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September 17, 2020

The Honorable Bruce D. White, Chief Judge
Fairfax Circuit Court
4110 Chain Bridge Road
Fairfax, VA 22030

Dear Chief Judge White:

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 Nineteenth Judicial Circuit. You may begin jury trials effective today, provided the jury trial is consistent with and in strict conformity with the plan. 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, reading "Donald W. Lemons".

Donald W. Lemons

FAIRFAX CIRCUIT COURT PLAN FOR RESUMING JURY TRIALS

Submitted on behalf of the Court by Chief Judge Bruce D. White

Submitted: August 4, 2020

Revised and Resubmitted: September 15, 2020

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1. Methodology

In developing this plan, we have sought and received input from many stakeholders and have reviewed pertinent materials. Here is an overview of our methodology:

- The Chief Judge established the Jury Resumption Committee composed of the Chief Judge and four other Circuit Court Judges, as well as representatives from the Clerk of the Court, and the Sheriff's Office. The Committee has met weekly to develop this plan.
- The Court has sought the input of the Fairfax Bar Association's Circuit Court Committee. Members of the Committee – which is composed of attorneys who have criminal, civil or domestic relations practices and appear regularly in the Fairfax Circuit Court – have been actively involved in planning for the resumption of jury trials. This has included the convening of a meeting in one of our largest courtrooms to evaluate various options for conducting a jury trial in a safe manner. Members of the Committee then submitted a memorandum of suggestions and considerations regarding the resumption of jury trials.
- The Chief Judge has solicited and received input from other members of the Bar.
- The Public Defender for Fairfax County has also submitted recommendations to the Committee.
- Consultation with representatives of the Clerk of the Court and the jury staff have continued throughout this process.
- Consultation with the Sheriff personnel responsible for courthouse security have also been consulted throughout this process.
- Consultation with the Facilities Management Division, with regard to issues related to signage, courthouse cleaning protocols, and the courthouse air filtration system, have also occurred on an ongoing basis

- Representatives of the Jury Resumption Committee met with Dr. Benjamin Schwartz, Director of the Division of Epidemiology & Population Health, Fairfax County Health Department. Dr. Schwartz provided the Committee valuable advice and guidance regarding the resumption of jury trials. Dr. Schwartz also reviewed and made suggestions regarding our screening questionnaire for potential jurors with regard to COVID-19. We have also consulted with Dr. Schwartz with respect to determining the appropriate action to take in the event that a juror or someone else in the courtroom becomes ill or tests positive for COVID-19, or lives with someone who becomes ill or tests positive for COVID-19.
- Representatives of the Jury Resumption Committee have reviewed the Covid-19 data compiled by the Virginia Department of Health and the Fairfax County Health Department, as well as other sources of information, in developing this plan.
- Representatives of the Jury Resumption Committee have reviewed materials submitted to the Supreme Court of Virginia Jury Task Force by the Chief Justice and the Office of Executive Secretary.
- Representatives of the Jury Resumption Committee have also reviewed the jury resumption plan published by the United States District Court for the Eastern District of Virginia. See General Order 2020-19 (In re: REVISED SCHEDULE FOR THE RESUMPTION OF CRIMINAL JURY TRIALS) and General Order 2020-20 (In re: MODIFIED JURY SUMMONS PACKET).
- Finally, the plan submitted on August 4, 2020 has been reviewed by the judges of the Fairfax Circuit Court and has been approved by the judges for submission to the Supreme Court of Virginia.

We express our deep appreciation to all stakeholders who provided input regarding the resumption of jury trials. We have adopted many of the recommendations provided by stakeholders and they have made an invaluable contribution to our work. Ultimately, however, we – the judges of the Fairfax Circuit Court – are responsible for the final jury resumption plan submitted to the Supreme Court of Virginia.

2. Statement of Criteria for Resuming and Stopping Jury Trials

The Supreme Court, in its memorandum entitled *Guidance and Considerations for the Resumption of Jury Trials* (June 29, 2020) (hereafter “Memorandum”) stated that the plan submitted to the Supreme Court should include “a statement of criteria the judges have considered to determine if they can safely conduct jury trials in their courts....” *Memorandum at 5*. The memorandum also stated that “the courts should work to mitigate risk as much as possible, but the Jury Task Force understands that the safety measures will not completely eliminate risk.” *Memorandum at 6*.

The criteria that we have used to determine whether we can safely conduct jury trials in Fairfax County fits into three categories:

First, we have examined Virginia Department of Health and Fairfax County Health Department data to ascertain the current status of the pandemic in the Commonwealth and Fairfax County.

Second, we have examined whether we have the facilities, the personnel, and the equipment “to mitigate risk as much as possible....”

Third, we have examined whether the proposed plan: (1) consistently maintains social distancing; (2) consistently requires some form of face covering to prevent the spread of the Covid-19 virus; (3) defers from jury service those individuals particularly vulnerable to Covid-19 as well as those individuals who live with or care for particularly vulnerable persons; and (4) provides cleaning protocols to mitigate the spread of the virus before and during a jury trial.

Finally, in addition to examining the criteria for resuming jury trials, we have examined the criteria for stopping the resumption of jury trials.¹

¹ The Circuit Court is taking steps to implement the regulations titled ***Emergency Temporary Standard—Infectious Disease Prevention, SARS-COV-2 Virus That Causes COVID-19***, which were recently adopted by the Virginia Department of Labor and Industry. A multi-step analysis of job tasks performed by all judicial employees is required as part of the implementation, and different protocol will be required based upon the identified risk levels of those job tasks of judicial employees. The Court will apprise the Supreme Court of Virginia of any

A. Data

The COVID-19 data indicates that the pandemic is far from over in either the Commonwealth or Fairfax County.

The current data for the Commonwealth as a whole is as follows (as of September 14, 2020):

- Total Cases: 134,571
- Total Hospitalized: 10,293
- Total Deceased: 2,743
- New Cases Today: 757²

The 7-day moving average for the Commonwealth is 1000 cases per day.³

As for Fairfax County, the COVID-19 Case Data for Fairfax Health District, is as follows (as of July 30, 2020):

- Total Cases: 19,854
- Total Hospitalized: 2,140
- Total Deceased: 582
- New Cases Today: 58⁴

modifications to the proposed plan that are required as a result of these emergency regulations.

² Source: <https://www.vdh.virginia.gov/coronavirus/covid-19-daily-dashboard/> (Accessed: September 14, 2020) and <https://www.vdh.virginia.gov/coronavirus/key-measures/> (Accessed: September 14, 2020).

³ Source: <https://www.vdh.virginia.gov/coronavirus/key-measures/> (Accessed: September 14, 2020).

⁴ Source: <https://www.fairfaxcounty.gov/covid19/case-information> (accessed: September 14, 2020).

