

Conducting Jury Trials Under Pandemic Conditions

The Nineteenth Judicial District is committed to resuming jury trials. This proposal contains the court's plan to resume jury trials while prioritizing the safety of everyone participating in the judicial process. We have consulted with local health officials to devise protocols that will minimize the risks to all participants and spectators, including jurors, attorneys, witnesses, parties, members of the public, the press, and court employees.

Throughout the pandemic, the Kansas Supreme Court has issued multiple orders relating to the reopening of courts. Specifically, Order PR 2020-76 provides the minimum requirements for district courts to consider and implement prior to resuming jury trials. This court is required to comply with the following:

- Orders of the Kansas Supreme Court and Chief Justice;
- All COVID-19 Safety Directives of the Office of Judicial Administration;
- Any applicable order or guidance from local public health officials;
- Any orders issued by the Kansas Governor;
- All guidelines from <https://covid.ks.gov/ad-astra-a-plan-to-reopen-Kansas>;
- Guidelines from the Kansas Department of Health and Environment.

Additionally, district courts are ordered to present a plan to our departmental justice for approval that provides the following:

- A location that allows for social distancing where people can remain at least six feet apart;
- How and where sidebars will occur with social distancing;
- How exhibits will be handled between attorneys and court staff, and by jurors;
- A video stream of the proceedings for viewing by the public and others not physically present, if necessary;
- The handling of venire and jury from entry into the facility through discharge, including items such as:
 - Special social distancing requirement—both for the room in which the proceeding is being conducted and during recesses;
 - Assuring jurors' ability to hear and see witnesses and exhibits;
 - How food will be handled and delivered to jurors;
 - Where the jury will deliberate and how the jury will leave for and return from deliberation;
 - Procedures for potential jurors and jurors to report any of the situations that would require the individual to be denied access to the courthouse and

actions for response by the court and parties; and

- A review of the procedures from the front door to jury rooms with court staff, attorneys, and county and facility personnel.

Supreme Court published the adopted Ad Hoc Jury Task Force Report, from July 17, 2020, establishing mandates or options for trial courts to:

- ❖ Conduct jury trials and grand jury proceedings while protecting the safety of participants;
- ❖ Summon juries while following safety directives;
- ❖ Explain the process to the public; and
- ❖ Execute other actions to help resume jury operations.

The Task Force report includes a checklist of steps each district court should take in order to resume jury trial. The following items are included in the content of this plan.

COVID-19 Jury Trial Checklist

- ✓ Develop plan for communication with public using social media, court website, or local news outlet (consider Task Force video)
- ✓ Use pretrial conferences, settlement conferences, and mediation
- Consider virtual proceedings for part or all of trial or grand jury
- ✓ Modify language in juror summons to include COVID concerns
- ✓ Send Jury Trial Task Force Supplemental COVID -19 questionnaire with juror summons
- ✓ Increase number of juror summons
- ✓ Develop plan for deferral or excusal of certain jurors
- ✓ Survey available spaces for jury selection and / or trial
- ✓ Determine the process for screening jurors
- ✓ Develop staging process for jurors to stagger arrival times and minimize interaction
- ✓ Ensure adequate signage about health and safety protocols is posted
- ✓ Create and implement protocols for heightened cleaning and sanitizing
- ✓ Create and implement mask protocols (comply with KSC administrative orders)
- ✓ Create and implement building / facility protocols for adequate physical distancing
(reconfigure space, limits on number of people in elevators, Plexiglass barriers)
- ✓ Develop protocols for trial participants to ensure adequate physical distancing (sidebars and attorney / client communication)
- ✓ Develop a plan for storage of juror personal items and pens / paper used for notes

- ✓ Develop a plan for juror breaks (identify specific restrooms and eating areas for use)
- ✓ Develop a plan for handling exhibits including photocopies and technology needed
- ✓ Develop a plan for interpreters, including adequate physical distancing
- ✓ Ensure public access through seating, live stream, or closed-circuit television
- ✓ Develop a plan for managing juror health concerns and safety non-compliance issues that arise during trial
- ✓ Address COVID and other procedural issues during jury orientation
- Examine small panels of 12 or less with adequate physical distancing
- Provide microphone and PA system for all participants
- Admonish jury during trial regarding masks and open court proceedings
- ✓ Use courtroom or other larger space for jury deliberations
- Collect and share data with OJA on any virtual proceedings

I. Discussion

In preparation for conducting jury trials we have consulted Thomas Langer, the Director the Cowley County Health Department. Mr. Langer has examined our jury courtroom and all spaces where jurors, attorneys, witnesses and spectators may occupy during a jury trial including all points of ingress and egress to all areas needed to conduct the trial. He has also reviewed all protocol and procedures as outlined in this plan. He has found that they are consistent with local regulations and consistent with his recommendations to protect the health and safety of the court staff, attorneys, litigants, witnesses and spectators. All judges of the 19th Judicial District are expected to follow the plan contained herein.

