**INSTRUCTIONS FOR JURY TRIALS WITH JUDGE PADGETT**

The judicial emergency associated with the COVID-19 pandemic will require all of us to change the manner in which we have conducted jury trials in the Augusta Judicial Circuit for decades. We must adhere to legal and constitutional requirements but must also reexamine how we conduct certain procedures and ensure that we are meeting the mandates but are also accommodating our new reality.

I recognize that there are many divisions of Superior Court just within the Augusta Circuit. The instructions included within this outline will only apply when trying a case before Judge Padgett. Other judges may have different procedures they wish to follow. However, beginning immediately and continuing for the foreseeable future, these instructions will apply to all jury trials conducted before Judge Padgett.

None of the modifications to the seating arrangements, the manner of conducting voir dire or any of the other modifications listed in this memo are ideal. Lawyers and judges are not generally noted for their fondness for change. My only request is that lawyers look for solutions instead of looking for problems during this period of unprecedented upheaval. We are going to all be required to plan well and be prepared to adapt as necessary. The Constitution is not a situational document and it does not bend for a pandemic. I am not suggesting that it should. However, the pandemic does require new approaches to entrenched procedures. Merely because it is not the way we used to do it B.C. (Before Corona) does not mean that we cannot adapt to fit our shared current reality.

These instructions are organized in a manner that provides for issues that might arise in any of our three counties and then there are instructions that will uniquely apply in each individual county. If there are questions or concerns about these instructions or a situation develops not anticipated by these instructions, please feel free to reach out to Judge Padgett’s office at (706) 312-7355 or wpadgett@columbiacountyga.gov if the question or issue arises prior to trial.

**ISSUES APPLICABLE IN ALL COUNTIES**

**GENERAL RULES**

1. All lawyers and parties will be expected to wear a mask that covers that person’s nose and mouth area during jury selection and trial. During trial, there may be an occasion for such mask to be removed while that person is speaking. Be aware that during voir dire, the jurors will be required to wear a clear face shield or a clear mask and many may resent that requirement. Lawyers are free to wear such a shield but be aware that while speaking, any mask or shield must be removed by the lawyer. It is my understanding that witnesses will also be provided shields but enabling the court reporter to be able to hear the witness may prove problematic if a shield is being used. Jurors and witnesses may become concerned if lawyers are not wearing any type of mask/shield and come within 6 feet of that person.
   1. Although it goes without saying, sharing clear shields is not permissible.
2. We will not be standing when the jury enters or exits the room during times when we are selecting a jury in a location other than a courthouse. This procedure may also be applicable during the trial itself, depending upon the circumstances. Not standing may seem strange but it will protect everyone involved.
3. There will be a limited calendar of triable cases identified before each available trial date. In Richmond County, lawyers and parties not involved in the first triable case but who have a case on the “short list” of triable cases will be expected to appear in the assigned courtroom and observe the proceedings via the simulcast. If the first triable case no longer necessitates a trial, the parties involved in the next triable case will be asked to come to the assigned jury selection room at the JBA. If the defendant for the next triable case is in custody, the Court will arrange for that individual to be transported to the JBA as soon as any defendant who is in custody from the first triable case is returned to the detention area of the courthouse. Stated more plainly, only one defendant(s) who is in custody will be at the JBA at any given time. In other counties, lawyers and parties involved in other cases from the short list will be expected to be present in the courthouse during jury selection of the first case to be tried and may observe the proceedings in the area of the courthouse designated for viewing of voir dire by members of the public.
4. The Chief Justice of the Georgia Supreme Court has reiterated recently that masks are to be worn in courtrooms by all involved. While I may allow lawyers or witnesses to remove masks while speaking, the wearing of masks is a point of emphasis which needs to be adhered to by all involved. I will have a plexiglass shield on the bench which will reduce the time I am using a mask during the trial. I have no interest in reminding lawyers that they need to be wearing a mask that covers both their mouth and nose and I respectfully request that lawyers endeavor not to put any of us in that position.

**VOIR DIRE – STATUTORY QUESTIONING**

1. In Richmond County, there will be 60 potential jurors in the jury selection area. In Columbia County, there will be 46 jurors in Courtroom 2. In Burke County, there will be 46 jurors in Courtroom 1.
   1. In each county, we only have the seats available that are currently occupied by the 60/46/46 jurors that made up the initial panel. Therefore, if we are required to call in other jurors to replace those jurors who have been excused, there may be a “new” Juror 4 (for example). Lawyers may want to develop alternative “juror sheets” if the existing forms prove inadequate.
2. The Court will administer the appropriate oaths to the jurors/bailiffs and will ask the “statutory qualification questions” to the potential jurors as has been done for decades. Any potential juror who responds to any of those questions in a manner that necessitates follow-up questions will be asked to step to a microphone and/or stand in place (depending on the county) and the Court will initially ask any additional questions required to clarify the response. The parties will be afforded the opportunity to ask any follow-up questions that need to be asked at that time.
3. Nothing herein shall prevent any party from presenting a challenge for cause at the time that such a challenge seems appropriate. At all times, the parties should be aware of the potential “infection” of the entire panel by a particular response and must consciously make the decision whether further questioning is warranted at that time or should be reserved until individual voir dire.
4. In a departure from prior procedure, we will not be handing a prompt sheet to each juror and have the juror state where he/she lives, where he/she works, marital status, etc. Each juror will be required to complete a written questionnaire prior to entering the area where voir dire is being conducted and each party will have each juror’s responses to that questionnaire available during voir dire.
   1. The parties will be allowed to follow-up with any questions that might arise from incomplete or confusing responses to the questionnaire during individual voir dire as noted below.

