

## **Jury Proceeding Addendum to COVID-19 Operating Plan for the Comal County Judiciary**

*Effective on and after October 1, 2020*

Recognizing the need to ensure the health and safety of jurors, litigants, attorneys, visitors, court staff, judges, and other individuals entering the buildings housing the courts, the courts of **Comal County** will implement, in addition to the procedures and protocols in the previously submitted COVID-19 Operating Plan, the following protective measures for jury proceedings:

### **General**

1. All judges will comply with the Emergency Orders issued by the Supreme Court of Texas and Court of Criminal Appeals, including conducting in-person jury proceedings according to the guidance issued by the Office of Court Administration.
2. The justice courts will not conduct an in-person jury proceeding until the Supreme Court permits such proceedings.
3. Judges of the district courts, constitutional and statutory county courts, and statutory probate courts will conduct in-person jury proceedings in accordance with the previously approved Operating Plan and this addendum only after this jury proceeding addendum is submitted and accepted by the Regional Presiding Judge.
4. Not more than five days before an approved in-person jury proceeding is scheduled to occur, the local administrative district judge or designee will consult with the local public health authority to verify that local health conditions and plan precautions are appropriate for the jury proceeding to proceed.
5. Except for criminal cases where confinement in jail or prison is a potential punishment, judges may conduct remote jury proceedings if the court follows the requirements of the hearings on objections or motions section below and ensures that all potential and selected petit jurors have access to technology to participate remotely. Judges may conduct remote jury proceedings in a criminal case where confinement in jail or prison is a potential punishment only with appropriate waivers and consent obtained on the record from the defendant and the prosecutor.

### **Jury Proceeding Approval Process**

1. Judges wishing to conduct a jury proceeding will follow the procedure detailed below to obtain approval to proceed with the jury proceeding from the local administrative district judge and Regional Presiding Judge:
  - A. Establish a docket giving preference to "essential" matters or cases with urgent issues that, in the best interests of justice, need to be resolved most expeditiously;
  - B. When proper to do so, plan to utilize a jury to be composed of less than 12 jurors; and

- C. As soon as practicable following established protocols, consult with all required approving authorities in advance of the jury proceeding date to verify that no alternate or additional health and/or safety protocols should be imposed on the case(s) most likely to be tried.
2. The local administrative district judge will, not more than five days before the jury proceeding, consult with the local public health authority to verify that the local health conditions and plan precautions are appropriate for the jury proceeding to proceed with the following procedure:
  - A. Verifying that local health & safety conditions pose NO contemporaneous or specific threat to the public, litigants, attorneys, support staff, jurors and judges; and
  - B. Confirming that required court procedures can and will be completed without compromising the health and safety of any member of the public, litigants, attorneys, support staff, jurors and judges.

#### **Hearings on Objections or Motions Related to Proceeding**

1. Parties who are scheduled for a jury proceeding are encouraged to make any objections or motions related to proceedings at least 10 days prior to the trial setting.
2. Any objections or motions related to proceeding with a jury proceeding will be heard by the judge presiding over the case at least seven days prior to the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding.

#### **Communication Protocols**

1. Each judge with an approved in-person jury proceeding will require the parties to communicate with the court if any participant in the jury proceeding, including attorneys, parties, attorney support staff, or witnesses, has tested positive for COVID-19 within the previous 30 days prior to any portion of the jury proceeding, currently has symptoms of COVID-19, or has had recent known exposure to COVID-19.
2. If the approved in-person jury proceeding involves an incarcerated participant, the judge will require the sheriff to report any positive COVID-19 test of the incarcerated participant within the previous 30 days prior to any portion of the jury proceeding, any current symptoms of COVID-19, or any recent known exposure to COVID-19.

### Scheduling

1. A judge who obtains approval for an in-person jury proceeding will schedule no more than ten cases for that jury trial setting, unless pre-approval for larger dockets is obtained from the Regional Presiding Judge.
2. Judges should attempt to alert parties who will not be proceeding prior to the day of trial to reduce attendance at the court facility.

### Summoning Jurors

1. The jury clerk must include with in-person juror summonses information regarding precautions that have been taken to protect the health and safety of prospective jurors (see Attachment A)<sup>1</sup> and COVID questionnaires (see Attachment B)<sup>2</sup> that elicit from prospective jurors information about their exposure or vulnerability to COVID-19.
2. Judges will consider using juror questionnaires for voir dire to assist in shortening the length of voir dire or the number of venirepersons.
3. Excuses or requests to reschedule from in-person prospective jurors who have been potentially exposed, who are symptomatic, and who are vulnerable or live with someone vulnerable to COVID-19 will be liberally granted.

