

# NOTICE TO THE BAR

## **COVID-19 – CRIMINAL AND CIVIL JURY TRIALS – PUBLIC INFORMATION AND GUIDANCE PURSUANT TO THE SUPREME COURT’S MAY 11, 2021 ORDER**

This notice provides a comprehensive update on the resumption of in-person jury trials and the continuation of virtual civil jury trials pursuant to the Supreme Court’s May 11, 2021 [Order](#). It supersedes this September 11, 2020 [notice](#).

Summoning Jurors .....	2
Qualification.....	2
Pre-Reporting Disqualifications and Excusals .....	2
Pre-Reporting Notice (Instead of COVID-19 Supplemental Questionnaire).....	3
Technology Assessment and Support .....	3
Protocol for Virtual Jury Selection .....	4
Selection of Cases for Trial.....	6
Locations for Jury Proceedings.....	7
Courthouse COVID-19 Protocols .....	7
Face Masks.....	7
Arrangement of the Courtroom.....	8
Sidebars .....	9
Confidential Attorney-Client Communications.....	9
Exhibits/Evidence .....	9
<i>Virtual Civil Jury Trials</i> .....	9
<i>Socially Distanced In-Person Jury Trials</i> .....	9
Cleaning .....	10
Notification of Potential Exposure.....	10

## Summoning Jurors

All counties are continuing to issue uniform juror summons. Consistent with Court Orders and this March 4, 2021 [notice](#) to the bar, the juror summons informs prospective jurors (1) that the jury selection process will begin in a virtual format; and (2) that their service may continue virtually or may involve reporting in person to a courthouse with safety precautions. The summons documents also note that the Judiciary will provide electronic devices (with internet capacity as necessary) and assistance to jurors who require technology in order to participate in virtual proceedings. Additional information is available on the [Jurors](#) page of the Judiciary's public website.

## Qualification

Jurors still are encouraged to qualify online using the eResponse Juror Portal, which enables responses to the standard questionnaire regarding eligibility to serve as a juror in general and availability to serve as scheduled. Jurors who do not timely respond online receive a hard copy questionnaire that can be completed and returned by mail. Consistent with pre-COVID-19 trends, more than 70% of responding jurors thus far have qualified using the online option. Thus far, juror yields (including for virtual civil jury trials) are similar to before the COVID-19 pandemic.

## Pre-Reporting Disqualifications and Excusals

Jurors who do not meet the qualification criteria established by N.J.S.A. 2B:20-1 are required to contact the court and substantiate disqualification. Jurors who seek to be excused for any of the grounds set forth by N.J.S.A. 2B:20-10 also must contact the Jury Management Office and supply documentation as necessary to substantiate their claim.

Consistent with N.J.S.A. 2B:20-9 and pre-COVID-19 practices, pre-reporting excusals are handled by the Assignment Judge or designee and other requests are handled during jury selection. For example, a juror who supplies a doctor's note substantiating that they are unable to serve based on a medical condition unlikely to change within one year would be excused before reporting for selection, without any new requirement to disclose their medical condition to the trial judge or attorneys. In contrast, consistent with applicable law and Supreme Court Orders, a juror who does not supply documentation required for a pre-reporting excuse and instead requests an excuse during *voir dire* (questioning

of the panel) would be addressed at sidebar in the presence of the judge, attorneys, and parties.

#### Pre-Reporting Notice (Instead of COVID-19 Supplemental Questionnaire)

Jury Management staff is continuing to inform jurors about the Judiciary's COVID-19 health protocols, including the requirement that individuals who have recently tested positive for or developed symptoms consistent with the virus, or who are subject to quarantine or otherwise at risk of transmitting the virus, must not report in person to the courthouse.

The Court's May 11, 2021 [Order](#) provides that all jury selections (for both criminal and civil trials) will begin in a virtual format. Accordingly, the COVID-19 supplemental questionnaire no longer is necessary. Rather, all confirmed jurors will receive an electronic notice before reporting for virtual selection. That notice will reiterate applicable COVID-19 health protocols and advise the juror to raise any questions or concerns about reporting in person (if they proceed to selection for an in-person trial) during the virtual phase of selection. Such questions will be addressed at sidebar in the presence of the judge, attorneys, and parties.

