

# **Protocol for Jury Trials in the District of Minnesota**

*(Draft as of April 13, 2021)*

This protocol for jury trials is intended to apply to both civil and criminal jury trials in the District of Minnesota during the pendency of the emergency declared by the Judicial Conference. We intend to carefully monitor trials and make necessary changes to the protocol to ensure the health and safety of all participants.

In juror communications and throughout the trial process, the Court will remind jurors about the importance of their jury service and acknowledge the challenges of serving as a juror at this time by highlighting the following:

- Jury service is a responsibility of citizenship to ensure the justice is served, even during a pandemic. The right to a trial with a jury of one's peers is guaranteed by our Constitution and, by being here, you are fulfilling that promise.
- Serving as a juror allows you to make a difference in our democracy. Your being here helps bring fairness and justice to our society and directly impacts the lives of the parties in this courtroom today.
- The Court is focused on the health, welfare, and safety of everyone in the courtroom and has taken every measure that it reasonably could to try to keep everyone safe and healthy.
- The Court and parties are grateful that individual citizens are willing to serve as jurors at this time.

The presiding judge may consult with counsel about whether or how the jury should be instructed not to blame the attorneys or the parties (especially a criminal defendant) for requiring that the jurors participate in a trial in the time of a public health emergency.

Judges who feel at risk trying cases may decide to transfer trials to judges who are more comfortable with handling a jury trial at this time. The Chief Judge must be notified of any possible transfer. If no judge volunteers to handle the jury trial, the case may be reassigned on a random basis.

This document is a work in progress, and we will continue to update and improve the protocol as we gain experience with jury trials.

## **I. Communications with the Jury Pool in Advance of Reporting Date**

Potential jurors must be given reasonable assurances that we will provide them with a safe environment and that we are taking careful and thoughtful measures to mitigate the risks. We want to ensure that they will focus on the evidence presented to them and not be distracted by concerns over the virus. To do so, we plan to utilize the following protocol.

### **A. Video**

We have created a short video featuring Chief Judge Tunheim, which describes the measures we are taking to ensure our jurors a safe environment. The video shows a trial courtroom fitted with plexiglass, masks, face shields, disinfecting wipes, and signage to ensure appropriate social distancing. The video also describes the process for jury selection, trial, deliberations, travel accommodations (hotels, parking costs covered), meals, and the like.

### **B. Frequently Asked Questions**

On the “Juror” section of the public website, we have added a new page with COVID-19 jury information. On this new page, there is a link to the Chief Judge’s video and the Jury Contact Information is available for prospective jurors to use for any questions regarding jury duty and the pandemic.

### **C. Letter Describing Procedures**

A letter from the Chief Judge will accompany the summons sent to prospective jurors, outlining the protocol, and including a link to the “Juror” section of the website and the Chief Judge’s video. The letter includes language from the Court’s order requiring the wearing of masks in the courthouse and notes that the mask requirement will be enforced.

## **II. Jury Questionnaires**

The Court will send every prospective juror two questionnaires, which will consist of a regular questionnaire and a supplemental medical questionnaire. Questionnaires will be sent with the notice to report. Jurors will be asked to complete the juror information sheets and questionnaires and return them via U.S. Mail or email by a certain date. Juror questionnaires will include an attestation clause making prospective jurors subject to the penalties of perjury for submitting false information. All returned juror questionnaires must be given to the jury clerk to be maintained with the Court's jury records.

### **A. Regular Questionnaire**

The Court has developed a regular juror questionnaire that can be modified by the presiding judge after consultation with counsel.<sup>1</sup> The regular juror questionnaire will be available on the Court's website for review by counsel. If there is sufficient time, the questionnaire may be vetted by counsel and the presiding judge during pretrial proceedings (consider using ZoomGov) and adjustments made as appropriate.

The questionnaire includes biographical information typically asked during voir dire questioning and prior jury service but also includes questions about financial hardship. Hardship might also include concern for exposing other members of their household to the virus, the need to care for children, and the need to look for a job.