### Location for Jury Selection, Trial, and Deliberation

1. The following locations have sufficient space to permit adequate social distancing and will be used for in-person jury proceedings:<sup>3</sup>
  - a. Jury Qualification: Comal County Landa Annex, 199 Main Plaza, New Braunfels, Texas 78130
  - b. Voir Dire: --same--
  - c. Trial:--same--
  - d. Jury Deliberation: --same--
2. Security protocols at the locations for jury proceedings have been reviewed with the appropriate courthouse security personnel and are adequate for the proceeding.

### Screening

1. In addition to the requirements of the previously submitted in-person Operating Plan, all court participants and observers attending an in-person jury proceeding will be screened for elevated temperatures and will be questioned to determine if the individual has recently had symptoms of COVID-19 or been exposed to COVID-19.

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<sup>1</sup> Include as Attachment A the information that the court will include with summonses.

<sup>2</sup> Include as Attachment B the COVID questionnaire that the court will include with summonses. A sample COVID questionnaire is available at <https://txcourts.gov/media/1449739/petit-juror-questionnaire-addendum-covid-19-pre-screening.pdf>.

<sup>3</sup> Court who may need to hold a proceeding outside of the courthouse should review Chapter 292 of the Local Government Code (related to having an auxiliary facility designated as a courthouse) and Government Code Sections 24.033(b) (district courts), 25.0019(b) (statutory county courts), 25.0032(b) (statutory probate courts), 26.009(b) (constitutional county courts), 27.0515 (justice courts), 29.015 (municipal courts), and 30.000123 (municipal courts of record)—relating to designating alternative locations for proceedings.

2. All participants in a trial who are incarcerated will be screened by the jail/prison prior to transport to the courtroom and any known exposure, symptoms, or COVID-19 positive test results within the past 30 days will be reported to the judge presiding over the jury trial prior to the transport of the participant to the courtroom.

### **Face Coverings**

1. In addition to the requirements of the previously submitted in-person Operating Plan, all persons entering the common areas of a courthouse, including a courtroom or any other location being used to conduct a jury trial, will be required to wear a face covering at all times unless the person is an individual that is not recommended to wear a mask by the Centers for Disease Control or the Texas Department of State Health Services.
2. All court participants will be required to wear face coverings from jury qualification through the end of trial.
3. Court participants who may need to lower their face mask to speak or for a short period of time will be required to wear a face shield. When speaking, judges will permit a court participant to lower his or her mask so long as a face shield is worn, and the person speaking is immobile.

### **Social Distancing**

1. Social distancing of all court participants and observers will be maintained at all times during the jury proceeding, including during the trial and deliberation.
2. Special attention will be paid by courts to ensure adequate social distancing and managed exits of individuals during breaks, especially when dismissing large groups of people for a break.

### **Alternate Jurors**

1. Each judge with an approved in-person jury proceeding will be encouraged to consider selecting alternate jurors to permit the trial to continue in the event of a juror becoming ineligible to serve for a reason unrelated to that person's exposure to or contraction of COVID-19.

### **Arrangement of Courtroom**

1. The following description (or attached drawing) details how each of the courtrooms or facilities will be arranged during the jury proceeding:<sup>4</sup>
  - A. Jury Qualification & Voir Dire: Utilizing every other chair, potential jurors (wearing masks) will be distanced and be seated in every other chair in the courtroom gallery and/or jury box, thus, safely accommodating approximately 50-60 members of the venire.

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<sup>4</sup> Include where the judge, parties/counsel, jurors, witnesses, court reporter, and bailiff will be arranged in each courtroom or facility during each phase of the trial.

Ceiling microphones are positioned above the gallery, and a waiver of the record during voir dire may be sought, if appropriate for a given case.

B. Trial: The Jury Box has been expanded to safely accommodate, if necessary, 12 jurors (wearing masks) adequately distanced and seated in every other chair. To accommodate the expanded Jury Box as well as to increase the visibility of all jurors, counsel tables (normally situated parallel in front of the bench and perpendicular to the side of the Jury Box) have been adjusted to approximately a 45 degree angle facing the corner of the courtroom between the Jury Box and the bench. The podium situated between counsel tables and the bench has also been aligned at the same approximate angle both to increase social distancing and to provide greater visibility for all jury proceeding participants. Chairs in the gallery will be marked with blue masking tape to indicate chairs available for seating to the public that are adequately spaced for mask-wearing onlookers. Bailiffs will endeavor to maintain furniture placement and alignment as well as the necessary spacing of individuals seated in the gallery.