**VOIR DIRE – GENERAL QUESTIONING**

1. In advance of trial, all general questions that either party wishes to be asked of the voir dire panel will be forwarded to Judge Padgett in Microsoft Word format. The Court will not set a “hard and fast” deadline for general voir dire questions to be submitted but please be reasonable with your submission dates so the judge will have sufficient time to work with the questions. *Wilkins v. State*, 246 Ga. App. 667, 667-668 (2000).
   1. The proposed questions that are submitted will be reviewed by the Court and if they are appropriate, they may be asked by counsel during general voir dire. The Court may change the language of the proposed questions from what was submitted by each respective party. However, as noted below, each party will receive a copy of the questions that have been approved before they are asked to ensure that the lawyers can keep up with responses.
   2. If a proposed question is rejected by the Court, the Court will advise the parties of that rejection prior to voir dire beginning and outside the presence of the jurors. If exception is taken to the Court’s ruling on any proposed question, that objection must be noted prior to voir dire beginning and on the record. If the proposed questions are submitted in advance of trial with sufficient time for the Court to advise the parties of any disallowed general questions via e-mail, the Court will respond accordingly. However, if the Court cannot complete that response process in advance of trial, the parties will be advised of any disallowed questions prior to voir dire beginning.
   3. If a party has an objection to any question proposed by the opposing party, notice of that objection must be made before voir dire begins. If no objection is noted prior to trial, any such objection will be deemed waived.
2. The Court will ask general questions to the voir dire panel that have been submitted and approved prior to trial. The Court will provide each party a copy of the questions that will be propounded during general questioning.
   1. Potential jurors will be asked to respond by raising a card that displays that potential juror’s assigned juror number. At this point in the proceedings, no follow-up questions will be asked of any juror who responds. The Court will note for the record any and all responses made by the prospective jurors to any of the general questions propounded. However, the parties need to take adequate notes to ensure they remember to revisit that response during individual voir dire, if desired.
   2. Lawyers/parties will have the opportunity to ask follow-up questions of each juror during the individual voir dire process. These follow-up questions will be in addition to any other individual voir dire questions that the respective parties may wish to ask.

**VOIR DIRE – INDIVIDUAL QUESTIONING**

1. To be clear, the Court is not granting individual sequestered voir dire as a matter of course. Instead, all of the jurors will be present in the area where voir dire is being conducted and each juror will be called in the order of their respective juror number.
2. Counsel will be asked whether he/she has any individual questions for each respective juror. If *either* party wishes to ask individual questions of any particular juror, *each* party will be allowed to ask individual questions of that juror.
3. During individual voir dire, each potential juror will be called to the microphone or asked to stand, depending upon which county the trial is being conducted. The lawyers will have the general information sheet that each juror has prepared and will have advance knowledge of any response each juror made to the general questions.
   1. Parties are not allowed to repeatedly ask each juror the same question(s) during individual voir dire. *Brockman v. State*, 292 Ga. 707, 724 (2013), citing *Gissendaner v. State*, 272 Ga. 704, 709 (2000). If there is a question(s) that either party believes needs to answered by each individual juror, that question(s) needs to be propounded as part of the general questions.
   2. The parties may follow-up on any responses made during general questioning, any issues raised by the completed questionnaire and/or any other appropriate question during individual voir dire.
4. After all questions have been asked of all potential jurors, the Court will take a recess for at least 15 minutes as required by U.S.C.R. 11. The potential jurors will be escorted to another area of the facility where jury selection is being conducted. The room will be sanitized during this break so everyone will be expected to leave the room to allow that process to occur.

**JURY SELECTION**

1. In a departure from prior practice, the jurors will not be brought back into the room for the jury selection process.[[1]](#footnote-1) The parties will be expected to recall the potential jurors and their responses.
2. The Court will endeavor to have at least two alternate jurors for each case. Assuming there are to be two alternate jurors, the alternate panel will consist of the last 6 potential jurors who were qualified to serve. By way of an example, assume there were 40 potential jurors qualified to hear the case at the conclusion of voir dire. During the selection process, if a jury of 12 has been selected within the first 28 jurors who were qualified, the parties would jump ahead to juror 35 as the first potential alternate juror. The two alternates would be selected from jurors 35-40. Each party has one strike per alternate to be selected. O.C.G.A. § 15-12-169.1. Once two alternates have been identified, jury selection will end. Therefore, under the hypothetical, if the parties both fail to strike (accept) jurors 36 and 38, the process never reaches jurors 39 and 40.
3. Once the Clerk announces that a jury has been selected, the Court will inquire whether there is any objection to the jury selection process. This is the opportunity to raise any *Batson/McCollum* issues. If no objection is noted, the jurors who were selected to serve will be called back into the room as identified by the Clerk.
   1. The potential jurors not selected for service will be released to be returned to the pool, thereby leaving the 12 (plus alternates) jurors actually selected for the trial remaining in the jury selection room.
4. We will confirm the jury that was selected now remains in the room. Once confirmed, we will adjourn until the appropriate time and to the appropriate location. More likely than not, we will not begin openings, etc. until the following day or on another date certain. The lawyers will know when we are to begin the actual trial well in advance of voir dire.

