

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 20 R 029

2020 OCT 16 P 2:37

JACKSON COUNTY, NC

IN RE:

)
BY _____)

NC

JURY TRIAL RESUMPTION PLAN)
FOR JACKSON COUNTY)
_____)

ADMINISTRATIVE ORDER

On March 13, 2020 Chief Justice Cheri Beasley announced measures on behalf of the Judicial Branch to minimize the spread of COVID-19 among members of the public. On July 16, 2020 Chief Justice ordered, *inter alia*, that all Jury Trial Sessions be postponed until the end of September 2020. Chief Justice Beasley likewise ordered that each Senior Resident Superior Court Judge, in consultation with other local officials, craft a plan for the resumption of jury trials in his or her judicial district.

This plan for Jackson County is unique since procedures must contemplate effectiveness in a mixed-use facility that also houses county offices, personnel and programs. Accordingly, this plan was developed after consultation and input from County leadership.

A. CONFIRMATION OF FACILITY COMPLIANCE WITH CHIEF JUSTICE CHERI BEASLEY’S EMERGENCY ORDER

1. That pursuant to Emergency Directive 11 of Chief Justice’s Order dated May 21, 2020 the Senior Resident Superior Court Judge is serving as the COVID-19 Coordinator.
2. That pursuant to Emergency Directive 12 of Chief Justice’s Order dated May 21, 2020 the Senior Resident Superior Court Judge for Judicial District 30B has ensured that the Jackson County Justice & Administration Center:
 - a. Is visibly marked in intervals of six feet in every direction in all areas where the public is expected to congregate or wait in line;
 - b. The maximum allowable occupancy of each courtroom is established such that persons who must sit or stand in such space may observe social distancing of at least six feet in every direction;
 - c. The established maximum occupancy is prominently posted at the entrances to each courtroom;
 - d. Hand sanitizer is available at the entry and exit of the facility and at all high touch areas of the facility;

- e. All areas accessed by the public are cleaned daily with high touch areas cleaned periodically throughout the day pursuant to my Order dated May 22, 2020; and
 - f. Face coverings shall be worn at all times inside the courthouse.
3. That pursuant to Emergency Directive 13 of Chief Justice's Order dated May 21, 2020 the Senior Resident Superior Court Judge/COVID-19 Coordinator for Judicial District 30B has:
- a. Prior to publication and distribution, reviewed each calendar, both individually and collectively with other sessions of court, to ensure that the calendars will not result in members of the public sitting or standing in close proximity and/or for extended periods of time in contravention of current public health guidance; and
 - b. That all judicial branch personnel assigned to a courtroom for more than thirty minutes will have a facemask made available prior to the session of court.

B. SUMMONING AND EXCUSING JURORS

4. Pursuant to the prior Jury Order of the undersigned dated June 19, 2020 for all Jury Trial Sessions ordered by the Senior Resident Superior Court Judge or Chief District Court Judge, the Clerk of Superior Court will summon separate panels of fifty (50) potential jurors for each day (Monday, Tuesday and Wednesday) of the Jury Trial Session. This procedure shall, however, be conducted in accordance with specific instructions from the presiding Superior or District Court Judge. For purposes of explanation and illumination, for example, a panel of fifty (50) potential jurors will be summoned for Monday of the Jury Trial Session, a separate panel of fifty (50) potential jurors will be summoned for Tuesday of the Jury Trial Session, and a separate panel of fifty (50) potential jurors will be summoned for Wednesday of the Jury Trial Session. If a jury is selected on Monday the Tuesday panel shall be instructed not to report. The same procedures will be used on Wednesday if a jury is selected on Tuesday.
5. The Clerk of Superior Court will update the applicable jury system phone line to give specific instructions and updates to potential jurors who have been summoned for a particular day during the Jury Trial Session.
6. Jury summonses will be updated to provide that potential jurors may make request to the Clerk of Superior Court in writing, by fax, by email, or by phone to be excused or deferred from jury service.
7. Potential jurors will not appear in person before a District Court Judge to be excused or deferred from jury service as authorized under N.C. Gen. Stat. §9-6(b) due to the public health concerns over COVID-19.

