Ohio Judicial Conference



Continuing Jury Operations

Prepared by the OJC Jury Service Committee

May 2020

The Jury Service Committee is:
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A special thanks to Judge Matthew Reger for spearheading the effort, Judges Ron Forsthoefel and Nick Selvaggio for providing documents, Marta Mudri for coordinating the work group and drafting the report and to the following people for joining the work group: David Ballman, Judge Jessica D'Varga, Judge Frederick Dressel, Judge Jack Durkin, Tonya Dye, Judge Todd Grace, Judge Deirdre Logan, Judge David Matia, Judge Denise Moody, Judge Jeffrey Reed, Elizabeth Stephenson.

May 1, 2020

Judges of Ohio,

COVID-19 is a respiratory illness caused by the novel coronavirus, which has caused a pandemic that reached the United States and Ohio in the early months of 2020. Governor Mike DeWine declared a state of emergency in Ohio On March 9, 2020 in conjunction with a stay-at-home order issued by the state's Director of Health, Dr. Amy Acton. As essential services, courts did not close on March 9 but drastically changed their operations to comply with guidelines from health professionals. At the time of writing this document, Ohio has reported thousands of cases of COVID-19 and hundreds of deaths.

The stay-at-home order is expected to be fully lifted in the near future, but the threat of COVID-19 has not yet been eliminated. In addition, COVID-19 may resurge in waves – again in the fall or next winter, possibly at the same time as the regular flu season, which will compound the problem for hospitals and may lead to another state lockdown. Courts operating in this environment of uncertainty need to do everything they can to both continue vital services and safeguard the health of court staff, visitors, and users. With statutory tolling periods soon expiring, it will be time to make the decision whether to move forward with jury trials and other court services.

Courts across Ohio have an astounding variety of available resources and it is a proven axiom that there is no one solution that can be implemented identically in all 88 Ohio counties. The purpose of this document is to provide suggestions – not directives – for any court to consider in the continuing operations of grand and petit juries. The first part of this document provides suggestions and checklists that comply with the general, and by now well-known, guidelines of keeping numbers low in meetings and public spaces, keeping distance between people, using personal protective equipment, and the like. In fact, one of our most important suggestions is useful to repeat here: rely on input from your local health director and get any new protocols approved through your local health director. The second part of this document provides some templates for communication with jurors, as one of the most important things to do is candidly provide information and assurance to jurors who are being morally courageous when completing their civic duties during a pandemic. It also includes sample protocols in use by judges. This document is still a work in progress and will be updated throughout the coming weeks. We welcome all input.

Juries perform a critical role in the American justice system and they safeguard one of the most important rights provided by our Constitution. The work of juries, both grand and petit, must go on and we hope that this document helps courts continue the fair administration of justice – safely – in these trying times.

Work in Progress

ALL LOCAL PLANS SHOULD BE REVIEWED WITH LOCAL HEALTH EXPERTS. THIS DOCUMENT IS MEANT, IN PART, TO PREPARE A JUDGE OR COURT STAFF TO MEET WITH THE LOCAL HEALTH DEPARTMENT TO DEVISE OR APPROVE A PLAN.

Continuing Trials When Possible

1. To the extent possible, longer trials should be continued, as least until after the peak of an outbreak subsides, to avoid the possibility of extended recesses or even a mistrial if jurors become ill during trial.
2. Reduce the number of jury trials scheduled by postponing civil and other jury trials where there is not a speedy trial issue
3. If you summon jurors at the beginning of a pandemic, can you extend their length of service to after the pandemic? Alternately, can you excuse them but get them back quickly when needed (when the state of emergency has been lifted)?

Checklist:

____ Determine the status of the virus in your county (consult the health department)

_____ Is it safe to meet with social distancing or not?

____ Why does this jury trial need to go forward?

_____ Criminal case that has previously been continued

_____ Speedy trial issues that have Constitutional implications

_____ Civil case with time issues that could not be ameliorated if the case did not go forward

____ If the trial needs to go forward, contact the Sheriff – transportation of people in and out of jails has been complicated significantly by coronavirus protocols

____ If the trial needs to go forward, contact the County Health Department

_____ Consult with health department on voir dire procedures, conducting trial, and maintaining safe distances for all participants

_____ Create a diagram of the courtroom in consultation with health department that accommodates social distancing and creates an environment that is safe and instills confidence in jurors, staff, attorneys, witness, victims and all other participants that the Court has fully considered the health of all participants.

_____ Consider a pretrial with health department representative and counsel to discuss all procedures for conducting trial

WORK IN PROGRESS

_____ Create a press release from both the court and health department that approves the courtroom as practicing all procedures to ensure social distancing limit the spread of COVID-19

_____ Where will jury trial take place?

_____ If off-site, the following issues may need to be addressed:

_____ Security

_____ Internet

_____ Bathrooms

_____ Sound system

_____ Easy to find location

_____ Other considerations:

<u>Staff and Others that Interact with Jurors</u>

4. It is critically important that jury staff who are sick not come to work until they are completely well. Employee screening can include: What is your current temperature? Within the past 24 hours, do you have *new* symptoms consistent with a virus, such as a fever, a cough, or shortness of breath? Are you monitoring your health under the direction of the local health department?
5. An employee that comes in contact with someone with coronavirus or tests positive without symptoms should stay at home for at least 2 weeks.
6. The courtroom, jury room, etc. should be sanitized every night (or at the conclusion of the trial)
7. Attorneys should also be healthy. They should not approach the witnesses in court but ask questions from their seats. Consideration should be made about sidebars – how to keep them confidential and socially distant at the same time.
8. Documents, such as ID, should not be physically taken from a juror. Staff that checks IDs can look at an ID without taking it. Name badges should be temporarily avoided, perhaps replaced with stickers. Jury and grand jury members can be assigned numbers on pieces of paper that get thrown away after use.

Checklist:

_____ Establish a daily regimen to check the health of staff, security, attorneys, jurors, witnesses, victims, press and anyone else entering the courtroom

_____ Establish process for reviewing juror identification

_____ Establish procedure with courthouse maintenance on cleaning courtroom every night

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_____ Establish rules for attorneys during trial:

- _____ Limit access to the well of the courtroom
- _____ Do not allow attorneys to approach witnesses
- _____ Use electronic means for presenting exhibits if possible
- _____ Require several copies of exhibits, marked appropriately, for witnesses, court, counsel, jury, court reporter, etc.
- _____ Consider originals plus 12 copies of exhibits so that each juror has their own copy and do not have to share.
- _____ Masks on except when speaking
- _____ Remove all items from counsel table at end of the day
- _____ Responsibility for advising all witnesses of courtroom procedures and ensuring witness is healthy

_____ Voir dire for the entire first day: two sessions or three sessions?

<u>Communications with Jurors</u>

9. Use every possible communication medium (website, courtroom door signs, press release, twitter, etc.) to broadcast the message that the court is actively concerned about health and safety of everyone using the court.
10. A statement with the jury notice to inform prospective jurors of what we are doing to ensure their safety, how the process will work to address those safety concerns, and providing them the opportunity to inquire of the court if they believe they are in a high-risk category for COVID-19 infection
11. Do not just tell jurors you are protecting safety – make sure they see that that is true. If you remove the community coffeepot, for example, replace it with a sign that explains the reasons for removing it.
12. Telling jurors why we are holding a jury trial: If we tell them that the defendant has a right to a speedy trial it might be prejudicial to the defendant and cause jurors to believe the defendant is making them be present and not the court. Jury trials are essential and have to continue.
13. A recorded message to jurors assuring anyone calling in off hours of our juror procedures to ensure safety
14. Fully leverage the benefits of improved communications technologies. Many jury management systems now collect cell phone numbers and email addresses when jurors respond to summons. Use those to supplement telephone call-in messages and court websites to send alerts and to publicize any new court policies enacted to support state and local health and safety measures.
15. A press release outlining how jury trials will proceed under new processes to guarantee safety

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16. If possible, try to get a story in local papers about the heroic jurors that possess the civic mindedness and moral courage to report to jury duty during a difficult time.

Checklist:

_____ Create a joint letter that is signed by the Court and county health director stating that all precautions have been taken in cooperation with the health department to make the courtroom safe. Send that letter to all jurors in the panel before trial.

_____ Create a statement about the long tradition of jury trials and how continuance of jury trials is inextricably linked to the continuance of our society.

_____ Record a statement from the judge (not staff) for the juror call-in the day before trial that informs them that the trial will be proceeding and what precautions have been created.

<u>Courthouse Entry</u>

17. Taking temperatures before entry into the court
18. Providing hand sanitizer at court entrance
19. Providing masks to people entering the court; a hospital-grade mask (does not need to be N95) is fairly effective PPE and can be worn all day or reused until it is no longer effective
20. Limit public entry. Provide livestreaming for the public that is interested in court proceedings
    a. *Keep in mind*, that something that is livestreamed can be accessed by anyone in real time, *including separated witnesses*. You may need to institute a policy to prevent this.
    b. There are various live-streaming services; a camera will be needed (a web-cam can be mounted on the wall) as well as input with HDMI or a standard video/audio cable and output (CATV/CATVI computer cable)
21. Polycarbonate shields?
22. If the courthouse has an elevator, post a maximum number of people who can safely (within 6 feet of each other) use the elevator at one time

Checklist:

____ Make sure all of these precautions are established along with any other specific precautions.

____ If off-site, who will meet at door, what directions do you need to provide

____ What will be the rules for spectators?

_____ Victim family: How extended?

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_____ Defendant family: How extended?

_____ Press: How many different? Use of pool?

_____ Others:

_____ Providing masks upon entry if they do not have one?

_____ Hand sanitizer available?

Jury Pools

23. The summons can contain screening questions specific to COVID-19.
24. Increase the number of jurors summoned to appear, noting that this increase must be balanced against the risk of calling more jurors than are realistically needed thereby unnecessarily exposing them to possible contagions. E.g. A pool of 50 as opposed to 40
25. **A jury may not need to have 12 jurors**[1]
26. Allow for deferring jury duty as much as possible, rather than excusing jurors from duty. The deferral policy could be, for example, that a potential juror can defer for any reason at all one time.
27. Allowing jurors in high-risk categories [specify: age, respiratory condition, diabetes …] to defer. The policy should identify who has authority to approve deferment for jurors, the criteria for deferment, and whether any documentation will be required
28. Allowing up to two deferrals in a year so that anyone called in May who may have been called earlier in the year but is in a high-risk category can be deferred again; second deferral for those who: have tested positive for COVID-19 or are in self-quarantine; person has high risk of infection [specify …];person living with others who have high risk of infection, is awaiting results of a test for coronavirus, or has tested positive for coronavirus; health care professionals
29. Using the BMV list in addition to the BOE list for creation of the jury pool results in more *younger* people in the pool.
30. The policy for jurors who fail to appear should be forgiving, but those failures should be followed up on – it is important that jurors know that deferrals are possible but that a juror cannot simply decide not respond to a summons.

[1] In State ex rel. Warner v. Baer (1921), 103 Ohio St. 585, the Ohio Supreme Court noted that the while the Ohio Constitution confers a jury trial right, "this right may be waived, and accused persons may, with the approval of the court, consent to be tried by a jury composed of less than 12 men." Id. at paragraph two of the syllabus; see also State v. Brooks (March 30, 2000), Cuyahoga App. Nos. 75711 & 75712, unreported, 2000 WL 337600 at * *5-6 (holding that felony defendants had impliedly waived claim that they were convicted by an 11-person jury and concluding that the claim did not rise to the level of plain error). Moreover, in State ex rel. City of Columbus v. Boyland (1979), 58 Ohio St.2d 490, the Supreme Court noted that the Criminal Rule 23(B) "in no way attempts to alter a defendant's substantive constitutional right to trial by jury. It merely prescribes the method by which the substantive right is to be exercised." Id. at 492-93. Therefore, while Crim.R. 23(B) clearly implements the constitutional right to a jury of twelve for felony cases, that right may be waived by "consent" and "with the approval of the court." Baer, 103 Ohio St. 585 at paragraph two of the syllabus. Here, the defendant expressly waived his right to a 12-member jury on the record.