#### Technology Assessment and Support

As noted, all jury selections begin in a virtual format. Accordingly, court staff contacts each juror before the selection date to request the following information:

1. Do you have private, uninterrupted access to the internet via a computer or tablet for a few hours each day the week you are summoned?
2. Please select the following technology that you have access to during your service. The electronic device **MUST** have audio and video capability. Please select all that apply.
  - Desktop computer or laptop with wi-fi or another internet connection
  - Desktop computer or laptop with no internet connection
  - Tablet with wi-fi/unlimited data plan
  - Tablet with limited data plan
  - Tablet with no internet connection
  - Smartphone with unlimited data plan

- Smartphone with limited data plan
- No device and internet connection
- Other

### 3. Do you have experience with web-conferencing programs such as Zoom?

For virtual jury selection, the Judiciary provides technology and assistance to jurors who otherwise could not participate. Jury management staff schedules an appointment for a juror to pick up a tablet (with Broadband if necessary) at the courthouse or arranges to deliver the tablet to the juror at an appropriate location.

As provided in the Court's January 7, 2021 and February 1, 2021 Orders, the Judiciary also will provide a Galaxy tablet (with Broadband if necessary) to jurors who are empaneled for virtual civil jury trials. The trial judges alternatively may permit jurors to use their own technology if it is reliable.

### Protocol for Virtual Jury Selection

The Supreme Court in 2014 approved and promulgated the New Jersey Judiciary [Bench Manual](#) on Jury Selection. Part 4 addresses the *voir dire* process and includes a number of key requirements, including that the *voir dire* questions be distributed to jurors in writing, with the names of the trial witnesses attached, and provided to the jurors with writing implements so that they can mark their answers to the questions in advance of oral questioning by the judge.

In a virtual setting, the process of distributing the *voir dire* questionnaire and instructing jurors to review and mark their answers necessarily operates differently. Importantly, and in contrast to pre-pandemic practices, the Judiciary has valid email addresses for all jurors who are scheduled to report for virtual selection – and has communicated with jurors via those email addresses for the purpose of inviting them to the Zoom selection. Before COVID-19, the court would have had email addresses for almost all jurors but would not necessarily have used those email addresses to communicate with jurors about specific aspects of jury selection before their reporting date.

As recommended by the Post-Pandemic Planning Committee on Resuming Jury Trials, the Judiciary Working Group on COVID-19 Jury Operations, and the Supreme Court Committee on Jury Selection in Civil and Criminal Trials, the Supreme Court has approved the following protocol as mandatory for criminal trials and encouraged for civil trials:

1. The judge at a pretrial conference will confer with counsel about the content of the written questionnaire. Counsel can suggest any case appropriate *voir dire* questions as well as specific open-ended questions. The written questionnaire will be reviewed by counsel before distribution to jurors.
2. Jury management staff will email the written questionnaire to all jurors on the last business day before their reporting date (e.g., Friday for a Monday selection; Monday for a Tuesday selection), along with instructions to have those questions available when they report to the virtual selection. Jurors should be directed to print the questionnaire if possible. The instructions also should remind jurors to bring a pencil/pen when reporting to the virtual selection. Instructions could be provided to remind jurors of the requirements that they must not share information or discuss the case and must not conduct any independent research.
3. As jurors log in to the virtual selection session, designated staff will confirm that they have received the questions and remind them to have those questions available. Staff also will remind jurors to have a writing implement with them.
4. The judge also will read aloud all *voir dire* questions. The judge will provide explanatory interpretation for each question as necessary and will offer examples, as appropriate, concerning the type of information a juror might have to supply to answer a question. If jurors are working with a hard copy, they will be instructed to mark all questions that apply to them for further discussion when they are individually questioned. If they are not working with a hard copy, they will have to note the question numbers that apply to them. Judges will ensure that jurors have adequate time to consider their answer to each question and will offer additional explanation as necessary during the individual *voir dire*. The judge will adhere to the requirements of the Bench Manual. These steps, as adapted for virtual selection, closely follow the pre-pandemic, in-person process.
5. If necessary, the judge will provide additional time during the virtual *voir dire* session for jurors to review the questions and mark or indicate their answers.
6. During the selection process, the questions also will be displayed at least once via screen sharing so that jurors easily can view them (including jurors

using a smartphone). Questions need not remain shown on the screen at all times, so that judges and attorneys can view the jurors during selection.