- The 7-Day Moving Average for the Northern Region⁵ is 216.0.⁶

Fairfax County entered Phase Three on July 1, 2020. Phase Three permits the following: restaurants and beverage services open but bar seating prohibited; fitness and exercise open at 75% capacity; non-essential retail open; entertainment venues open at 50% capacity; childcare open; places of worship open with six foot seating requirement; personal grooming facilities open; county parks and athletic fields open but facilities closed; gatherings permitted with 250-person limitation; face coverings required but with exceptions; and teleworking strongly encouraged.⁷

The key takeaway from this data is that, even though Fairfax County has entered Phase Three, the COVID-19 pandemic in the Commonwealth and Fairfax County remains a source of the utmost concern and will require substantial alteration of the Court's usual jury trial procedures in order for the Court to protect the safety of "jurors, attorneys, clerks, judges, court staff, members of the press, and other present from the risk of the spread of COVID-19 from in-person court proceedings." *Memorandum at 5.*

The Court recognizes that this remains a dynamic situation. The Court will continue to monitor the data on a regular basis for the purpose of determining whether it is necessary to modify its plans, which may include increasing or reducing the number of jury trials it can safely conduct, or suspending jury trials entirely if conditions warrant.

⁵ The Northern region includes Alexandria, Arlington, Fairfax County, Fairfax City, Falls Church, Loudoun County, Manassas City, Manassas Park, and Prince William County.

⁶ Source: <https://www.vdh.virginia.gov/coronavirus/key-measures/#northern> (accessed: September 14, 2020).

⁷ Source: <https://www.fairfaxcounty.gov/covid19/reopen> (accessed: September 14, 2020).

B. Facilities, Personnel and Equipment

The Fairfax Courthouse has the facilities to conduct jury trials with social distancing. Specifically, the Courthouse has three large courtrooms – 4J, 5J, and 5E – that can accommodate a 14-person jury (12 jurors and two alternates) with social distancing. These courtrooms are “high tech” courtrooms with display monitors throughout the courtroom and technology built into the podium for the display of exhibits to witnesses and jurors and the gallery.

In addition, the Courthouse has two jury assembly rooms that together can accommodate the prospective jury panel with social distancing.

There is also a large cafeteria seating area on the ground level of the courthouse that can be used for juror lunches. However, the Court anticipates using the jury assembly room for juror lunches, since the jury assembly room is a controlled access area, has its own bathrooms, as well as a refrigerator to store lunches that the jurors may bring to the courthouse. In the event that jurors will be purchasing lunch in the cafeteria and eating it in the cafeteria seating area, we expect to cordon off an area to be reserved for jurors.

In addition, the Court has a number of other courtrooms or conference rooms that can be used to stream court proceedings to spectators, the press, family members, and others. We have the technological capacity to stream court proceedings – including *voir dire* and other trial proceedings – to other courtrooms and conference rooms. For each jury trial, we will designate a location for the public, press, family members, and other observers to watch the trial. (These individuals will not be permitted in the courtroom where the trial is being conducted because the jury will be in the gallery.) Observers will be required to maintain social distancing and masking requirements while in the room designated for streaming of the trial.

With respect to personnel, the judges of the Fairfax Circuit Court have worked very closely with the Clerk of the Court and the Sheriff, and their staffs, to address the COVID-19 pandemic and we believe we collectively have the personnel to facilitate the requirements of a jury trial in a safe manner. In addition, the Court and Fairfax County has IT personnel and equipment to stream court proceedings into other courtrooms or conference rooms for remote observation of court proceedings. In addition, the Fairfax County Facilities Management Division

will be arranging for cleaning personnel to address the additional cleaning and sanitization requirements described in this plan.

With respect to Personal Protective Equipment (“PPE”), we will not bring prospective jurors into the Courthouse until we have secured the PPE supplies referenced elsewhere in this plan, including clear masks, face shields, disposable gloves, hand sanitizer, and cleaning supplies.

As to issues related to air filtration, we have consulted with Aaron Mills, Facilities Management Division – Chief Building Engineer. We have been advised of the following: (1) Pre (standard) filters (for dust mites and mold spores) get changed every 3-6 months; (2) Final filters (for bacteria and virus carriers) get changed every 1-2 years; (3) The HVAC system is a 4 pipe boiler/chiller system with air handlers and VAV (Variable Air Volume) boxes. The air handlers are the main source of cooling, fresh air, exhaust and building airflow. The air handling units take outdoor air temperature which determines how much or how little air comes in and also determines how much or how little air is exhausted. There needs to be a minimum of 10% fresh air by code, which is always complied with. The remaining air is circulated air.⁸

⁸ We have been advised that the replacement of the filters is occurring now, as well as the cleaning of heating and cooling coils on the air handlers. In addition, the Facilities Management Division is making sure that all the dampers, actuators and linkages (that open and close the dampers) are working properly in order to ensure that the air flow is balanced correctly. These maintenance activities are estimated to be completed by August 9, 2020.

C. Four Core Safety Aspects of the Plan

There are four core safety aspects of the Plan to resume jury trials.

First, at all times the plan contemplates maintenance of social distancing by all jury trial participants, including prospective jurors, selected jurors, witnesses, attorneys, defendants, clerks, and judges.⁹ Sheriff deputies will also maintain social distancing except when security requirements preclude them from doing so.

Second, the plan contemplates the wearing of face masks or face shields by all trial participants at all times, except under limited circumstances as described below, and only if all trial participants can maintain at least 10 feet of separation from the person authorized to remove a face mask:

- All persons, including witnesses, must wear face coverings. However, in those courtrooms where the witness stand is sufficiently distanced from any other person in the courtroom (at least 10 feet), a witness may be permitted by the Court to remove his or her face covering and testify with face exposed.¹⁰ If a lawyer or bailiff needs to approach a witness, the Court will instruct the witness to re-cover his or her face before allowing the approach.
- If a face covering impairs 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, so long as the attorney can maintain a distance of at least 10 feet from any other person.

⁹ The Court recognizes that the defendant and defense counsel must be able to communicate confidentially during the trial. In order to facilitate confidential communication, the Court will make headsets available to counsel and clients, or permit the use of other technology to facilitate confidential communication, or take recesses as necessary so that a client and counsel can enter another room to confer confidentially while maintaining social distancing.

¹⁰ The witness stand in Courtrooms 5J and 5E are sufficiently far from other persons to permit a witness to testify with face uncovered. The witness stand in Courtroom 4J is not sufficiently far from other persons to permit a witness to testify with face uncovered. The court is considering alternative witness seating locations within Courtroom 4J in order to permit the witness to testify with face uncovered.

- A criminal defendant may be asked to briefly remove his or her face covering during voir dire to ensure that prospective jurors can see the defendant and indicate whether any of the jurors know or recognize the defendant. A criminal defendant may also be asked to briefly lower or remove a face covering for the purpose of an identification proceeding.
- If a face covering impairs 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 such recesses as 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 wear face coverings at all times, but the Court may permit individual jurors to briefly lower or remove their face covering if requested by counsel so long as social distancing of at least 10 feet is maintained from all other persons, including other jurors.
- When sidebars are necessary, the Court may conduct them in a jury deliberation room, or excuse jurors from the courtroom.
- The Court may permit a trial participant to remove a face covering for other reasons that the Court deems appropriate, such as when necessary for the trial participant to be heard or understood, so long as the trial participant is at least 10 feet from all other persons.
- In the event that a necessary witness is unable for medical reasons to wear a face covering, or is unwilling to wear a face covering, and social distancing cannot be maintained, the Court will employ alternative means of taking the witness' testimony, such as through the use of Web-Ex or Polycom.