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31. The change to the composition of the jury because of the state of emergency could cause the jury to arguably NOT include a fair cross-section of the community. Courts should document the demographic characteristics of a jury during this time, as well as keeping track of the reasons that jurors were deferred or excused – presumably those reasons will be mostly pandemic-related. If a jury is later challenged, it will be helpful to have that documentation.

Checklist:

_____ Is your community ready for a jury trial? (Each community has been impacted by COVID-19 in a different way. Be sensitive to the community.)

_____ How many jurors do you call? 10 more, 20 more, twice as many

_____ Has a deferral policy been created and articulated to potential jurors?

_____ Create record of deferrals; consult with counsel about deferral policy

_____ Health questionnaire can screen some jurors remotely

Jury Reporting

32. Some courts may find it more effective to have jurors report later in the day (e.g. after lunch) and retain morning calendars to accept plea agreements, settlements, and motions for continuance. For such a policy to be truly effective, there must be very clear communication between jury staff and the individual courtrooms. It will not work if the judges are informed about the parties' intent but that information is not shared with the jury office in time to inform jurors not to report.
33. Avoid having jurors report if the court anticipates a civil settlement or guilty plea, with consideration given to having the jurors report later than the scheduled trial time to allow the court to accept pleas or settlements or to continue cases in time to provide notice (posted outside courthouse and on phone recording) to jurors so they do not needlessly appear;
34. When a jury selection does begin, the smaller the jury panel, the less likely the risk of infection. A technique the court may wish to consider is to have each panel report directly to the assigned courtroom rather than to the jury assembly room.
35. Another technique is to have jurors report for service on a staggered schedule during the day.
36. Voir dire could be divided into morning and afternoon thereby allowing one day for voir dire in smaller panels, e.g. 25 in the morning and 25 in the afternoon
37. Would it be possible to send case-specific voir dire questionnaires that jurors complete online or on paper? The lawyers can review the responses and ask the court to summon only those jurors who would survive a challenge for cause or peremptory challenges.

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38. Initial screening for jury selection can be remote – done through email and a service like Qualtrics or SurveyMonkey. Questions could screen jurors that will end up being excused because of time, hardship, or a for-cause conflict.
39. Judges might also consider impaneling extra alternates or extending service for grand juries so that new people are not needed.
40. Grand juries may be able to meet remotely (this is not a possibility for petit juries for constitutional reasons). As long as the secrecy of the grand jury deliberations can be safeguarded (e.g. each member of the grand jury agree to use a computer in a private room and the technology used is secure), this is a possibility.

Checklist:

_____ Voir dire procedure established and communicate to staff, security, attorneys, others

_____ Press release on initial trial procedures

_____ Online survey: Is this technically possible?

_____ Create separate protocol for grand jury

Social Distancing in the Courthouse

41. Moving jury deliberations to a larger room or to a nearby larger facility (such as a school gym).
42. Use the gallery of the court instead of the jury box. Leave the jurors in the courtroom, locked, for deliberations rather than using the jury room.
43. Restrict access to the jury room if it is a small one that does not allow for social distancing. Items touched by everyone, such as coffee pots, should be removed from the jury room.
44. If the jury room contains puzzles or games for waiting jurors, remove them. However, jurors can be informed that they can bring their own puzzles or games to occupy them while they wait.
45. Jurors can be seated every other chair or spaced 6 feet apart around the courtroom. Painter's tape can be used to make an "X" marking 6-foot intervals.
46. Courtroom processes: Having wipes at the witness chair and wipe down each time a witness is completed with testimony; Wipe down the microphone; Require facemasks for witnesses; Hand sanitizer at each counsel table; Require face masks for attorneys
47. Consider where witnesses will wait before they testify
48. Utilize Nomad for all exhibits. Attorneys must wipe down Nomad between each use.
49. Make copies of all exhibits so that one document is not handled by everyone.
50. Avoid passing exhibits between jurors
51. Jurors provided with pens that are not to be collected or returned to anyone.

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52. Jurors must put their phones on a paper towel on the floor under their chairs to ensure they are not using their phones inappropriately without anyone else having to touch the phone.
53. Testimony can be made via video
54. Jurors cannot eat lunch together

Checklist:

_____ Pros and Cons of off-site written down and considered

_____ Cleaning process established during trial with tasks assigned

_____ Courtroom etiquette created

- _____ Seating locations marked 6 feet apart
- _____ Cleaning supplies, hand sanitizer, and other cleaners available and in place
- _____ Established procedure for witnesses and where they will wait
- _____ Electronic exhibit display equipment is operational and clean
- _____ Exhibit process established
- _____ Establish process for cell phones and other electronics
- _____ Video equipment operational and any remote connections tested
  - _____ Is everyone knowledgeable about how system works?
  - _____ Is there a protocol for use of remote video system?
- _____ Jury instructions completed for COVID-19 processes
- _____ Jury deliberations procedure established to fit location

_____ Everything in jury trial protocol communicated to everyone

WORK IN PROGRESS

SAMPLE STATEMENT FROM THE COURT:

The Court takes public health and safety seriously and has implemented aggressive policies to prevent the risk of infection for jurors and other court users.

SAMPLE EMPLOYEE DAILY HEALTH REVIEW:

- Current temperature _____
- Within the past 24 hours, do you have NEW symptoms consistent with a virus, such as a fever, a cough, or shortness of breath?

SAMPLE VISITOR SCREENING QUESTIONS:

- What is your purpose for coming to the courthouse today?
    - Do you have personal business in court today? (Are you an attorney, a plaintiff, juror, witness, etc?) You will be asked to wear a mask at all times that you are in populated areas of the courthouse.
    - Are you a visitor to the courthouse? (Are you accompanying a family member? Are you a member of the public interested in court proceedings? Etc) We ask that you not enter the building to minimize the number of people in the courthouse and the risk to those people. Please consider watching any proceedings through live stream.
- We need to check your temperature. Is temperature 100.0F or higher?
- Have you been on a cruise or international travel in the last 14 days?
- Have you had a fever, a cough, shortness of breath, or loss of taste or smell over the last few days?
- Have you been in close contact with anyone who has been confirmed to have Coronavirus/COVID-19?
- Have you been tested for or diagnosed with Coronavirus in the last 14 days?
- Have you previously been tested for Coronavirus but have now been cleared?

SAMPLE ELEVATOR SIGN:

Due to social distancing guidelines, MAXIMUM of 2 PEOPLE PERMITTED

SAMPLE BUILDING ENTRY SIGN:

For health safety, and in accordance with the Ohio Department of Health guidelines, please observe social distancing. Six-foot lengths are marked on the floor. Face coverings are highly recommended for all who enter the building.

SAMPLE

Personal Protection Masks

What You Should Know

In our efforts to prevent the transmission of COVID-19, we are implementing a policy of mandatory masks for all courthouse visitors, starting May 4, 2020. This follows CDC guidelines. When people enter the courthouse, they will be given an isolation mask, to be worn for the duration of their time in the courthouse, along with a paper bag in which to store the mask. If a person arrives at the courthouse with a homemade mask, that person will be asked to remove the homemade mask and wear a hospital-grade isolation mask.

When people should get a mask:

Upon entry into the courthouse, each person should receive a mask, hand sanitizer, a paper bag for storing the mask when it is not in use, and this information sheet. The mask should be worn by people using the courthouse whenever the person is in a populated area of the courthouse.

How to properly put the mask on:

- Wash or sanitize hands.
- Using the elastic pulls or cloth ties, adjust the mask to the face.
- Cover both mouth and nose with the mask.
- Try to avoid touching the center of the mask while wearing it.

How to properly take the mask off:

- Wash or sanitize hands.
- Touch only the elastic pulls or cloth ties that keep the mask on the face. Do not touch the front of the mask.
- If the mask is to be reused, fold the mask carefully so that the outward surface is held inward and against itself to reduce contact with anything during storage.
- Place the mask in a paper bag labeled with a name.
- Wash or sanitize hands.

A medical grade mask can be reused by the original wearer unless it is known to be contaminated with blood or other body fluids, it is visibly soiled, or it is damaged or impedes breathing. If throwing a mask away, please dispose of in a trash can.

SAMPLE

Sample Joint Letter from Court and Local Health Department



Dear Potential Juror,

You have been summoned for jury duty. Jury duty is important because it safeguards one of the most crucial rights of the American legal system. As trials continue to take place, the court must continue to rely on civic-minded jurors like you for help in ensuring fairness and providing impartial viewpoints in cases.

The Court takes public health and safety seriously and has implemented aggressive policies to prevent the risk of infection from coronavirus for jurors and other court users. We would like to assure you that the court has done everything it can to safeguard your health during your time in the courthouse. We have taken the following precautions:

1. Masks and gloves will be made available for jurors who do not have their own

2. Jurors will never be in groups larger than ___ and will have enough space to distance themselves from other people in the room by at least 6 feet

3. Jurors will not be asked to touch any surfaces, documents, or objects that have previously been touched by another person without being sanitized

4. The overall number of people inside the courthouse and the courtroom will be restricted

5. The courtroom and the courthouse will be sanitized daily

6. Jurors will be able to sanitize or wash their hands as often as they feel is necessary

7. Nobody who has tested positive for coronavirus or exhibits any symptoms will be permitted onto the jury

8. Jurors will be encouraged to share any concerns with JURY ADMINISTRATOR, JUDGE, BAILIFF

We have collaborated with the local health department and the steps the court has taken have been approved by the local health department.

Please note that it is possible to defer your jury duty for six months (that means you will be called again in six months). You do no need to provide a reason the first time you defer jury duty [or: you will need to provide a reason for deferring, and that reason can be related to the coronavirus pandemic].

Although you are able to defer jury duty, you cannot simply ignore a summons to jury duty – you must respond to a jury summons. You can respond either by reporting for jury duty or by calling the court and deferring jury duty one time for 6 months.

We're all in this together,

COURT SIGNATURE HEALTH DEPT SIGNATURE

SAMPLE

Sample

Journal Entry Moving Trial Location & Sample Jury Protocol



FILED
2020 APR 22 AM 8:03
PEGGY S. UNDERWOOD
CLERK OF COURTS COURT
CHAMPAIGN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS,
CHAMPAIGN COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

- vs. -

CLIFTON ISAAC MOXLEY, JR.,

Defendant.

Case No. 2019 CR 269

Judge Nick A. Selvaggio

JOURNAL ENTRY SEEKING PARTY RESPONSE
TO COURT CONSIDERATION OF MOVING TRIAL LOCATION

The Champaign County Court of Common Pleas, General Division makes the following Findings of Fact:

1. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D "Declaring a State of Emergency" in response to the growing COVID-19 public health crisis.

2. On March 11, 2020, the World Health Organization officially declared COVID-19 to be a global "pandemic" requiring "urgent and aggressive action" to control the spread of the virus.

3. On March 11, 2020, the first "community transfer" positive case of COVID-19 in the State of Ohio was confirmed to be in Stark County.

4. On March 13, 2020, President Donald J. Trump declared the COVID-19 virus pandemic a "national emergency beginning March 1, 2020".

5. From March 13, 2020 through the filing of this entry, Ohio Governor DeWine, after consultation with the Ohio Department of Health, has issued an number of additional executive orders, and mandated the closure of schools, private businesses and public agencies such as the Bureau of Motor Vehicles in order to

protect the health of all Ohioans. Through televised news conferences, Ohio Governor DeWine has also encouraged Ohio's public and private sector employers to monitor its workforce and enact protocols to reduce the possibility of the "public spread."

