

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF BURKE

2020 OCT -8 P 4: 27

20-R- 352

BURKE CO., C.S.C.

BY CPV

IN THE MATTER OF THE OPERATION OF
THE GENERAL COURT OF JUSTICE FOR
BURKE COUNTY

ADMINISTRATIVE ORDER FOR
THE RESUMPTION OF JURY
TRIALS

This matter came on before Robert C. Ervin, Senior Resident Superior Court Judge, in the exercise of the Court's in chambers jurisdiction, pursuant to Emergency Directive 22 promulgated by Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, on July 16, 2020 concerning the resumption of jury trials. The Court, pursuant to Emergency Directive 22, enters the following administrative order. It is hereby ordered that:

COMPLIANCE WITH PRECEDING EMERGENCY DIRECTIVES. The Court has reviewed Emergency Directives 1-22 and believes that this Administrative Order and the plan for the resumption of jury trials complies with those directives.

FACE COVERINGS. Pursuant to Emergency Directive 21 promulgated by Cheri Beasley, Chief Justice of the Supreme Court of North Carolina, on July 16, 2020, every person who is present at the courthouse to participate in a jury trial, including prospective jurors, attorneys, parties and court personnel, is required to wear a face covering while they are in any area described in this plan unless subject to the limited exclusions in Chief Justice Beasley's Emergency Directive or unless required to remove the face covering in accordance with the provisions of this plan. It is anticipated that disposable face coverings will be made available to those who are present who do not have one.

FACE COVERINGS FOR ATTORNEYS. Attorneys who are questioning jurors or witnesses or who are arguing to the Court or the jury will not be required to wear face coverings while speaking or listening to matters to which they may be called upon to object during the course of the trial. If multiple attorneys are representing a party, only the attorney who is actually speaking or likely to speak may remove his or her face covering.

JURY SUMMONSES. The issuance of jury summonses will be handled in the same manner in which those summonses were handled prior to the advent of the COVID-19 virus. However, a letter signed by the Senior Resident Superior Court Judge and the Resident Superior Court Judge will be sent to those prospective jurors with their summons to explain the precautions that are being made in an effort to reduce the risks posed by jury service. A copy of this letter is attached as Exhibit A to this plan.

REQUESTS TO BE EXCUSED OR DEFERRED. Arrangements have been made with the Clerk of Superior Court to advise prospective jurors that such requests may be mailed to the Clerk's office, faxed to the Clerk's office or emailed to that office. Any notations on the

summons that suggest personally appearing at the courthouse to handle these requests have been removed.

RESPONSES FROM JURORS CONCERNING COVID-19. Prospective jurors, who are currently ill with COVID-19, who are subject to quarantine or who are currently experiencing symptoms of COVID-19, will be instructed in the letter to call the Clerk's office or the Trial Court Coordinator for further instructions. These individuals will be instructed not to appear for jury service.

SIGNS CONCERNING COVID-19. Signs have been prominently posted at the courthouse to advise prospective jurors and others of the requirement to wear face coverings and the directive not to enter the courthouse with active symptoms of COVID-19.

MONITORING OF PROSPECTIVE JURORS AND TRIAL PARTICIPANTS. The courtroom officers and other court personnel will monitor everyone participating in a trial for any signs of illness and have been instructed to advise the presiding judge of any such observations. AOC has provided a portable thermometer for use in this monitoring.

ARRIVAL OF PROSPECTIVE JURORS. When prospective jurors arrive, they will return a COVID-19 checklist that will be enclosed in the letter accompanying their jury summons. A copy of that COVID-19 checklist is attached as Exhibit B to this plan. If a juror fails to bring that checklist, the prospective juror will be required to complete that checklist before entering the room where the jury will assemble. Any prospective juror, who provides an affirmative answer to any screening question, will be told to remain outside the court facility until the issue can be addressed. It is anticipated that prospective jurors who return a checklist with an affirmative answer will be excused from further jury service.

DAILY CHECKLISTS FOR TRIAL PARTICIPANTS. Every clerk, courtroom officer, court reporter, judge, attorney, party, or witness participating in the trial will be required to complete a daily COVID-19 symptom checklist.