Third, the plan contemplates that prospective jurors will be deferred from jury service if they or someone they live with, or someone they provide direct care to, is particularly vulnerable to the COVID-19 virus, or if the juror has had an exposure to the COVID-19 virus that requires deferral of jury service for the protection of others, or if the juror seeks exemption due to a continuous care obligation, such as for a child age 16 or younger, pursuant to Virginia Code Section 8.01-341.1.

Finally, the plan that we propose contemplates substantial and frequent cleaning protocols to mitigate the spread of the virus on surfaces. This cleaning will take place before, during, and after each day of trial. High touch surfaces will be disinfected during trial recesses at intervals of no more than two hours.

D. Stopping Jury Trials

There are three aspects to this section:

- First, when should the Court stop a specific jury trial due to an emergent COVID-19 exposure;
- Second, when should the Chief Judge stop all jury trials due to a resurgence of the virus; and
- Third, under what circumstances should the Chief Judge close the Courthouse entirely for cleaning purposes.

With respect to the first issue, Section 10 addresses how the Court will respond to jurors or other trial participants who become ill with symptoms consistent with COVID-19, or tests positive for the COVID-19 virus, or who are in close contact with someone who has become ill with symptoms consistent with COVID-19 or tests positive for the virus. We have consulted with Dr. Schwartz in developing our protocol for addressing these situations.

With respect to the second matter, we will carefully monitor evidence of resurgence and consult on an as needed basis with the Fairfax Health Department to determine whether the resumption of jury trials needs to be suspended. Reinstatement of “stay-at-home” Executive Orders, or returning to Phase 1 or Phase 2 reopening status, will almost certainly require suspension of jury trials.

With respect to the third matter, we recognize that circumstances may require the Chief Judge to close the Courthouse entirely for a period of time for deep cleaning. We will consult with the Fairfax Health Department should circumstances arise that require the Chief Judge to consider such an action. In the event that the entire courthouse must be closed for a deep cleaning while a jury trial is ongoing, the trial will be suspended and will resume upon the reopening of the courthouse. We do not contemplate that such a closure will be for more than a few days. If the courthouse can safely be reopened in stages, we will prioritize those facilities necessary for resumption of the jury trial.

3. Prioritization of Jury Trials

The Court's highest jury trial priority is to try felony jury trials involving incarcerated defendants¹¹, as well as jury trials that have statutory priority,¹² and other jury trials that must be conducted within a specified time period absent good cause.¹³ At present, there are approximately 42 defendants in the Fairfax Adult Detention Center who are awaiting felony jury trials.¹⁴ But for the COVID-19 pandemic, many of these cases would have been tried already.

It is our aspiration to give the earliest available trial dates to those defendants who have been incarcerated the longest, recognizing that this may not be possible in every case for a variety of reasons, including the unavailability of necessary witnesses.

The second highest priority is to try felony jury trials involving non-incarcerated defendants.

The third highest priority is to try misdemeanor jury trials.

Civil jury trials will resume after the criminal jury trial priorities have been achieved.

¹¹ When this plan was initially submitted on August 4, 2020, there were no confirmed COVID-19 cases in the Fairfax Adult Detention Center. Subsequently, 16 individuals detained at the ADC tested positive for COVID-19. According to information provided by the Sheriff's Office on September 8, 2020, all the detained individuals who tested positive have now been released from quarantine and, as of September 8, there were no new COVID-19 confirmed cases at the ADC.

¹² See, for example, Virginia Code Section 37.2-821 (Civil Commitment trials "shall be given priority over all other pending matters before the court and heard as soon as possible....").

¹³ See, for example, Virginia Code Section 37.2-908 (Sexually Violent Predator trials to be conducted within 120 days after probable cause hearing, unless good cause shown or by agreement of the parties).

¹⁴ As of September 14, 2020.

4. Facilities and Courtrooms to be Used

- a. In order to ensure social distancing, the two jury assembly rooms will be used for one jury panel.¹⁵ Thirty people can be placed in each room at proper social distance. The chairs will be prepositioned at the proper distance. Jurors will be instructed not to move the chairs and to sit in the same chair throughout their time in the assembly room. Masks will be worn at all times.
- B. For the criminal jury trials, only courtrooms 4J¹⁶, 5J¹⁷ and 5E¹⁸ will be used. Photographs of each of these courtrooms are included at Appendix 1. These courtrooms allow 25 jurors to be placed in the

¹⁵ The measurements of the Jury Assembly Rooms are comparable to each other. The measurements of the Jury Assembly Room on the 5th Floor is as follows:

- Front to Back: 39 feet, 1 inch.
- Side to Side (front part of jury room): 45 feet, 10 inches.
- Side to Side (rear part of jury room): 29 feet, 2 inches.

¹⁶ The measurements of Courtroom 4J are as follows:

- Front of Judge's Bench to Back Door: 42 feet, 9 inches.
- Gallery Length (Bar to back door): 21 feet, 7 inches.
- Gallery Width: 38 feet, 8 inches.
- Number of Rows in Gallery: 5

¹⁷ The measurements of Courtroom 5J are as follows:

- Front of Judge's Bench to Back Door: 55 feet, 1 inch.
- Gallery Length (Bar to back door): 33 feet, 2 inches.
- Gallery Width: 38 feet, 9 inches.
- Number of Rows in Gallery: 10

¹⁸ The measurements of Courtroom 5E are as follows:

- Front of Judge's Bench to Back Door: 45 feet, 8 inches.
- Gallery Length (Bar to back door): 17 feet, 11 inches.
- Gallery Width: 43 feet, 8 inches.
- Number of Rows in Gallery: 5

gallery for *voir dire*. Once the trial begins, the 14 jurors will be in the gallery on marked numbers at least six feet away from each other.

- C. The jury recess/deliberations courtrooms will be 4H for 4J; 5H for 5J and 5D for 5E. These courtrooms will also have 14 numbers posted for the jurors to sit and they will sit in the same seat throughout the trial.
- D. As stated above, jurors will have several options for lunch. First, they can leave the Courthouse, but this will require that they go through the entrance protocol again upon their return. Second, jurors can bring lunch and eat in one of the jury assembly rooms. Third, jurors may be permitted to eat in the cafeteria seating area. Fourth, the Courthouse has an open-air courtyard where jurors can also eat.
- E. Spectators for the jury trial will be able to observe the trial through a video feed. This feed will be set up in another courtroom, jury assembly room, or a courthouse conference room depending on availability.
- F. Other courtrooms to include 3F can be used as overflow if needed and if available. A section of the cafeteria can be used as well if needed.
- G. Signage will be used to ensure social distancing and proper hand-washing hygiene throughout the courthouse to include:
 - 1. “DO NOT SIT” signs on chairs and couches to ensure social distancing.
 - 2. Numerical signs denoting the 14 jurors in the courtroom and in the jury recess/deliberation courtroom so that the jurors sit in the same place each time.
 - 3. Signs by elevators requiring no more than four people in the elevator at a time.
 - 4. Signs throughout the courthouse reminding visitors of social distancing requirements.
 - 5. Any queue lines in the courthouse will require footprints on the floor to ensure social distancing.
 - 6. Signs posted in kitchenettes and bathrooms regarding hand-washing.