Taking the lead from Chief Judge Goering, we anticipate that the first jury trial will be a short misdemeanor trial. We plan to conduct the trial on Thursday September 17, 2020. The trial will likely have only two witnesses and limited exhibits. We anticipate that we will summon 20 prospective jurors for this trial.

All perspective jurors have completed and returned both the traditional questionnaire and the supplemental Covid-19 questionnaire in the form recommended by the Jury Trial Task Force. As chief judge I have personally reviewed each supplemental questionnaire. Any prospective juror who has identified a valid specific reason for excuse related to Covid-19 has been deferred from jury service or summons for a period of one year. This includes prospective jurors who are between the age of 70 and 90 years of age who identified health concerns and greater risk related to appearing for jury duty. Others, identified specific health conditions that result in a weakened immune system, thus increasing their risk for appearing. Last, some indicated that they provide substantial care for or worked with individuals who may be at higher risk for complications from Covid-19 infection. Most who returned the questionnaire have not identified an specific Covid-19 issues related to appearing for jury duty.

We have only one courtroom large enough to accommodate a jury trial. We summon jurors to appear for a specific case. The number of prospective jurors summoned varies depending upon

the type of case and the number of preemptory challenges allowed.

Most of our pending cases for jury trial are major cases that will require at least two days for jury selection and 3 to 10 days for trial. Based upon the number of staff that will be needed for cleaning and assistance for jurors we believe that we can only accommodate about 1 major jury trial per month. We have established a specific order for trial of all criminal and civil cases that were pending for jury trial at the time that jury trials were suspended and the cases that have advanced for trial in the time that jury trials have been suspended. Criminal cases where the person accused remains in custody will be resolved first. Criminal cases that were pending prior to suspension where the accused remains on bond will be completed second. Third, we will take civil cases that were canceled or postponed during suspension. If we are able to start major jury trials in October, we anticipate being able to begin the postponed civil cases in April of 2021.

Communicating with Jurors

1. Develop a plan for communication with the public using social media, court website, or local news outlets

The court will provide information to the public on the court's website, about steps being taken to create a safer environment in the courthouse.

The court provides a designated phone number and e-mail in all communication and on our website. Prospective jurors can use this contact information to ask specific questions related to the pandemic.

2. Send a COVID letter and insert with the jury summons

As part of the summons, the court shall notify prospective jurors of existing safety protocols and what to expect upon arrival at the courthouse. Since a jurors circumstances may have changed since they returned the supplemental Covid-19 questionnaire, summoned jurors will be advised to contact the jury bailiff if there has been any change in their personal circumstances that might impair their ability to safely appear for jury service. If needed their service will be deferred.

Additionally, on the day jury service begins, the court will ask prospective jurors whether any of the information provided in the questionnaire or supplemental questionnaire has changed. Additionally, jurors will be screened entering the courthouse, having their temperature measured and will answer the same questions that all public is required to answer before gaining entry.

3. Securing Adequate Jury Pools

- a. Review existing juror utilization rates and adjust summons accordingly

Utilization rate: Historically, we draw names from the jury data base and send out initial questionnaires only as needed. Need is based upon the number of trials we anticipate for a specific time period and the number of potential jurors who have already returned a jury questionnaire. In my 16 years on the bench we have had years where we have had 7 or 8 jury trials. Other years we have had only 1 or 2. Because of the build up in jury trials we have sent out an additional 1000 questionnaires. We plan to send out an additional 1000 initial questionnaires but are waiting to send them to help ensure that we receive a more current response.