INSTRUCTIONS TO PROSPECTIVE JURORS AND TRIAL PARTICIPANTS. In the course of jury orientation, the presiding judge will advise all prospective jurors and trial participants of the requirement to complete a daily COVID-19 symptom checklist and to return those forms each morning when they appear for court. A copy of this daily checklist is attached as Exhibit C to this plan. The Court will also advise all prospective jurors and trial participants of the requirement to immediately report to the courtroom officers if they begin experiencing symptoms of COVID-19.

RETENTION OF CHECKLISTS. Since the information on the completed checklists may contain personal medical information, the courtroom clerk will maintain these records in separate sealed envelopes for each day of the trial. These checklists will not be released to any individual except by an order of the court.

REPORTS OF ILLNESS AND EXPOSURE PLAN. If anyone is observed to be experiencing symptoms of COVID-19 or if anyone reports experiencing these symptoms either verbally or on a checklist, the presiding judge should immediately address the situation. The individual

reporting or observed to be exhibiting suspicious symptoms will be removed from the courtroom and sent to a protected area. At the COMMA, the protected area will be the entrance area at the front of the building. At the courthouse, the protected area is the unused hallway between Courtroom #1 and the front of the building. It may be necessary to make further inquiry outside the presence of the jury or to contact the Health Department for guidance. Any prospective juror, juror or trial participant who is experiencing symptoms of COVID-19 and who is excused from further participation in the trial, will be instructed to immediately leave the courthouse and directed to immediately seek medical attention.

PLACE OCCUPIED BY EXCUSED PERSON. The seating area used by an excused person will not be utilized by anyone else until the surfaces in the area have been thoroughly cleaned.

JURY ASSEMBLY. Jury orientation and selection will take place in the lobby of the City of Morganton Municipal Auditorium (“COMMA”). When prospective jurors arrive at COMMA, they will be checked in by the Clerk’s office jury coordinator and assigned to a seat. The jurors will be seated in an area that allows for social distancing six feet apart from other prospective jurors.

The courtroom officers will monitor the number of prospective jurors who arrive and will stop seating prospective jurors when 40 people have checked in. Once 40 prospective jurors have checked in, the jury coordinator will provide a form to the remaining prospective jurors to complete. This form will have the prospective juror provide his or her name, address and a contact phone number to the court room officers and the courtroom clerk for their use. These prospective jurors will be given an information sheet that contains a phone number to call for further instructions. After completing that form and receiving the information sheet, these prospective jurors will be placed on stand-by status and permitted to leave the COMMA.

MAXIMUM ALLOWABLE OCCUPANCY. The maximum allowable occupancy of the lobby of COMMA is 40. A sign to this effect will be posted on the door at the entrance to COMMA.

JURY ORIENTATION. Once 40 jurors are seated in the lobby of COMMA, jury orientation will be conducted by the Clerk of Superior Court or her designee. Once that process is completed, then the jury panel will be available for the beginning of jury selection.

JURY SELECTION. Jury selection will be conducted in the lobby of COMMA. The trial court judge, the attorneys and the parties will be seated in the lobby facing the jury venire. The trial court judge will conduct the normal jury orientation, including the COVID-19 instructions described earlier in this order, in the lobby. Once that process is completed, the Clerk will call out the names of the first 12 jurors to be questioned. Those jurors will be seated in the front rows of the area assigned to jurors in designated seats that will be spaced apart for appropriate social distancing. The remaining prospective jurors will remain seated in the lobby until they are called forward for questioning. The arrangement of this room will allow for social distancing of prospective jurors and trial participants.

JURY VOIR DIRE. Jury voir dire will be conducted in the lobby of COMMA. Jurors who are excused during this process will be released and given a slip of paper with a telephone number to call for further instructions concerning when to report back for additional service. As jurors are

excused, replacement jurors will be summoned from the lobby until the first panel of 40 jurors is exhausted.