C. Jury Deliberation: The provided space for jury deliberation is sufficient for 6 to 12 jurors to be adequately spaced, especially if wearing a mask. Instructions and reminders will be provided to the Presiding Juror to help ensure jurors maintain safe and healthy distances while deliberating.

### **Microphone Protection Protocols**

1. Judges will limit, to the degree possible, the shared use of microphones during the jury proceeding.
2. If a microphone must be shared, judges will limit the passing of the microphone unless the microphone is cleaned between each user.
3. Disposable microphone covers will be placed on shared microphones and changed between each user.

### **Exhibit/Evidence Management**

1. Judges will limit, to the degree possible, the use of physical or paper exhibits/evidence where feasible or appropriate by converting the exhibit/evidence to a digital form.
2. When physical or paper exhibits/evidence is required, judges will reduce the exchange of that exhibit/evidence to the number of persons necessary and will limit passing the exhibit/evidence to the individual members of the jury.
3. If an exhibit/evidence is required to be transferred from person-to-person, single use gloves will be provided, worn, and discarded immediately after handling the exhibit/evidence.
4. During jury deliberations, judges will make efforts to provide the jury with access to digital exhibits/evidence that would normally be shared with the jury during deliberation. Where digital exhibits/evidence is not feasible, judges will consider limiting the transfer of the exhibits/evidence from juror-to-juror by spreading the exhibits/evidence on a table for inspection from the table in the jury deliberation room.

### **Witnesses**

1. Judges will inquire whether witnesses to the proceedings have COVID-related issues.
2. To the degree constitutionally permissible or with the consent of the parties, judges will permit witnesses to testify remotely via videoconference, especially if that witness has symptoms of or a recent positive test for COVID-19, has been recently exposed, or is vulnerable to contracting COVID-19.

### **Food Precautions**

1. Courts that provide food to jurors or other participants during a jury proceeding will ensure individual food portions, such as individually boxed meals, are provided.

### **Cleaning**

1. In addition to the requirements of the previously submitted in-person Operating Plan, frequent cleaning protocols in the courtrooms and facilities will be maintained throughout the jury proceeding as appropriate.
2. Shared spaces such as witness stands, seating in the gallery, and seating during qualification/voir dire will be cleaned during transitions of those spaces.
3. Seats for members of the jury panel and selected jurors will be assigned to reduce potential transmission and the need for more frequent cleaning.

I have attempted to confer with all judges of courts with courtrooms in the court building regarding the Jury Proceeding Addendum to the Operating Plan. In developing the plan, I consulted with the local health authority and county judge, documentation of which is attached to this plan. I will ensure that the judges of courts with courtrooms in the court building covered by this Operating Plan conduct proceedings consistent with the plan.

Date: 9/30/2020



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Local Administrative District Judge  
R. Bruce Boyer

PRECAUTIONS TO PROTECT § IN THE DISTRICT COURT  
THE HEALTH & SAFETY § 433<sup>RD</sup> JUDICIAL DISTRICT  
OF JURY TRIAL PARTICIPANTS § COMAL COUNTY, TEXAS



**PROSPECTIVE JUROR INFORMATION**

In compliance with Emergency Orders issued by the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the Texas Office of Court Administration, as a part of the overall COVID-19 Operating Plan of the Comal County Judiciary in advance of the trial of all cases scheduled for jury selection in the 433<sup>rd</sup> Judicial District Court of Comal County after October 1, 2020, this information is provided all prospective jurors.

