

## **JURY TRIAL RESTART GUIDELINES FOR USDC-DELAWARE<sup>1</sup>**

### **IDENTIFYING AND ASSEMBLING THE VENIRE**

1. To account for the potential of a smaller than usual yield from the mailing of jury summonses, approximately 250 summonses should be sent out (for a criminal trial, with a similarly-proportionate excess for a civil trial).
2. Each summons should include a COVID-19-specific questionnaire.
3. The COVID-specific questionnaire will be distributed and completed through E-Juror or by emailed fillable pdfs to allow sufficient time for the results of the questionnaire, with a certification as to the answers, to be received and distributed to the parties no later than two weeks prior to trial.
4. In criminal cases, a hearing with the defendant present will be conducted no later than one week prior to trial to allow the parties and the Court to discuss courtroom configuration issues and striking jurors for cause based on responses to the questionnaire. The hearing may be combined with the pretrial conference. The Court will encourage the parties to arrive at agreement regarding those COVID-19-related responses that automatically result in a strike for cause.
5. Between 50 and 100 individuals should serve in the venire.
6. A message should be sent to the venire the night before trial informing the venire members that they must call the jury administrator prior to reporting if they meet certain COVID-19

---

<sup>1</sup> This document only provides guidance; it does not have the force of law. Likewise, it is not intended to create or confer rights, privileges, or benefits to any party. Moreover, the parties to a case may object to any of the procedures set forth here, and the Court may modify same in the exercise of its discretion.

criteria (e.g., they become symptomatic, etc.) and reemphasizing the requirement that they must wear masks in the courthouse.

7. Court jury staff will randomize the ordering of the venire via the Jury Management System (JMS) before the venire members report to the courthouse. The first 25 members of the venire will be designated as Group One. The second 25 will be designated as Group Two. Additional venire groups of no more than 25 people may be designated as necessary. Groups will be instructed to report to the Courthouse at staggered times. No more than two groups shall be in the Courthouse at any given time.
8. Upon arrival at the Courthouse, venire members will report to the jury assembly room on the third floor. At check-in, each venire member will be asked COVID-19 screening questions and provided with a face mask and other items for the duration of their service. Staff will remind the venire that all individuals are required to wear masks while in the Courthouse.
9. Each venire group should be placed in a separate large room/courtroom to allow the individuals in that group to congregate in a socially-distanced manner. Each venire group will be supervised by Court personnel throughout its time in the Courthouse.

### **VOIR DIRE AND JURY SELECTION**

1. In criminal cases, defense counsel may use a Court-supplied two-way electronic transceiver system that will allow for private communications with clients when speaking in a quiet voice during voir dire and trial while social distancing. The Court will purchase sufficient equipment for use not only for defense counsel during voir dire, but also for counsel for all parties to converse with the Court in virtual side-bar conversations, and for the court reporter to record those conversations. Defense counsel may choose not to use

the Court-provided equipment for client conversations during the trial and, in that case, are to supply their own. Attorneys are encouraged to bring their own ear buds with microphone when using the Court-supplied transceivers. Court staff will seek industry guidance regarding sterilization of Court-supplied transceivers during trial and between trials.

2. Voir dire should be conducted in stages, one venire group at a time, to select a Final Jury Pool, from which the jury will be impaneled using peremptory strikes. The Final Jury Pool shall consist of at least 32 persons in a criminal case and 14 persons in a civil case.
3. To begin the voir dire process, venire Group One will be seated in a socially-distanced fashion using the gallery, jury box, and additional seating in the well of the presiding judge's courtroom. The Deputy Clerk will administer the oath and the presiding judge may offer welcoming remarks, give preliminary instructions, and read or summarize the questions for voir dire. At the conclusion of this session, Group One will be escorted back to its pre-designated room where it will be supervised by Court personnel while members of the group are questioned individually.
4. Individuals in Group One will be called to the presiding judge's courtroom in numerical order (using the numbers assigned to them randomly by JMS) for questioning. Upon completion of questioning, the individual will be asked to wait outside the courtroom and either party may make a motion to strike the individual for cause. The presiding judge may call the individual back into the Courtroom for further questioning or rule or defer ruling on the motion to strike. Any person struck for cause shall immediately be excused and asked to leave the building directly. Venire members not struck for cause shall be directed either to return to the room designated for their venire group or to leave the Courthouse until the Court is ready to proceed with the next stage of jury selection.

5. When the presiding judge has ruled on all motions to strike members of Group One, the members of Group One not struck for cause shall either (1) be asked to wait in their designated room until the Final Jury Pool has been selected or (2) be excused for the day and instructed to contact the Clerk's Office to learn when they should return to the Courthouse to complete the jury selection process.
6. This same process shall be followed with respect to Group Two and additional venire groups as necessary to obtain the minimum number of persons required for the Final Jury Pool.
7. All members of the Final Jury Pool shall be seated in the presiding judge's courtroom for the peremptory strike process. The presiding judge or a designated court employee may hold and pass a clipboard containing the juror list between counsel for the parties, who will strike out the names of prospective jurors on whom peremptory strikes are used.
8. Petit jury assembly during breaks and deliberations will occur in a courtroom adjacent to the presiding judge's courtroom. The space will be cleaned frequently, on a schedule to be determined by the Court consistent with GSA guidelines. The jurors will come and go from the jury deliberation room via utilization of the private hallway. Protocols for the presiding judge to consider include locking the courtroom door, placing paper over the windows, ensuring coordination with the judge whose courtroom is being used, turning off sound systems from the courtroom into chambers, and use of jury room bathrooms.