The presiding judge must determine how the completed regular questionnaires will be shared with counsel and parties. If deemed appropriate, completed regular juror questionnaires may be filed in ECF, with access only given to attorneys and the Court. If such questionnaires are filed, access to the questionnaires will be removed after the trial. In criminal cases, the presiding judge must also determine how best to share the completed regular questionnaires, which contain each potential juror's name and other detailed personal information, with the defendant. One option is to have the defendant inspect the completed questionnaires at the courthouse in a designated room for a specified time.

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<sup>1</sup> Please notify the jury clerk as soon as possible, or at least 6 weeks before the trial if the presiding judge intends to use a different regular juror questionnaire.

## **B. Supplemental Medical Questionnaire**

Medical questions will be asked on a supplemental questionnaire so that questionnaire can be sealed to protect the privacy of the medical information provided to the Court. The medical questionnaire states that this information is necessary so that the Court can adequately protect the health and safety of all jurors.

The supplemental questionnaire includes questions about:

- (1) whether the prospective juror has been exposed to or diagnosed with COVID-19 and the dates of such exposure and/or diagnosis;
- (2) whether the prospective juror is currently under a Minnesota Department of Health or employer-imposed isolation or quarantine period;
- (3) whether someone they live with has experienced symptoms indicative of a COVID-19 infection or been diagnosed with the disease; and
- (4) whether they, or someone they live with, suffer from an underlying medical condition that would place them at higher risk for severe illness should they become infected with COVID-19; and
- (5) whether they have a medical condition that makes wearing a mask difficult or impossible.

The questionnaire states that these questions are being asked only to determine if a juror can serve and that the answers will be sealed and made available only to the judge. The Minnesota Department of Health has reviewed the questionnaire and their feedback has been incorporated into the document.

## **C. Unwillingness to Serve**

We need to summon significantly more jurors for each trial because we have found that a substantial number of prospective jurors are unwilling or unable to serve. It is recommended that the presiding judge review the answers to the regular questionnaires in advance with counsel (by ZoomGov) and excuse jurors as soon as possible so that the jurors reporting to the courthouse will likely be able to serve unless excused for cause.

The judge should review the answers to the supplemental medical questionnaires and make determinations on whether prospective jurors should be excused. If the judge deems it necessary, the judge may consult with counsel when conducting this review but should not disclose the names of prospective jurors.

#### **D. No Systematic Exclusion**

There should be no systematic exclusion of jurors based on age, or any other factor. Such a systematic exclusion of any group of jurors would likely not pass constitutional muster. If a juror believes that it is a hardship to serve, whether based on age, exposure, underlying medical condition, or the like, they may be excused on any individual basis. But the Court cannot have a policy of excusing all jurors of a particular group.

### **III. Contact with Prospective Jurors Before Trial**

To ensure updated health reporting, the jury staff will contact prospective jurors, by email, or telephone if a juror does not have access to an email account, in advance of their report date. Any new, disqualifying medical information should be immediately communicated to the presiding judge.

### **IV. Ongoing Study of Protocol**

After the first and subsequent jury trials are completed, the jury staff will report to the bench statistics about the number of prospective jurors who received summonses, the number of jurors excused for virus-related reasons, the number of jurors excused for hardship, and perhaps other statistics that would provide the Court with guidance going forward.

## **V. Preparations for Prospective Jurors**

### **A. Parking Reimbursement**

To avoid jurors traveling by public transportation, the Court will offer jurors reimbursement for parking downtown. The AO notes that taxis and ride sharing services are not reimbursable as a public transportation “unless in an emergency situation the clerk of court specifically authorizes the use of a taxicab (or Uber) as essential to the expeditious performance of a juror’s duties.” *Guide to Judiciary Policy*, Vol. 4, section 365.50.25(b). The Clerk will provide this authorization and pay for taxicab (or Uber/Lyft/etc.) for prospective jurors in the Twin Cities metropolitan area and in Duluth.