FACE COVERINGS DURING JURY VOIR DIRE. While jurors are seated in the seats designated for questioning and while answering questions, these prospective jurors will not be permitted to wear face coverings in order to allow the court reporter, attorneys and parties to hear the prospective jurors' responses and to facilitate observation of the expressions of the prospective jurors. The prospective jurors, who have not been called to the jury box for questioning, should continue to wear face coverings.

USE OF REMAINING JURORS. As the first panel of prospective jurors thins out, the jurors who were placed on standby status will be directed to return to COMMA. Depending on the need for additional jurors after the first pool of 40 jurors has been exhausted, these stand-by jurors will be oriented by the Clerk and the trial court judge in the same manner that the first pool of jurors was oriented. This process will continue until the necessary jurors and alternates are selected.

LOCATION OF TRIAL. The remainder of the trial will be conducted in Courtroom #1 at the Burke County Courthouse.

PLEXIGLASS SHIELDS. Certain plexiglass shields have been constructed and placed in the courtroom. These shields are located in the front row of the jury box and shield the first row of jurors from their fellow jurors and the court reporter. There are also shields between the judge and the clerk, the counsel tables and the witness and the clerk.

ARRANGEMENT OF COURTROOM #1. The normal arrangement of Courtroom #1 will be altered to facilitate social distancing of the jurors during the trial. Only four seats in the second row of the jury box in that courtroom will be used for the seating of jurors. The remaining jurors will be seated in the four rows of the audience section of the courtroom behind the jury box. Each witness will testify from a position in the center of the courtroom in front of the clerk's desk. The judge, courtroom clerk, court reporter and attorneys will remain in their current positions in the courtroom. A diagram of the courtroom as modified is attached as Exhibit D to these rules. This arrangement of the court room will allow for social distancing of all trial participants with the exception of the defense attorney and the defendant. An optional plexiglass shield will be available for use by the defendant and defense attorney.

FACE COVERINGS FOR JURORS DURING TRIAL. Except during jury voir dire, jurors will be required to wear face coverings during the course of the trial itself. It is anticipated that a face covering will be made available to any jurors who do not already have one.

REQUESTS TO APPROACH THE BENCH OR TO BE HEARD OUTSIDE OF THE PRESENCE OF THE JURY. Counsel are encouraged to limit their requests to approach the bench. In the event that matters need to be heard outside the presence of the jury, counsel, the judge, the court reporter and other necessary individuals will leave the courtroom and address those matters in the jury room which is behind Courtroom #1. With a limited number of individuals present, social distancing can be maintained.

COUNSEL'S MOVEMENTS. Counsel shall question jurors or witnesses while seated at counsel table.

WITNESS AFFIRMATIONS. Witnesses will be affirmed and oaths using the Bible will not be administered to minimize individuals touching the same surface.

EXHIBITS. Prior to the beginning of the trial, counsel for each party will prepare an exhibit notebook that contains every exhibit that the party anticipates using during the course of the trial. This exhibit book will be placed on the witness stand prior to the beginning of opening statements. Other exhibits that counsel did not anticipate utilizing may be added to the notebook at breaks in the trial.

DISPLAY OF EXHIBITS TO THE JURY. Arrangements have been made to obtain an ELMO device to assist in displaying exhibits. There is also a large screen TV that can be used for videos.

OPENING AND CLOSING ARGUMENTS. Counsel will make their jury arguments while standing in the center of the courtroom facing the jury. Counsel will not be permitted to move beyond the wooden rail at the front of the jury box.

JURY DELIBERATIONS. The jury will deliberate in Courtroom #1 which has sufficient space to permit social distancing of the jurors while deliberating. The attorneys, parties, clerk, judge, court reporter and bailiffs will exit the courtroom once the time arrives for the jury to begin its deliberations. Counsel should remain in reasonable proximity to the courtroom while awaiting the jury's verdict.

BENCH TRIALS AND CIVIL TRIAL OPTIONS. Counsel are reminded that they have the option of electing a bench trial in both civil and criminal cases. In civil cases, pursuant to Rule 48 of the Rules of Civil Procedure, the parties have the option of stipulating that the jury will consist of less than 12 members. Counsel are encouraged to consider these alternatives.