6. On March 13, 2020, the Champaign County Common Pleas Court, General Division and the Champaign County Municipal Court issued a joint press release noting that in order to preserve the public health all upcoming jury trials would be postponed and rescheduled to late April, 2020. *See, Urbana Daily Citizen*, publication date March 14, 2020.

7. On March 16, 2020, the Champaign County Common Pleas Court, General Division, the Champaign County Common Pleas Court, Family Court Division and the Champaign County Municipal Court issued a joint press release noting that the courts would remain open in order to maintain essential court functions while modifying individual court operations in order to promote the public health, prioritize public safety and uphold the rule of law. *See, Urbana Daily Citizen*, publication date March 17, 2020.

8. On March 16, 2020, Ohio Department of Health Director Amy Acton issued a Director's Order that mandated the closure of polling locations in the State of Ohio on March 17, 2020 "to avoid the imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number [of persons]", thus effectively postponing the scheduled March 17, 2020 Ohio Primary Election.

9. On March 20, 2020, the Champaign County Common Pleas Court, General Division, issued a temporary emergency order governing its operations in order to protect the public health and reduce the size of public gatherings and unnecessary travel, while maintaining essential court functions during this period of the COVID-19 pandemic. *See, In Re: Temporary Emergency Order Resulting from the Declared COVID-19 Public Health Emergency*, Champaign Case No. 2020 MS 007.

10. The Centers for Disease Control and Prevention (CDC) and other national and State of Ohio health authorities have advised people to take precautions to reduce the possibility of exposure to the COVID-19 virus.

11. Specifically, the CDC and Ohio health officials are recommending that people attempt to keep physical distance between themselves and other people. This technique, known as social distancing, is especially important for people who have a higher health risk should they contract the disease.

12. The CDC is also recommending employers try to minimize exposure between employees and the public and to consider the public health and safety when scheduling group or public events.

13. On March 22, 2020, Ohio Department of Health Director Amy Acton issued a Director's "Stay at Home Order," effective at 11:59 p.m. on March 23, 2020 to 11:59 p.m. on April 6, 2020, unless rescinded or modified by the Ohio Department of Health, in order to prevent the spread of COVID-19 into the State of Ohio.

14. On March 28, 2020, Governor Mike DeWine signed Am. Sub. H.B. 197, which tolls various time requirements established by statute (i.e., statute of limitations and speedy trial requirements from March 9, 2020 to July 30, 2020 or until the emergency order expires, whichever is sooner).

15. On March 28, 2020, the Ohio Supreme Court issued *In re: Tolling of Time Requirements Imposed by Rules Promulgated by the Supreme Court and Use of Technology* ("Order") to complement Am. Sub. H.B. 197. The Order tolls time requirements found in the "Rules of the Court" promulgated by the Ohio Supreme Court.

16. On March 30, 2020, President Donald J. Trump announced during a press conference that that the peak in the death rate from the COVID-19 virus is likely to occur within the "next two weeks" and therefore extended the White House Coronavirus Task Force recommended guidelines for "social distancing" to April 30, 2020 in the effort to "slow the spread."

17. On April 2, 2020, Ohio Department of Health Director Amy Acton issued an Amended Director's "Stay at Home Order," in effect to 11:59 p.m. on May 1, 2020, unless rescinded or modified by the Ohio Department of Health, in order to prevent the spread of COVID-19 through the State of Ohio.

18. On April 16, 2020, Governor Mike DeWine announced during a press conference that he intends to lift restrictions for Ohioans when the current Stay-At-Home Order expires on May 1, 2020. On that same day, Governor DeWine issued the following "tweet" at 3:00 p.m.:

    a. "We have a plan to start opening Ohio back up. It's going to be gradual – one thing after another. We want to do this in a thoughtful way that engenders confidence and ensures customers and employees are safe."

THEREFORE, in order to protect the public health and comply with social distancing requirements, while maintaining essential court functions and operations, **the Court has determined the threat to the public health continues to outweigh the present necessity conducting the Defendant's jury trial at the Champaign County Courthouse.**

The Court finds, however, that like its development of "COVID-19 protocol" for sessions of Grand Jury, the Court is able to develop "COVID-19 protocol" for jury trials in such a manner that protects the public health and promotes public confidence in the judicial proceeding. Thus, the Court is therefore considering the following alternative sites that will enable the Court to comply with social distancing recommendations:

1. The Champaign County Community Center auditorium for the trial and the Champaign County Community Center conference room C for the jury room (provided that the facility is available on the scheduled trial dates);

2. The Champaign County Fairgrounds, specifically the 4H building for the trial and the adjoining kitchen for the jury room (provided that the facility is available on the scheduled trial dates);

So that timely summonsing of the jury can take place with the ability to give the potential jurors appropriate notification of compliance with social distancing recommendations, the Court is soliciting both parties to this action to provide the Court with a written response as to the following questions:

1. Is the case resolved that consideration of moving the trial is not necessary? If the answer to this question is yes, it is not necessary to answer Questions 2, 3, and 4.

2. Do you object to the trial being moved from the Champaign County Courthouse? If so, state the basis for your objection.

3. Notwithstanding your position on question 1, do you object to the Court considering the Champaign County Community Center or the Champaign County Fairgrounds for an alternative location?

4. Do you have another location that you would recommend?

Each party shall provide the Court with a written response no later than Thursday, April 30, 2020.

Prosecutor and Defense Counsel have been notified through telephone by Court Staff on the date of the filing of this entry. Defense Counsel shall notify the Defendant.

No costs for this entry.

IT IS SO ORDERED.

Nick A. Selvaggio
Judge

NAS

Copies to: Kevin S. Talebi, Prosecuting Attorney
Christopher M. Bucci, Defense Counsel

FILED
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BRANDI S. UNDERWOOD
CHAMPAIGN COUNTY COURT
CHAMPAIGN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS,
CHAMPAIGN COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

- vs. -

CLIFTON ISAAC MOXLEY, JR.,

Defendant.

Case No. 2019 CR 269

Judge Nick A. Selvaggio

JOURNAL ENTRY GRANTING STATE OF OHIO'S ORAL MOTION TO DISMISS THE STATE OF OHIO'S WRITTEN MOTION TO DISMISS [INDICTMENT], JOURNAL ENTRY ORDERING ALTERNATE LOCATION OF JURY TRIAL DUE TO COURT INABILITY TO COMPLY WITH "SOCIAL DISTANCING" SPACING RECOMMENDATIONS FOR COURTROOM FACILITIES, NOTIFICATION OF BOND VIOLATION ALLEGATION AND ATTACHMENT OF CHAMPAIGN COUNTY COVID-19 JURY TRIAL PROTOCOL

On May 4, 2020, hearing was held on the State of Ohio's Motion to Dismiss [Indictment]. Prosecutor Kevin S. Talebi, Defense Counsel Christopher M. Bucci, and the Defendant were present. The hearing was audio recorded.

The parties informed the Court that the Defendant "changed his mind" about accepting the proposal outlined in the State of Ohio's Motion to Dismiss [Indictment], whereby the State of Ohio would ask for dismissal of the F3 Domestic Violence indictment[1], and the Defendant would agree to enter a plea of guilty to a M1 Domestic Violence in the Champaign County Municipal Court.

The parties informed the Court that the Defendant desired to proceed to trial. The Court elected not to pursue questioning as to the change of heart, as it did not want it to be interpreted that the Court was attempting to "strong-arm" a plea resolution.

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[1] The Defendant is charged with felony three Domestic Violence due to four prior convictions of domestic violence.

The Court **GRANTS** the State's oral Motion to Dismiss the State of Ohio's written Motion to Dismiss.

The Court then reviewed the trial location responses ("Response") as ordered by the Court. Because the Prosecutor's Office believed the case to be resolved, it had not answered the remaining questions as set forth in the entry.

Upon inquiry by the Court, Prosecutor Talebi indicated that the State of Ohio did not object to the trial being moved to a different location. Defense Counsel Bucci maintained the Defendant's objection to moving trial location as set forth in Defendant's Response.

The Court makes the following findings:

1. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D "Declaring a State of Emergency" in response to the growing COVID-19 public health crisis.

2. On March 11, 2020, the World Health Organization officially declared COVID-19 to be a global "pandemic" requiring "urgent and aggressive action" to control the spread of the virus.

3. On March 11, 2020, the first "community transfer" positive case of COVID-19 in the State of Ohio was confirmed to be in Stark County.

4. On March 13, 2020, President Donald J. Trump declared the COVID-19 virus pandemic a "national emergency beginning March 1, 2020".

5. From March 13, 2020 through the filing of this entry, Ohio Governor DeWine, after consultation with the Ohio Department of Health, has issued an number of additional executive orders, and mandated the closure of schools, private businesses and public agencies such as the Bureau of Motor Vehicles in order to protect the health of all Ohioans. Through televised news conferences, Ohio Governor DeWine has also encouraged Ohio's public and private sector employers to monitor its workforce and enact protocols to reduce the possibility of the "public spread."

6. On March 13, 2020, the Champaign County Common Pleas Court, General Division and the Champaign County Municipal Court issued a joint press release noting that in order to preserve the public health all upcoming jury trials would be postponed and rescheduled to late April, 2020. *See, Urbana Daily Citizen*, publication date March 14, 2020.

7. On March 16, 2020, the Champaign County Common Pleas Court, General Division, the Champaign County Common Pleas Court, Family Court Division and the Champaign County Municipal Court issued a joint press release noting that the courts would remain open in order to maintain essential court functions while modifying individual court operations in order to promote the public health, prioritize public safety and uphold the rule of law. *See, Urbana Daily Citizen*, publication date March 17, 2020.

8. On March 16, 2020, Ohio Department of Health Director Dr. Amy Acton issued a Director's Order that mandated the closure of polling locations in the State of Ohio on March 17, 2020 "to avoid the imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number [of persons]", thus effectively postponing the scheduled March 17, 2020 Ohio Primary Election.

9. In a March 19, 2020 press conference with Ohio Governor DeWine, Ohio Supreme Court Chief Justice Maureen O'Connor, building on her March 13, 2020 declaration to judges that "closing the courthouse and disrupting services is not a plan", emphasized that "[c]ourts must be open to address emergency and time sensitive matters…[m]easures can be taken to ensure access to justice while safeguarding the health."

10. On March 20, 2020, the Champaign County Common Pleas Court, General Division, issued a temporary emergency order governing its operations in order to protect the public health and reduce the size of public gatherings and unnecessary travel, while maintaining essential court functions during this period of the COVID-19 pandemic. *See, In Re: Temporary Emergency Order Resulting from the Declared COVID-19 Public Health Emergency*, Champaign Case No. 2020 MS 007.

11. The Centers for Disease Control and Prevention (CDC) and other national and State of Ohio health authorities have advised people to take precautions to reduce the possibility of exposure to the COVID-19 virus.

12. Specifically, the CDC and Ohio health officials are recommending that people attempt to keep physical distance between themselves and other people. This technique, known as social distancing, is especially important for people who have a higher health risk should they contract the disease.

13. The CDC is also recommending employers try to minimize exposure between employees and the public and to consider the public health and safety when scheduling group or public events.

14. The current physical facility housing the Champaign County Common Pleas, General Division courtroom:

    a. Is the largest space in the Champaign County Courthouse (approximately 30' x 48') and houses immovable furniture hosting the courtroom bench, the witness stand, the jury box itself and public seating area;
    b. Has wi-fi accessibility and projection screen capability;
    c. Has a jury box consisting of two rows of side by side swivel chairs. The ability to expand the space between the jury chairs is impeded by a two-sided wooden bar that encases the jury box and by a wall on the other side of the jury box. Immediately adjoining the jury box on the non-wall side is the public entry way into the courtroom;
    d. Has one counsel table located three feet away from the jury box.
    e. Has counsel tables located in the center of the courtroom with two and one-half feet of space between the tables.
    f. Has eight, four person rows of pews in the public seating area. The pews normally can seat thirty-two persons, but with "social distancing" spacing implementation, can only accommodate a maximum of eleven persons (i.e., eight persons in the pews plus the addition of three chairs strategically placed around the pews)

g. Has an adjoining jury room (approximately 20' x 15') with a large immovable conference room-styled table, sturdy credenza and thirteen chairs placed side-by-side.