### **B. Signage**

The Court has placed signage at the courthouse entrance explaining the restrictions in place in the courthouse, including the wearing of masks and social distancing. The floor has been marked to ensure proper social distancing from the moment of entry into the courthouse, including through security, juror check-in, the courtrooms, bathrooms, and elevators. In certain locations, footprints have been added to the floors to help direct jurors. When reporting for jury selection, jurors are provided a small piece of paper identifying the location where they are supposed to report to help avoid any unnecessary milling around the public areas of the courthouse.

### **C. Juror Assembly and Orientation**

1. The Court will issue summons to prospective jurors, placing the jurors on-call for a two-month period. If called, jurors will receive a notice to report on a specific date.

2. Juror orientation materials will be mailed to prospective jurors in advance of their reporting date. Included in that packet is a map of the courthouse and the location where the juror should check in. Jurors will be instructed that they will receive a check-in time to report for jury service.
3. The randomized list of jurors who will be asked to report for selection will be prepared at least one business day before the trial. The random list will identify the time the jurors will be asked to check-in. The jury clerks will notify the jurors of their individual check-in time. The randomized list of jurors will be given to counsel before the selection process begins on the morning of trial.
4. The Court will place a juror check-in table in the lobby of each courthouse where we can assure that the juror is properly wearing a mask and to direct the juror to the appropriate courtroom.
  - a. The floor will be marked to ensure appropriate social distancing while jurors check-in.
  - b. The check-in clerk will inquire of each prospective juror whether there is any update in their health and/or exposure relevant to jury service.
  - c. Each prospective juror will be screened for symptoms and asked verbally if he or she has any of the following symptoms: a new sore throat, a new cough, fever or feeling feverish, new muscle aches, shortness of breath, chills, new headache, or new loss of smell or taste. Any juror who answers in the affirmative to any symptom will be excused and encouraged to seek medical evaluation and testing.
  - d. If the juror failed to complete a regular questionnaire and supplemental questionnaire prior to reporting, they will be asked to complete both questionnaires before voir dire begins.

- e. A jury clerk will be located at each courtroom being used to help direct the prospective jurors to their assigned seats and answer any questions they have.
5. For criminal trials, assuming a pool of 64 prospective jurors: 16 jurors would be invited for an 8:00 am check-in time, to report to the courtroom at 9:00 am; 16 jurors would be invited for a 10:00 am check-in time, to report to the courtroom at 11:00 am; 16 would jurors be invited for a 12:00 p.m. check-in time, to report to the courtroom at 1:00 pm; and (if necessary) 16 jurors would be invited for a 2:00 pm check-in time, to report to the courtroom at 3:00 pm. The judge and counsel should agree on the number of alternates to be selected; consideration should be given to having additional alternates due to the emergency situation.
  6. For civil trials, to minimize the number of potential jurors, we will only summon 32 (or fewer) jurors and use an 8 or 9-person jury depending on the length of the trial: 16-24 jurors would be invited for an 8:00 am check-in time, to report to the courtroom at 9:00 am; and 8-16 jurors would be invited for a 9:00 a.m. check-in, to report to the courtroom at 10:00 am.
  7. Juror orientation sessions will take place in a designated courtroom with seats marked for appropriate social distancing. The orientation should include the usual videos played to the jury as well as the video created by the Chief Judge regarding mitigation of the risks of the virus in the courthouse. Further instructions will be given about the safety protocols in place, including daily symptom screening, mandatory mask usage, the limitation on two individuals per elevator, two individuals per public bathroom, one individual per smaller bathroom, social distancing, the use of hand sanitizer, and the importance of washing hands. The jury clerks will also address what jurors should do if they experience symptoms indicative of COVID-19. For a civil trial, if more than 16 jurors are asked to report at the same time, an additional courtroom may be used for juror orientation to maintain appropriate social distancing.