Because our data base partially draws from the division of vehicles data base and drivers licenses are only renewed every 4 to 6 years we have found that many of the initial questionnaires are returned as being undeliverable because the person has moved and not updated their address in the division of vehicles data base or the person no longer lives in the county. As a result of this, our average return rate is only about 40%. We then summon jurors from the group of questionnaires that have been returned and have not been deferred related to information provided by the questionnaire and supplemental Covid-19 questionnaire. Because of this we hope to cut down on the number of jurors requesting deferral or excuse at the time they receive the summons.

Summons: As advised by the Task Force, we do anticipate that we will need to summon more jurors than we typically do to account for changing circumstances that may have occurred from the time they returned the questionnaires and when they are actually summoned for jury service. .

- b. Develop a plan for deferral or excusal of certain jurors
 1. The Task Force recommends liberally granting deferral requests where appropriate reasoning is provided. The court encourages the use of deferrals over excusals.
 - i. We are considering all requests for excuse and deferral and trying to view the request from the position of the prospective juror.
 2. The Task Force recommends courts consider fair cross section implications of utilizing blanket deferral policies. As such, excusals or deferrals shall be considered on an individual basis.
 - i. We have no blanket deferral; all requests are reviewed on a case by case basis.
 3. The presiding judge or a designee will prescreen juror responses to the supplemental questionnaires when jurors have expressed an inability to serve. The initial screening will be done based on open-ended explanation fields in the jury summons questionnaire.
 - i. We utilize the Jury Trial Task Force Supplemental questionnaire. There is enough writing space to provide explanation. The prospective juror is provided the name and telephone number of the jury bailiff to provide additional or supplemental information or to request information should they have any questions.
 4. Judges are encouraged to defer jurors prior to coming into the courthouse and require others to appear for selection. In the review, judges will consider insufficient answers or failures to respond as a reason to proceed to summon that person for further inquiry.
 - i. The Chief Judge personally examines all returned questionnaires and grants deferrals or excuse in advance of appearance.
 5. The jury supervisor will keep statistics of summons sent, excuses requested due to virus concerns, the number of people deferred over virus concerns, and the number of people excused for virus concerns. The court offers for self-

identification of jurors and as such, should also track excusals and deferrals based on self-identified racial and ethnic characteristics.

- i. The court maintains the original copy of questionnaires for each prospective juror who has been deferred or excused. The questionnaire does not request information concerning the persons race or ethnicity so unless this is self-disclosed it is not tracked.

4. Alternate juror considerations

At least two alternate jurors will be seated for any trial expected to take longer than two days

5. Peremptory strikes

Per statute, only through stipulation of parties may peremptory strikes be reduced. As advised by the Task Force, a Judge that gains this stipulation shall make a record informing parties that the refusal to stipulate will not result in any disadvantage in the case. Stipulations pertaining to peremptory strikes shall be considered by the Court in advance of jury selection.

6. Reduced jury panels

Per statute, only through stipulation of parties may the size of a civil jury panel be reduced. As advised by the Task Force, the court, where appropriate, will encourage litigants to stipulate to smaller jury panels in **civil cases**.

7. Health screening and self-monitoring

Per Kansas Supreme Court Administrative Order 2020-PR-054, all entrants to the courthouse are asked specific questions relating to COVID symptoms, proximity to positive COVID people and travel. At the time of check-in, each prospective juror will be asked the same COVID-19 related supplemental questions as is required by the AO. Each person will have their temperature measured as they enter the courthouse. As per the recommendation of our County Health Officer, anyone displaying a temporal temperature of 99 degrees Fahrenheit or greater will be sent home.

In the event a juror should become ill during a trial, arrangements have been established with our county health officer to secure rapid Covid-19 testing that will provide a result in less than 30 minutes. As per his instruction, if the person tested positive than all jurors, witnesses, staff or participants would be eligible to receive a rapid Covid-19 test.

Jurors will be given a number to call or text if they become ill or believe that they have been exposed to Covid 19. They will be instructed to contact us before they come to the courthouse. They will be told not to come to the courthouse if they are feeling ill.

Utilizing Pretrial Measures to Minimize the number of Jurors Needed

a. Settlement conferences and mediations

The Court proposes offering mediation in criminal cases. Mediation would be conducted by a judge from the district but not the judge presiding in the case. Parties will not be required to

participate but will be encouraged to do so. The parties will be advised that participation is completely voluntary. If the parties are unable to reach an agreement or refuse to participate the mediator will simply notify the trial judge that no agreement was not reached by the parties. All information provided in mediation will remain confidential. .

b. Encouraging stipulations

As noted by the Task Force, jury trials are most efficient when issues that can be raised are resolved on the record pretrial. The following recommendations of the Task Force apply to this court.