### **PPE REQUIREMENTS**

1. All individuals present in the courtroom, including counsel, parties, witnesses, and court staff, shall be required to wear face masks, unless another prophylactic measure is in place

at the time, e.g., counsel speaking from a socially-distanced location within the courtroom that can be readily cleaned prior to use by another. Witnesses shall remove masks while testifying. Disposable microphone covers will be provided by the Court and will be changed out during the lunch break and before each day's trial session.

### **EVIDENCE/DOCUMENT HANDLING**

1. To the extent possible, parties should exchange exhibits in advance of trial in an effort to stipulate to the authenticity of potential exhibits, to facilitate trial proceedings, and to avoid passing out or touching paper.
2. The parties should have all hardcopy paper exhibits pre-loaded onto a computer to be shown digitally to opposing counsel, the witness, the Court, and the jury as necessary.
3. The Court will provide each side its own podium and microphone, with disposable microphone covers. Parties are prohibited from utilizing the other side's microphone or podium for questioning witnesses or presenting evidence or argument, unless technical difficulties preclude use of their own. Counsel are responsible for cleaning the microphone and podium, as necessary, in between presentations by attorneys representing the same party.
4. The parties will have access to a jointly-used document camera, to be utilized in the event that a piece of evidence cannot be published digitally. In the event a party requires use of the document camera, counsel is expected to clean the device after each use. The Court will provide cleaning supplies for mid-presentation cleaning by counsel.
5. Witnesses waiting to testify shall observe proper social distancing and wear masks.
6. The witness and/or courtroom or chambers staff is responsible for cleaning the witness

chair and table after the witness has testified. The Court will provide cleaning supplies.

### **COURTROOM CONFIGURATION**

1. Prior to the commencement of trial, the courtroom shall be configured in a manner that facilitates social distancing among the parties, witnesses, jurors, and court staff. The final configuration will be dependent on the space available in the courtroom and the presiding judge's discretion. The parties and the Court will work to ensure, to the extent feasible, unobstructed sight lines among all trial participants.
2. An example of such a configuration for criminal trials is as follows:
  - a. The jurors and alternates seated in an expanded jury box that extends into the well of the courtroom;
  - b. The parties seated directly across from the jury box backed against the opposite wall, with separate podiums configured with Plexiglass shields. Incarcerated defendants will be seated as near the door to the internal hallway as possible.
  - c. A witness box on an elevated stand in the gallery configured with a Plexiglass shield.
  - d. The Court will provide monitors as necessary to assist the jury with the review of digital evidence.
3. Jurors are not permitted to move from their assigned and marked spots without Court permission, which the Court will consider granting during the presentation of evidence for the purpose of more clearly seeing and/or hearing the evidence and testimony.
4. In certain circumstances, the presiding judge may consider permitting the witness to testify via videoteleconferencing, including videoteleconferencing from another room in the courthouse.

5. If seating is unavailable in the courtroom gallery due to jury placement or the presiding judge's decision to limit the number of individuals in the courtroom to preserve social distancing and other safety concerns, a closed-circuit livestream of at least the audio of the proceedings will be broadcast to a separate room in the courthouse. In consultation with the parties, the presiding judge may also consider use of an audio link to allow members of the public to call in and listen to the proceedings.

### **SIDEBARS DURING TRIAL**

1. When necessary, counsel will rise and indicate the need for a sidebar. The presiding judge will halt proceedings and remain on the bench while employing an electronic transceiver and ensuring the court reporter does the same. Counsel, using Court-provided electronic transceivers, will address the Court quietly while seated at counsel table. Notwithstanding the use of noise-cancelling equipment, counsel may be required to move outside the courtroom into the public or private hallways to explain the sidebar request to the Court via transceiver, should it be necessary to avoid having the jury overhear counsel's discussion with the Court. At no point will the presiding judge leave the courtroom with the jury present.
2. In the alternative, once counsel indicates the need for a sidebar, the presiding judge will halt proceedings while counsel, using counsel-provided internet access, drafts an email to the Court and to opposing counsel, explaining the nature of the sidebar request. Opposing counsel will have the opportunity to email a response. After considering the original request and any response, the presiding judge will resolve the issue via email, if possible. If the matter is urgent and cannot be resolved via discussion via headset or email, the jury

will be removed from the courtroom so that the matter can be addressed. If the matter is not urgent, the presiding judge may address the matter at the next scheduled break in proceedings.

### **JURY DELIBERATIONS**

1. Deliberations will occur in the adjacent courtroom. Social distancing will be ensured through seating placement and court instructions. Masks must be worn in the jury room unless social distancing (at least 6 feet between speakers) can be achieved.
2. All exhibits that can be digitized will be loaded into a laptop for use by the jury. The laptop contents will be projected onto a screen(s), so that the jury may see the exhibits while maintaining social distance. The jury will designate one juror to operate the laptop.
3. Physical exhibits which cannot be digitized will be provided to the jury, subject to a specific decision in a particular case. In no case will contraband or firearms be provided to the jury.
4. When jury deliberation is occurring in the adjacent courtroom, court deputies will be stationed at the door nearest the bathroom facilities.

October 7, 2020