8. In the trial courtroom, a juror seat location, socially distanced from any other juror, will be marked by juror number and the juror. Jurors will be provided the following sanitation supplies: gloves, hand sanitizer, and a mask. Individually wrapped snacks, beverages, and lunches will be provided each day to the jurors, unless they wish to bring their own food and beverages to the courthouse. If taking individual lunch orders, jurors will write down their lunch order on separate menus or submit the orders electronically to the jury staff. Hand sanitizer should be located near any electronic device “plug-in” area where jurors are likely to charge their electronic devices.
9. Detailed seating charts of the courtrooms or conference rooms have been prepared to ensure proper social distancing. At any given time, there should be no more than 16 prospective jurors and limited staff in each courtroom or conference room.
10. A CSO or court staff person will be stationed at the elevator bank to ensure safe use of the elevators as the jurors proceed to the courtrooms.
11. There should be no magazines or newspapers in any jury assembly locations.
12. We will work with the GSA to adjust the HVAC for optimal air replacement in the jury assembly locations.
13. Jurors should not be allowed to access the skyway or leave the courthouse, except for brief outside breaks during the day.
14. We will ensure that GSA thoroughly cleans the rooms used each day for jury selection and trial, including in between voir dire sessions.

## **VI. Courtroom Preparations**

## **A. Public Health Consultation and Social Distancing**

The Court has retrofitted a trial courtroom to create a safe environment. The courtroom design plans for social distancing where possible. Jury chairs have been removed to create spacing between jurors and plexiglass dividers have been installed. In Minneapolis, for criminal trials and civil trials with more than eight jurors, we added chairs with portable monitors in front of the jury box. The lectern and counsel tables have been moved further away from the jury box for appropriate social distancing. In St. Paul, we added chairs in front of the jury box and counsel will speak from portable lecterns situated next to counsel tables.

The Court will begin to conduct jury trials with one designated trial courtroom in the Minneapolis and St. Paul, outfitted with plexiglass and appropriate technology. With experience, the Court may equip additional courtrooms for jury trials.

## **B. Technology Needs**

A member of the IS staff will be available at all times because of the need for heavy reliance on technology.

## **C. Courtroom Layout**

A detailed layout of the courtroom has been prepared to ensure proper social distancing. The Court will install plexiglass dividers at appropriate locations in the trial courtrooms where distancing cannot be maintained. To the extent possible, the Court will provide a standard plexiglass location model for use in each courtroom in each courthouse. Plexiglass may be installed between the judge and the parties for a sidebar (although we strongly recommend against traditional judge/lawyer sidebar conferences), at all counsel tables, around the lectern, around the witness stand, around the court reporter and interpreters, around jurors, and/or at other locations unique to the courtroom. Modular plexiglass is being used so that it may easily be installed and de-installed in courtrooms and moved if requested by the presiding judge.

#### **D. Microphones for Jurors**

It is not possible to provide enough portable microphones so that each member of the jury venire has their own microphone. Instead, for voir dire, each juror will be asked to speak, while standing, into microphone on a stand. See section VII, below, for more information on conducting voir dire.

#### **E. Masks and Clear Face Shields**

Everyone must wear masks in the common areas of the courthouse and when moving from one location to another. All trial participants must wear masks that are devoid of any messaging. In the courtroom, everyone, except a witness who is testifying, must always wear a mask, unless the presiding judge directs otherwise. The presiding judge, for example, may wish to direct that jurors remove masks when answering questions during voir dire. Once seated, courtroom participants may also wear clear plastic face shields.

#### **F. Meeting Space**

Break-out rooms will be identified and assigned in advance to parties to enable counsel and their client to have private discussions safely during breaks in the trial. For defendants who are detained, a room in the cellblock may be designated for such private discussions.

#### **G. Sidebar Conferences**

We have successfully tested headset communications to permit a safe method for the Court to conduct sidebar conferences. The set can accommodate up to 8-9 participants so court reporters can record the conversations. The use of the white noise system can prevent jurors from overhearing the conversations. Judges will limit the number of sidebar conferences allowed as best as possible. For more information on sidebar conferences, see section VIII.E.

#### **H. Interpretation**

We will provide a safe location in the courtroom for the interpreter at a separate table with any necessary plexiglass dividers. For more information on interpretation, see section VIII.C.