8. The screening process contemplated by N.C. Gen. Stat. §9-6(b) is considered by our courts to not be a part of trial and merely an early selection for service examination. *State v. McCarver*, 341 NC 364 (1995), cert denied, 517 U.S. 1110 (1996).

The North Carolina Supreme Court has declined to extend the right of a defendant to be present at this early stage of jury screening. *Id.*

By requiring all jurors to appear at the trial session there is no prejudice to defendant since defendant is able to examine and be heard regarding all excuses by the court. And the reason for suspension of District Court pretrial screening pursuant to N.C. Gen. Stat. §9-6(b) is not for reasons of corrupt intent, discrimination, irregularities, or any form of prejudice to either the defendant or state. Further, the sole reason is need to reduce crowd size in court, maintain social distancing and affirmatively address the public health concerns so as to protect the jurors health, and the health of their family and loved ones, due to COVID-19.

9. Requests for excusal or deferral arising on the day a potential juror is told to appear will be heard by the Superior or District Court Judge in court on the day the potential juror appears for service. However, notwithstanding the suspension of District Court screening pursuant to N.C. Gen. Stat. §9-6(b) and excuses being heard by the presiding judge in that session of court, the Clerk may use her discretion and excuse or defer any juror if just cause is shown unless otherwise ordered by the presiding judge.
10. Orientation video will no longer be shown to jurors on the day they report. Jury summonses will be updated to provide that a valid excuse for excusal or deferral from jury service exists for potential jurors who wish to be excused or deferred due to the COVID-19 outbreak.
11. The Clerk will ensure that the revised jury summonses will include the link to the Jury Orientation Video allowing potential jurors to watch the video prior to "in-person" orientation.
12. A notice will be provided with summonses to potential jurors stating that precautions have been taken in accordance with guidelines from the Judicial Branch of North Carolina and the Centers for Disease Control and Prevention to reduce the risk of transmission of COVID-19. Said notice will be updated to reflect the most recent guidelines and the jury orientation process will be conducted in accordance with said guidelines, including any social distancing guidelines then in effect jurors may, if they wish, bring their own notepad and pens for the purpose of notetaking. In addition, said notice will provide that potential jurors should not enter the courthouse if the potential juror:
 - a. Has travelled internationally within the preceding fourteen (14) days;

- b. Is experiencing fever, cough, shortness of breath or new loss of taste or smell;
- c. Has been directed to quarantine, isolate, or self-monitor;
- d. Has a known exposure to COVID-19;
- e. Has been diagnosed with COVID-19; or
- f. Resides with or has been in close contact with any person in the abovementioned categories.

13. The Court in its inherent authority finally orders that the citizens of Jackson County shall be duly summoned for potential service as Grand Jurors or as Trial Jurors for the criminal and civil sessions of Jackson County on any date necessary for the proper administration of justice.

C. CONDUCTING VOIR DIRE WITH SOCIAL DISTANCING

- 14. The court will conduct voir dire in Courtroom 1 with all summoned jurors spaced at least six feet apart in the public seating section of courtrooms.
- 15. Potential jurors may be asked to complete questionnaires prior to their scheduled day of service and as part of the questions provided the option of raising health concerns related to age or medical condition.
- 16. Courtroom 2 will be used for the jury break and deliberation room. Proper social distancing will be observed during breaks and deliberation.
- 17. All other courts shall be held in other areas of the Jackson County Justice Center.

D. CONDUCTING TRIALS WITH SOCIAL DISTANCING IN THE COURTROOM FOR ALL COURT PARTICIPANTS, INCLUDING THE JURY, AND IN THE DELIBERATION ROOM

- 18. Jury selection and trials will be held in Courtroom 1 of the Justice and Administration Building.
- 19. The jury will be seated in the public seating section and will be spaced six feet apart.
- 20. Witnesses will wear either a clear cloth face covering or a clear face shield so jurors can see the face of the witness while they testify. Proper distance will be observed when the witness is wearing a face shield only.
- 21. The attorneys and witnesses will be oriented facing the jury seated in the audience.