Parties should be encouraged to review K.S.A. 60-216 (c) pertaining to matters to be considered at the pretrial conference, and Kansas Supreme Court Rule 140 pertaining to the final pretrial conference procedure.

In an effort to reduce the time spent in trial, courts are encouraged to be diligent during pretrial conferences to simplify the issues, determine the issues of law that may eliminate or affect the trial of issues of fact, and obtain admissions and stipulations to avoid unnecessary proof of an issue. Any modification of trial processes, such as reducing the number of jurors or peremptory strikes, should be resolved at the time of the pretrial hearing and be included in a pretrial order or by journal entry in criminal matters

8. Prioritizing jury trials

See information above.

Conducting a Fair Trial While Protecting Juror Safety

Potential jurors will be summoned for service will appear in groups of 20. In order to account for 6ft. spacing when jurors arrive, they will be checked in in groups of 10. The first group of 10 will check in at 8:30 a.m., the second at 8:50 a.m. For the afternoon session, the first group will check in at 1:00 p.m. the second at 1:20 p.m. In order to maintain adequate spacing the area where they check in will be marked for 6ft. distancing.

Jurors will be instructed to go to the main courthouse (center) entrance. (This entrance is closed to the public and will be made available only for jurors. This entrance is the closest location to the main stairway and elevator to the courtroom. A check in station will be set up on the first floor of the courthouse at the main entrance. At check in jurors will have their temperature taken and be given a ClearMask to use during their time as a juror. They will then be directed by a staff member either up the stairs or elevator where they will be directed by a second staff member to their designated seat. The area of the entrance way and stairway or elevator to the second floor and access to the Court Clerk's office will be closed to all outside traffic during the time jurors are checking in and being seated.

15 prospective jurors will be seated on the north side of the bar. 5 will be seated in a designated area on the south side of the bar. All jurors will be seated before any other members of the public will be allowed into the courtroom. All seats are separated by 6' in distance.

Jury selection will be done addressing the first 15 seated. If a prospective juror is struck for cause, one of the 5 remaining prospective jurors will be called to their seat. (time must be given

for disinfecting of the seat before the next prospective juror can be seated.)

If all 15 prospective jurors seated on the north side of the bar are passed for cause, then they will be excused. Any remaining prospective jurors will be called up for questioning. Prospective jurors seated on the south side of the bar will be instructed to pay attention to the questions being asked as they will likely be addressed with the same or similar questions when they move to the north side of the bar.

The number of prospective jurors needed will vary depending upon the type of case and the number of preemptory challenges. Therefore, the number of days or sessions and the number of prospective jurors may vary, but the format will remain the same.

During recess the jurors will be released to leave the courtroom first, followed by counsel and parties, then the general public in attendance. Upon return, jurors will be admitted back into the courtroom first followed by counsel and the parties, then any spectators.

The court must control the number of individuals checking in at one time in order to account for 6ft. distancing. Therefore, counsel, parties, jurors and spectators will not be allowed to linger outside the courtroom during breaks. 6ft. spacing will be marked on the floor outside of the courtroom to account for spacing.

All jurors and prospective jurors, attorney's, judge, court reporter, witnesses, bailiff and court staff will be required to wear a mask during all proceedings. Clearview masks will be available for all jurors and counsel and witnesses. Plexiglass shields have been placed in front of and to each side of the witness stand.

There will be no podium. All questioning shall take place from the counsel table. Microphones are at each counsel table to ensure adequate sound amplification for jurors.

During jury selection the court reporter will either be at the witness stand or in the middle between all jurors. During trial they will likely be in front of the witness stand.

The defendant and counsel will have the use of the present jury room for their private conferences. This is large enough to maintain 6ft. distancing.

No bench conferences will occur in the courtroom. All needed bench conferences will be held in the law library. Only the attorneys, defendant, judge and court reporter shall be present. Masks will be required. Attorneys will be instructed that it is important that we limit the number of bench conferences. They are directed to try and resolve anticipated evidentiary and other issues before we start the trial.