### **I. Public Viewing**

The public and the media must be able to view a trial. It is not safe to have members of the public in the courtroom during the trial so we will provide video and audio of the trial to either the jury assembly room or, if necessary, to a remote courtroom. Masks and social distancing will be required at all times. We will provide sanitation supplies for the media rooms to protect reporters who are covering trials. Upon request, if there is sufficient room in the courtroom after the jury has been selected, the judge may permit a limited number of immediate family members to be seated in the gallery. They must remain in the courtroom during short breaks to permit jurors to use the public bathrooms near the courtroom. They will be required to move to the remote viewing area during longer breaks in the trial.

There may be instances when it is inappropriate to have the public and media observe portions of the trial. The judge and his or her staff must work out a communication plan with I.S. staff to stop the video or audio feed for the public and media. The I.S. staff is also responsible for verifying throughout each day of trial that members of the public and media can adequately hear and see the trial in the jury assembly room or remote courtroom.

### **J. Cleaning and Air flow**

We will require GSA to thoroughly clean each night after a day of trial. Counsel and court staff should be encouraged to take all their papers, exhibits, and belongings out of the courtroom each evening to ensure that all surfaces can be adequately cleaned in the courtroom. Similarly, each evening, all conference rooms should be emptied of belongings, or all items placed in one corner, so that TASKS is able to thoroughly clean the conference rooms. All microphones, face shields, plexiglass dividers, iPads, headsets, monitors, and laptops should be cleaned. Attention should be paid to frequently touched surfaces such as doors, the swinging gate, tables, and the lectern.

The GSA has increased airflow throughout all courthouses by four additional hours each day and from 3:30 a.m. to 7:00 p.m. The Court requested additional air exchanges throughout the day and 24/7 airflow when jury trials are in session.

## **VII. Conducting Voir Dire**

### **A. General Voir Dire Process**

The parties and the Court should consult in advance on how to proceed with voir dire. This plan contemplates 16 jurors at a time in the courtroom completing voir dire. A judge may choose instead to conduct voir dire on an individual basis or with a smaller number of jurors. At the conclusion of the questioning of a group, it is anticipated that the parties could make any motions to excuse a juror for cause. Those motions could be made using the private headsets with the Court. Any jurors excused for cause would be allowed to leave the courthouse. Jurors not excused would move to designated courtrooms or conference rooms to await the final exercise of peremptory challenges. The next 16 jurors (or an alternative number) would be summoned to the trial courtroom and the process would continue until the appropriate number of jurors remained to proceed with the exercise of peremptory challenges.

Jury venire groups will be seated in the courtroom gallery during voir dire. A microphone on a stand will be placed in the well of the courtroom for individual jurors to speak into from a standing position. The floor will be marked to indicate where the juror should stand while answering questions and the microphone will be placed so that jurors do not need to touch the microphone while speaking. The parties and the Court should consult in advance to determine where counsel will sit during voir dire to ensure they are able to adequately see and hear individual jurors when they are speaking.

### **B. Juror Communications During Voir Dire**

Any juror who wishes to share a concern privately with the Court during voir dire will be provided with a headset to speak with the judge in a safe manner,

with the lawyers and court reporter participating as well. The presiding judge's courtroom deputy, or another designated person, must clean the headset after it is used by a juror.

### **C. Jury Selection**

At the conclusion of the questioning of the prospective jurors, the remaining qualified jurors will be divided between a conference room or other courtrooms to wait until the jury is selected. Potential jurors will be removed from the trial courtroom during the exercise of peremptory challenges, to keep the numbers limited to always accomplish appropriate social distancing. Because prospective jurors will not be in the courtroom during the exercise of peremptory challenges, counsel should be asked to verbally exercise their peremptory challenges to avoid needing to exchange paper.

After counsel exercise their peremptory challenges, the Court will announce the makeup of the jury; all jurors not selected will be asked to leave the courthouse. The selected jury would then come to the trial courtroom to be sworn in.

## **VIII. Trial**

### **A. Limits on Jury Trials**

Given the high demand for space during a jury trial, including the use of the jury assembly room, the courtroom, a "jury room" courtroom, and possibly a courtroom for public and media access, along with the concern for elevator and bathroom use, only one jury trial will be conducted at a time in a courthouse until the Court is comfortable with jury trial arrangements. The Court does not anticipate that more than two trials could be held at one time in either Minneapolis or St. Paul. The CRDs are prioritizing the need to proceed with a particular jury trial and court staff facilitating the scheduling of those trials.