22. Questioning by counsel may be in a seated position as allowed by Rule 12 of the General Rules of Practice for the Superior and District Court or from a standing position if necessitated by the orientation of the judge and discretion from the judge.
23. Court will be open to the public with limited, dedicated seating identified for spectators. One seat will also be open and dedicated for the press.
24. Exhibits published to the jury will be either presented electronically or collectively. No paper exhibits will be distributed to the jury.
25. The jury will be instructed that the court will not provide pens and notebooks. However, if a juror wishes to take notes they may bring their own pen and notebook.
26. Bench conferences lasting more than five minutes will be conducted in the jury deliberation room unrecorded. The court will then summarize the bench conference on the record.
27. Restrooms located in the jury deliberation room in Courtroom 2 will be reserved for jurors only.
28. Alternate sites for jury trials, should the need arise, shall be at the Community Room at the Historic Jackson County Courthouse, the gymnasium at Smoky Mountain High School, or the Performing Arts Center at Smoky Mountain High School. Trial procedures for these ancillary sites shall be entered by separate order of the Court and shall be approved by the Chief Justice of the North Carolina Supreme Court.

E. DAILY SCREENING OF JURORS, COURT PERSONNEL, ATTORNEYS, WITNESSES, AND PARTIES FOR COVID-19 EXPOSURE OR INFECTION

29. The current mixed-use nature of the Jackson County Justice and Administrative Building combined with the lack of sufficient space in the entrance atrium potentially limits the ability to properly social distance and allow safe, adequate screening for COVID-19 exposure or infection of all persons entering the Courthouse. With these current structural limitations, the best workable solution for proper public health screening at this time, shall include the following process listed below. However, as events unfold and additional information becomes available further changes to the initial screening process may necessitate changes to the procedures for screening; up to and including, but not limited to, taking temperatures by automated screening device or by a county staff member, agent or designee, and creation of a temporary structure

outside the main entrance of the Courthouse in order to provide proper public safety and mitigate community health risks.

30. Under this initial screening process, all persons entering the courthouse will be screened for COVID-19 exposure or infection. At the entry doors to the Courthouse and inside the Atrium, signs shall be placed with the following questions to allow all persons entering the Courthouse to self-screen for possible COVID-19 exposure or infection.

This initial screening process requires all persons to self-screen by individually answering the following questions regarding known exposures and their current health status:

- i. Do you have a fever or feel feverish?
- ii. Do you have chills?
- iii. Do you have a cough?
- iv. Do you have a sore throat?
- v. Have you been experiencing shortness of breath?
- vi. Do you have a new loss of smell?
- vii. Are you experiencing a new loss of taste?
- viii. Have you taken fever reducing medication in the last three (3) days?
- ix. Have you been in close contact with a confirmed positive case of COVID-19?

All persons who self-answer "Yes" to any of the above questions are not allowed entry into the courthouse. All persons who self-answer "Yes" to any of the above questions shall contact their attorney or the parties involved in their matter to explain the instruction they are not to enter the courthouse and they will be unable to attend the court proceeding due to possible COVID-19 exposure or infection.

31. Individuals selected and seated as jurors in a trial are required to report by phone each morning between 8:30 AM - 9:00 AM of the trial to confirm that the juror is not experiencing any symptoms consistent with COVID-19. Each juror shall inform the clerk of a self-reported temperature of 100.4 or greater. If a juror reports such symptoms or a temperature of 100.4 or greater, the juror shall be instructed they are not allowed entry into the courthouse. If a juror reports COVID-19 symptoms or a temperature of 100.4 or greater, the clerk will notify the presiding judge and the other jurors.

F. FACE COVERINGS AVAILABLE FOR JURORS, COURT PERSONNEL, ATTORNEYS, WITNESSES AND PARTIES

32. All court personnel have been provided with a mask.
33. Masks are available for jurors, attorneys, witnesses and parties.

