawyers have finished examining the first panel of 15, that group of jurors will be asked to wait in the adjacent empty courtroom. The lawyers will then commence voir dire with the second panel of 15 who reported at 9:15. At the conclusion of all voir dire questioning of the 30 jurors who reported at 9:15, the lawyers will make their peremptory strikes against these two groups. The attorneys will be expected to move between the courtrooms to accomplish their strikes, in order to look at the assembled jurors. Those selected will assemble in one courtroom, and those struck will either be excused or returned to their assembly areas, depending on whether other litigants need additional jurors that day.

On days when two criminal juries are scheduled to begin, two additional panels of 15 will report at 11:00. The second group of lawyers for the second jury trial beginning that day will conduct their voir dire with this group in the same manner, using two other courtrooms. Those struck from the 9:15 criminal jury panel will also be present and available for this group should they need extra jurors.

Voir dire in civil cases will operate in a similar manner, although only a single courtroom is necessary. The first civil group will commence voir dire with a panel of 20 jurors who have been summoned to report at 9:15. The civil panel will be seated in a designated area of the Courthouse, separate from any criminal panels, in seats that are six feet apart. In the event that two civil juries begin on the same day, the second group of litigants would begin voir dire with a panel of 20 who were summoned to report at 11:00. The Court does not expect to begin more than three jury trials in one day.

6. Temperature Checks

All persons reporting for jury duty will have their temperatures scanned by court personnel when they report initially. Persons measuring temperatures of 100.5 degrees or higher will be excused from serving. Additionally, personnel involved in the trial who will be in the

courtroom the entire time (lawyers, paralegals, court reporters) will have their temperatures checked at the beginning of each day. The Court recognizes that temperature screening is not a silver bullet and that persons may be infected without displaying a fever, but jurors and litigants should take some comfort knowing that they are not spending hours and hours in a closed room with a feverish participant in their midst.

7. Jury Lunch

The Norfolk Courthouse is in downtown Norfolk, within walking distance of many restaurants and sandwich shops. The jury will receive approximately one hour for lunch and will be encouraged to leave the building and get some fresh air; this is the Court's normal procedure. Jurors may bring their lunches and stay in one of the jury deliberation rooms over the lunch break to eat. If they remain in the Courthouse, they must stay at least six feet apart.

8. Criminal Trials

The Court will begin criminal jury trials with all due caution, starting with one jury at a time and, it is hoped, shortly increasing to two based on comments from the Sheriff and other stakeholders regarding the suitability of the new procedures. We plan to conduct no more than three criminal juries at one time once the system is fully operational, and we will dedicate Circuit Courtrooms 4B, 5B, and 6A (each on a separate floor and the largest courtroom on that floor) for criminal jury trials.

We will not use the existing jury box for criminal jury trials. The Court has solicited and received a design drawing for modification of the jury box in two existing courtrooms so that it extends the length of the courtroom and increases the distance between chairs to six feet. This modification requires removal of virtually all public seating and relocation of counsel tables so that they face the jury (perpendicular to the judge's bench). It also requires modification of audio-visual cables that permit lawyers to display from their laptops to the courtroom monitors. Spectators who cannot fit into the very limited spectator seating will be able to watch a live audio-video feed from an adjacent courtroom. At this time, the Court has not received a final price for the needed modifications nor definite confirmation from the City of Norfolk that funds are available to pay for this project. Thus, while we will continue to explore this option and will pursue it if feasible, the judges ask the Supreme Court of Virginia to approve a plan that can be initiated immediately, without courtroom modification.

The immediate plan calls for jurors and alternates to sit six feet apart in the gallery area of the courtroom. Counsel tables will be rotated so that the attorneys face the jury and not the judge at the front of the room. In one of the three designated courtrooms, there will be enough space for approximately 12 members of the public to watch. In the other two courtrooms, there will be no spectator seating based on the jury relocation; the Court will make the empty jury boxes in those courtrooms available for victims who wish to be present for trial. Other members of the public can watch the trial via audio-visual feed from existing courtroom cameras into the adjacent courtroom. Deputies will provide security in the adjacent courtroom housing spectators.

Because the jurors seated in the back of the gallery section of the courtroom will not have a clear view of the video monitors displayed on the left and right sides of the courtroom, the

Court will set up a third video monitor on a cart that can be positioned in the center aisle of the courtroom and seen by those jurors. In addition, the Court is installing arms onto the two existing video monitors that will allow the monitors to be pulled out and angled toward the gallery.

Juror breaks will take place in the two adjacent jury deliberation rooms on each floor. These rooms are sufficiently sized to permit seven people to remain six feet apart. Each room has two bathrooms. The Director of the Norfolk Public Health Department, Dr. Demetria Lindsay, advised that jurors receive enough opportunities to remove their face coverings occasionally and breath normally. Jurors will receive this opportunity in the secure hallway between the courtroom and the deliberation rooms, where they can separate from the others, under supervision of the courtroom bailiff. Jurors will be encouraged to wash their hands during these recesses. Jury trials on the fourth floor can use the much larger jury assembly room for their restroom breaks.

Exhibits will be displayed on the video monitors. The Court will discourage exhibits from being handed person to person but will have gloves available to provide if handling a particular exhibit becomes necessary.