Photographs of current signage in the Courthouse appears at Appendix 2.

5. Screening of Prospective Jurors Regarding COVID-19 Issues

Screening of prospective jurors regarding COVID-19 issues will be conducted in two phases, each of which are designed to protect vulnerable individuals and to mitigate the spread of the virus.

The first phase consists of a questionnaire that will be sent out to the entire prospective jury pool for a particular date. These are the individuals randomly selected from the master jury list for a particular date. The Court will send out the questionnaire along with the jury summons to a significantly larger number of jurors than it would have summoned prior to the pandemic, given the expectation that many jurors will seek deferral from jury service for reasons associated with COVID-19. The text of the questionnaire is as follows:

SUPPLEMENTAL JUROR QUESTIONNAIRE

The Fairfax County Circuit Court has taken substantial steps to reduce the risk of the spread of COVID-19 in the courthouse complex. This includes requiring all staff and visitors to wear masks, maintain social distancing, wash hands frequently, and to stay home if experiencing symptoms. Additional cleaning protocols will be implemented during jury trials.

All persons entering the courthouse are required to have their temperature taken. All persons entering the courthouse must also wear a face covering. All persons entering the courthouse will also be asked several COVID-19 related questions before being permitted to enter the courthouse. Any individual who declines to cooperate with these screening measures will be refused entry to the courthouse.

Detailed information regarding the Fairfax Circuit Court's Jury Resumption Plan, as approved by the Supreme Court of Virginia, may be found at the following link:

<http://www.>

IF YOU HAVE QUESTIONS OR CONCERNS REGARDING THIS QUESTIONNAIRE, PLEASE CALL THE JURY DEPARTMENT AT 703-246-2292.

It is essential that prospective jurors monitor themselves prior to leaving home for any possible symptoms of COVID-19 including: fever or chills, cough, shortness of breath, difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion, runny nose, nausea, vomiting, or diarrhea? Immediately contact our **Jury Department at 703-246-2292** if you are experiencing any of these symptoms. Potential jurors entering the courthouse will have their temperature checked upon entry and following the lunch recess.

DO NOT COME TO THE COURTHOUSE IF YOU ARE EXPERIENCING ANY OF THESE SYMPTOMS.

You must complete and submit this information 10 days prior to your reporting date by one of the following methods:

1. **Submit online at:** <https://Juror.FairfaxCounty.Gov> or Fax: 703-359-4389
2. **Mail:** Circuit Court Jury Dept., 4110 Chain Bridge Rd., Suite 503, Fairfax, VA 22030
3. **Email:** Jurymailbox@FairfaxCounty.Gov

Please Complete in Black Ink Only

Individuals who are, or might be, at increased risk of severe COVID-19 may request a deferral of your jury service at this time. **This includes individuals age 65 years old or older.** It also includes individuals with certain conditions, as described on the next page of this questionnaire.

According to the Centers for Disease Control and Prevention (CDC), individuals with certain conditions are at increased risk of severe COVID-19. These conditions are:

- Cancer
- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 or higher)
- Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Sickle cell disease
- Type 2 diabetes mellitus

According to the Centers for Disease Control and Prevention (CDC), individuals with certain conditions might be at an increased risk of severe COVID-19. These conditions are:

- Asthma (moderate-to-severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurological conditions
- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Smoking
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

Please certify below if a deferral from jury service is requested, either because

(1) you meet one of the criteria listed above;

(2) you live with or provide direct care to a person who meets one of the criteria listed above;
or

(3) you, or someone you live with, or someone you provide direct care to, has another underlying medical condition that puts this person at a higher risk of developing serious health complications from COVID-19.

___ I hereby certify, under penalty of perjury, that I meet the criteria for deferral described above and request deferral from jury service at this time.

In addition, please answer the following questions with **YES** or **NO**:

1. Have you traveled internationally within the last 14 days? _____
2. Are you currently experiencing, or have you experienced in the past 14 days, any of the following conditions: fever or chills; cough; shortness of breath; difficulty breathing (other than a pre-existing non-COVID diagnosis); fatigue; muscle or body aches; headache; new loss of taste or smell; sore throat; congestion; runny nose; nausea; vomiting; or diarrhea? _____
3. In the past 14 days, have you been in close proximity to anyone who was experiencing any of the above-listed symptoms? _____
4. In the past 14 days, have you been directed to quarantine, isolate or self-monitor? _____
5. In the past 14 days, have you been diagnosed with COVID-19? _____
6. In the past 14 days, have you had contact with anyone who has been diagnosed with COVID-19? _____
7. In the past 14 days, have you resided with anyone who has been diagnosed with COVID-19? _____
8. Are you presently awaiting the results of a COVID-19 test? _____
9. Do you interact with individuals at work who are at high-risk of exposure to COVID-19? _____
10. Do you work in a long-term care facility or other health care environment? _____
11. Are you unable to wear a face covering for medical reasons? _____

A "YES" ANSWER TO ANY OF THE FOREGOING QUESTIONS WILL RESULT IN A DEFERRAL OF YOUR JURY SERVICE TO A LATER DATE.

CONTINUOUS CARE OBLIGATION

Please indicate if you wish to claim an exemption from jury service for the following reason: *I am necessarily and personally responsible during normal court hours for providing the continuous care required by (i) a child or children age 16 or younger of whom I have legal custody, or (ii) a person having a physical or mental impairment.*

Do you meet this criteria? Yes/No: _____

If Yes, do you wish to claim an exemption from jury service? Yes/No _____

Date

Signature

Juror Bar Code Number

Upon receipt of the questionnaires, a determination will be made as to those jurors to be deferred from jury service. It is the Court's intention to defer jurors who are particularly vulnerable to the virus, or who live with, or provide direct care to, an individual particularly vulnerable to the virus, or who – due to their own exposure to the virus – pose a risk to others.

The second phase of screening will occur at the time a prospective juror arrives at the Courthouse. Prospective jurors – like anyone else seeking entrance to the Courthouse – will have their temperature taken to confirm that they do not have a fever.¹⁹ Pursuant to a standing Order (CM 2020-48700) issued by Chief Judge Bruce D. White on April 24, 2020, any individual with a temperature of 100.4 Fahrenheit or above will be denied access to the building. In addition, before being permitted to enter the Courthouse prospective jurors will be asked each of the eleven questions posed in the Questionnaire regarding current symptoms and circumstances.²⁰

¹⁹ The Sheriff has ordered four Mobotix Thermal Imaging Screening Stations for determination of the temperature of persons entering the Courthouse. According to company literature, the device can determine an individual's temperature in less than one second. Two of these stations will be placed at the main entrance to the Courthouse. A third device will be used at the employees' entrance to the Courthouse and the fourth device will be placed at the side entrance to the Courthouse. We have been advised that the Thermal Stations are expected to arrive at the Courthouse in September 2020. Jurors who remain in the courthouse after the lunch recess will have their temperatures taken with hand-held devices.