This plan and Administrative Order has been approved by the Chief Justice of the Supreme Court of North Carolina and shall become effective when the Emergency Directive issued by the Chief Justice of the Supreme Court of North Carolina for the suspension of jury trials expires or lapses.

This the 8th day of October, 2020.



Robert C. Ervin

Senior Resident Superior Court Judge



ROBERT C. ERVIN
SENIOR RESIDENT SUPERIOR COURT JUDGE

DANIEL A. KUEHNERT
RESIDENT SUPERIOR COURT JUDGE

JUDICIAL DISTRICT 25A
BURKE AND CALDWELL COUNTIES

BURKE COUNTY
201 SOUTH GREEN STREET (28655)
PO BOX 796, MORGANTON, NC 28680
O (828) 433-3288 | F (828) 433-3217

CALDWELL COUNTY
216 N. MAIN STREET NW
PO BOX 1376, LENOIR, NC 28645
O (828) 759-3516 | (828) 759-3517

Dear Fellow Citizen of Burke County,

You have been summoned to appear for jury service in Burke County.

Jury service is a vital part of our system of government. President John Adams observed that “representative government and trial by jury are the heart and lungs of liberty.” President Thomas Jefferson considered “trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” As the Supreme Court has observed, every citizen has “the chance to take part directly in our democracy by jury service.” Your participation as a juror is critical to our ability to do justice for our fellow citizens and to protect the rights of all.

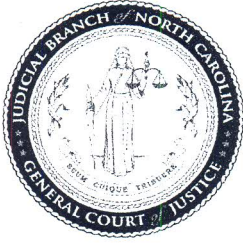
We recognize that this summons is reaching you at a time when the COVID-19 virus is still spreading in this County. COVID-19 is potentially a serious medical condition and the court system is taking a variety of precautions to minimize the risk of jurors, court personnel, lawyers, parties and witnesses being exposed to the virus while participating in a trial. In this letter, we want to explain some of the measures that are being taken for your safety.

Potential jurors, who have been diagnosed with COVID-19 in the three weeks prior to the designated court date, who have been instructed to quarantine themselves or who are experiencing symptoms of COVID-19, are instructed not to come to the courthouse and to call either the Clerk of Superior Court of Burke County at 433-3200 or the Trial Court Coordinator at 433-3288 for further instructions. If this describes your situation, you should not come to the courthouse until you have called one of these numbers and received further instructions.

Every juror and every person participating in any jury trial will be required to complete a daily health screening checklist in an effort to alert the Court of any potential health issue that may arise. **A COPY OF THIS CHECKLIST IS ENCLOSED WITH THIS LETTER. PLEASE FILL IT OUT THE DAY THAT YOU ARE SCHEDULED TO ARRIVE FOR JURY SERVICE AND BRING THE COMPLETED FORM WITH YOU TO GIVE TO THE CLERK WHEN YOU CHECK IN.**

Every juror and every person in the courtroom will be required to wear a face covering unless that individual is speaking as part of their participation in the trial. **YOU MUST BRING A FACE COVERING WITH YOU FOR JURY SERVICE.**

The following steps are being taken in an effort to minimize the health risks to prospective jurors and trial participants:



Face coverings will be required throughout the process with limited exceptions.

Requests to be excused or deferred will be handled in a manner that avoids the need to appear at the courthouse.

Signs have been posted to instruct anyone who is ill or at risk of having COVID-19 not to enter the courthouse.

There will be monitoring of all trial participants for illness during the trial.

All prospective jurors and trial participants will be required to complete a checklist before the trial begins to check for symptoms of or exposure to the virus.

Daily checklists will also be completed by every participant in the trial.

Court personnel have access to thermometers to check temperatures.

Instructions will be given to all trial participants directing them to immediately report any signs of illness to the Court.

Plans have been made for the isolation of individuals who become ill during the trial.

Social distancing will be required during jury orientation, selection, the trial itself and jury deliberations.

Plexiglass shields have been erected in the courtroom to augment necessary social distancing.

