

Approved 10/11/20
Sh B. Abley
Presiding Judge
6th Region

**Jury Trial Addendum to the COVID-19 Operating Procedures
El Paso County, Texas**

Adopted by the Council of Judges on _____, 2020

The Standard Operating Procedures (SOP) implement recommended health and safety measures and comply with the Emergency Orders of the Texas Supreme Court and the Court of Criminal Appeals, and the directives of the Office of Court Administration and El Paso County Council of Judges, including the El Paso County Council of Judges Court Operations Plan (COP), attached and incorporated at Exhibit "1". These precautions and restrictions seek to minimize and control the number of people coming into the El Paso County Courthouse and its courtrooms, permit the resumption of jury trials and protect the health and safety of all court users.

Priority of Cases:

Each court will manage its own docket in compliance with the COP to use virtual means for hearings when at all possible. The following priority shall be given to scheduling of jury trials:

1. Criminal Cases in which the defendant (including juveniles) is detained (factors to consider include length of detention, possibility of release, circumstances of the case and whether experts are being called) and matters in which the court may lose jurisdiction;
2. Family law cases involving violence or children;
3. Criminal Cases in which the defendant is not in detention (priority to higher class offenses and age of case);
4. Civil cases including probate and family law matters not involving violence or children.

~~Master Calendar Scheduling~~

1. So long as Texas Supreme Court orders require prior approval of a jury trial setting, no district, county or probate court may proceed without first obtaining approval of the Local Administrative Judge and the Regional Presiding Judge. Furthermore, no more than five (5) days prior to the date an in-person jury trial is scheduled to occur, the Local Administrative Judge or a designee must schedule a consultation with the local public health authority to verify that local health conditions and the plan precautions are appropriate for the jury proceeding to proceed. A checklist is attached as Exhibit 2 that should be signed by the judge holding the jury proceeding and filed with the Local Administrative Judge.
2. At the expiration of Texas Supreme Court orders requiring prior approval, a Master Trial Calendar will be used to ensure that cases are given priority as

contemplated above. Commissioners Court is only available four days a week. A court may use its own courtroom to conduct jury selection but only a certain number of courts will be able to conduct jury trials on a given day. Courts located on the same floor may not conduct jury selection on the same day.

3. 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.
4. Judges should attempt to alert parties who will not be proceeding prior to the day of trial to reduce attendance at the court facility.

Public Access to Courthouse and Court Facilities

The Jury Trial Procedures follow the COP and include the following requirements:

1. All persons entering the courthouse will have their temperature taken and be asked to answer health questions.
2. All persons entering the courthouse are required to wear face coverings. This requirement remains in effect until changed by El Paso County.
3. All persons who work in the courthouse must wear a face covering as required by El Paso County.¹
4. A limited number of masks may be available to jurors who do not bring face coverings.
5. Refusal to wear a mask does not relieve a juror from the responsibility of jury service.
6. All courtroom spaces shall be cleaned before and after a jury selection event. All courtroom spaces are to be cleaned on a daily basis.
7. Social distancing (6 ft. or more) will be observed at all times within the courthouse.
8. Notices in English and Spanish shall be posted throughout the courthouse, Liberty Hall and the parking garage regarding these requirements.

Summoned Jurors

Prospective jurors will receive a letter with their summons that provides information about the jury trial procedures and advises jurors that they may claim exemptions or disqualification PRIOR to their report for jury service by completing the COVID Questionnaire. A copy of the letter and questionnaire are attached as Exhibits 3 and 4.

¹ Second Amendment to Emergency Order No. 7 issued by El Paso County Judge Ricardo Samaniego on April 23, 2020.

Jurors will receive additional communications regarding health and safety plans and expectations via the Juror text and email messages. Information about court operations is available at <http://epcounty.com/courts> and <http://www.epcounty.com/information/JuryTrialProcedures.pdf>

Communication Protocols

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. 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.

Location of Jury Selection

Options for Jury Selection:

Option 1: Commissioners Courtroom, 3rd floor. Capacity 39-57 jurors. See attached seating charts, Exhibit 5.

Option 2: Courts' individual courtrooms. Capacity 17-25 jurors. See attached sample seating charts, Exhibit 6.

Public areas and courtrooms will be marked for social distancing. Bailiffs will monitor social distancing in and around courtrooms and public areas

Arrival for Jury Selection

- Jurors will be met outside the entrances to the courthouse on the first and third floors by a bailiff. A bailiff will also be posted outside the parking garage to direct jurors towards the courthouse. Employees at jury hall will direct any jurors that arrive at jury hall to the courthouse.
- Courthouse security will be given information about the particular court proceeding with jury selection so that they can help direct jurors.
- Once Jurors arrive at their assigned location, a bailiff will check them in and direct them to enter the courtroom and take their pre-assigned seats.