34. Face shields or clear masks will be provided to witnesses to wear during testimony so jurors may see the faces of witnesses.

G. RESPONSE IN THE EVENT A JUROR, DEFENDANT, ATTORNEY, WITNESS, JUDGE, OR OTHER COURTROOM PERSONNEL BECOMES SYMPTOMATIC, TESTS POSITIVE FOR COVID-19, OR HAS A KNOWN EXPOSURE TO SOMEONE WHO HAS TESTED POSITIVE FOR COVID-19 DURING THE TRIAL

i. During Trial

35. In the event of a positive COVID-19 diagnosis of a juror, defendant, attorney, witness, courtroom personnel or judge, the presiding judge will declare a mistrial pursuant to N.C. Gen. Stat. § 15A-1063.
36. The presiding judge will inform the jurors that a positive COVID-19 case has been reported and this information has been provided to the Jackson County Public Health Department. You may hear from them if you were considered a close contact.
37. The court will contact the Jackson County Public Health Department and ask for assistance including, but not limited to, contact tracing.
38. At the commencement of all jury sessions contact tracing information will be collected of all those in attendance at jury trials for use by the public health department if an exposure event occurs. The Public Health Department shall delineate what information the Court will collect to assist with contact tracing.

ii. After Conclusion of Trial

39. The court will contact the Jackson County Public Health Department and ask for assistance including, but not limited to, contact tracing.
40. At the commencement of all jury sessions contact tracing information will be collected of all those in attendance at jury trials for use by the public health department if an exposure event occurs. The Public Health Department shall delineate what information the Court will collect to assist with contact tracing.

This Administrative Order shall become effective after the date on which Chief Justice Cheri Beasley's Emergency Directive 10 expires.

This Administrative Order is in addition to all previous orders.

Signed this the 31st day of August, 2020.

B. B. Letts

Hon. Bradley B. Letts
Senior Resident Superior Court Judge
Judicial District 30B

/s/ Richard K. Walker

Hon. Richard K. Walker
Chief District Court Judge
30th Judicial District

/s/ Ann D. Melton

Ann D. Melton
Jackson County Clerk of Superior Court

/s/ Ashley H. Welch

Ashley H. Welch
District Attorney
43rd Prosecutorial District

/s/ Jay Pavey

Jay Pavey, Esq.
Criminal Defense Attorney

/s/ Chip L. Hall

Chip L. Hall
Jackson County Sheriff

*

Brian T. McMahan
Chairman, Jackson County Commissioners

*

Don Adams
Jackson County Manager

*

Heather Baker
Jackson County Attorney

/s/ Shelley Carraway

Shelley Carraway
Jackson County Public Health Director

* Jackson County leadership "neither agree or disagree" with the Jackson County Jury Trial Resumption Plan. Please see attached emails.

From: [Don Adams](#)
To: [Morrison, Erin R.](#); [Heather Baker](#); brianmcmahan@jacksonnc.org
Subject: RE: Jackson Co Jury Trial Resumption Plan v. 3.docx
Date: Thursday, August 27, 2020 9:00:17 AM

Ms. Morrison,

I officially request that my name and title be removed from this document completely. This document had been previously created and approved prior to being disseminated to me. Any reference to me is not necessary for this document pursuant to the Order of Chief Justice Cheri Beasley. My name and title should not be part of this agreement with a statement such as "declined to sign" associated with it due to the fact that my approval is not mandated. I neither agree or disagree with this previously approved document. I do appreciate the opportunity to review the approved document.

If Judge Letts will not remove my name from this document then please do not put "declined to sign" next to my name. Just go ahead and sign my name digitally.

I still continue to offer to do my best to provide assistance in the implementation of the plan. It is my understanding that this plan is not due until September 30, 2020 and that jury trials will not be held prior to November 1, 2020. This should allow plenty of time for preparation. Please let me know what is needed from my office to assist in implementing this plan.

Judge Letts has my personal cell phone. He is welcome to contact me personally if he wishes to discuss further. Or I can contact him directly if he prefers.