Breaks will occur about every two hours and will last 20-30 minutes to allow for jurors to leave the building and to separate so that they can take off their mask to avoid mask fatigue. During the trial jurors will utilize the downstairs restroom facilities. After breaks jurors that leave the courthouse will enter the main entrance checking in with court staff and being directed to their seat in a manner that accounts for adequate spacing. During deliberations they will use the

traditional jury restroom located right outside the jury room. If the defendant and or counsel are in the jury room the jury bailiff will close the jury room door before a juror enters the hallway to the restroom.

With 6ft. distancing between each jury chair, the jurors will have space to store any personal items on the floor next to their or under their chair. They will be instructed that all cell phones must be turned off and stored during any court proceeding. Jurors, counsel and witnesses will be allowed to bring their own individual water bottle. A newly installed water bottle station is available to them as they enter the main entrance to the building. If needed a sealed individual bottle of water will be provided to jurors, counsel and witnesses. The court will not provide any food or snacks to jurors. Once the trial begins jurors will be paid a stipend of \$6 per day to use toward the purchase of lunch or snacks that they may need.

Upon submission of the case to the jury, the courtroom will become the jury room. The courtroom will be secure. No one other than jurors will be allowed to enter unless the parties need to address an issue with the jurors' present, such as a jury question. Once a verdict has been reached then the parties and public may re-enter the courtroom. Any needed conferences that must take place during deliberations will occur in the law library.

There is space for public seating of 25 persons in the gallery. During trial 3 seats will be preserved for each party for their spectators. One seat will be designated for the press. Spectators must be subject to having their temperature taken before they enter the courtroom, they must wear masks. They may only be admitted to the courtroom before the proceeding begins or during breaks. They will be assigned an open seat and must only use this seat. If they leave no one else may be seated in that location until the next break after the seat surface has been cleaned by court staff.

Spectators will be given a sticky note when they enter the courtroom. They will be instructed to place the sticky note on the top rail of the chair. If they leave and do not intend to return to the courtroom, they must take the sticky note with them. That will alert our staff that the chair needs to be cleaned before anyone else can occupy the chair.

At least 30 days before trial, or on whatever schedule is established by the trial judge, the court must receive a complete list of potential witnesses as well as a complete list of all exhibits that counsel intend to use during the trial. The exhibit list must include the method, manner and/or format that counsel intends to utilize in offering each exhibit. i.e. by digital means, by physical means.

If digital, they must disclose how they intend to present the testimony. We have a projector and screen available to display exhibits. Counsel should exchange exhibit lists with each other while they are disclosed to the court. To the extent that it is possible, counsel should agree or stipulate to foundation or agree to pre-admit exhibits in advance of trial, subject to identification etc. All exhibits should be premarked in advance of trial. If counsel anticipates an objection to a specific exhibit, they should notify the court at least 2 weeks before trial, so that the court can conduct any hearings that may be needed to determine admissibility.

If the exhibit is being offered physically then they may not be published and passed to the jury until the end of the witness testimony. Gloves and hand sanitizer are available to jurors who handle an exhibit.

Presentation of remote witnesses. If counsel intends to offer witness testimony using remote technology, they must notify the court and opposing counsel at least 30 days before trial. If the parties and the court agree to allow the presentation of testimony in this manner, the court will need to know in advance the process that is proposed in obtaining this testimony. The testimony will be taken with the Zoom platform. The witness must be able to maintain a strong enough internet connection to maintain both audio and video during their testimony. The court will set up and control the Zoom meeting to ensure the security of the conference. Prior to trial, as directed by the court, counsel and the witness must work with the judge and the court reporter to test the process to decrease the chance of delay or disruption during the trial.

Cleaning:

The witness stand will be cleaned between each witness. All chairs, counsel tables or other hard surfaces in the courtroom, law library and defense area (formerly the jury room) will be cleaned daily. The court will monitor each situation, for example if individual examination of a prospective juror is needed, this will occur in the law library. The area of the table and chair surface will be cleaned before the next person will utilize the same seating location.



Witness Box Front View



Witness Box Angle View



Jury Box South End



Jury North End of Box



Public Seating Area. Extra Table for storage

Extended Jury area South of box and north of Bar





Counsel Tables



Counsel Tables and Screen for Exhibits



Judge's Bench



Portable Hand Sanitizer



Stationary Hand Sanitizer Located Outside of Courtroom