

**THIRD JUDICIAL DISTRICT COVID-19 PROTOCOL
FOR HOLDING TRIALS AFTER MAY 29th, 2020**

Purpose: The purpose of this Protocol is to assist and instruct each individual judge, TCAA, and the Court staff, in preparation for holding jury trials after the suspension expires on May 29, 2020. It is anticipated that while certain COVID restrictions are lifted, the 6-foot spacing requirement will remain in place. If the spacing requirement continues, the physical configurations of most courtrooms, and jury rooms, cannot accommodate 12-14 jurors, spaced 6 feet apart.

Reference: Supreme Court Order No. 20-8500-013.

Directive: Each judge and her/his staff should physically inspect and measure their respective courtrooms to determine what types (6 or 12 persons plus alternates) of jury trials can be held within the spacing capabilities of their courtroom and jury room. This should be done prior to May 15th and thereafter, start coordinating with other jury-related staff and/or other judges for courtroom spacing, holding jury voir dire, etc. I expect everyone to coordinate with all jury-related staff (interpreters, court reporters, security, bailiffs, attorneys, jury division, etc) to come up with a plan on how they will conduct jury voir dire, the jury trial, and deliberations, at least one week before trial and advise their respective attorneys of how the trial will be conducted.

The Situation: There are only 3 courtrooms from what I have inspected that might be capable of handling a 12-14 person jury trial. We have not accounted for spacing of ancillary staff such as two possible interpreters, a bailiff, one or two security, the Judge, and the attorneys and their staff. Each trial will likely have different parameters. This is what we have preliminarily assessed:

COURTROOM 1 (Judge Beyer)

Courtroom 1 can accommodate jury selection and deliberations in the jury room. As with **ALL** of our courtrooms, we will have issues with seating the jury in and outside of the jury box. The tables in the jury room will need to be moved around to space everyone apart 6 feet.

COURTROOMS 2, 3, 4, and 5

All of these courtrooms and jury rooms are too small to hold jury selection or deliberations with the 6-foot rule in place. It is possible that a 6 person plus 1 alternate jury can be accommodated. You will need to determine this by going into your courtroom and spacing 6-8 chairs. All jury boxes are fixed and we have determined that you will be able to fit at most, 4 jurors set 6 feet apart in the box.

COURTROOM 6 (Judge Driggers)

Courtroom 6 is able to hold a 6 - 7 person trial without many major changes needing to happen. Having a 12 – 13 person jury will need some major changes including but not limited to having jurors seated on the sides and in front of the jury box. Possibly a few rows of chairs in front of the jury box to accommodate the 6-foot rule. We would also need to use Jury Assembly Room 2 (across the main hall) as a jury room. Using the public restrooms would also need to happen with a 12 – 13 person jury, and bailiffs will need to clear the public out before a juror(s) can go in. In addition, you may want the use of the Grand Jury Room for deliberations to stay in compliance with the 6-foot rule.

COURTROOM 7 (Judge Martin)

Courtroom 7 has the biggest jury room of all of our courtrooms (except no. 1). Seating a jury should not be an issue besides using the one bathroom. The courtroom itself is wider but much shallower than Courtroom 6. The same issues that we face in Courtroom 6 exists with Courtroom 7 except for the jury room.

COURTROOM 8 (Judge Schultz)

Courtroom 8 has a different configuration than other courtrooms. The courtroom itself is as wide as 7, but it is shorter. Having a 12-person jury in that courtroom is unlikely.

PROTOCOL:

- 1. Calendar Review.** Review your calendar to determine if you have a trial in June-July. If you have a 12-person jury, you may want to review the calendar to see whether courtrooms 1, 6 or 7 might be available in order to switch out with that judge. Also, calendar the use of the Jury Assembly Room 2 and/or the Grand Jury room with Samantha Woodard, if necessary. If not available, we will have to look at other options including the use of hearing rooms A & B, when available.
- 2. Measure and Plan.** Check your courtroom to see where you are going to physically seat 6-8 or 12-14 jurors. This will obviously spill into the well of the courtroom. Will counsels' tables need to be moved? Will the jurors' seating (or others) interfere with the use of Elmo or examination of witnesses? Will jurors be sitting next to, or behind attorneys where they can see the attorney's work product? Where will ancillary staff sit (interpreters, bailiffs, security, attorney staff, etc)?
- 3. Coordinate all Personnel.** Contact all ancillary staff. How many deputies will be in courtroom and where will you place them, as they have to be close to the (criminal) defendant? How will you seat 1-2 interpreters – are they appearing remote? How many attorneys will be seated on each side and how much staff will they bring? Where will the bailiff(s) be seated? Are you going to expect attorneys to distribute paper exhibits or will you require the use of Elmo to limit papers exchanging hands frequently? How will you provide a final exhibit book to the jury that is COVID safe? Have you calendared the use of Jury Assembly Room 2 (no. 1 is being used for access screening) and/or Grand Jury Assembly room for deliberation? Will you remind bailiffs to escort jurors to the public bathroom without the public being there? Realistically, how will all these preparations affect the time of trial – should you notify counsel to expect extra trial time?
- 4. Coordinate with Jury Division.** We cannot space 50-100 or more jurors 6 feet apart in any room. Therefore, jury voir dire will have to take place in “rolling waves”. The plan is for the Jury Division to call in 15-20 jurors every 1 ½ hours starting between 8-9:00 am. This will probably be held in your courtroom, or other larger available room. You will need to complete voir dire and jury selection within that 1 ½ hours. If not enough jurors are selected in the first wave, go on to the second, etc. You will need to keep track of peremptory challenges throughout the process. Coordinate with Jury Division to determine when and where voir dire will occur. Coordinate with counsel ahead of time to let them know what the process is. Typically, in voir dire a “shared” wireless microphone is passed around to answer questions – it's unlikely that passing around a

microphone will be COVID-safe – you may need potential jurors to answer out loud so that a record can be made. Also check in with security, bailiffs, interpreters, court reporters/monitors, etc, to see what issues or concerns they might have with the spacing or process.

5. **Coordinate with Attorneys.** Contact trial attorneys early on so they have an opportunity to visit the proposed courtroom and understand what the setup will be. Determine the number of attorneys and staff that they will bring (try to keep them to a minimum). Discuss with them the problems with exchanging paper exhibits, distancing requirements, possible interference with use of Elmo, and the seating of jurors within the well of your courtroom. Consider how to achieve spacing with necessary “bench conferences” in addition to the opening and closing statements. Discuss how these preparations will affect the time of trial. Minimize calling multiple witnesses at once who will hang out in the common hallway as the jurors move from courtroom to Assembly Room 2.

PLEASE NOTE: The Supreme Court is in the process of creating guidelines and policies for the jury trials that will be held after May 29. It is likely that site-specific preparation will be left up to the individual Districts. Since each courtroom presents different configurations, the preparations for trial will have to be courtroom specific. It is anticipated that in addition to social spacing, the Supreme Court may order use of gloves and masks for all jurors, and possibly, everyone in the courtroom. As soon as these policies and guidelines are disseminated, we will advise you of the same.

Chief Judge Manuel I. Arrieta
Third Judicial District Court
Las Cruces, New Mexico