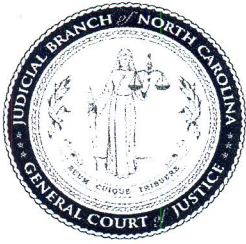
The court room layout has been rearranged to permit the necessary social distancing.

Witnesses and jurors will be affirmed and not sworn to avoid touching of common surfaces,

Exhibits will be displayed electronically in an effort to reduce the touching of items of evidence by multiple people.

The written plan for conducting jury trials in Burke County has been reviewed and approved by the County Health Director and the Chief Justice of the Supreme Court of North Carolina.





Every juror and every person in the courtroom will be instructed to immediately advise the court room officers if they begin experiencing potential COVID-19 symptoms and individuals who are ill will be removed from the area where the trial is being conducted.

Thank you for your service as a juror and remember to bring the completed checklist and a face covering to the courthouse.

Sincerely,

Robert C. Ervin
Senior Resident Superior Court Judge

Daniel A. Kuehnert
Resident Superior Court Judge

RCE/DAK/jat

Enclosures



EXHIBIT B

COVID-19 CHECKLIST FOR USE BEFORE PARTICIPATING IN A JURY TRIAL

NAME

1. HAVE YOU BEEN DIAGNOSED TO HAVE OR TESTED POSITIVE FOR COVID-19 WITHIN THE LAST THREE WEEKS?

_____ YES _____ NO

2. HAVE YOU BEEN TOLD TO QUARANTINE YOURSELF OR CONTACTED BY THE HEALTH DEPARTMENT WITHIN THE LAST THREE WEEKS?

_____ YES _____ NO

3. HAVE YOU BEEN IN CLOSE CONTACT WITH OR EXPOSED TO ANYONE IN THE LAST THREE WEEKS WHO HAS TESTED POSITIVE FOR, BEEN DIAGNOSED TO SUFFER FROM OR IS SUSPECTED TO HAVE COVID-19?

_____ YES _____ NO

4. ARE YOU OR DO YOU LIVE IN THE SAME HOUSEHOLD WITH SOMEONE WHO IS IN A HIGH RISK GROUP FOR COVID-19?

_____ YES _____ NO

IF YOU ANSWERED, PLEASE PROVIDE FURTHER INFORMATION: _____

5. DO YOU HAVE ANY OF THE FOLLOWING SYMPTOMS TODAY? (If so, please check the line or box by the symptom you have.)

_____ Fever

_____ Chills

_____ Shortness of Breath (Is this a recent development: _____ YES _____ NO)

_____ New Cough

_____ New Loss of sense of taste or smell

_____ Severe Headache

By my signature below, I certify that the information that I am providing in this form is true. If I provide false answers to the questions on this form, I recognize that I could be held in contempt of court.

Name

Date

EXHIBIT C

DAILY COVID-19 CHECKLIST FOR USE WHILE PARTICIPATING IN A JURY TRIAL

NAME

1. HAVE YOU BEEN DIAGNOSED WITH COVID-19 SINCE YOU LEFT COURT YESTERDAY?

_____ YES _____ NO

2. HAVE YOU BEEN TOLD TO QUARANTINE YOURSELF SINCE YOU LEFT COURT YESTERDAY?

_____ YES _____ NO

3. HAVE YOU BEEN IN CLOSE CONTACT WITH OR EXPOSED TO ANYONE SINCE YOU LEFT COURT YESTERDAY WHO HAS TESTED POSITIVE FOR, BEEN DIAGNOSED TO SUFFER FROM OR IS SUSPECTED TO HAVE COVID-19 WITHIN THE LAST THREE WEEKS?