Other aspects of the *voir dire* process will remain consistent with in-person practices, with judges exercising substantial discretion as to how to question jurors. Among other matters, hardship requests will be handled as provided in Section 4.7.2 of the Bench Manual (“The questions regarding disqualification of a juror may be reviewed at the outset along with hardship issues. Jurors determined by the court to have reasons why they cannot serve can be excused immediately.”) In the virtual setting, this means that where a judge grants a hardship excuse (whether in the presence of the panel or during individual questioning in a sidebar breakout room), the juror may be permitted to log out of the virtual session. Consistent with Section 4.8 “judges in their discretion may alter the sequence and wording of the questions as they determine appropriate, as long as the substance is not materially modified.” The other provisions of the Bench Manual also will be followed during the virtual selection process.

The Bench Manual does not require jurors to complete and return to the court written questionnaires in advance of reporting. Nor does it direct distribution to counsel of questionnaires that have been completed by jurors. Rather, the approach set forth in the Bench Manual anticipates that jurors will receive the written questionnaires just before the *voir dire* process starts. Any request to adjust that protocol should be addressed during the Rule 1:8-3 conference.

### Selection of Cases for Trial

Consistent with the Court’s May 11, 2021 [Order](#), criminal jury trials that involve detained defendants will be the highest priority.

Courts will continue to notify attorneys in cases that should be prepared to proceed to trial soon. Judges will schedule conferences and walk-throughs in preparation for trials. Judges also will address any COVID-19 issues on a case-by-case basis (e.g., current COVID-19 diagnosis or quarantine of an attorney, party, or witness).

## Locations for Jury Proceedings

Criminal and civil jury trials will be conducted on-site in a courtroom large enough to accommodate all trial participants with social distancing. Courtrooms in each county have been selected based on a rigorous review to confirm that jurors and all trial participants can be seated, with appropriate sightlines, with at least six feet of social distancing.

During in-person socially distanced trials, all jurors will be in the same courtroom as the judge and attorneys. Additional locations in the courthouse may be used for sidebar communications, juror breaks, and real-time viewing by family, friends, media, and public observers.

## Courthouse COVID-19 Protocols

All persons seeking entry to or occupancy of court facilities are notified of Judiciary COVID-19 health protocols. Many court locations include thermal scanning as part of the point-of-entry screening process. Individuals – including jurors, attorneys, and other trial participants – who are symptomatic for COVID-19 or otherwise at risk of spreading the virus are not permitted to enter or remain in court facilities.

In addition to the [COVID-19 information](#) posted on the Judiciary's [Jurors](#) webpage and covered during juror orientation, jurors scheduled to report for in-person selection and in-person trials also are reminded (via email and/or text message) not to report if they may be exposed to or at risk of transmitting the virus.

## Face Masks

The Supreme Court's June 9, 2020 [Order](#) requires face masks and social distancing by all persons in non-private areas of court facilities. Signage is posted in lobbies, elevators, hallways, and courtrooms reminding court users of those universal requirements, which are subject to limited exceptions for medical need. Within courtrooms, judges also may temporarily remove or lower their mask, or direct other participants to do so, as may be necessary for audibility and appropriate when other precautions (e.g., plexiglass barriers) are used. This September 22, 2020 [notice](#) provides additional guidance on the requirement to wear face masks in courtrooms.

The Judiciary will continue to provide single-use clear face masks to all trial jurors who report in person (for selection and/or trial). Clear face masks also will be provided as needed to certain other trial participants, including criminal defendants. Jurors will store the mask they are wearing when they report to the courthouse. While participating in trial, they will wear the clear mask, which will be discarded at the end of each day. Jurors will then wear their own stored masks when leaving the courthouse.

### Arrangement of the Courtroom

Courtrooms have been reconfigured for jury trials to ensure unobstructed views of participants, including jurors. In many counties, counsel tables have been rearranged to support clear sight lines of jurors who will be seated in the gallery (rather than in the jury box).

### Public Access

Paragraph 4 of the Court's May 11, 2021 Order revises the presumptive methods for providing public access to jury proceedings. Based on improved COVID-19 trends throughout New Jersey, courts may resume in-person access to jury proceedings rather than supporting access only through remote options.

Public access to virtual proceedings is intended to parallel access during pre-COVID-19 in-person operations, meaning, for example, that an observer viewing a virtual jury selection will be permitted access to the main jury room but will not have access to private sidebar questioning conducted in a virtual breakout room.