**A. General COVID-19 Protocols**

- A. To ensure the health and safety of jurors, litigants, attorneys, visitors, court staff, judges, and other individuals entering the Comal County Landa Annex, 199 Main Plaza, New Braunfels, Texas for all jury trials conducted in the 433<sup>rd</sup> Judicial District Court, the Court implements the following special procedures and protective measures for all participants and observers attending a jury trial after October 1, 2020.
- B. Approval of this process has been granted as indicated below by the Comal County Administrative Judge and the Third Regional Presiding Judge.
- C. Not more than five (5) days before an approved in-person jury proceeding is scheduled to occur, the local administrative district judge or designee will consult with the local public health authority to verify that local health conditions and plan precautions are appropriate for the jury proceeding to occur.
- D. Objections or motions related to any matter scheduled for a jury proceeding should, as best possible, be raised ten (10) days prior to the trial setting to allow the presiding judge to hear and resolve any such issue approximately seven (7) days prior to the jury proceeding or as soon as practicable.
- E. All litigants, attorneys, support staff, or witnesses shall notify the Court if any such participant has tested positive for COVID-19 within the previous thirty (30) days, is currently experiencing symptoms of COVID-19, or has had known exposure to COVID-19.



- F. If the proceeding involves an incarcerated participant, the Comal County Sheriff or his designee will screen all such persons and report any positive COVID-19 test of the incarcerated participant, any current symptoms of COVID-19, or any known exposure to COVID-19. As of the date of this ORDER, no person while incarcerated within the Comal County Jail has tested positive for COVID-19.
- G. Every participant in the trial, including court personnel and jurors, will be asked daily and is required to alert the Court if the participant has, learns that a member of the participant's household has, or knows of another participant who has or exhibits: (i) COVID-19 or flu-like symptoms, or a fever, chills, repeated shaking with chills, cough, shortness of breath or difficulty breathing, muscle pain, headache, sore throat, loss of taste or smell, diarrhea; or (ii) been in close contact with a person who is confirmed to have COVID-19.
- H. No more than ten (10) cases are to be scheduled for any jury trial setting, and the Court will alert parties not expected to proceed to trial, prior to the day of trial, to reduce attendance by unnecessary persons in the Courthouse.

#### **Juror Summons & Security Protocols**

- A. Petit Jurors will be summoned, qualified and empanelled for the purpose of an in-person jury trial. In addition to the jury summons, potential jurors will be provided both a copy of this ORDER and a COVID-19 Pre-screening Jury Questionnaire in advance of the trial date. If a potential juror answers "yes" to certain questions, he or she will be excused, and other jurors, if qualified, may be excused from jury service.
- B. The anticipated location for all proceedings will be at the Comal County Landa Annex, 199 Main Plaza, New Braunfels, Texas 78130, where sufficient space is arranged to permit adequate social distancing.
- C. Standard security protocols with appropriate courthouse security personnel shall be on the grounds at all times of the trial.
- D. All participants in court, including the judge, will be screened daily, using an infrared thermometer, to ensure body temperature readings of less than 100.0 degrees Fahrenheit.

- E. Throughout the trial, all participants will be required to wear face coverings over their nose and mouth while in the courtroom, except when testifying from the witness stand, questioning a witness, or otherwise addressing either the Court, the jury or the litigants. Anyone speaking without a mask must remain immobile, and face shields are to be utilized when masks are not being worn as best possible.
- F. All court participants and observers will maintain appropriate social distancing at all times during managed entrances, exits, the trial, all breaks and jury deliberation. Counsel and litigants are exempt with regard to each other so as to permit and maintain the confidentiality of attorney-client communications as the need may arise.
- G. Counsel will address the witnesses or the jury solely from counsel table or the podium.
- H. Counsel shall not approach witnesses or the jury.
- I. Exhibits are to be displayed digitally via computers whenever possible.
- J. All items to be physically handled by a witness shall be handed to the Court's Bailiff who shall, wearing single-use disposable gloves, sanitize the item with a disposable wipe. Counsel or support staff handling any item should also take appropriate precautions.
- K. Witnesses shall wear single-use disposable gloves while handling any item, if necessary.
- L. The Court will ensure that adequate amounts of hand sanitizer are available for all participants. Before and after handling any demonstrative items, exhibits, trial notebooks, etc., all court participants are encouraged to use hand sanitizer.
- M. Everyone is expected to wash their hands and/or to use hand sanitizer frequently.

## **II. Court Schedule**

- A. Counsel, litigants, court staff and jurors involved in the trial during a given day are expected to remain in the Courthouse from arrival (8:30—9:30 a.m.) until Court is adjourned for the day each day during the trial.
- B. Witnesses shall remain in the Courthouse from an appointed arrival time until the testimony is completed or court has adjourned for the day.
- C. An outdoor break area will be made available for jurors accessible to them during breaks from the courtroom. Lunch will be provided daily for the jury by the Court.
- D. Counsel and litigants are expected to arrange for lunches to be consumed in the

Courthouse. Priority will be given counsel and litigants for access to adequate and appropriate space for all breaks.