15. On March 22, 2020, Ohio Department of Health Director Dr. Amy Acton issued a Director's "Stay at Home Order," effective at 11:59 p.m. on March 23, 2020 to 11:59 p.m. on April 6, 2020, unless rescinded or modified by the Ohio Department of Health, in order to prevent the spread of COVID-19 into the State of Ohio.

16. Since March 23, 2020, this Court has timely and thoughtfully continued the Defendant's trial date twice during this declared pandemic.

a. By journal entry filed March 23, 2020, the Court continued the Defendant's initial trial date from April 7-8, 2020 to April 28-29, 2020.

b. By journal entry filed April 1, 2020, the Court continued the Defendant's second trial date from April 28-29, 2020 to May 21-22, 2020.

c. In both journal entries granting trial continuance, and notwithstanding the Defendant's bond violation of testing positive for using methamphetamine and cocaine on March 5, 2020, the Court evaluated the availability of local resources that could address the Defendant's risks of engaging in criminogenic behavior that threaten his ability to prepare for trial as well as his compliance with attendance at counseling sessions.[2]

17. On March 28, 2020, Governor Mike DeWine signed Am. Sub. H.B. 197, which tolls various time requirements established by statute (i.e., statute of limitations and speedy trial requirements from March 9, 2020 to July 30, 2020 or until the emergency order expires, whichever is sooner).

18. On March 28, 2020, the Ohio Supreme Court issued *In re: Tolling of Time Requirements Imposed by Rules Promulgated by the Supreme Court and Use of Technology* ("Order") to complement Am. Sub. H.B. 197. The Order tolls time

[2] Subsequent thereto, the Defendant is alleged to have violated bond by testing positive for marijuana on April 24, 2020. See *Notification of Bond Violation Allegation*, below.

requirements found in the "Rules of the Court" promulgated by the Ohio Supreme Court.

19. On March 30, 2020, President Donald J. Trump announced during a press conference that that the peak in the death rate from the COVID-19 virus is likely to occur within the "next two weeks" and therefore extended the White House Coronavirus Task Force recommended guidelines for "social distancing" to April 30, 2020 in the effort to "slow the spread."

20. On April 2, 2020, Ohio Department of Health Director Dr. Amy Acton issued an Amended Director's "Stay at Home Order," in effect to 11:59 p.m. on May 1, 2020, unless rescinded or modified by the Ohio Department of Health, in order to prevent the spread of COVID-19 through the State of Ohio.

21. On April 16, 2020, Governor Mike DeWine announced during a press conference that he intends to lift restrictions for Ohioans when the current Stay-At-Home Order expires on May 1, 2020. On that same day, Governor DeWine issued the following "tweet" at 3:00 p.m.:

    a. "We have a plan to start opening Ohio back up. It's going to be gradual – one thing after another. We want to do this in a thoughtful way that engenders confidence and ensures customers and employees are safe."

        i. Manufacturing, distribution, construction and general business operations were approved for opening on May 4, 2020.
        ii. Consumer, retail and service businesses were approved for opening on May 12, 2020.
        iii. Outside dining operations and hair salon operations were approved for opening on May 15, 2020.
        iv. Inside dining operations were approved for opening on May 21, 2020.

22. On April 16, 2020, the Champaign County Common Pleas Court, General Division, convened a Grand Jury Session and implemented eleven changes to the traditional procedural protocol used by Court Staff to conduct Grand Jury. The changes were designed to reduce the number of unnecessary gatherings,

comply with the social distancing recommendations and minimize the risk of exposure to the COVID-19 virus.

a. The protocols involved changing the location where grand jury would be conducted (i.e., in the main courtroom as opposed to in the jury room), enhancing juror seating spacing, enacting witness presentation spacing to ensure social distancing for all "presentation of evidence and recording of testimony" participants, and providing disposable jury materials to jurors.

b. The Court advised the Champaign County Health District Commissioner of the procedural changes to conducting grand jury, and no objection to the new protocols were raised.

c. No reports of juror discomfort with the protocol were reported to the Court. The Court had eleven jurors willing to appear and approximately six more on "stand-by."

d. The Court will use the same protocols for the May 11, 2020 session of Grand Jury.

23. On April 30, 2020, Ohio Department of Health Director Dr. Amy Acton issued a Director's "Stay Safe Ohio Order," in effect to 11:59 p.m. on May 29, 2020, unless rescinded or modified by the Ohio Department of Health, in order to "prevent the spread of COVID-19 into the State of Ohio" and continued the previously imposed "stay at home" order "...unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential and Unrestricted Businesses and Operations as set forth in [the] Order."

24. On April 30, 2020, the Champaign County Common Pleas Court, General Division and Family Court, consistent with Ohio Governor Mike DeWine's COVID-19 Responsible Protocols for Getting Ohio Back to Work, filed entries ordering "Courthouse Compliance" with wearing facial coverings for employees working in the courthouse or anyone entering the courthouse.

25. On May 4, 2020, signs were posted at the Champaign County Community Center ("Community Center") stating "[a"]ll persons entering this building are required to wear a mask."

    a. The Community Center is a county-owned facility that formerly housed a "retail anchor store" with a string of adjoining storefront bays. The County purchased the facility in 1997 and renovated the facility to house non-judicial county offices.

    b. The "anchor store" area of the Community Center houses county offices within the structure that include the Health District, Department of Jobs and Family Services, Child Support Enforcement Agency, Board of Elections, 911 Dispatch Center, and includes a large auditorium ("Auditorium"). The "adjoining bays" separately house the Board of Commissioners, Recorder, Auditor, Treasurer, and Conference Room C among others.

    c. The proposed courtroom, the Auditorium, is located off the main lobby as one immediately enters the "anchor store" area of the Community Center.

        i. The Auditorium is a large, flat-floored, open spaced room area, (approximately 58' x 61') with wi-fi accessibility, projection screen capability and no permanent fixtures. All tables and chairs within the auditorium are moveable. The Auditorium is approved to hold a maximum of 237 persons. Separate gender specific restrooms are located across the hallway from the Auditorium.

    d. The proposed jury room, Conference Room C, is located in one of the bays down an enclosed hallway from the Auditorium. Conference Room C is an open room area, (approximately 19 ½' x 32') with a kitchen sink and counter top fixed to one corner of the room. All tables and chairs within the room are moveable. Conference Room C can be secured through locked doors. Separate gender specific restrooms are accessible through a back door to Conference Room C. Public access to the restrooms can also be restricted to the public through installation of a hallway gate.

26. On May 5, 2020, the Court and Court Staff met with the Champaign County Health Commissioner at the Auditorium to review traditional trial procedural protocol and proposed changes to trial procedural protocol in light of COVID-19 "social distancing" recommendations. The Court and Court Staff laid out proposed *voir dire* placement for 40 prospective jurors and trial participants, and then reconfigured the Auditorium for trial involving 13 jurors and trial participants.

    a. The Health Commissioner indicated that he would be reviewing the proposed layouts with his infectious disease personnel and also consult state health officials.

    b. On May 7, 2020, the Court emailed the Court's proposed "COVID-19" Jury Trial Protocol for conducting *voir dire*, trial and deliberations in the Auditorium, and for housing the trial jury during breaks in Conference Room C, to the Health Commissioner for review and comment.

    c. On May 8, 2020, the Health Commissioner, in concert with his Director of Nursing and a second Registered Nurse, engaged in a telephone conference with the Court to review the proposed spacing distancing layout in the Auditorium and Conference Room C, and to discuss the proposed COVID-19 Jury Trial Protocol provided by the Court.

    d. Additional recommendations from the Health Commissioner were accepted by the Court and a COVID-19 Jury Trial Protocol was approved by the Health Commissioner.

    e. A copy of the approved Champaign County Common Pleas Court COVID-19 Jury Trial Protocol is attached hereto.

27. On May 5, 2020, the Court and Court Staff met with the Champaign County Sheriff and his deputies to review court security concerns associated with the proposed placement of *voir dire* and trial layout at the Auditorium and proposed placement of the jury room in Conference Room C.

    a. On that same date, additional recommendations from the Champaign County Sheriff for jury screening and security were accepted by the Court, and the Auditorium and Conference Room C were approved for

conducting *voir dire* and the trial, and for housing the trial jury, respectively.

28. The Court's exercise of conducting its functions and operations have been deemed to be essential governmental functions.

29. In matters of criminal justice, the Court is charged with providing responsible access to justice for those complaining of criminal conduct and those accused of criminal conduct. For those convicted of criminal offenses, the Court is charged with protecting the public, punishing the offender and rehabilitating the offender.

30. To continually delay an essential function of the Court, like a trial, materially and adversely effects the ability of the Defendant and the Alleged Victim to having their cases fairly and timely adjudicated. As such, access to justice is denied.

31. While any reasonable continuance, particularly one during a declared pandemic is necessary at times, the perpetual need for trial continuance when normal business and governmental operations are resuming should be balanced against the seriousness of the offense and the potential occurrence of impediments to a fair adjudication of the dispute resulting from ongoing delay, such as:

    a. Fading witness memories.
    b. Witness who become uncooperative over time due to facing socio-familial pressures of intimidation.
    c. Witnesses who, due to economic instability, become transient and difficult to track.
    d. Witnesses who suffer severe health complications or die unexpectedly before trial.
        i. The case file reveals that the Alleged Victim in this case is a 75 year old male who requires a walker to be ambulatory.

32. Although lengthy trial continuances do not fit the "perpetuation of testimony" circumstances as contemplated by Crim.R. 16(G), the Court acknowledges that some of these general impediments could be addressed where the parties jointly agree to pursue "Perpetuation of Testimony" involving potentially forgetful, transient, or vulnerable witnesses.

33. Specific to the charge of domestic violence, the Court is familiar with the "cycle of violence" as testified to by individuals in abusive relationships. Depending on individual circumstances, the dynamics of "power and control" may be projected through acts of "isolation", "denial and blame", "economic abuse", or "coercion and threats" to serve as the catalyst for a victim's fraudulent recantation of the initial allegation (e.g., as the victim experiences emotional or financial pressures during the pendency of the case, the victim looks for ways to appease the accused, appease the accused's family / friends, or appease children shared with the accused in the effort to keep the family unit together or maintain needed economic stability).

    a. The Court finds that to perpetually continue the prosecution of a charge of domestic violence principally and materially risks the ability of the State of Ohio to present a truthful picture of the alleged dispute from the eyes of its witnesses.

34. The Governor's Protocols, as specifically set forth in the Ohio Department of Health's "Stay Safe Ohio" Order and adopted by this Court, lessen any negative stigma associated with facial coverings worn or required in professional and social settings, thereby placing those asked to wear facial coverings in less of a unique or socially uncomfortable position.

35. The Defendant's claimed Response that moving the trial location will cause prejudice against the Defendant for "putting [the jurors] in a situation that may be harmful to their health" is speculative.

    a. The Defendant's Response presumes that the Court will require prospective jurors who express opposition to serving due to COVID-19 health concerns will be required to serve. The Court has not given any indication of such requirement.

        i. To the contrary, at the time of receiving their summons, prospective jurors are being told that "any person who wants to be excused from jury service because they are either in a high-risk category for contracting the virus or feels scared about contracting the virus

during their jury service, should call Court Offices immediately (937-484-1000) and the juror will be excused from jury service. *Champaign County Common Pleas Court COVID-19 Jury Trial Protocol, ¶2(b)(i).*

b. Second, like the protocol changes developed for grand jury, the Court has discussed, reviewed and gained approval for the proposed changes to jury trial protocol with the Champaign County Health District Commissioner in the effort to minimize the risk of exposure to the COVID-19 virus.

c. Third, the Court finds that by moving the trial location to a more spacious venue where social distancing measures can be implemented both for the actual trial and while having short recesses in the jury room fosters more public confidence that court officials are pursuing measures to minimize risk to, and protect the health of, people involved in the trial.

d. Fourth, the Court finds that the Defendant presumes prejudice when, in fact, the jurors could also find prejudice against the government (i.e. the entity that initiated the charging decision and has to satisfy the burden of proof.)

e. Last, the Court finds that prospective juror feelings about service may be explored during *voir dire*.