Conducting the Trial

Hearings on Objections or Motions Related to Proceeding

- 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.
- 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.

Microphone Protection Protocols

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

1st Phase of Trial--Jury Selection

- All participants must abide by social distancing requirements and wear face coverings.² 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.
- To the extent possible, pretrial matters will be resolved outside the presence of the jury prior to the start of the trial.
- Counsel tables will be situated in such a way that proper social distancing is observed.
- Counsel will be limited to certain areas of the courtroom so that social distancing rules are not violated. The permissible area will be clearly marked in the courtroom.
- Social distancing rules shall be followed during any bench conferences.
- To exercise peremptory strikes and conduct other pretrial matters, the judge and the attorneys will exit the courtroom and the venire will remain inside the courtroom.

² Should El Paso County modify this directive, the plan will change accordingly.

- Additional bailiffs will be available to assist the court both inside and outside of the courtroom as required by the judge.
- Time limits are designed to limit the amount of time jurors are kept in the same room for jury selection. The court will be mindful of the time being used for all procedures, including the court’s comments, excusing jurors for cause as well as voir dire, exercise of peremptory strikes, and seating of jury.

Restroom and Other Breaks

- Public restrooms are available on each floor. There is limited bathroom occupancy.
- Long breaks for jurors to leave the jury selection room are discouraged.
- Jurors must remain in the courtroom unless they are using the restrooms or allowed to temporarily leave the courtroom by the appropriate bailiff.
- Bailiffs will enforce social distancing during all breaks.

2nd Phase of Trial—Presentation of Evidence

- All participants must abide by social distancing requirements and wear face coverings.³
- Opening statements, presentation of evidence, closing arguments, and deliberations will be held in the regular courtroom regardless of the place for jury selection.
- 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.
- 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.
- Gloves will be used to handle all exhibits and papers shared during the trial.
- Counsel will use the camera projection system to present admitted exhibits.
- When necessary, gloves will be provided to jurors for viewing and handling exhibits.
- Elevator occupancy is limited to 4 people.
- The courtroom will be rearranged as shown in the attached diagram to ensure proper social distancing. See Exhibit “7”.
- Bailiffs will monitor the movement of trial participants between floors.

³ Should El Paso County modify this directive, the plan will change accordingly.

- At least 2 Bailiffs will monitor the movement of the jurors throughout the trial.
- Bailiffs will assist with witnesses and will monitor anyone entering or leaving the courtroom.

Witnesses

- ~~Testimony by video conferencing is encouraged.~~ 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.
- Bailiffs shall ensure compliance with social distancing requirements and “the rule.”
- Witnesses should check in with a bailiff upon arriving to give testimony.
- A bailiff will instruct the witness where to wait until that witness is called.

3rd Phase of Trial--Jury Deliberations

- All participants must abide by social distancing requirements and wear face coverings.⁴
- The jury shall conduct its deliberations in the courtroom.
- All entrances to the courtroom will be secured during deliberation.
- 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 a table in the jury deliberation room.

Restroom Breaks

- Jurors will use the restrooms in proximity to the court’s designated jury deliberation room.

Alimentation

- Individual meals, snacks, water, and coffee shall be provided to jurors in the courtroom.

⁴ Should El Paso County modify this directive, the plan will change accordingly.

Cleaning and Sanitation

See COP, attached as Exhibit “1” for hygiene and sanitation requirements.

PUBLIC ACCESS

Given the size of courtrooms and the need to comply with health and safety requirements, only trial participants can be seated in the courtroom. However, public access to all proceedings will be provided via live stream on the YouTube court channel. Along with the live feed, a limited number of seats may be available in the courtroom and an additional courtroom may be available for spectators. Face covering and social distancing requirements will be enforced at all times.

JURY SERVICE COVID-19 PRE-SCREENING QUESTIONNAIRE

Dear Prospective Juror:

As part of the court's ongoing measures to protect against the spread of the COVID-19 disease, we ask that you complete the following before reporting for Jury Service on _____, 2020. Bring this completed questionnaire with you or email it to _____@_____ BEFORE (insert date of jury service, 2020):

1. SYMPTOMS NOW OR BETWEEN (insert date that is 14 days before date of jury service), 2020 AND (insert date of jury selection proceeding), 2020: check any that apply to YOU or A MEMBER OF YOUR HOUSEHOLD

____ Fever (above 100.0) ____ Change in taste or smell ____ Cough ____ Nausea or Vomiting

____ Headache ____ Shortness of Breath/Difficulty Breathing ____ Diarrhea ____ Chills

____ Muscle pain or body aches ____ Sore throat ____ Fatigue ____ Congestion or Runny Nose

____ I certify that NONE of the symptoms above have been experienced by me or a member of my household between (insert date that is 14 days before date of jury service) and (insert date of jury selection, 2020).