_____ YES _____ NO

4. DO YOU HAVE ANY OF THE FOLLOWING SYMPTOMS TODAY? (If so, please check the line or box by the symptom you have.)

_____ Fever

_____ Chills

_____ Shortness of Breath (Is this a recent development: _____ YES _____ NO)

_____ New Cough

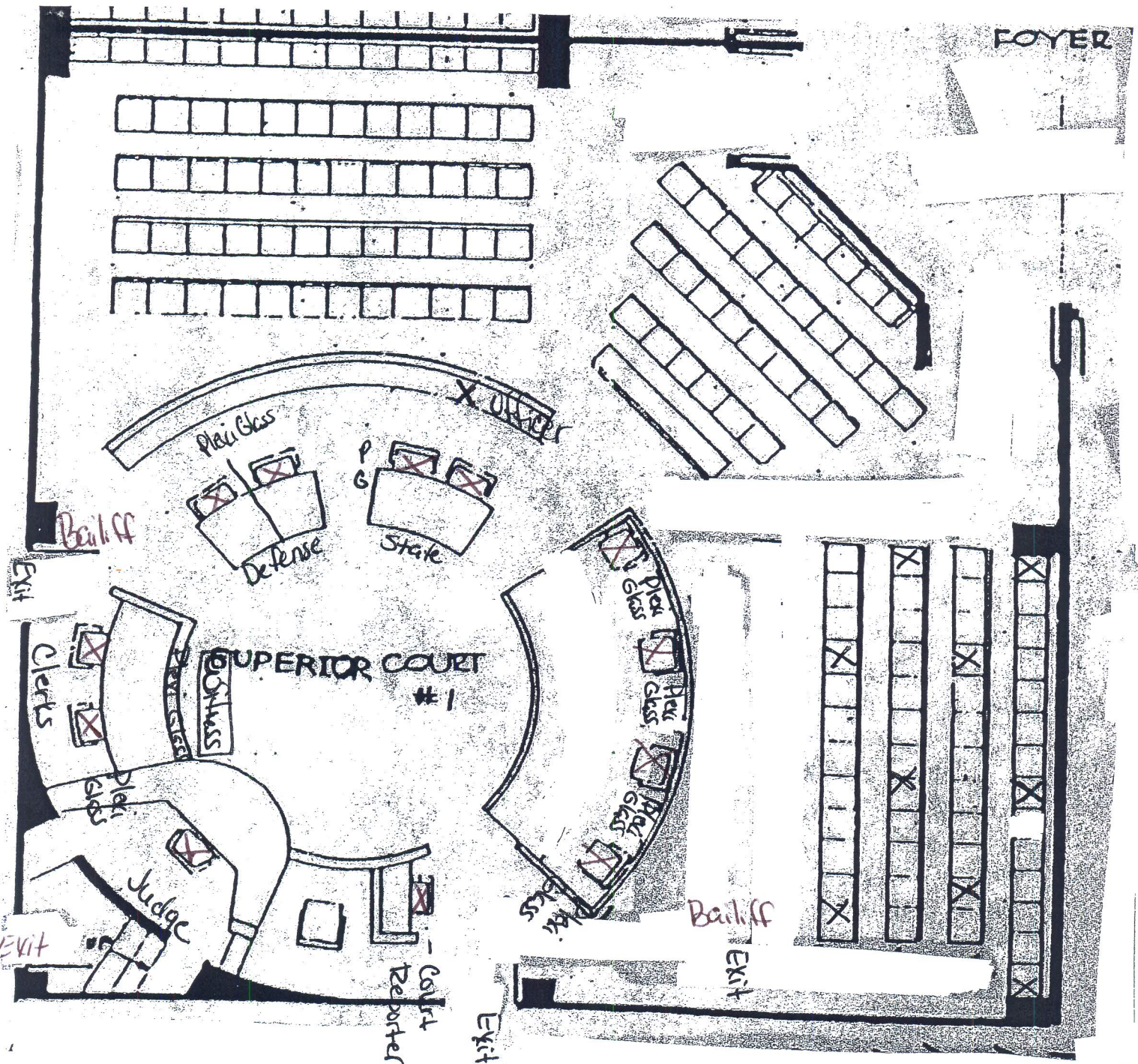
_____ New Loss of sense of taste or smell

_____ Severe Headache

By my signature below, I certify that the information that I am providing in this form is true. If I provide false answers to the questions on this form, I recognize that I could be held in contempt of court.

Name

Date



Burke County Courthouse