36. The Defendant's claimed Response that moving the trial from the Courthouse "will amplify any prejudice against the Defendant by the jury because it will illustrate that there is a danger to a potential juror's health by conducting a jury trial at this time even with speedy trial requirements being tolled until July 30, 2020" is affirmatively rejected by this Court.

a. The Court finds that there is no medical or scientific basis or explanation offered by the Defendant or by the Ohio General Assembly for the selection of the "July 30, 2020" tolling date.

b. To date, there has been no medical or scientific determination that the COVID-19 virus will be considered an afterthought on July 30, 2020.

c. To date, there has been no vaccine developed for the COVID-19 virus and it is unknown when a vaccine will be developed and approved for widespread use.

37. The physical characteristics of the Champaign County Courthouse courtroom and jury room currently available to the Court will not permit the Court to conduct a jury trial and implement recommended social distancing requirements that would minimize the risk of exposure to the COVID-19 virus to trial participants.

38. With the consent and approval of the Champaign County Health Commissioner, the Court finds that there are local facilities available that will permit the Court to conduct a jury trial and implement recommended social distancing requirements minimize the risk of exposure to the COVID-19 virus to trial participants.

The Court finds that the seriousness of the charged offense, elevated by the Defendant's criminal history of violence toward family or household members, together with the age and declining health of the Alleged Victim, the allegation that the Defendant has committed a second violation of bond, this time with a different drug, and the availability of a local facility that allows the Court to comply with recommendations of state and local health officials for conducting essential government functions, support the determination to proceed with the jury trial instead of waiting for pronouncement that the COVID-19 virus is no longer a threat to the general public.

The Court further finds that like its development of "COVID-19 protocol" for sessions of Grand Jury, the Court has developed "COVID-19 protocol" for jury trials in such a manner that is consistent with the objectives of the state and local health officials, minimizes risk of exposure of the COVID-19 virus to the trial participants and promotes public confidence in the judicial proceeding.

Therefore, it is the ORDER of this Court that trial shall be relocated from the General Division Courtroom of the Champaign County Courthouse, 200 North Main Street, Second Floor Urbana, Ohio 43078 to the Champaign County Community Center Auditorium, 1512 St. Rt. 68 South, Urbana, Ohio 43078.

Because of the delay in timely sending Court communications to the prospective panel of jurors occasioned by the Defendant's proffered acceptance of a plea resolution that

disposed of the need for trial, the Court stated at the May 4, 2020 hearing that it was necessary to continue the trial dates of Thursday, May 21, 2020 and Friday, May 22, 2020 in order to give the Court sufficient time to meet with the Champaign County Health Commissioner and Champaign County Sheriff regarding alternative site location preparation and to give Deputy Jury Commissioners sufficient time to have prospective jurors time complete jury questionnaires and communicate any "COVID-19" requests to be excused from jury service.

After consulting the schedules of Prosecutor Talebi, Defense Counsel Bucci and reviewing the availability of the Community Center Auditorium and Conference Room C, the Court **ORDERED** trial rescheduled for **Tuesday, June 2, 2020, Wednesday, June 3, 2020 and Thursday, June 4, 2020 at 8:30 a.m.**

Any subpoenas lawfully served for earlier trial dates remain in effect for the new trial date.

NOTIFICATION OF BOND VIOLATION ALLEGATION:

After the hearing concluded, the Court reviewed the Defendant's compliance with Pretrial Services. Pretrial Services reported that on April 24, 2020, the Defendant tested positive for alcohol and THC. The Defendant denied alcohol use, but did stated that he had used marijuana approximately "two weeks ago."

The Court therefore alleges the following bond violation:

1. Use of illegal controlled substances, to wit: On April 24, 2020, the Defendant tested positive for marijuana.

The Court will address the bond violation at the next scheduled hearing, or prior to the commencement of trial and outside the presence of the jury, whichever occurs first.

IT IS SO ORDERED.

Nick A. Selvaggio
Judge

NAS

Copies to: Kevin S. Talebi, Prosecuting Attorney
Christopher M. Bucci, Defense Counsel
Common Pleas Court Pretrial Services
Gabe Jones, Champaign County Health Commissioner
Matt Melvin, Champaign County Sheriff
Chris Copeland, Lt., Champaign County Sheriff, Court Services Division
Christine A. Phelps, Jury Commissioner
R. Bart Ward, Jury Commissioner
Board of Champaign County Commissioners, c/o Andrea Millice, Clerk
Penny Underwood, Clerk of Courts

NICK A. SELVAGGIO, JUDGE
Champaign County Court of Common Pleas, General Division

Scott D. Schockling, Magistrate
Sandi G. Perry, Court Administrator

Janelle L. Bey, Judicial Assistant
Jennifer L. Demarco, Judicial Assistant
Christie L. Harrigan, Judicial Assistant

Champaign County Common Pleas Court COVID-19 Jury Trial Protocol

1. Juror Summons

    a. Based on jury response rates and approved excused dismissal rates for "COVID-19 era" jurors summonsed for grand jury, the Court will summons one hundred thirty-five (135) prospective jurors, an increase from the traditional fifty (50) prospective jurors usually summoned.

2. Pretrial Juror Communications and Questionnaires

    a. The Jury Commissioners will mail a letter and Jury Questionnaire to prospective jurors with instructions to complete and mail the questionnaire back to Court Offices before a pre-selected deadline. The letter will contain traditional advisements for being excused from jury service and the opportunity to express a "COVID-19" reason for being excused from jury service.

        i. Pretrial completion of the questionnaires will reduce the amount of time prospective jurors are present in the Auditorium waiting for the trial to begin.

        ii. Non-responsive jurors may receive a second letter from the Court requesting compliance.

    b. The Jury Commissioner letter and Jury Questionnaire will be accompanied by a letter from the Court informing the prospective jurors that, like all businesses, the Court has a strong interest in minimizing their risk of contracting the COVID-19 virus.

        i. Similar to the language used by the Jury Commissioners, the jurors will again be informed that any person who wants to be excused from jury service because they are either in a high-risk category for contracting the virus or feels scared about contracting the virus during their jury service, should call Court Offices immediately (937-484-1000) and the juror will be excused from jury service.

        ii. The letter from the Court will also inform jurors of the new jury trial protocols implemented by the Court, as approved by the Champaign County Health Commissioner, for jury trial service.

3. Juror Appearance on Day of Trial

    a. Trial jury service will take place in the Auditorium of the Champaign County Community Center, 1512 St. Rt. 68 South, Urbana, Ohio.

    b. Only thirty (30) non-excused prospective jurors (in numerical order) who have returned questionnaires will be asked to physically appear at the Community Center on the day of trial.

    c. The remaining non-excused prospective jurors who returned questionnaires will be asked to remain at their residence on the first day of trial in an "on-call" status from 8:15 a.m. – 2:15 p.m. in case it becomes necessary to have additional jurors appear.

        i. If not called by 2:15 p.m., jurors will be released from their duty to serve as a prospective trial juror.

        ii. The "on-call" method enables the Court to keep "crowd gathering" to a minimum.

    d. Regardless of whether the prospective juror is required to physically appear for trial, on the day of trial, and before they come to the Community Center, all non-excused prospective jurors (including those "on-call") will be asked through the Court's letter to self-monitor whether they are experiencing any of the following symptoms within the last 2-3 days or have been exposed to someone experiencing these symptoms:

        i. Fever more than 100.4 degrees;
        ii. Persistent, dry cough
        iii. Shortness of breath or difficulty breathing
        iv. Chills, Muscle pain or Sore Throat
        v. New loss of taste or smell
        vi. Nausea, vomiting or diarrhea

        Jurors will be instructed not come to trial if they are experiencing these symptoms or feel sick. Jurors experiencing symptoms or feeling sick will be instructed to call Court Staff (937-484-1000) to be excused from jury service.

4. Screening of Trial Participants

    a. Prospective jurors will be instructed to look for a large "JURORS (with pointed arrow)" sign at the front entrance of the building and be directed to a single entrance point into the Community Center.

b. While in their vehicle, jurors will be asked to self-monitor the entrance into the Community Center, and to remain in their vehicle if there appears to be a group of other jurors waiting to be screened.

c. Before entering the Community Center, the Court, Court Staff, lawyers, parties and prospective jurors will be screened for COVID-19 symptoms, including taking of temperature.

    i. The Court, Court Staff, lawyers, parties and any participating juror will have their temperature taken at the beginning of every day of service.

    ii. All individuals entering the Community Center will also be screened in accordance with court security policies for weapons and inspection of handbags.

5. Facial Coverings / Gloves / Hand Sanitizer

    a. All lawyers, parties, prospective jurors, and trial jurors will be required to have facial coverings before entering the Community Center.

    b. Lawyers, parties and jurors will be permitted to bring and wear their own facial covering.

        i. The Court will provide any prospective juror and each trial juror who does not bring a facial covering to the Community Center with a baggie containing a disposable face mask for each day of service.

    c. Lawyers and parties (except when testifying) shall wear masks throughout the trial (i.e., during opening statement, closing argument, examination of witnesses, recesses, bench conferences and jury instruction discussions).

    d. Lawyers (except when handling exhibits during trial), parties, and jurors (except when handling exhibits during deliberations) are not required to wear gloves, but instead will be encouraged to use hand sanitizer every time they enter the Auditorium or Conference Room C.

    e. Hand sanitizer will be placed in the entrance to the Auditorium and in the entrance to Conference Room C.

6. Trial Witnesses

    a. Any witness, including law enforcement officers, lay witnesses and expert witnesses expected to testify shall:

i. Adhere to the "self-monitoring" requirements noted in Paragraph 3, above.

ii. Comply with the "health screening" and "security screening" noted in Paragraph 4, above.

iii. Comply with the "facial covering" requirements noted in Paragraph 5, above.

iv. Shall be seated in "social distancing spaced" chairs in the hallway outside the Auditorium while waiting to testify.

b. The party that subpoenaed the particular witness is ordered to communicate this directive to their prospective witness before trial and monitor the hallway during the trial in order to ensure that this directive is being complied with.

c. The Court will provide a disposable mask to any witness who comes to the Community Center without a facial covering.

7. Public or Media Spectators

a. Any member of the public or member of the media wishing to observe the trial shall:

i. Adhere to the "self-monitoring" requirements noted in Paragraph 3, above.

ii. Comply with the "health screening" and "security screening" noted in Paragraph 4, above.

iii. Comply with the "facial covering" requirements noted in Paragraph 5, above.

iv. Sit in "social-distancing" spaced seating marked for the public.

8. Juror Check-In

a. Once screened, prospective jurors will stand on "social distancing spaced markings" in the hallway outside the Auditorium while waiting to be checked-in by Court Staff.

b. Prospective jurors will be checked-in by Court Staff by approaching the check-in table one at a time and lay their identification on the table.

c. The juror will be asked to step back while the Court Staff examines and verifies the identification. Once verified, Court Staff will step back, ask the juror to pick up their ID and then proceed into the Auditorium and be seated at a location marked by a table tent hung over a chair with their juror number.

d. The juror will use that same juror number to identify themselves when answering questions during *voir dire.*

9. Courtroom Configuration – *Voir Dire* and Opening Statements

a. Prospective jurors will be seated on "social distancing spaced markings" in the Auditorium to comply with "social distancing" requirements.

b. In order to comply with "social distancing" requirements, the presentation of *voir dire* and opening statement will have tables and chairs arranged so that the Court, counsel, and the parties are all facing the panel of prospective jurors.

c. The Court and both counsel will be provided with clip-on microphones.

d. The Court and both counsel will individually address the prospective panel of jurors from behind the podium. The podium will be sanitized after each individual use.

e. Attempts will be made to conduct *voir dire* without the individual juror's use of a microphone. In the event amplification of the juror's voice is needed, Court Staff will provide the juror with a hand-held microphone, which will be sanitized after each individual use.

f. The Court and parties will not remove themselves from the Auditorium to select the trial jury. Challenges for cause and peremptory challenges will be made in the presence of the prospective jurors.