### **B. Jury Room**

A second courtroom in Minneapolis and the 7<sup>th</sup> floor conference room in St. Paul will be designated as the jury room for purposes of the trial. To prepare

the courtroom and conference room to serve as a jury room, all phones, computers, and rule or other law books must be removed or disabled. In addition, the courtroom's USMS cameras must be covered and the Court's cameras and sound system must be disabled.

Jurors will check-in with the jury clerk each day when entering the jury room courtroom. Each day, each juror must be verbally screened for COVID-19 symptoms, whether anyone in their household is exhibiting COVID-19 symptoms, tested positive for COVID-19, or is awaiting COVID-19 test results. Each juror must be verbally screened for the following symptoms: new sore throat, new cough, fever or feeling feverish, new muscle aches, shortness of breath, chills, new headache, new loss of smell or taste. The jury clerk must immediately notify the presiding judge if a juror answers in the affirmative to any question or symptom. The presiding judge will determine if the juror needs to be excused and encouraged to seek medical evaluation and testing.

Jurors should always remain in the jury room courtroom/conference room (except for an outside break at lunch), when they are not in the trial courtroom. A refrigerator and microwave will be placed in the room for jurors' use. The room will be marked to ensure appropriate social distancing during juror breaks.

For deliberations, additional tables will be added to the well of the jury room courtroom to create a very large square table, enabling all 12 (or fewer for civil trials) jurors to see and hear each other but still maintain appropriate social distancing. A careful layout of the jury deliberation room will be created, and the seats appropriately marked. Before deliberations begin, both a mobile whiteboard and a large video monitor will be moved into the jury deliberation room to assist with deliberations.

### **C. Interpreters**

The Court will provide a private channel for simultaneous interpretation on a headset system, separate from a channel that a client may choose to use to speak with his lawyer, without the presence of the interpreter. The interpreter will be placed in the courtroom in a socially distanced location, with appropriate plexiglass dividers. Interpreters must wear a mask when moving in the courthouse.

If needed, the Court will allow the defendant to privately communicate with his attorney with the assistance of an interpreter.

#### **D. Evidence Presentation**

1. If possible, all documentary evidence will be provided electronically with no paper used in the courtroom to protect the safety of all participants. If necessary, the Court will provide training to lawyers on how to scan documents and utilize appropriate software to provide electronic evidence. Paper exhibits admitted during trial will be scanned to be available electronically for the jury. This will also facilitate jurors' review of evidence during deliberations which will be through thumb drives with an index (it would be helpful to have a linked index, especially for trials with lots of exhibits). Some of the judges have already been utilizing this method of jury review of evidence during deliberations. The Court will provide the jury the laptop and connection to a large monitor. The parties of one side will be asked to accumulate all admitted exhibits and an index. In criminal cases, after the evidence has all been admitted, the US Attorney's Office will be asked to accumulate all admitted exhibits, including any evidence submitted by the defendant, on a thumb drive with an index. IS Staff will show the jury how to review the evidence with the laptop and monitor.
2. To the extent that the parties need to introduce physical evidence, any such evidence should be contained in a plastic covering and handled only by one person wearing disposable gloves. The plastic covering should be wiped down with disinfecting wipes before it is provided to the jury in their deliberation room. Jurors will be required to use gloves to handle the evidence.
3. Paper exhibits should be strongly discouraged during testimony as screen review should always be sufficient. If necessary, for a witness to review a paper document, the lawyer should place any paper exhibits on the witness stand before the witness is called to testify. Paper exhibits that are admitted should be scanned before jury deliberations to eliminate the need for paper during



deliberations. Both the lawyer and the witness should use gloves when handling the exhibits.

