

# **Jury Proceeding Addendum to COVID-19 Operating Plan for the Wise 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 County and District Court of Wise County, Texas, these rules shall be implemented for jury trials conducted in these courts 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: The Judge shall communicate whether it is a civil or criminal case, the dates preferred for trial, the number of days anticipated for the trial (including jury selection, trial and deliberations) and the number of parties that will be involved in the trial. The Judge shall indicate the number of back up cases that will be set if any.

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: The Judge will consult with the County Judge, the County Medical Director and the Emergency Management Director to determine if there are any developing health concerns related to Covid 19 or the facilities that are planned to be used for the jury proceedings.

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

1. Parties who are scheduled for a jury trial shall file any objections or motions related to the Court plan for selecting the jury at least 10 days prior to the trial setting and shall immediately notify the Court of the filing of same.
2. Any objections or motions related to proceeding with a jury trial shall 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 less than ten days before the date of the the jury trial.

### **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:
  - a. Jury Qualification and Voir Dire: The Women's Building, Decatur, Texas; The Decatur Conference Center.
  - b. Trial: The District Courtroom and the Wise County Court At Law #1 Courtroom located in the Courthouse at Decatur, Texas
  - c. Jury Deliberation and Jury Retirement: The County Courtroom of the Wise County Courthouse.
  - d. The County Court At Law # 2 Courtroom can be used for jury trials but should use the Women's Building for jury selection.
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.
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 details how each of the courtrooms or facilities will be arranged during the jury proceeding:<sup>3</sup>

Jury selection for District Court cases will be conducted at the Women's Building located at the Rodeo Grounds, Decatur, Texas and not at the Wise County Courthouse because of space limitations. The venire persons will be separated so that they are seated six feet apart and they will be wearing protective shields during voir dire. The Judges bench will be at the front of the auditorium and the attorneys and any clients will be seated in front and to the side of the judge's bench with six foot distancing observed. The Court Reporter will be stationed at the front near the judge with appropriate social distancing. The Women's building will only be used for jury selection and then the trial will move to the Wise County courthouse.

The District Courtroom in the Wise County Courthouse will be used for the trial. The Jury will be seated during testimony so that the jurors are spaced six feet apart and they will be required to wear masks or a face shield while in the Courthouse. Trial Counsel and any clients will be separated and located in front of the judge's bench so that they are at least six feet apart and all Court participants will be required to wear face masks. The Court Reporter will be separated at least six feet from the jury and any other trial participants. The witness chair is now protected by plexiglass as is the Judge's Bench and they will remain located at the very front of the courtroom. The Bailiff will be located primarily at the front of each facility and will be facilitating the assembly of the jury each day

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as well as when it must be retired from the Courtroom. After the Jury is selected it will assemble and be retired as needed into the County Courtroom that is located on the floor directly above the district courtroom. The jury will also conduct its deliberations in the county court space because it will allow them to observe social distancing and will allow them to have private deliberations.

### **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. No exhibits will be given or handed to the jury during the trial without the Court's permission but will be available during their deliberation. All documents or photographs will be displayed during the trial by use of the Courtroom screen monitors.
3. If an exhibit/evidence is anticipated to be transferred from person-to-person, then single use gloves will be provided, worn, and discarded immediately after handling the exhibit/evidence.
4. During jury deliberations, judges will 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. If a jury is in jury deliberations and a meal is required, the jurors will be escorted to a food establishment where each juror can order their own meal.

## **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: 10/21/2020

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Brock Smith, Administrative District Judge  
271<sup>st</sup> District Court, Wise and Wise Counties



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10/23/2020

**TO:** David L. Evans, Administrative Judge

**FROM:** Jon W. Walker, M.D., Local Health Authority

**RE:** Jury Proceeding Addendum

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Judge Evans,

I have read the Jury Proceeding Addendum for Wise County Texas dated 10-21-2020 and find this plan to meet or exceed the recommendations from the Center for Disease Control, Department of State Health Services, and Office of the Governor regarding the health protocols to slow or prevent the spread of Covid19.

Jon W. Walker, M.D.  
Local Health Authority