10. Courtroom Configuration – Trial

a. After the jury is selected, the basic panel of twelve, plus the alternate if selected, will be placed in Conference Room C while Court Staff reconfigure the Auditorium space in a "socially distant" configuration similar in design to the layout of the current Champaign County Common Pleas Courtroom.

b. Tables and chairs will be spaced in order to comply with social distancing requirements.

c. Trial jurors will be seated on "social distancing spaced markings" in the Auditorium to comply with "social distancing" requirements.

d. Court Staff will wipe down and sanitize the reconfigured juror chairs.

e. A plexi-glass screen will be placed between the two counsel tables.

11. Testifying Witness

a. A plexi-glass screen will be placed around the witness stand, and the testifying witness will remove his/her facial covering before testifying.

i. This configuration will enable the Court Reporter to maintain an accurate recording of the proceedings.

ii. This configuration will enable the Court, the jurors and counsel with the opportunity to observe the witness' demeanor and facial expressions during the examination process.

b. The testifying witness will utilize a hand-held microphone during testimony.

i. Court Staff will sanitize the plexi-glass screen and microphone at the conclusion of the testimony of each witness.

c. Lawyers shall ask questions from counsel table.

d. Lawyers shall attempt to minimize the number of times they need to approach the witness.

12. Trial Exhibits

a. Each counsel and the testifying witness shall wear disposable gloves when handling an exhibit.

i. The Court will provide each witness with disposable gloves to handle the exhibit.

b. Exhibit(s) shall not be passed to jurors during the trial.

c. If one of the parties desires to use the Auditorium projection screen, arrangements should be made with the Bailiff prior to trial to practice their presentation.

d. Champaign G.D.L.R. 3.3(F) for Trial Exhibit presentation remains applicable.

e. During deliberations, the Court will provide each trial juror with disposable gloves so they may handle and examine any exhibits admitted into evidence.

13. Bench Conferences

a. In an effort to adhere to "social distancing recommendations", bench conferences will be attempted in a corner of the Auditorium farthest away from the jury.

b. For anticipated prolonged bench discussions, the trial jury will be escorted back to Conference C, be escorted outside (weather permitting) or be temporarily excused from the proceedings while the Court, Court Reporter and parties remain in the Auditorium to discuss and resolve the issue.

14. Juror Conduct During Trial

a. Upon commencement of the actual trial, the trial jurors will be provided with a bottle of water and disposable three-ring notebooks containing paper and a pen.

i. The trial jurors will be permitted to consume water at their seats during the trial.

ii. The trial jurors will be permitted to take notes during the trial.

iii. The trial jurors will be instructed that upon completion of the trial, they will keep the notebook and pen and personally shred their trial notes into the shredder provided by the Court.

b. The Court will suspend the practice of allowing the jurors to ask questions during the trial.

i. The Court finds that the juror questioning process requires:

1. Each juror to transmit paperwork "down the jury row" to the Bailiff for collection and delivery to the Court.

2. The Court and lawyers to gather around the Court Reporter in whispered tones to discuss and debate whether the proposed question(s) should be asked.

ii. The Court finds that the public health need for "social distancing" and the public health need to minimize the risk of transmission/exposure to the COVID-19 virus outweighs, at this

time, the need for the jury to have the opportunity to ask questions of a witness.

15. Restroom Use

a. During *voir dire*, trial and deliberations in the Auditorium, the Health Commissioner has determined that there is sufficient "physical distance" spacing in the restrooms located across from the Auditorium to have two persons enter the same gender specific restroom at one time.

b. During short trial recesses when the jury is housed in Conference Room C, only one person will be permitted to enter the same gender specific restroom at one time.

c. Court Staff shall monitor the restroom occupancy during a recess break.

16. Trial Recess

a. Weather permitting, the Court will strive to permit jurors to walk outside the building during all recesses in their path of travel to Conference Room C.

b. The Court will not provide jurors in Conference Room C with reading materials, games or food (except for individually wrapped snacks) during breaks in the trial. Disposable bottles of water will be provided.

c. Jurors seated in Conference Room C will be encouraged to bring their own puzzles, games, books and magazines with them to occupy their time during breaks. Card games are prohibited.

17. Retention of Cell Phones

a. Prospective jurors will be permitted to retain their cell phones in the "off position" during *voir dire*.

b. During the presentation of trial, trial jurors will not be asked to place their cell phone in one of the Court's secured pouches. Instead, the trial juror will be asked to place their cell phone in the "off position" on a paper plate underneath their seat, with instructions not to use it during their trial service.

c. During a break in the trial, the juror will be permitted to access their cell phone, provided that the juror complies with Court instructions not to research the case, conduct experiments on their own or communicate or express opinions about the case with others regarding their service.

d. When the jury retires to deliberate, the trial jurors who have cell phones in their possession will be ordered to place and seal their cell phone in individual one-gallon plastic baggies.

    i. The baggies will be retained by the bailiff until the verdict is read and the jury is dismissed.

18. Deliberations

    a. All deliberations of the trial jury will occur in the Auditorium.

    b. Court Staff will sanitize six tables of at least six feet in length and twelve chairs to be spaced in accordance with "social distancing recommendations".

        i. Jurors will utilize these tables while deliberating and if applicable, while eating a meal.

    c. Jurors will ring a bell to notify the Bailiff of the need to use the adjoining restrooms before jurors are permitted to depart the jury room.

    d. Jurors will ring a bell to notify the Bailiff when they have a question or have reached a verdict.

    e. Any food ordered for the jury during deliberations shall comply with the following protocol:

        i. Paper menus shall be used with instructions to mark their order on the menu.

        ii. Court Staff will collect the paper menus while wearing gloves.

        iii. Court Staff shall use gloves when disbursing the food and individual cans of soda or bottled water to the jurors.

        iv. Jurors will abide by "social distancing" requirements when consuming the food.

19. This protocol is subject to joint modification by the Court and Champaign County Health Commissioner or designated Champaign County Health District staff member should circumstances arise necessitating deviation from the procedures set forth herein.

Sample
Grand Jury Protocol



NICK A. SELVAGGIO, JUDGE

Champaign County Court of Common Pleas, General Division

Scott D. Schockling, Magistrate
Sandi G. Perry, Court Administrator

Janelle L. Bey, Judicial Assistant
Jennifer L. Demarco, Judicial Assistant
Christie L. Harrigan, Judicial Assistant

To: Kevin S. Talebi, Prosecutor
Matthew M. Melvin, Sheriff
Penny S. Underwood, Clerk of Courts

From: Nick A. Selvaggio, Judge NAS

Re: COVID-19 Grand Jury Protocol

Date: April 3, 2020

COVID-19 GRAND JURY PROTOCOL

Due to the declared COVID-19 public health emergency, and after speaking with the Deputy Jury Commissioners, Janelle Bey and Christie Harrigan, Prosecutor Kevin Talebi and the Clerk of Courts, Penny Underwood, the Court hereby sets the following protocol for managing the upcoming April 13th Grand Jury session and for successive grand juries until the public health emergency declaration is rescinded.

In order to minimize the amount of time prospective jurors spend in the courtroom during jury selection, the Deputy Jury Commissioners have sent out jury questionnaires to the prospective list of grand jurors with instructions to return them to the Court.

Of those who return questionnaires, eleven will be asked to report for Grand Jury service. As you may be aware, of the eleven that report, nine will ultimately be selected for jury service.

The remaining individuals who have returned questionnaires but are not asked to report for service will be asked to remain "on-call" at their homes from 8:15 a.m. – 9:30 a.m. in case the Deputy Jury Commissioners need to call them because one of the original eleven have not appeared. This is being done in the effort to reduce the large number of prospective jurors typically sitting in the courtroom during the jury selection process.

The Court is asking the Sheriff's Office to direct the reporting eleven jurors directly to the second floor and not to report to the Clerk's Office. This is being done in the effort to keep the eleven jurors from having unnecessary contact with the Clerk's Staff.

Upon arriving on the second floor, the eleven jurors will be asked to have a seat in the hallway at the staggered chairs marked with a blue "X". This is being done to prevent people from gathering too closely.

There will be a table in front of the Courtroom One entrance staffed by either Janelle or Christie. The jurors will be asked to approach the table one at a time and lay their identification on the table. The juror will be asked to step back while the Court Staff verify the ID. Once verified, Court Staff will step back, ask the juror to pick up their ID and then proceed into the courtroom and be seated at a location marked with a blue "X".

In order to minimize the number of people in the courtroom, it will not be necessary to have a member of the Clerk of Courts Staff or the Sheriff's Office in the courtroom during jury selection. Court Staff will advise the Clerk's Office of the names of those selected.

The Prosecutor's Office may enter the Courtroom only after all eleven jurors are seated. Court Staff will call the Prosecutor's Office to come to the courtroom once all eleven jurors are seated. The Prosecutor's Office shall sit at the counsel table closest to the jury box.

In order to comply with "social distancing" requirements, the Court Reporter will be moved from the Court's bench area and be seated in between the Bailiff's desk and the table traditionally used by the Prosecutor's Office for court hearings. The Court Reporter will have the same opportunity to use the Prosecutor's "hearing" table just like the Court Reporter uses the current Court Reporter table.

After the Court provides the selected nine jurors with the instructions of law, the Court will leave the courtroom and all grand jury testimony and all deliberations will take place in Courtroom One.

During the presentation of testimony, the Court will move the podium up to the Court's bench nearest to the jury box. The Prosecutor will present the State's case from that location. The Prosecuting Witness shall testify from the Witness Stand. This is being done to comply with "social distancing" requirements.

If exhibits are needed to be shown to the grand jury, the Prosecutor's Office shall use the installed courtroom technology to present the exhibit to the jury on the television screen. The Prosecutor's Office shall not pass exhibits between jurors. The Prosecutor's Office shall advise Court Staff of the need to use the technology prior to grand jury so that preparations can be made for its use.

During jury deliberations, the Prosecutor, Court Reporter and Prosecuting Witness shall depart the courtroom through the main court doors. Jurors are not to retire to the jury room to deliberate.

Law enforcement officers and lay witnesses who are waiting to testify are expected to adhere to the "social distancing" requirements on the second floor hallway. The Court orders the Prosecutor's Office to communicate this directive to anticipated grand jury witnesses ahead of the grand jury session and to monitor the hallway during grand jury in order to ensure that this directive is being complied with.

The jurors will be provided with disposable number cards that correspond to their names. If jurors desire to ask questions of the Prosecuting Witness, jurors can raise their card so that the Court Reporter will have an identification reference point for the juror asking the question.

The jurors will be provided with a bottle of water with permission to drink the water in the courtroom. The jurors will be permitted to enter the jury room one at a time to use the restroom. No other use of the jury room will be permitted.

The jurors will be provided with pens that will not be collected back from them. Any paper notes will be shredded by the jurors at the shredder provided by the Court on their way out of the courtroom.

The Court will not ask the jurors to place their phone in the Court's secured pouches. Instead, they will be provided with a paper towel to lay their cell phones on the floor under their seat. This will ensure that people will be able to notice whether someone is attempting to use their cell phone during the taking of testimony or during deliberations.

All of the instructions above are designed to adhere to recommended "social distancing" practices, minimize the opportunity for the "public spread" and put people, in particular, our jurors, at ease during this difficult time.