4. The witness stand, witness microphone, witness chair, and the witness monitor should be cleaned between every witness with disinfecting wipes. Ordinarily, this brief cleaning will be conducted by the presiding judge's courtroom deputy unless the judge asks the witness to conduct the cleaning or other arrangements are made.
5. Counsel should question a witness and argue to the Court from counsel table or a provided portable lectern to avoid sharing the main lectern. In general, counsel should remain seated when questioning a witness to ensure that they are close enough to the microphone to be adequately heard. Counsel should never approach the witness or the Court. Opening statements and closing arguments, and with permission of the Court, lengthy direct and cross examinations, may be made from the main lectern, but microphone covers must be used. Counsel must remove their used microphone cover and use disinfecting wipes to clean the microphone and lectern when they are finished speaking at the lectern.
6. Any demonstratives must be displayed and shared electronically.

#### **E. Sidebar Conferences**

Because of the difficulty in allowing communications in close quarters, the Court will not permit traditional sidebar conferences. Headset communications and the use of white noise will be the preferred manner of communicating between Court and counsel if sidebar discussions are necessary. The Court should strive to hold private communications with counsel when the jury is out of the courtroom. Court reporters will have access to any headset devices used for sidebars or will be present for any sidebar conferences that take place with the jury out of the courtroom.

Individual headsets will be assigned and labeled at the beginning of trial, so that the same person uses the same headset each day. Headsets must be wiped clean at the end of each day.

## **F. Criminal Defendants**

1. The Court and counsel should identify and discuss issues unique to the constitutional rights of defendants during pretrial proceedings. The Court should consider having the parties submit briefing to identify any particular case law that can provide guidance to the Court. Possible unique issues raised by proceeding to trial in a criminal case during an emergency have been addressed in a memo to the Court by a law clerk, so that the remainder of the bench can benefit from that research.
2. The Court must always consider the ability of the defendant to adequately communicate with his counsel at trial. First, consider whether a safe private consultation might occur in the cell block first thing in the morning, during breaks, during the lunch hour, or at the conclusion of the day. Second, consider whether the defendant can communicate with counsel freely and safely during trial. We will provide plexiglass dividers at counsel table and headsets for private communications. The Court may consider whether to allow counsel, parties, and other case participants to privately communicate using mobile devices.
3. The Court should consider the ability of the defendant to review discovery and other trial materials each night after trial. (Under current protocol, that defendant would be placed in quarantine at Sherburne each night - limiting his ability to communicate with counsel and review trial materials.) The Court will work with the detention center to accommodate a defendant's needs during the trial.
4. The Court will ensure that the jury is unable to see the presence of shackles or handcuffs on the defendant if such restraints are necessary. If requested, the Court will arrange for the defendant to

change into street clothes each day. Those clothes should be bagged and handled carefully with gloves.

5. The Court will ensure that the courtroom layout allows the defendant to see the witnesses and jury during the trial. The Court will encourage the use of clear plastic face shields for witnesses to avoid concerns that the parties are unable to evaluate a witness's credibility. The Court should consider making findings at the beginning of trial that the use of clear plastic face shields through which the defendant can see and hear the witness is necessary to ensure public safety, assures the reliability of the evidence, and fully preserves the defendant's confrontation rights. See section VI.E., above, for more information on the use of masks and face shields during the trial.

## **G. Witnesses**

1. Counsel should ensure that witnesses are provided with any exhibits they might be asked about during questioning in advance, to the extent possible.
2. The Court will provide each witness the following in advance of their testimony:
  - a. A bottle of water.
  - b. A clear plastic face shield.
  - c. Disinfecting wipes for the witness to use on the stand, on the microphone, and on the monitor.
  - d. Gloves (for handling exhibits).
4. It is possible that witnesses may refuse to appear or honor a subpoena out of concerns about the transmission of the virus. The Court should discuss with the parties consenting to the witness appearing by videoconference technology if it is not safe for the witness to appear in person or is not safe for the witness to travel to Minnesota. Video testimony will be easier to accomplish in civil trials; in criminal trials both parties must consent before any witness can appear by video conference.

5. The Court will plan for witnesses to wait for their turn to testify in the public hallways or in the attorney conference rooms. If attorney conference rooms are used, social distancing must be enforced. The Court will provide disinfecting wipes in the attorney conference rooms.
6. Parties should provide witnesses with lunch or snacks as appropriate and discourage witnesses from walking in the skyway during the lunch hour or during breaks.