²⁰ All courthouse visitors are presently questioned before being permitted to enter the courthouse. These are the questions presently asked of courthouse visitors:

1. Have you experienced any of the following symptoms in the last 14 days: Fever, Cough, Respiratory Illness, Difficulty Breathing?
2. Have you been in close contact with anyone that has shown any of the signs listed above in the last 14 days?
3. Have you been in close contact with anyone who has tested positive for COVID-19 in the last 14 days?

6. Courthouse Cleaning Protocols and Personal Protective Equipment Requirements

Dedicated Facilities Management Individuals: Fairfax County's Facilities Management Division has committed to provide three full-time porters for each jury trial. They will be assigned to clean the touch surfaces of the courtrooms, jury assembly rooms, bathrooms and other facilities used in connection with each jury trial. This is in addition to other individuals responsible for cleaning the courthouse during the day and evening. The assigned individuals for each jury trial shall maintain a cleaning log throughout the day. Facilities Management shall retain the cleaning logs for those assigned individuals.

Cleaning Substance: The cleaning substance to be used shall be an EPA-registered cleaner/disinfectant.

Areas to be Cleaned by the Assigned Individuals: The cleaning areas for the assigned individuals will consist of the jury room, jury assembly room, jury recess/deliberations room, public viewing room, bathrooms used by the jurors, and elevators and escalators used by the jurors. The cleanings shall include spraying and wiping down handrails, escalator rails, buttons and handrails on the elevators, bathrooms, doors, tables, and seating areas throughout the trial.

Anything touched in the courtroom, jury assembly room, jury recess/deliberations room and public viewing room needs to be disinfected with wipes after each use. Because there is no practical way for the assigned individuals to determine everything that is touched, the assigned personnel need to wipe down these areas periodically as part of standard operating procedure.

In addition, judges need to be mindful of the need to disinfect areas in the courtroom after use and arrange for this if the assigned individual is not in the courtroom. Judges also must be aware of the contact time for the cleaner/disinfectant being used, as the manufacturer's directions will indicate the length of time that the cleaning substance must be on a surface before the surface is disinfected.

Cleaning personnel will also be responsible for cleaning the reusable face shields that are employed during each day of a trial.

Frequency of Cleaning: Cleaning personnel will clean touch surfaces at least once every two hours.

Voir Dire Considerations: In the past, the Court has brought in an entire prospective jury panel for *voir dire*. That will not now be possible, however, due to the need to maintain a proper social distancing of at least six feet. Therefore, the Court contemplates bringing in fewer jurors at a time for *voir dire*, which will require at least two and perhaps more panels of jurors. Since a second panel will be seated in the same seats as a first panel, it will be necessary for the benches to be cleaned between panels. Further, in the past, after a juror was struck he or she was asked to remain in the back of the courtroom until *voir dire* was completed and then struck jurors would be collectively sent back to the Jury Assembly Room for possible reassignment to “strike” juries. Going forward, all struck jurors will be immediately excused so that they can promptly leave the Courthouse. In the event a potential juror is asked to remove or lower his or her face covering during *voir dire*, the juror will be placed at least 10 feet from all other individuals.

Hand Sanitizers for Jurors and Witnesses: Hand sanitizer and disinfectant wipes will be located at the witness stand in the courtroom and in the seating area used by jurors. They will also be available in the jury assembly room, jury recess/deliberations room, and the courtroom used for public viewing. Jurors will be encouraged to use hand sanitizers frequently and to use the disinfectant wipes to clean areas where they have been seated.

Hand-Washing by Jurors and Other Courtroom Attendees: We will recess at least once per 75 minutes and jurors will be escorted in a socially distant manner by deputy sheriffs to the bathrooms designated for use by jurors during the trial. Jurors will be asked to socially distant within the bathrooms as well.

Face Masks/Clear Face Coverings/Clear Face Shields: During trial, all people in courtroom at all times are required to wear face masks or shields that cover the mouth and nose areas, with the limited exceptions noted above in Section 2(C) above. This includes the judge, jury, court clerks, attorneys, interpreters, witnesses, the defendant, and anyone else who may be in the courtroom. If a witness or a potential juror refuses or is unable for medical reasons to wear a face covering, the witness or potential juror will be refused entrance to the courthouse. Potential jurors should call the Jury Department at **703-246-2292**. If the witness is an essential trial witness, alternative arrangements will be made to take the witness’ testimony virtually, as further explained above.

Jurors, defense counsel, the Assistant Commonwealth’s Attorney, and the defendant will have the option of: (1) wearing a face mask brought from home; (2)

wearing a clear disposable mask provided by the Court; (3) wearing a surgical-type disposable mask provided by the Court; or (4) wearing a reusable transparent face shield provided by the Court. All face shields will be cleaned each night. All witnesses will be requested to wear either transparent face masks or shields, in order to facilitate the jury's ability to assess credibility.

Elevators: No more than four people shall use an elevator at the same time in the courthouse. Every person must wear a face mask.

Bathrooms: Six bathrooms will be used by jurors for each trial. There are two bathrooms in the jury assembly room on the 4th floor and two bathrooms in the jury assembly room on the 5th floor. There are two bathrooms behind the courtroom that will be used as a jury recess/deliberations room. The door handles, toilet handles, and faucets in these bathrooms need to be cleaned and disinfected throughout the day by the assigned persons. In the event an entire jury pool cannot be seated in the 4th floor jury assembly room and the 5th floor jury assembly room, an additional courtroom will be used to seat the remaining prospective jurors. The same cleaning protocol shall be used for this courtroom.

Cloth Chairs: The use of cloth chairs in the courtroom should be discouraged and, when possible, replaced with vinyl, plastic or wood chairs. Furniture made of fabric must be disinfected using a spray, which will make the surface wet. If cloth seats are used, the seat must be fully wetted, disinfected, and fully air dried before being used by someone else. If several people must use the same cloth chair throughout the day, a single-use chair cover should be used that can be disposed between users.

All fabric furniture in the courtroom will be disinfected twice a day—prior to court being in session and after court is in recess. Again, the use of cloth furniture should be discouraged.

Vinyl, Plastic and Wood Chairs: Chairs made of vinyl, plastic, and/or wood must be wiped down after each use. An individual is not permitted to sit on a chair unless it has been being cleaned and disinfected with a wipe after the prior user. The Court is also considering the use of one time use disposable chair covers.