While I'm sure that you want to chide me for the detail, in the end there's no substitute for good planning and proper execution.

As for jury trials, all jury trials for the month of April have been postponed and continued. As for plans regarding upcoming jury trials scheduled for the month of May, I am currently working on a couple of ideas on how to handle that in the event trial is deemed necessary or postponing the trial becomes impractical.

I thank you in advance for your anticipated cooperation.

Nick A. Selvaggio
Judge, Champaign County Common Pleas Court

cc: Chris Phelps, Jury Commissioner
Bart Ward, Jury Commissioner
Lt. Chris Copeland, Court Services Division
Board of Champaign County Commissioners, c/o Andrea Millice
Gabe Jones, Director, Champaign County Health District

Sample
Grand Jury Documents:
Letter from Health Dept
Summons
Instructions
Questionnaires



Ashtabula County Health Department
12 West Jefferson Street
Jefferson, Ohio 44047

Raymond Saporito, M.P.H., R.S.
Health Commissioner

Telephone: 440.576.6010
Fax: 440.576.5527

April 20, 2020

Cecilia Cooper
Ashtabula County Prosecutor
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, Ohio 44047-1092

Dear Ms. Cooper:

On April 20, 2020, I reviewed the Ashtabula County Grand Jury Room for compatibility with the Stay at Home Order requirements of the Director of Health, as they pertain to essential businesses.

My review of the Grand Jury Room revealed that it is compatible with the Amended Stay at Home Order of the Director of Health.

There is sufficient room for jurors to be separated from each other a minimum of six feet. Moreover, you also have separate rooms for jury witnesses which will also meet the said six-foot social distancing requirement of essentials businesses.

SAMPLE

A review of the Grand Jury Room also noted that you have hand sanitizer available for grand jurors to use. In addition, you have noted that all frequently touched surfaces such as door handles and tables will be repeatedly sanitized. A container of Clorox wipes was noted to be available for staff of the Prosecutor's office to use on frequently touched surfaces.

You also indicated that any grand juror or witness that has flu-like symptoms will not be allowed to attend a grand jury hearing, and will be told to stay home.

All of these actions will help to prevent the transmission of COVID-19.

In sum, usage of the Ashtabula County Grand Jury Room in the manner as previously described is in compliance with the Amended Stay at Home Order of the Director of Health.

Should you have any further questions pertaining to this matter, please contact me.

Sincerely,

Raymond J. Saporito, M.P.H., R.S.
Health Commissioner

cc: Catherine Colgan, Ashtabula County Prosecutor's Office

Equal Provider of Services
Equal Opportunity Employer

Exhibit "A"

READ THIS FIRST

Please be advised that Grand Jury service has been deemed as an essential function. However, in the midst of the Coronavirus pandemic, unless health and safety guidelines change, the Grand Jury will be seated and only convened for emergency purposes unless otherwise determined, based upon health and safety guidelines as set forth by the Governor, the Ohio Director of Public Health, and the Ohio Supreme Court.

INSTRUCTIONS

1. Immediately open up your summons. Detach the portion labeled as the **First Questionnaire** from your summons. Fill out the **First Questionnaire** and the separate paper labeled as the **Second Questionnaire**. Please make sure to provide your **phone number** and **email** on your questionnaires **legibly**. Place **both** completed questionnaires in the self-addressed stamped envelope provided and then place the envelope in the mail so that it will be **received by the Office of the Jury Manager no later than April 27, 2020.**

   EXCUSAL/POSTPONEMENT: If you are requesting to be excused/postponed from Grand Jury service **for any reason**, including reasons related to the Coronavirus pandemic, there are instructions on the back of the First Questionnaire attached to your summons. A detailed explanation in writing must be provided as to why you are asking to be excused/postponed. You are not excused/postponed until your request has been granted. You will receive a notice by mail informing you if your request has been granted.

2. On May 6, 2020 anytime after 5:00 PM, you will call 440-576-6641 to listen to a voicemail message with instructions including what time you will report on May 7, 2020, unless you are otherwise excused or postponed. **Please make sure that you have your juror number ready. Your juror number can be located on the bottom portion of your summons.**

Should you have any questions or concerns, please feel free to contact the Office of the Jury Manager during business hours at (440) 576-3615 and/or email jurycommission@ashtabulacounty.us

SAMPLE

FIRST QUESTIONNAIRE

JURY QUESTIONNAIRE MUST BE FILLED OUT AND RETURNED WITHIN 7 DAYS OF RECEIPT.

Return to: The Office of the Jury Manager
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, OH 44047

IF YOU FEEL A QUESTION INVOLVES A LEGITIMATE PRIVACY INTEREST, YOU HAVE THE RIGHT TO REQUEST A HEARING, IN CHAMBERS, ON THE RECORD WITH COUNSEL FOR THE PARTIES PRESENT TO DETERMINE WHETHER YOU HAVE A LEGITIMATE PRIVACY INTEREST TO WARRANT NON-DISCLOSURE OF ANY ANSWER.

Background Information: **Name Change:** ☐ No ☐ Yes **Address Change:** ☐ No ☐ Yes

Full Name: | **Gender:** ☐ Male ☐ Female | **Birth Date:** *(mm/dd/yyyy)* | **Age:**

Address: *Street Address* *PO Box or Apt #* *City* *Zip Code*

Phone Numbers: Home: _____ **Cell:** _____ **Work:** _____ | **Email:**

Years of Residency in Ashtabula County:

Education or years attended: ☐ Grade School ☐ High School ☐ College ☐ Graduate School

Occupation: | **If Retired, former occupation:**

Employer: | **If Retired, former employer:**

Marital Status: ☐ Married ☐ Separated ☐ Divorced ☐ Widowed ☐ Single | **Number of Children:**

Prior Jury/Court Experience:

- Have you ever served on a Jury? ☐ No ☐ Yes • Was a verdict reached? ☐ No ☐ Yes
- Have you ever served on a Grand Jury? ☐ No ☐ Yes
- Have you or any family member been a victim of crime? ☐ No ☐ Yes
- Have you or a family member been sued or sued another person? ☐ No ☐ Yes
- Has a claim for personal injury ever been made against you or your family? ☐ No ☐ Yes
- Have you ever been a witness in any court case? ☐ No ☐ Yes
  If yes, state the circumstances.
- Have you ever been arrested or convicted of any offense? ☐ No ☐ Yes
  If yes, what kind of case, when and what court?

SAMPLE

Are you related to, or a close friend of any law enforcement officer? ☐ No ☐ Yes | Name of your Attorney:

I affirm that I did read and complete this questionnaire.

Signature: **Date:**

Detach the questionnaire (top portion) and return by mail. Bring the Summons (bottom portion) with you when you report for jury duty.

Jonea Cassin, Jury Manager
Ashtabula County Courthouse
25 West Jefferson Street
Jefferson, OH 44047



JURY SUMMONS

SUMMONS

Postponements or Excuses: You are required by law to serve on the dates specified. Excuses from jury service are restricted by law. Please see the list below:

IT IS YOUR RESPONSIBILITY TO VERIFY THE STATUS OF YOUR CLAIM OF EXCUSE OR REQUEST TO BE POSTPONED.

Statutory Exemptions are:

1. The interest of the public will be materially injured by juror's attendance. O.R.C.§2313.14(A)
2. The juror's spouse or near relative of the juror or the juror's spouse has recently died or is dangerously ill. O.R.C.§2313.14(A)(2)
3. The juror is a cloistered member of a religious organization. O.R.C.§2313.14(A)(3)
4. The prospective juror has a mental or physical condition that causes the prospective juror to be incapable of performing jury service. O.R.C.§2313.14(A)(4)
5. Jury service would otherwise cause undue or extreme physical or financial hardship to the prospective juror or a person under the care or supervision of the prospective juror. O.R.C.§2313.14(A)(5)
6. The juror is over seventy-five years of age, and the juror REQUESTS to be excused. O.R.C.§2313.14(A)(6)
7. The prospective juror is an active member of a recognized Amish sect and requests to be excused because of the prospective juror's sincere belief that as a result of that membership the prospective juror cannot pass judgment in a judicial matter. O.R.C.§2313.14(A)(7)
8. The prospective juror is on active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or section 5919.29 or 5923.21 of the Revised Code. O.R.C.§2313.14(A)(8)
9. The prospective juror is not qualified to serve as a juror, i.e., is not eighteen years of age or older, is not a resident of the county, or could not be an elector. O.R.C.§2313.17(A)

IF YOU WISH TO BE EXCUSED OR POSTPONE JURY DUTY YOU MUST WRITE THE REASON TO BE CONSIDERED BELOW OR ON A SEPARATE PAGE AND INCLUDE DOCUMENTATION:

SAMPLE

All requests must be in writing stating the specific reason for the postponement or excuse including documentation and should be sent to the Office of the Jury Manager at 25 West Jefferson Street, Jefferson, OH 44047; emailed to jurycommission@ashtabulacounty.us; or faxed to 440-576-4968. Requests must be received in the Office of the Jury Manager **at least 2 days** prior to your scheduled date.

Although it is realized that jury service often imposes a real hardship on jurors, the right of trial by jury is one of the most fundamental American principles, and is a basic right assured to all persons. It is the duty and responsibility of every qualified citizen to render jury service when called upon, giving you the satisfaction of actively participating in the administration of justice. Quoting Harlan F. Stone, Chief Justice, United States Supreme Court (1941-1946), "Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man, and between government and the individual".

LENGTH OF SERVICE:

Petit Jury:
On the day you are to report, at a minimum, you will remain in the courtroom until a jury is chosen. If you are selected to serve on any jury, you will begin your service on the day you report and should plan to remain until court adjourns for the day; you will be required to continue to report until the trial is concluded. The court will advise you of the estimated duration of the trial so that you may make appropriate arrangements. In most cases, jurors seated serve one (1) to three (3) days, although, there is always a possibility it could be longer. Once you are released from service by the Judge you will not serve again for at least one year and you will receive a new summons at that time.

Grand Jury:
If you are summoned for Grand Jury and selected as a Grand Juror, you will begin your service the day that you are to report and should plan to remain until the completion of that day's session. Also, when selected as a Grand Juror, your service will require you to report a minimum of two (2) times per month for a four (4) month period with the possibility of additional days. As much notice as possible will be given for all dates of service.

WHAT TO EXPECT:

Dress: As you will be in the courtroom most of your day you may want to dress in layers; as the temperature varies throughout the day. Hats are not permitted to be worn in the courtroom.

Breaks: Food and beverage are not permitted in the courtroom; breaks will be given throughout the day with access to water and restrooms in the designated jury room. A lunch break will also be given midday; a refrigerator is available, so feel free to pack a lunch.

Electronic devices: Each court may have different rules regarding cell phones, at a minimum, phones should be turned off during court proceedings or they may be confiscated. A court may collect phones or any other device capable of recording (i.e.: tablets, I-pads, etc...) during trial and return them to you on breaks and after court has finished for the day.

Security:
The Ashtabula County Courthouse is a secured facility and the only entrance into the

Reimbursement:
If you are employed, check with your personnel department to determine your

SECOND QUESTIONNAIRE

Please completely fill out this questionnaire and return it with the First Questionnaire attached to your summons in the enclosed self-addressed stamped envelope.

Name: _____ Juror #:_____
Phone Number:_____ Email: _____

1.	Are you 18 years of age or older?	Yes ☐	No ☐
2.	Are you a U.S. citizen?	Yes ☐	No ☐
3.	Have you been a resident of the State of Ohio for 6 months?	Yes ☐	No ☐
4.	Have you been a resident of Ashtabula County for 30 days?	Yes ☐	No ☐
5.	Is English your native language?	Yes ☐	No ☐
6.	Are you currently on probation or post release control?	Yes ☐	No ☐
7.	Could you be fair and impartial, consider the evidence, and make a decision as to whether there is sufficient evidence or probable cause to go forward?	Yes ☐	No ☐

If your answer is no, please explain.