## **H. Breaks**

The Court should keep in mind the time it will take everyone to use restroom facilities (up to two at a time) during a break and time the breaks accordingly. Bathroom assignments may be made for various categories of courtroom participants (e.g., multiple bathrooms assigned to jurors).

## **I. Juror Supplies**

Each juror will be assigned a plastic container, which will be labeled with their juror number. The containers will be used to store juror notebooks, pens, and pencils, and any other supplies. At the end of each trial day, jurors will be asked to store their items in the containers and move them to a location that will not interfere with the ability to clean surfaces every evening.

## **J. Deliberations**

1. Only one jury member should run the computer equipment for exhibit review during deliberations. That jury member should wear gloves and have disinfecting wipes available. A large monitor will be installed to allow all jurors to see exhibits being shown.
2. Each juror must be provided with a copy of the jury instructions.
3. Only the foreperson should prepare any questions for the judge. We will procure envelopes that have pre-taped closures so that the

foreperson does not need to lick the envelope or use tape. The foreperson should wear gloves when preparing the note. The presiding judge and his or her staff should develop a communication plan with the CSOs to handle jury communications or issues. For example, the CSO may transmit the message from the jurors electronically or in paper.

4. Mobile devices should not be collected during deliberations and jurors should be instructed that mobile devices may not be used during the time the jury is deliberating. Jurors likely would prefer that devices not be collected so that they can be contacted for family emergencies.
5. Only the jury foreperson signs the verdict form. The foreperson should wear gloves when signing the verdict form. When returning to the courtroom to give the verdict, the CSO and foreperson should wear gloves to pass the verdict form from the foreperson, to the CSO, to the judge.

#### **K. Possible Illness During Proceedings**

1. The presiding judge's CRD must send the supplemental medical questionnaire to counsel before the trial. All counsel and parties who will attend the trial must complete the questionnaire. (Please note that in-custody defendants do not need to complete the questionnaire.) Counsel must return the completed questionnaires at least one business day before the trial.
2. Each day, every trial participant must be verbally screened for COVID-19 symptoms, whether anyone in their household is exhibiting COVID-19 symptoms, tested positive for COVID-19, or is awaiting COVID-19 test results. Each participant must be verbally screened for the following symptoms: new sore throat, new cough, fever or feeling feverish, chills, new muscle aches, shortness of breath, new headache, or new loss of smell or taste. If any participant answers in the affirmative to any question or symptom, the presiding judge must be immediately notified to determine if the participant must be excused and encouraged to seek medical

evaluation and testing.

- a. The jury clerk will screen all jurors when they check-in each day.
  - b. The CRD, or another designated person, will screen counsel and parties before trial starts each day. If family members are allowed to observe the trial from the gallery, the CRD will screen the family members when they enter the courtroom.
  - c. Counsel must screen each witness that they intend to call to testify that day.
  - d. The USMS must screen all in-custody defendants each day.
  - e. All court staff who are attending the trial or supporting the trial must self-monitor their symptoms and immediately report to their supervisor and the presiding judge if they exhibit COVID-19 symptoms.
  - f. All deputy marshals and CSOs who will be attending the trial or in contact with the in-custody defendant must self-monitor their symptoms and immediately report to their supervisor and the presiding judge if they exhibit COVID-19 symptoms.
3. For the length of the trial and for the 5 days immediately following the conclusion of the trial, counsel, parties, witnesses, jurors, and court staff will be required to immediately notify the Court if either they or a person with whom they have had contact has exhibited symptoms of possible COVID-19 infection or tested positive for COVID-19.
  4. Any notifying individual must obtain a COVID-19 test as quickly as possible. The Court may postpone proceedings pending the outcome of the test or, if possible, proceed with trial (for example, substituting an alternate juror).
  5. If at any time during the proceeding, the Court in its discretion, after consultation with counsel, should consider declaring a mistrial

if the Court believes that the trial may not be able to proceed without endangering the health and safety of any individual.