### **III. Jury Deliberations**

- A. After the close of all evidence but in any event prior to the start of deliberations, the parties shall provide to the Court a thumb drive containing all of the exhibits that are admitted into evidence and nothing else. They shall also provide to the Court a printed index of the admitted exhibits indicating the exhibit number, brief description and file name for each admitted exhibit.
- B. The jury shall be permitted to use a closed-computer system allowing access only to review the admitted exhibits during the deliberations.
- C. Physical exhibits will not be sent to the jury room without a specific request received from the Presiding Juror.
- D. The jury will not be sequestered, but in addition to standard admonitions, jurors shall be instructed that during deliberations they shall refrain, as best possible, from all contact with any and all individuals not a member of their immediate family—nor be away from their permanent residence absent medical emergency.

## JURY SERVICE COVID-19 PRE-SCREENING QUESTIONNAIRE

Dear Prospective Juror reporting for service on the DATE of **OCTOBER 19, 2020:**

To protect against the spread of the COVID-19 disease, we ask that you complete the following before reporting for Jury Service on the **DATE ABOVE**. Bring this completed questionnaire with you, or email the completed, and signed questionnaire to [henryj@co.comal.tx.us](mailto:henryj@co.comal.tx.us) by 4:00 p.m. on the **FRIDAY BEFORE** reporting for Jury Service on the **DATE ABOVE**:

**1. SYMPTOMS NOW OR DURING the 14 days immediately preceding the DATE ABOVE:** check any that apply to YOU or A MEMBER OF YOUR HOUSEHOLD

Fever (above 100.0)     Change in taste, smell or appetite     Cough  
 Headache     Shortness of Breath     Diarrhea     Chills or repeated shaking with chills  
 Muscle pain or body aches     Sore throat

I certify that **NONE** of the symptoms above have been experienced by me or a member of my household DURING the 14 days immediately preceding the DATE ABOVE.

**IF YOU DO EXPERIENCE ANY OF THE ABOVE SYMPTOMS, CALL THE DISTRICT CLERK'S OFFICE at 8:00 a.m. (830) 221-1255 BEFORE REPORTING for Jury Service on the DATE ABOVE.**

**2. CONTACT HISTORY - check any that apply to YOU or A MEMBER OF YOUR HOUSEHOLD:**

I have or a member of my household has been diagnosed with COVID-19 within the past 4 months;  
 I have or a member of my household has been in close contact with someone known to be exposed to or infected with COVID-19 in the last 14 days;  
 I am or a member of my household is currently on a watch list or self-quarantining because of possible COVID-19 exposure;  
 NONE of the above apply.

**IF ANY OF THE ABOVE THREE COVID-19 DIAGNOSIS/SUSPICIONS APPLY, CALL THE DISTRICT CLERK'S OFFICE at 8:00 a.m. (830) 221-1255 BEFORE REPORTING for Jury Service on the DATE ABOVE.**

**3. COVID-19 RELATED EXCUSE -** Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, or those whose immune systems may be compromised, such as by chemotherapy for cancer or other conditions requiring such therapy, are considered to be vulnerable populations and may request to be excused from jury service at this time. If you wish to be excused, check the certification box below.

***I certify that I meet the described conditions in paragraph #3. above, and I request to be excused from jury service because of those conditions. IF YOU CERTIFY YOU ARE QUALIFIED TO BE EXCUSED DUE TO A COVID-19 RELATED REASON LISTED IN PARAGRAPH #3. ABOVE, EMAIL THE PRE-SCREENING QUESTIONNAIRE [henryj@co.comal.tx.us](mailto:henryj@co.comal.tx.us) BY 4:00 P.M. on the FRIDAY BEFORE reporting for Jury Service on the DATE ABOVE, AND YOU NEED NOT APPEAR FOR JURY SERVICE.***

**4. FACE COVERINGS:**

Out of respect for your fellow prospective jurors, physical distancing of six (6) feet is encouraged and a face covering is **REQUIRED** while in the courthouse, when and for as long as is practical during the jury selection process. Individuals are encouraged to bring a cloth face covering with them. If an individual does not have a cloth face covering, a **disposable face mask will be provided.**

I certify the above is true and correct: \_\_\_\_\_

Signature

Printed Name—Juror # \_\_\_\_\_