

Erie County Supreme and County Courts
Civil Jury Trial Plan/Protocol

The rules detailed in this plan shall serve as general guidelines and may be overridden as the circumstances require, upon permission of the Administrative Judge, at the request of the trial judge.

I. General Pre-Trial Guidelines:

- A. Jury selection shall take place in the jury assembly room, 1st floor, 25 Delaware Ave.
- B. Once the jury is selected, Court staff shall ascertain whether all jurors and attorneys are healthy and able to go forward with the trial each day. Such contact shall include asking all jurors and attorneys the health screening questions contained in paragraph ‘2’ of the “Coronavirus—Screening of Courthouse Visitors” as required for entry to the courthouse.
 - a. All jurors and attorneys shall be informed that if at any time during the trial the answers to any of the questions change to “Yes,” or if at any time they fall ill, then the juror or attorney should **not** report to the courthouse and should instead contact Christine Farrow, Commissioner of Jurors office at (716) 845-2551. Should this happen, the Trial Judge shall be notified, and the trial further adjourned as necessary;
 - b. Attorneys shall be directed to ask these questions of their **witnesses** where possible, and shall be further directed to instruct their witnesses not to appear in the event the witness is ill or answers “Yes” to any of the questions; (see attachment A.)
- C. Prior to entry into the courthouse each day all jurors, attorneys, and witnesses shall be screened pursuant to the protocols in Exhibit ‘A’. Should any juror, attorney, or witness answer yes to any questions or screen with a fever greater than 100.1 degrees Fahrenheit, then they shall be directed to return home, the Trial Judge shall be notified, and the trial shall be further adjourned as necessary;
- D. All jurors and attorneys shall be informed that they will always be required to wear face masks while inside the courthouse; in case of emergency the court will supply;
- E. Jurors shall generally be directed to report to the courthouse every morning at 9:00 AM, unless other matters dictate that the trial start later on a particular day. Upon reporting

jurors shall be directed to the designated courtroom where they will wait until the trial is ready to commence. Socially distant markers will be placed on seating in the courtroom to direct where jurors should sit;

- F. Two designated courtrooms shall be utilized for the conduct of the trial; one for evidence presentation (Evidence Presentation Courtroom) and one for use as juror breakroom.
- G. To the extent practicable, no other court business shall be scheduled during the trial;
- H. Attorneys, jurors, and witnesses will be encouraged to sanitize regularly with court-provided hand sanitizer which will be made available in all courtrooms;
- I. Disposable gloves will be made available in all courtrooms;

II. Cleaning and Distancing Procedures

- A. Prior to the commencement of the trial each day and at the close of the trial each day, the courtrooms, and jury deliberation room within same shall be cleaned following enhanced cleaning procedures that shall include, at a minimum, the following:
 - a. The wiping down of all juror seating, witness seating, attorney seating, and judicial seating with disinfectant;
 - b. The wiping down of all microphones with disinfectant;
 - c. The wiping down of all tables, podiums, and the bench with disinfectant;
- B. During the course of the trial, the attorney podium and microphone shall be wiped down with disinfectant by the attorneys between every set of testimony where an attorney switches to use the podium (i.e.: between direct and cross-examination), or the attorney shall be permitted to ask questions from counsel table;
- C. During the trial, the witness box, witness chair, and witness microphone shall be wiped down with disinfectant by court staff between each witness; unless courtroom set up allows for separate seating for each witness;
- D. During the trial, the jury shall sit in the designated area of the courtroom which will be defined prior to commencement of the trial. Socially distant seat markings shall be placed indicating where jurors shall sit;

III. Conduct of the Trial

- A. The court shall endeavor not to schedule other matters during the trial so as to commence the trial each morning as near as possible to 9:30 AM.

- B. During the trial, should any conversations need to take place between attorneys and the court outside the presence of the jury, such conversations shall take place utilizing the second courtroom or other space designated for that purpose. During such conferences the jurors shall remain in their jury seats in the trial courtroom;
- C. During the trial no attorney shall be permitted to approach a witness or the jury. Should any item of evidence need to be presented to a witness, such item of evidence should first be handed to a court officer who may present it to the witness. Should an attorney wish to publish an item of evidence to the jury, the following protocols should be utilized:
- a. All items of evidence shall be treated with the same protocols normally reserved for biohazard evidence;
 - b. If the evidence is documentary or photographic, the document or photograph shall be placed on an overhead projector and displayed on a screen to the jury;
 - c. If the evidence is physical, the evidence shall be held up and displayed for the jury;
 - d. The court may provide for an item of evidence to be given to the jury only if there is a request from the jury to view that item of evidence or if the court deems it necessary upon application from counsel, for the jury to see the item of evidence closer;
 - e. Protective gloves shall be made available to counsel, witnesses and jurors when handling physical or documentary evidence.
- D. During the course of the trial all court staff, attorneys, the defendant, jurors, and witnesses shall be required to wear face masks except that during actual testimony a witness may remove his/her face mask if requested in which case they shall be provided with a disposable clear face shield to enable the jury to see their face while testifying. When testimony is complete the witness shall again be directed to replace his/her face mask;
- E. Witnesses may appear by Skype for Business/Microsoft Teams or other live remote connection. If a witness (fact or expert) is unable or unwilling to appear in person, counsel must provide for his or her remote appearance at the assigned time for that witness unless good cause for non-appearance is shown; consent may not be unreasonably withheld, and the Trial Judge shall determine whether good cause for the

objection has been established. Arrangements for any electronic equipment needs during a trial need to be brought to the court's attention before the jury selection date.

IV. Jury Deliberations

- A. At the conclusion of the trial the second courtroom being utilized as the jury break room shall be utilized for jury deliberations. Markings shall be placed in the courtroom to allow the jurors to sit in a socially distant manner, and jurors shall have access to the restroom located adjacent to the jury deliberation room;
- B. A court officer shall stay on duty by the entrance to the courtroom to ensure that the courtroom is private and secure. Any juror notes may be given by the jury to the court officer;
- C. Should there be any juror questions or notes requiring the court's attention the court shall conference the notes with the attorneys in the evidence presentation courtroom.

V. Distribution

- A. A copy of this plan may be distributed to the parties prior to the start of the trial;