7. Juror Movement In and About the Courthouse

a. Parking

- i. Jurors will park in the public parking garage. Additional signage will be added coming from the parking lots, near employee entrance and at the main entrance directing jurors to report to the main entrance to the Courthouse.

b. Entering the Courthouse

- i. Jurors will undergo the screening protocol described above prior to entering the courthouse. If a juror cannot enter due to this screening, he or she will be instructed to call the Jury Department at **703-246-2292**.
- ii. Hand sanitizer stations will be set up around the courthouse.
- iii. Jurors must wear face masks upon entering the courthouse and while in the courthouse. If a juror does not have a face mask, one will be provided by the Court.

c. Arrival Time

All jurors will be instructed to report at 8:00 a.m. Given the limited number of jury trials that will be conducted at any one time, the Court did not deem it necessary to require jurors to arrive at staggered times. A further reason not to require jurors to arrive at staggered times is that the Main Entrance to the Courthouse gets more congested after 8:00 a.m.

d. Juror Check-In

Jurors will initially be directed to report to the 5th floor Jury Assembly Room. Signage will give jurors the option to use elevators or stairs to reach the 5th floor. Outside of the 5th floor Jury Assembly room, footprints will be placed on the ground as a waiting queue to ensure social distancing. Once checked in, 30 jurors will remain at the 5th floor Jury Assembly Room spaced at 6 feet apart. The remaining 30 jurors will be directed to wait in the 4th floor Jury Assembly Room where they will be spaced 6 feet apart. Consequently, both assembly rooms will be utilized for one jury panel of 60. Both rooms will present a jury information speech. A deputy will collect the first 25 from the 5th floor Jury Assembly Room and take them to the

assigned courtroom, seating them in the gallery at least six feet distant from each other for *voir dire*. The remaining jurors will wait in the assigned assembly room to see if they are needed.

e. **“Flow of Traffic” Entering and Leaving the Courthouse and Courtrooms**

Jurors will enter the courthouse at the main entrance and proceed directly to the Fifth Floor Jury Assembly Room. Jurors will be reminded to maintain social distancing while waiting to check-in with the jury staff. The floor will be marked at six feet intervals.

Jurors, witnesses, attorneys and other individuals entering and leaving courtrooms will maintain social distancing of at least 6 feet at all times. This requirement also applies to jurors entering and leaving the jury deliberation courtroom, the Jury Assembly Rooms, and restroom facilities.

Jurors will be escorted by the Sheriff’s Office in and out of courtrooms and from the Jury Assembly Room to the courtroom and back. If jurors need to move from one floor of the courthouse to another floor of the courthouse, only four jurors will be permitted in an elevator. If the stairwells are used, social distancing will be maintained within the stairwells.

In the event of a courthouse alarm requiring evacuation, social distancing will be maintained unless juror safety requires otherwise.

8. Initial Limitations on number of Jury Trials

- a. Initially, we will schedule two jury trials per week, with one to start on Monday and the other to start on Wednesday. The jury trials may include multi-day trials.
- b. The first jury trial will begin approximately 45 days after the plan is approved by the Supreme Court. This time period is necessary to issue juror summons, permit a reasonable time period for jurors to fill out and submit the COVID-19 Questionnaires, and provide the Court sufficient time to evaluate the Questionnaires upon their submission. The first jury trial will begin on a Monday and the second jury trial will begin on the Wednesday of that same week.
- c. Jury trials will run five days a week starting at 9:30 a.m.
- d. A third jury trial may be added to a week once we are operational and have evaluated our policies and procedures.
- e. We have determined that for each felony jury trial, we will issue the jury summons and COVID-19 questionnaire to 200 potential jurors for each day of trial. This is based on the following assumptions:
 - (1) We anticipate that we will defer at least two-thirds of the jurors who are summoned based on the COVID-19 questionnaire. (This number may be adjusted upward or downward based on experience.) The reason we anticipate such a high rate of deferral is that the questionnaire contains four different justifications for deferral: (i) particularly vulnerable jurors; (2) particularly vulnerable family members or persons cared for by the juror; (3) individuals exposed to COVID-19 or at risk of having been exposed; and (4) individuals with childcare responsibilities meeting statutory exemption requirements. With respect to this fourth category, we would note that Fairfax County Public Schools has announced that the Fall Quarter of public school will be all virtual, which will undoubtedly result in jurors seeking exemptions who did not seek exemptions in 2019 when they first filled out the standard questionnaire.²¹ In

²¹ The standard questionnaire was provided to jurors in October 2019 for the 2020 term. In 2019, 58,682 questionnaires were sent out. Ultimately, 28,086 jurors were qualified by the jury commissioners.

addition, we expect some additional jurors to be deferred or excused for non-COVID-19 related reasons.

- (2) Our protocol requires jurors to call in the night before their summons date to verify whether they are, or are not, required to report the next day. In other words, the pool of jurors who are summoned and not deferred is not necessarily the pool of jurors who will be instructed to actually report to court. Our plan is to require 60 jurors to actually report for each jury trial. This should provide a sufficient number of jurors for the actual jury selection process of 12 jurors and two alternates.²²

²² We expect to follow our standard protocol with respect to jurors who do not show up after being summoned and who have not previously been deferred or excused. That protocol is as follows: First, we send out “Failure to Appear” letters to jurors who did not show up when scheduled. The letters direct the juror to reschedule their service within 21 days. Second, if the juror does not reschedule their service, the jury staff goes ahead and reschedules the juror for a second time. Third, if the juror does not show up a second time, and has not contacted the jury office to seek deferral or excusal, the juror information is forwarded to the Chief Judge for issuance of Rule to Show Cause.

9. Conduct of Trials, including Jury Selection and Deliberations

a. **Assignment of Trials and Pre-trial Conferences:** Judges will be assigned to criminal trials in advance. The presiding judge will decide whether a pre-trial conference should occur to address pre-trial motions and the COVID-19 protocol pertaining to the criminal jury trial. The Court should not entertain pre-trial motions on the day of trial that could have been addressed at the pre-trial conference.

b. **Social Distancing:** All persons in the courtroom, in the jury assembly room, and in the jury recess/deliberations room shall remain at least six feet apart at all times.

c. **Staggering the Arrival of Witnesses:**

Counsel will be directed to give their witnesses specific arrival times to minimize the number of people in the courthouse and near the courtroom. Upon arrival, witnesses will wait in the hallway at a social distance from all other persons, unless a witness room is used for security or privacy purposes.

d. **Location of Courtroom Participants:**

a. **Witnesses:** Witnesses will use the witness stand in those courtrooms where the witness stand is located at least six feet from all other participants. In courtrooms where the witness stand is not located at least six feet from all other participants, an alternative location will be used. There are three courtrooms that will be used for jury trials under this plan: 5E, 5J and 4J. The witness stand in 5E and 5J is sufficiently distant from other trial participants so that a witness can maintain an appropriate social distance. (This includes the 10 foot requirement if the witness is permitted to remove his or her face covering.) The witness stand's location in 4J, however, does not permit either a six foot or 10 foot social distance. Therefore, the witness will testify from a seat placed in the well of the courtroom that will allow for appropriate social distancing. The witness' seat will face the jury but be at a social distance from both the judge and counsel.