8. Are you employed by the Prosecutor's office or related to anyone employed at the Prosecutor's office? Yes ☐ No ☐

If your answer is yes, please explain.

SAMPLE

9. Is there a financial hardship or employment related reason that would make it difficult for you to serve? Yes ☐ No ☐

If your answer is yes, please explain.

10. Is there a medical or other health related reason, including specific issues related to the Coronavirus health crisis, that would make it difficult for you to serve? Yes ☐ No ☐

If your answer is yes, please explain.

11. Is there any other reason that would make it difficult for you to serve as a Grand Juror? Yes ☐ No ☐

If your answer is yes, please explain.

Excusal/Postponement: If you are requesting to be excused or have your service postponed, please state in specific detail in writing the reason for your request on the back of the First Questionnaire attached to your summons.

Signature: _____ Date: _____

Sample
Jury Questionnaire



Sample Juror Questionnaire

1. What is your occupation? _____
2. Were you, at any time, laid off from employment or otherwise prohibited from working as a result of the COVID-19 pandemic? _____
   If so, please explain _____
3. If your answer to question 2 was "yes," have you returned to your employment? _____
   If so, when did you return?_____
4. If your answer to question 3 was "no," do you expect to return to your employment? _____
   If so, when do you expect to return?_____
5. Have you and/or any member of your immediate household been out of the State of Ohio in the past two weeks? _____
   If so, did you and/or the household member self-quarantine for 14 days upon the return to Ohio?_____
6. Have you or any member of your immediate household been notified by any health department that you/ household member have been in contact with an individual who tested positive for the COVID-19 virus? _____
   If so, when did the notification take place?_____
   Were you/household member required to self-quarantine?_____
   Did you/household member self-quarantine for the required period?_____
7. Have you or any member of your immediate household tested positive for the COVID-19 virus and/or have any test results pending regarding the COVID-19 virus? _____
   If so, please explain and provide date(s) or test(s): _____
   _____
8. Do you or any member of your immediate household have any of the following conditions: chronic lung disease, moderate-severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease or undergoing dialysis, liver disease, pregnant, or breastfeeding?_____
   If so, please explain:_____
   _____
9. Are you or any member of your immediate household 65 years of age or older?_____
   If so, please explain:_____
10. Are you currently residing in a nursing home or long-term care facility?_____

SAMPLE

Juror Number _____

Under Ohio Law, your answers will normally be subject to public disclosure. Certain items are not normally subject to disclosure such as social security number, telephone number and drivers license number. You may request an in-court private hearing if there are specific answers you believe should not be disclosed. **Do you want an in-court private hearing to determine if your answers to the above questions should be released? Yes / No (circle one).** Failure to make a designation will be considered as a "no" request.

SAMPLE

Sample
Voir Dire



EXHIBIT 1

IN

09:49 am, Apr 15, 2020

DEBORAH A. MYERS

CLERK OF COURTS

ASHLAND COUNTY, OHIO

IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO,

Plaintiff, **CASE NO. 19-CRI-114**

vs.

SETH M WHITED,

Defendant. **JUDGMENT ENTRY**
Special COVID-19 Procedures

This matter is before the Court *sua sponte* to establish special procedures for the jury trial scheduled April 28, 2020, necessitated by current social distancing and other personal protective policies established by both the State and Federal governments. In accordance with those policies, the practices set forth below shall be observed during the April 28, 2020 jury trial:

1. Jury *voir dire* shall be conducted in three (3) sessions on Tuesday, April 28, 2020. The first session will commence at 8:00 a.m. with juror orientation and will be for those designated as Group A jurors. Group A shall not exceed a total of 18 persons. Counsel and parties shall not be required to report to Courtroom One until 8:30 a.m. Group A jurors who are not excused for cause shall be temporarily excused until 3:00 p.m., at which time they shall appear and be present to participate in the third session (the exercise of challenges for cause).

2. The second session will commence at 1:00 p.m. with juror orientation and will be for those designated as Group B jurors. Group B shall not exceed a total of 18 persons. Counsel and parties shall not be required to report to Courtroom One until 1:30 p.m.
3. The third session will commence upon the conclusion of Group B *voir dire* (approximately 3:00 p.m.). The third session shall be for the purpose of exercising peremptory challenges. The session shall commence with the first 18 jurors collectively from Groups A and B seated in the courtroom. Any remaining jurors shall remain in the hallway outside Courtroom One until called to fill a seat opened by any juror excused. When one of the first 12 jurors is excused, only the juror replacing one of the first 12 will rotate seats, and the juror called from the hallway shall fill the seat of the juror moved to one of the first 12 seats.
4. There will be 12 jurors seated as well as two alternates.
5. No evidence nor witness testimony will be presented on Tuesday, April 28, 2020. The day will be used only for jury selection.
6. After the jury is selected, during the start of each day of trial, jurors shall report to the main entrance of the courtroom, and shall move directly to their assigned seats in the gallery, unless otherwise accessing water or refreshments, which will be made available for jurors in the courtroom.
7. Day Two of the trial will commence on Wednesday, April 29, 2020 at 8:30 a.m. with opening statements of Counsel.

8. The Courtroom One gallery shall be used for seating the jurors.
9. Counsel table shall be facing each other, with the State's table situated in front of the existing jury box.
10. A temporary witness stand will be placed in the middle of the courtroom well, between counsel table, located at a point where counsel and all jurors can observe the witness.
11. Counsel shall remain at counsel table when questioning witnesses but may otherwise move through the well of the courtroom to access evidence and presentation tools.
12. The Court will attempt to have a free-standing monitor connected to the courtroom evidence presentation system for witness use.
13. Should there be any issue requiring discussion outside the presence of the jury, the judge, counsel and the court reporter shall retire to the jury to engage in that discussion, and the jurors will remain in the courtroom.
14. Face masks for personal health protection may be worn by any juror, the defendant and counsel; provided however, that the defendant will be required to remove any face mask he may be wearing when requested for the purpose of witness identification. Witnesses may wear face masks when not testifying but shall lower or remove or lower them when testifying. It is recommended that counsel also lower or remove their masks when asking questions of any witness or when addressing the Court, so that their speech may be accurately recorded by the Court Stenographer.

15. The Court Stenographer shall be permitted to set up at a location where the faces of both the witness and counsel are capable of being observed.
16. During jury deliberation, the jurors shall be instructed to knock on the glass entrance door of the courtroom when needing the assistance of court personnel. Court security officers shall respond from their office which is located near the courtroom entrance door.
17. Additional procedures such as restroom protocol, and other logistical matters shall be addressed during the trial as circumstances dictate.

It is so ordered.



Ronald P. Forsthoefel, Judge

Sample
Press Release



NICK A. SELVAGGIO, JUDGE

Champaign County Court of Common Pleas, General Division

Scott D. Schockling, Magistrate
Sandi G. Perry, Court Administrator

Janelle L. Bey, Judicial Assistant
Jennifer L. Demarco, Judicial Assistant
Christie L. Harrigan, Judicial Assistant

PRESS RELEASE – MAY 12, 2020 – (2 pages total)

PETIT JURY TRIAL LOCATION TO BE MOVED TO COMMUNITY CENTER

GRAND JURY LOCATION TO REMAIN AT COUNTY COURTHOUSE

HEARINGS OF THE COMMON PLEAS COURT (2ND FLOOR) AND FAMILY COURT (3RD FLOOR) REMAIN AT THE COUNTY COURTHOUSE

Judge Nick A. Selvaggio announces that the implications of the COVID-19 virus have caused the Common Pleas Court to order a change in location for felony criminal jury trials from the Champaign County Courthouse to the Champaign County Community Center Auditorium. All other second floor court hearings will remain at the Courthouse.

The first jury trial is scheduled for June 2-4, 2020. A return date for jury trials at the Courthouse has not yet been determined.

The third floor operations of the Champaign County Family Court will remain at the Courthouse and are unaffected by this change in location.

"Governor DeWine's mandatory and recommended public health protocols provide the Court with the needed guidance to safely conduct a trial by jury in a manner that will give all trial participants access to justice while minimizing their risk of exposure to the virus," said Judge Selvaggio.

Judge Selvaggio credited the partnership between the Court, the Champaign County Health District, Champaign County Sheriff's Office and the Board of Champaign County Commissioners to be able to plan for these proceedings.

"Champaign Health District infectious disease staff has conducted a thorough review of the Champaign County Common Pleas Court's COVID-19 Jury Trial Protocol. Prior to review of the protocol, Judge Selvaggio provided the Champaign Health District with a walkthrough of the layout of the environment in which the Court will take place," said Champaign County Health Commissioner Gabe Jones.

"Upon completion of the walkthrough and after review and consultation with infectious disease staff on the COVID-19 Jury Trial Protocol, Champaign Health District has found that the guidelines are consistent with the social distancing guidelines set forth in the Ohio Department of Health Director's Stay Safe Ohio Order," said Health Commissioner Jones.

"Upon review, we found that Judge Selvaggio was thorough in all considerations when it comes to protecting the health of the public and preventing the spread of contagious or infectious diseases such as COVID-19. We compared the measures written into the COVID-19 Jury Trial Protocol to the Ohio Department of Health's guidelines, written based upon the facts and the science existing at this time in Ohio concerning prevention of COVID-19, and we found all precautions and measures to be consistent with the state's recommendations," said Health Commissioner Jones.

"We are fortunate to have a spacious county-owned facility that can house many public and private events. I'm sure the Commissioners never thought the Auditorium would serve as a courtroom, but the implications of the pandemic require the Court to develop an innovative, pro-active approach to criminal justice," said Judge Selvaggio.

As a result of "social distancing modifications" to the second floor courtroom, sessions of the Champaign County Grand Jury have continued to be able to be held at the Courthouse.

"We have also conducted a review of the Champaign County Common Pleas Court's COVID-19 Grand Jury Protocol. We found this protocol to be consistent with the measures required for social distancing outlined in the Director's Stay Safe Ohio Order, including all other Responsible Protocols," said Jones.

"The April and May grand jurors answered their duty to citizenship and accepted that the courtroom modifications were made for the health and safety of all involved. The process has gone very smoothly thus far," said Judge Selvaggio.

END

Glossary of terms

Contact – an opportunity for acquiring an infection through association with an infected person or animal

Epidemic – the occurrence in a community or region of cases of an illness that is clearly in excess of normal expectancy

Essential needs – basic human needs for sustenance including food, water, and health care

HIPAA – the Health Insurance Portability and Accountability Act of 1996 are federal regulations that require protecting patient privacy by regulating the way certain healthcare groups, organizations, or businesses ("covered entities") handle protected health information

Immunization – a procedure that increases the protective response of an individual's immune system to a specified pathogen (like a virus)

Incubation period – the time (in hours, days, or weeks) between the initial exposure to an infectious organism and the first appearance of symptoms of the infection

Infected individual – A person that harbors an infectious agent who either manifests the disease or does not have an apparent infection

Isolation – physical separation of an individual who is infected or reasonably suspected to be infected; it can be complete, modified (designed to meet particular needs), or protective (designed to separate an uninfected individual who is highly susceptible)

Mode of transmission – the mechanism by which an infectious agent is spread among humans; it can be direct, indirect, or airborne

Outbreak – the occurrence of more cases of a disease than expected

Period of communicability – the time (in hours, days, or weeks) during which an infectious agent may be transferred from an infected person to another person

Personal protective equipment (PPE) – items that act as a barrier against hazards, including diseases; the appropriate PPE for a communicable disease depends on the characteristics of the disease

Quarantine – see isolation

Self-shielding – self-imposed exclusion from infected people

Susceptible individual – a person who is vulnerable to a disease or potentially able to contract a disease or condition; factors can be genetic, age, physical characteristics, medications, or chronic exposure

Work in Progress



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