IF YOU ARE EXPERIENCING ANY OF THE ABOVE SYMPTOMS, CALL THE DISTRICT CLERK'S OFFICE at () ____ - ____ BEFORE REPORTING ON _____, 2020.

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

____ I or a member of my household has been diagnosed with COVID-19 within the past 30 days;

____ I or a member of my household has been in close contact with someone exposed to or infected with COVID-19 in the last 14 days;

____ I or a member of my household are currently on a watch list or self-quarantining because of possible COVID-19 exposure;

____ NONE of the above apply.

IF ANY OF THE ABOVE APPLY, CALL THE DISTRICT CLERK'S OFFICE at () ____ - ____ BEFORE REPORTING ON _____, 2020.

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

I certify that I meet the above-described conditions and I am requesting to be excused from jury service or desire to have my service date postponed because of those conditions.

IF YOU ARE REQUESTING TO BE EXCUSED OR YOUR SERVICE DATE BE POSTPONED DUE TO A COVID-19 RELATED REASON, CALL THE DISTRICT CLERK'S OFFICE at () ____ - ____ BEFORE REPORTING ON _____, 2020.

4. FACE COVERINGS:

Prospective jurors are required to wear a face covering while they are in the courthouse. 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

second highest form of public service that any American can perform (second only to service in the Armed Forces). The right to trial by jury has been enshrined within the Sixth and Seventh Amendment to our U. S. Constitution since 1791, and it was one of the stated principles in the Declaration of Independence which fueled our struggle to become an independent nation. Only those with extreme hardships should seek to be excused based on pre-existing obligations.

I want you to know that we are mindful of these challenging times and we have taken every reasonable precaution to protect your health as well as that of the parties, lawyers and Court staff during this upcoming trial. I hope this letter is helpful and I thank you in advance for your participation.

Respectfully,

Linda Y. Chew
327th District Court Judge

cc: Victor Ramirez; 915-546-8102; viramirez@epcounty.com

[DATE]

To All Prospective Jurors
Summoned for service on _____, 2020

RE: Jury Service in the Era of Coronavirus

Dear Prospective Jurors:

You have been summoned to appear for Jury Service at [TIME] [DATE] [COURTROOM] [FLOOR] of the El Paso County Courthouse. I want to assure you that your health and safety is extremely important and will not be compromised. In anticipation of this trial, I reached out to Dr. Ocaranza and the Department of Public Health to ensure that all necessary precautions are taken to ensure the safety and health of all participants.

Please be aware that everyone entering the courthouse will be screened and will be required to wear face coverings while in the courthouse. In addition, jurors will be provided a face shield to wear with their face covering during the jury selection process. Jurors will be socially distanced in the courtroom. Therefore, unlike previous experiences you may have had when called for jury service, the size of the jury panel will be much smaller.

Upon arrival at your assigned courtroom, prospective jurors will immediately be seated in the courtroom. This will help avoid jurors waiting in the lobby and ensure social distancing throughout the selection process. Jurors are encouraged to bring bottled water and individual lunches will be provided to those selected to serve.

I anticipate this trial will last 1-2 days. If you are unable to serve due to an underlying condition, sickness or matters related to the Coronavirus or, if you have a pre-existing obligation that cannot be rescheduled, immediately advise Mr. Victor Ramirez, the jury hall bailiff at the number below.

The right to trial by jury is a cornerstone of our democracy, and jury trials necessarily involve sacrifice from those citizens called upon to serve. This has always been true, but it is especially true during these unique and trying times. It is my personal conviction that jury service is the

Judge's Jury Trial Approval Checklist: _____ Court

Case Number: _____

- Notify Judge Chew or Judge Morales of desired date for a jury trial. Please include:
 - Type of Case
 - If criminal, whether defendant is detained
 - Expected length of trial
 - Have the parties/attorneys consented
 - Will witnesses be able to testify remotely

- Hold a jury trial conference with Judge Chew, Judge Morales, Judge Ables and a court administrator to determine whether the trial has approval to proceed.

- Work with Victor Ramirez to determine number of summons and prepare a summons packet including (1) the letter from the judge, (2) jury questionnaire and (3) OCA COVID Questionnaire.

- Reserve Commissioners Courtroom, and additional conference rooms on the third floor for attorneys if Commissioners Court is needed.

- Mail summons.

- Monitor excusals.

- Bailiff contact Council of Judges to review personal protective items.

- Bailiff contact Courthouse Security to notify they of dates and locations of jury selection and trial.

- Bailiff find a second bailiff to cover jury selection and trial. Work with COJ to have additional bailiffs to cover entrances for jury selection.

- Five-day call with El Paso Department of Public Health scheduled.

- Hold call with Public Health to verify that local health conditions and plan precautions are appropriate for the jury proceeding to proceed.

Please sign and submit this completed checklist to the Local Administrative Judge.

By: _____

Date: _____