- b. Court reporter: The Court reporter typically sits right in front of the judge. In order to maintain social distancing, the court reporter will be asked to sit in either the jury box or an alternative location.
 - c. Court clerks: Court clerks will remain in their current location, unless social distancing cannot be maintained. In that event, they will be relocated within the courtroom.
 - d. Deputy sheriffs: Except when security protocols require that deputy sheriffs be close to an incarcerated defendant, the deputy sheriffs will maintain social distancing from all trial participants, including potential and actual jurors, witnesses, counsel, the judge, the clerk, and other trial participants.
 - e. Interpreters: Interpreters will use electronic devices to interpret so that social distancing can be maintained.
- e. **Location of Counsel or *Pro Se* Litigants for the Presentation of the Case:** Counsel and *pro se* litigants shall question witnesses from counsel's table. Upon request, the Court will provide counsel and *pro se* litigants with a portable podium to place on counsel's table. Counsel may face the jury from the well of the Court, with proper social distancing maintained, during *voir dire* and opening statement and closing argument.
- f. **Use of the Courtroom Podium Prohibited:** The podium located in the courtroom shall not be used except for the presentation of electronic evidence. During such presentation, counsel is required to clean the podium. Cleaning wipes will be located at or near the podium.
- g. **Location of Counsel Tables:** Presently, all counsel tables face the judge. Since the jury will be sitting in the gallery, counsels' tables will be turned so that the tables are perpendicular to the judge and jury.
- h. **Pre-marking of Exhibits:** All exhibits will be pre-marked to minimize handling.
- i. **Consultation Between Defense Counsel and Defendant:** Defense counsel and their client, and co-counsel, need to maintain at least a six-foot distance in the courtroom. As described in Section 2(c), the Court will employ or permit the use of technology to facilitate confidential communication between defense

counsel and the defendant, or provide a room for counsel and the defendant to conduct a confidential communication.

- j. **Cleaning of Witness Chair(s)**: Chairs must either be sanitized between use by different witnesses or one-time disposable chair covers used. Wood, vinyl or plastic chairs are preferred, rather than cloth or fabric chairs, in order to facilitate cleaning.
- k. **Assigned Individual for Cleaning**: As stated above, the Facilities Management Division has committed to assigning additional personnel for cleaning during jury trials.
- l. **Location of Jurors**: When in the courtroom, jurors and prospective jurors will be seated on the courtroom benches in the gallery. The benches will have numbers affixed to them that are located at least six feet apart from one another. Jurors and prospective jurors shall be assigned a corresponding number and shall sit where their number is located. Similarly, in the jury recess/deliberations room, the benches will have numbers affixed to them that are located at least six feet apart from one another. Those numbers will correspond with juror numbers. For example, Juror 1 will sit at the location marked “1”. When a juror is struck, the juror will leave the courtroom immediately. The other jurors will remain in their current seats.
- m. **Provision for Trial Breaks for the Jury**: Jurors will take breaks and deliberate in a courtroom near the one being used for the trial, which shall be used as the jury recess/deliberations room throughout the trial. The Court’s usual jury deliberation rooms will not be used because they are too small to permit social distancing. In order to ensure the privacy and security of jury deliberations, no one other than jurors will be permitted in the jury recess/deliberation room, except for cleaning personnel when the jury is not present and Sheriff personnel escorting jurors to and from the room. Windows on the public doors shall be covered with opaque material and recording devices within the courtroom shall be turned off.
- n. **Sidebars**: When sidebars occur, the jury will be excused to the jury recess/deliberations room. The presiding judge, court clerk, attorneys, defendant, court reporter, and security personnel will remain in the courtroom.

Livestreaming of the proceeding will discontinue during the sidebar. Alternatively, the Court may conduct the sidebar in one of the jury deliberation rooms.

- o. Handling of Exhibits in Court:** Jurors will not touch documentary or tangible exhibits during in-court trial proceedings. Where counsel wish to display an exhibit to a witness or publish an admitted exhibit to the jury, the exhibit will be presented to the witness electronically and, once admitted, displayed on the large screen monitors in the gallery. Counsel and court personnel should use hand sanitizer after touching documentary or tangible exhibits.
- p. Handling of Exhibits by Jury During Deliberations:** Upon request, exhibits will be provided to jurors, using the following protocol: With respect to documentary exhibits, a copy of each exhibit requested will be made for each juror so that each juror has his or her own set of documentary exhibits to review. If the jurors request all exhibits, a complete copy of all documentary exhibits will be made for each juror. With respect to tangible exhibits, these exhibits will also be provided to the jurors upon request. Jurors will be instructed to use gloves in order to touch or handle any exhibit and, upon completing the examination of the exhibit, to dispose of the gloves and use hand sanitizer or wash their hands.
- q. Accessibility and Cleaning of Bathrooms for Jurors:** Six bathrooms can be used by jurors during each trial: two bathrooms in the juror assembly room on the 4th floor, two bathrooms in the jury assembly room on the 5th floor, and two bathrooms behind the courtroom that will be used as a jury recess/deliberations room. All bathrooms will have signage reminding occupants to wash their hands in warm water with soap for twenty seconds and to use a paper towel when turning off the faucets. In addition, the door handles, toilet handles, and faucets in these bathrooms will be cleaned and disinfected throughout the day. The bathrooms will be fully cleaned and disinfected each evening.
- r. Lunch Plans for Jurors:** Lunch plans are discussed in Section 4, above. The Court intends to provide a longer than usual lunch break for jurors.
- s. Selection of Alternates:** All criminal jury trials will have at least two alternates.

- t. **Jury Instructions**: The Court will read the jury instructions to the jury in accordance with normal protocol, but will at all times maintain an appropriate social distance. Each juror will be provided a copy of the jury instructions, so that they do not need to share the instructions with each other. Any jury question must be in writing and signed by the foreperson and given to a deputy Sheriff for transmittal to the Court. Hand sanitization will be employed by those who handle the jury instructions and jury questions, as well as the verdict form.

10. Plan of Action in the Event of an Emergent COVID-19 Case

We have considered six scenarios in which an individual in the courtroom or who reported for jury duty has a confirmed COVID-19 diagnosis or symptoms consistent with COVID-19. We have developed our plan of action for these scenarios in consultation with the Fairfax Health Department.

Scenario 1: Someone in the courtroom (juror or another person) has been identified as having contracted COVID-19.

In this situation, the following protocol will occur: The person who tests positive needs to be immediately isolated. If the person is a juror, the juror will be excused. The Fairfax County Health Department will conduct an investigation and identify anyone who has been in close contact with the infected individual. “Close contact” is defined as persons with contact within six feet for fifteen minutes or more during the infectious period. Anyone who meets the close contact criteria will be told to quarantine for fourteen days by the Fairfax County Health Department. Any jurors meeting the criteria will be excused. Jurors and courthouse staff involved with the trial will be notified of the following: (1) a case of COVID-19 occurred in the courtroom; (2) persons who have been exposed have already been contacted by the Health Department; and (3) this notice is just to notify you of the situation; be alert for fever or other COVID-19 symptoms over the next fourteen days and if you do become ill, consult with your healthcare provider.

If the person having contracted COVID-19 is a judicial employee, in addition to the above protocol, that person will be replaced by another judicial employee for the remainder of the trial. The Court will adhere to the protocol required by the regulations titled Emergency Temporary Standard—Infectious Disease Prevention, SARS-COV-2 Virus That Causes COVID-19, which were recently adopted by the Virginia Department of Labor and Industry.

Scenario 2: Someone in the courtroom (juror or another person) exhibits symptoms consistent with COVID-19 but has not yet been tested.

In this situation, the following protocol will occur:

- The person is immediately separated from others.