The Court will encourage counsel to stipulate to any non-controversial evidence to reduce the length of trial and to agree on witnesses whose testimony could be presented remotely by WebEx or Polycom.

All persons, including witnesses, must wear face coverings. The witness stand, however, is sufficiently distanced from any other person in the courtroom to allow the witness to take the face covering down and testify with face exposed. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to recover his or her face covering before allowing the approach.

If face coverings impair the ability of a lawyer to communicate with the witness or with the Court, the Court may grant the attorney permission to remove his or her face covering as necessary, ensuring that the attorney remains physically distant from other persons in the courtroom.

A criminal defendant may be asked to remove his face covering during voir dire to ensure that prospective jurors can see him and indicate whether any know him or recognize him. He may also be asked to lower his face covering briefly for the purpose of enabling a witness to see his face and answer whether the witness can identify the defendant.

If face coverings impair the ability of a lawyer and his client to communicate at counsel table (and alternate methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.

Sidebars may be conducted at the bench, with a plexiglass shield separating the judge from the lawyers, or alternatively in the jury deliberation room immediately behind the courtroom.

All courtrooms have plexiglass barriers in front of the judge, in front of the courtroom clerk, and between the judge and the courtroom clerk.

9. Civil Trials

Civil litigants who wish to conduct voir dire on the same day as opening statements and the presentation of evidence may be accommodated, depending on the status of criminal trials scheduled for that day. If fewer than three criminal trials are starting on a given day, then one of the panels of jurors who report at 9:15 a.m. could be directed to a civil courtroom for voir dire. If the questioning yields enough eligible jurors, peremptory strikes could be made with the jurors in the courtroom, and the trial could begin immediately thereafter (as is normally done).

Civil juries with five or seven members will be seated in the existing 14-seat jury box. Two jurors can sit on opposite ends of the back row; one juror can sit in the middle of the front row; and four chairs will be placed in the well of the courtroom, in front of the jury box. The chairs will be spaced six feet apart from each other. Civil juries with alternates will be seated in the same way as criminal juries and will be invited to take their breaks in two groups.

10. Jury Deliberation

Jury deliberation in criminal trials will take place in the courtroom itself. Court personnel and lawyers will vacate the courtroom for deliberation. Any need for on-the-record proceedings while the jury is deliberating (such as consideration of jury questions) will occur in one of the conference rooms adjacent to the courtroom with the lawyers, parties, and court reporter. The jurors will receive individual sets of jury instructions so that they do not need to share. In civil trials, the Court will use existing jury deliberation rooms, which can accommodate seven jurors.

11. Cleaning

Courtroom bailiffs already clean the witness stand with disinfectant between each witness. The City (Department of General Services) has confirmed that additional cleaning staff will be available for all jury trials, with instructions to clean all high-touch surfaces, including jury bathrooms, approximately every two hours.

12. Symptoms Developing During Trial

The presiding judge and/or the judge's staff will collect from each juror and alternate a mobile telephone number and email address for use if the Court needs to contact jurors during any evening recess. If events develop that cause the trial to be discontinued, the Court will notify each juror personally with the contact information provided.

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 Court—if they have any symptoms. Likewise, if any 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 and isolate alone in an adjacent conference room off the secure corridor behind the courtroom. The Sheriff will be immediately notified to provide an escort garbed in suitable personal protective equipment to escort that person from the courthouse, ensuring via radio communication with other Sheriff's deputies that an elevator is vacant and the corridors have been cleared to allow the person to pass. Court staff will contact that person after court adjourns for the day and request that he/she notify the Court of any positive COVID-19 test result.

If any participant in the trial tests positive for COVID-19 during a trial, the Court 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 Virginia Department of Health 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. In cases where counsel do not consent, the Court expects to seat up to two alternates for all multi-day 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) or a mistrial will depend on consideration of several factors including: the availability of rapid-return test results, the use of alternates, the stage of trial, the length of the prospective delay, and the continued availability of jurors and litigants. The Court will also consult with the Virginia Department of Health 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 Virginia Department of Health and established in the Emergency Temporary Standard will be followed in the event an infection develops during a 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 move the trial into one of the other available courtrooms (three courtrooms available for criminal jury trials and four for civil jury trials). If those courtrooms are in use with other jury trials, the Court will confer with the litigants involved in the trials to assess the priorities and the feasibility of adjourning one for a time sufficient to allow the other to conclude. Given that the Court proposes to conduct no more than three jury trials simultaneously, it is unlikely that all available courtrooms will be occupied with juries at the same time.

Conclusion

“It is common sense to take a method and try it: if it fails, admit it frankly and try another. But above all, try something.” Franklin D. Roosevelt, President of the U.S.; Oglethorpe University Commencement Address (May 22, 1932).

The Norfolk Circuit Court plan might have problems that require fixing. We expect this to be a fluid process that will involve constant consultation and re-evaluation. If something doesn't work, we will abandon it and try something else. We expect to run into unforeseen issues, but we know that we have experienced and thoughtful people on the team to help us make necessary adjustments.

We are ready to resume jury trials and to respond to the challenges involved as they confront us.

Respectfully submitted

Mary Jane Hall, Chief Judge
Norfolk Circuit Court
August 20, 2020