Respectfully,

Don Adams
Jackson County Manager
401 Grindstaff Cove Rd, Suite A207
Sylva, NC 28779
828-631-2295
donadams@jacksonnc.org

From: Morrison, Erin R. <Erin.R.Morrison@nccourts.org>
Sent: Tuesday, August 25, 2020 4:07 PM
To: Don Adams <donadams@jacksonnc.org>; Heather Baker <heatherbaker@jacksonnc.org>; brianmcmahan@jacksonnc.org
Subject: RE: Jackson Co Jury Trial Resumption Plan v. 3.docx

Mr. Adams,

Thank you for your email dated August 25th at 1:57 PM. We are aware that Chief Justice Beasley

does not require the Jury Trial Resumption Plan be approved by County Managers, Attorneys or Commissioner Chair. However, the unique nature of the Jackson County facility considered against the backdrop of the circumstances we live under informs Judge Letts' approach and motivates his desire to inform, consult and share thoughts, suggestions, and ideas with county leadership. As we all recognize the Jackson County Justice Center is a mixed-use facility and upon resumption of jury trials court sessions will likely consume locations primarily used for county business. With all this in mind, we thought it both prudent and necessary to receive input and approval from county leadership at every phase of the drafting, development, and implementation of the Jury Trial Resumption Plan. Pursuant to your email and response we will simply state "declined to sign" in lieu of your electronic signatures.

I have attached a copy of the finalized Haywood County Jury Trial Resumption Plan which was just submitted to the Chief Justice for approval. As Jackson County comprises part of District 30B we share the Haywood County plan with you for your information.

Sincerely,
Erin

Erin R. Morrison
North Carolina Judicial Branch
O 828-454-6512 (Haywood)
O 828-631-6416 (Jackson)
F 828-454-6490

From: Don Adams <donadams@jacksonnc.org>
Sent: Tuesday, August 25, 2020 1:56 PM
To: Morrison, Erin R. <Erin.R.Morrison@nccourts.org>; Heather Baker <heatherbaker@jacksonnc.org>; brianmcmahan@jacksonnc.org
Subject: RE: Jackson Co Jury Trial Resumption Plan v. 3.docx

Hello Ms. Morrison,

The required Jury Trial Resumption Plan pursuant to the Order of Chief Justice Cheri Beasley does not require the approval/signature of the County Commissioner Chair, the County Manager nor the County Attorney. Only the following must approve the plan:

- The chief district court judge;
- The clerk of superior court;
- The district attorney;
- The public defender, or a criminal defense attorney chosen by the senior resident superior court judge in districts without a public defender;
- The sheriff; and
- The public health director.

Thank you for the opportunity to review. Please ask Judge Letts to let me know what specifically may be needed from me to assist in the implementation of this plan. I will do my best to assist.

Respectfully,

Don Adams
Jackson County Manager
401 Grindstaff Cove Rd, Suite A207
Sylva, NC 28779
828-631-2295
donadams@jacksonnc.org

From: Morrison, Erin R. <Erin.R.Morrison@nccourts.org>
Sent: Friday, August 21, 2020 2:02 PM
To: Don Adams <donadams@jacksonnc.org>; Heather Baker <heatherbaker@jacksonnc.org>; brianmcmahan@jacksonnc.org
Subject: Jackson Co Jury Trial Resumption Plan v. 3.docx

Good Afternoon,

Please find attached Jackson Co. Jury Trial Resumption Plan pursuant to Order of Chief Justice Cheri Beasley. After several phone conversations with Ms. Carraway it was determined that due to the architectural constraints of the Courthouse there is currently no requirement of a county staffed position to screen all persons entering the facility. However, if in the future circumstances change, screening procedures may be modified to require a staffed individual to perform screening.

This plan has been approved by Judge Letts, Judge Walker and Shelley Carraway, Public Health Director. If you are in agreement with this plan please email me back so we may submit this to the remaining signatories. If you approve, your actual signature on the document is not required. We will sign your name electronically as we have with Judge Letts, Judge Walker and Ms. Carraway. Have a great day.

Stay safe and well,
Erin

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