- Court staff contacts the Health Department's Communicable Disease number and is connected with the Outbreak Team.
- The Outbreak team arranges or COVID-19 testing at the Public health Lab (which is 5 minutes from the Courthouse.)
- The lab runs a rapid PCR which yields results in 15 minutes and obtains a specimen to back-up a negative test with the more sensitive RT-PCR test.
- If the rapid test is positive, the team interviews the individual immediately and recommends isolation. The team will also identify contacts and then communicate with contacts to recommend quarantine.
- The Health Department will then communicate back to the Court to indicate that the investigation was completed and all contacts have been informed.
- If the rapid test is negative, the symptomatic person needs to stay isolated pending the results of the more sensitive test (results should be available the next day). If that test is positive, then the investigation for contacts takes place; if the test is negative, then the individual can return to Court.

If the person exhibiting symptoms of COVID-19 is a judicial employee, that person will be replaced by another judicial employee for the remainder of the trial. The Court will adhere to the protocol required by the regulations titled Emergency Temporary Standard—Infectious Disease Prevention, SARS-COV-2 Virus That Causes COVID-19, which were recently adopted by the Virginia Department of Labor and Industry.

Scenario 3: Someone in the courtroom (juror or another person) has been in close contact with a person who has contracted COVID-19.

In this situation, the following protocol will occur: The identified close contact will be told to quarantine for fourteen days and will be contacted by the Fairfax County Health Department. If the person is a juror, the juror will be excused. In the event that the close contact is a judicial employee, that person will be replaced by another judicial employee for the remainder of the trial.

Scenario 4: A prospective juror who was not selected for a jury is identified as having contracted COVID-19.

In this situation, the following protocol will occur: The Fairfax County Health Department will investigate. Anyone meeting the close contacts criteria will be notified by the Health Department and asked to self-quarantine for fourteen days. Any jurors meeting the close contact criteria will be excused. All of the prospective jurors and courthouse staff involved with the trial will be notified of the following: (1) a case of COVID-19 occurred in the jury assembly room; (2) persons who have been exposed have already been contacted by the Health Department; and (3) this notice is just to notify you of the situation; be alert for fever or other COVID-19 symptoms over the next fourteen days and if you do become ill, consult with your healthcare provider.

Scenario 5: An attorney of record, criminal defendant, or civil litigant is identified as having exhibited symptoms consistent with COVID-19 but has not yet been tested or is identified as having contracted COVID-19 or is a close contact of someone who contracted COVID-19.

In this situation, the Court will follow the protocol set forth above for non-judicial employees in the courtroom depending upon the particular scenario. The Court will delay the trial if an attorney of record, criminal defendant, or civil litigant is unavailable due to the circumstances described herein. A significant delay may require a mistrial.

Scenario 6: The Courthouse is Closed Due to COVID-19 for Deep Cleaning.

Because the Nineteenth Judicial Circuit of Virginia consists of one courthouse, it is not possible to move a jury trial to another courthouse within the Circuit. Further, given the extensive protocols contained in this plan, it is highly unlikely that we would be able to move to a courthouse within another judicial circuit, especially given the fact that other circuits will also be conducting jury trials pursuant to their own extensive protocols. If the delay caused by the Fairfax County Courthouse being closed due to COVID-19 is for an extended duration, it may be necessary to declare a mistrial.

11. Additional Considerations

- We recognize that some jurors may have medical reasons that preclude the wearing of face masks or shields. Given that a principal purpose of a face mask or shield is to protect others, if a juror is unable to wear a face mask or shield for medical reasons, the juror will be deferred from jury service.
- The Court also recognizes that there may be circumstances where a necessary witness, or counsel, or a party in a civil case, or the defendant in a criminal case, is unable to wear a face mask or shield for medical reasons. The Court will address these issues on a case-by-case basis, with safety always being the predominant concern.
- Witnesses in criminal cases will appear in person, unless the parties agree to permit a remote appearance for certain witnesses. A remote appearance must meet the requirements of Virginia Code Section 19.2-3.1 (*Personal appearance by two-way electronic video and audio communications; standards.*)

This jury resumption plan also applies to civil jury trials. However, it is anticipated that civil jury trials will not begin for a considerable amount of time, given the need to first try criminal jury trials involving incarcerated and non-incarcerated defendants. We also anticipate that some of the challenging issues presented by conducting jury trials in the midst of the COVID-19 pandemic may be somewhat ameliorated by the following considerations: (1) the number of jurors required will be reduced; and (2) considerable evidence may be presented by video pursuant to various rules and statutes. See, e.g., Rule 4:7 and 1:27 of the Rules of the Supreme Court of Virginia and Virginia Code Section 17.1-513.2.

APPENDIX 1

Photos of Courtrooms

4J, 5J and 5E







APPENDIX 2

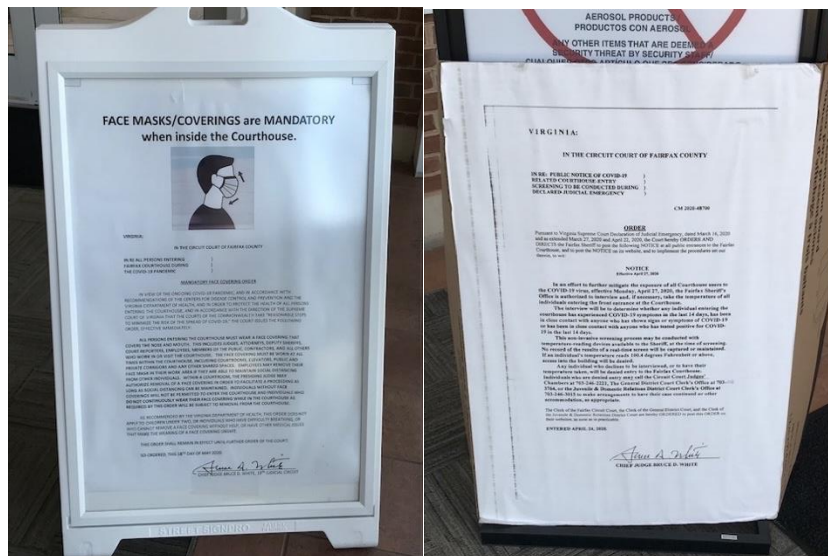
Photographs of Current COVID-19 Signage in Courthouse

Current Signage in the Courthouse

At Front Entrance



Large sandwich board signage displayed inside main entrance vestibule



Posted at Public Elevators



Posted at 5th Floor Jury Assembly Room



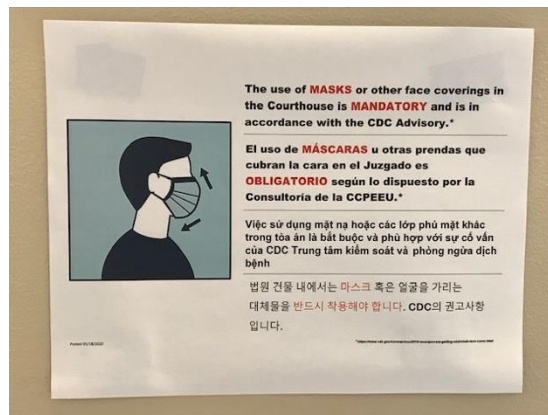
Posted throughout Courthouse hallways



Social distancing floor markers in front of clerk's offices



Posted on hallway walls throughout courthouse



Hand-Washing Hygiene Signs Posted in Kitchenettes and Bathrooms