Members of the media and public should continue to follow the provisions of directive [#11-20](#) ("Supreme Court Guidelines on Media Access and Electronic Devices in the Courts"). The Guidelines incorporate the Request to Photograph, Electronically Record, or Broadcast a Court Proceeding [form](#), which remains in effect. As always, persons who seek to photograph, record, or broadcast court proceedings - including remote court proceedings - must in advance request and obtain permission from the Assignment Judge or designee.



## Sidebars

Sidebar communications can be supported in a number of ways depending on the layout of the courtroom, the duration of the discussion, and other factors. This September 11, 2020 [notice](#) details options for sidebar communications conducted in courtrooms, in chambers, and in alternate courthouse locations.

## Confidential Attorney-Client Communications

The Judiciary will support confidential attorney-client communications in all criminal and civil jury trials (and in other virtual and in-person proceedings). Attorneys may speak quietly with their clients while wearing masks and separated by a plexiglass barrier or may use available technological options for private communications. Judges will work closely with attorneys to identify one or more acceptable options for communications during trial (and during jury selection) in advance.

## Exhibits/Evidence

- *Virtual Civil Jury Trials*

In virtual civil jury trials, attorneys may show exhibits in various ways. [Directive #02-21](#) (“COVID-19 – Electronic Evidence in Virtual Civil Jury Trials – Supreme Court’s January 7, 2021 Order”) provides guidance on the submission of electronic evidence in virtual civil jury trials.

After both sides have rested their cases, hard copy evidence binders may be provided to jurors. Such binders must be returned by jurors at the conclusion of the trial. The court should oversee destruction of the evidence and should confirm to the attorneys and parties that all physical documentation has been received and safely discarded. This is consistent with practices in those counties that already have conducted trials with hard copy evidence. The delivery, retrieval, and destruction of hard copy evidence requires substantial planning and staff resources. To the extent practicable, access to and sharing of evidence in an electronic format is preferable.

- *Socially Distanced In-Person Jury Trials*

Depending on courtroom layout and seating arrangements, various technological options may be used to support juror views of witnesses and evidence. Large display screens, individual tablets, and other alternatives will be

integrated as necessary. Judges will consult with attorneys and parties before trial to select and implement technological solutions as necessary.

### Cleaning

The Judiciary has implemented enhanced cleaning protocols for all court facilities, including frequent cleaning of high-traffic and high-touch areas. All areas used by jurors and trial participants – including courtrooms, lunch and break areas, and restrooms – will be cleaned regularly. Hand sanitizer and sanitizing wipes also will be readily available in courtrooms and other shared locations to support as-needed cleaning throughout the day. In the event of any confirmed or potential COVID-19 exposure in a court facility, the Judiciary will coordinate with the building owner for specialized cleaning as necessary.

### Notification of Potential Exposure

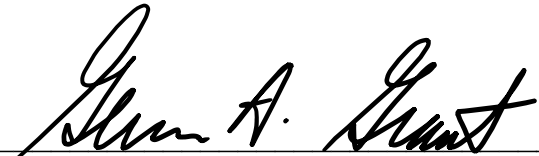
The Judiciary recognizes the possibility that a trial participant may be diagnosed or develop symptoms consistent with the COVID-19 virus. In the event of an actual or potential exposure – whether confirmed or unconfirmed – the Judiciary will take appropriate steps to safeguard the privacy of individuals with COVID-19 while providing notice to close contacts and arranging for cleaning.

In the context of jury trials, additional precautions also apply, including existing agreements with the Department of Corrections and County Jails to ensure regular testing of inmates scheduled to appear for in-person court events.

As emphasized in the [August 3, 2020 notice](#), the Judiciary always will prioritize the safety of trial participants, rather than moving forward with a trial despite risk of exposure to COVID-19. If a trial participant discloses a positive COVID-19 test result or advises the court or displays symptoms of COVID-19, the judge will suspend the trial and will not resume until it is safe to do so. Jurors will be informed of notification protocols during the virtual orientation process. Judges also will reiterate COVID-19 restrictions and notification protocols at the start of trial and periodically as necessary.

The Judiciary will continue to provide information about jury trials and all court operations, including on its public website [njcourts.gov](http://njcourts.gov). Questions about this

notice should be directed to the Office of the Administrative Director of the Courts  
at (609) 376-3000.



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Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: May 17, 2021