**COUNTY-SPECIFIC ISSUES**

All of the foregoing will apply to all trials conducted before Judge Padgett in all of the three counties within the Circuit for the foreseeable future. The following points will apply in each of the three counties, respectively.

**RICHMOND COUNTY**

1. Jury selection will occur at the James Brown Arena (“JBA”) pursuant to O.C.G.A. § 38-3-61. Trial counsel and any defendant not in custody will enter the JBA at the appointed entrance to the building. Jurors may well be entering the building in a nearby area or may be within the parking lot so please be careful to avoid conversations that should not be overheard.
   1. If anyone wishes to watch jury selection, a live feed of the proceedings will be simulcast into the assigned courtroom of the Richmond County Courthouse. No friends or family will be present for jury selection in the JBA.
2. Unless otherwise directed, everyone needs to be prepared to begin at 9:00 a.m. on the date that voir dire is to be conducted. Lawyers, parties, deputy clerks, court reporters and any other “trial participants” will use the appropriate entry as dictated by the Marshal’s Office. Upon entry, the security personnel will conduct the traditional searches and there will also be temperature screens conducted.
   1. Only minimal pretrial issues will be addressed prior to the jury entering the room for voir dire. If there are extensive pretrial issues that need to be resolved, we may need to schedule those issues for a hearing in advance of the trial date or will hear them after jury selection but before administering the oath to the jurors back at the courthouse.
3. Jury selection will occur in the jury selection room to which we are assigned. It is entirely possible that two different judges will be selecting juries at the same time in adjoining rooms so ensure you are in the correct room.
4. We anticipate having an audio broadcasting system with sanitized headphones in each jury selection room so that what is said in one jury selection room is not overheard by participants in the adjoining room. There will be different channels for lawyers, jurors, etc. and it will be very important that each party uses the correct equipment to ensure that private conversations are not overheard by others.
   1. If you are not speaking into a microphone, you are likely not being heard so be aware that using the microphone will be of paramount importance.
   2. We cannot have pacing or excessive movement so all voir dire questions must be asked from each respective counsel table and lawyers will remain seated.
   3. It is anticipated that there will be a separate “channel” on the audio system for lawyers, judges, court reporter and defendant but from which the jurors are excluded. We will use that channel for “bench conferences” or similar activities to avoid moving the potential jurors in and out of the jury selection room.
5. During individual voir dire (or any time that a juror is asked to respond in any manner other than by raising his/her card), they will be asked to step to a microphone. Everyone will be able to clearly see and hear each juror who needs to be questioned.
6. Once a jury is selected and we adjourn, we will reconvene in a courtroom within the Courthouse and the trial will proceed. As noted above, the trial will not likely begin the same day as jury selection.
7. During trial in the courthouse, the trial participants will sit facing the entry doors at the back of the courtroom (with their backs to the judge). The jury will be entering and exiting through the same door they have always entered and exited but they will be seated in the gallery during the trial. The witness will sit in the jury box, likely in the highest seat that is also closest to the gallery.
   1. There will be a podium stationed at a position that allows for spacing away from the witness, the other lawyers, etc. For those who tend to pace the room during examinations of witnesses or during argument, be aware of others and how close you are to those other people. Personal space will be much more of an issue during these trials. Lawyers have asked that I not require them to wear clear face shields during trial and masks usually interfere with being able to be clearly heard. Therefore, please be aware of social distancing while conducting the trial itself.
   2. The jurors will be looking “through” the trial participants when looking at the judge. Be aware of facial expressions, eye rolls, etc. as they may prove more identifiable in this configuration of the courtroom.
   3. If there are members of the public who wish to observe the proceedings, they will have the opportunity to do so in another courtroom within the courthouse. The proceedings will be broadcast in real time in that other room. Depending on which room the trial is being conducted, it is not likely that we will have sufficient space for members of the public to sit while being both socially distanced from each other and apart from the jurors.
8. Extensive use of the evidence presentation equipment will be required. This division does not have a very successful track record of success with those systems. If a witness absolutely must be handed a tangible piece of evidence, care must be taken in how that process is accomplished. Bailiffs may be able to take things from the party questioning the witness, hand that thing to the witness and then retrieve the thing from the witness at the appropriate time.
   1. There may be times when the party absolutely needs to approach the witness to point out something with a piece of evidence, etc. If that is deemed necessary, please ask for permission before approaching the witness. Masks/shields may ultimately be required.
9. Because voir dire is being conducted in a location other than the courthouse in Richmond County, should a scheduled case no longer necessitate a trial, appropriate accommodations will be made to have any witnesses who need to testify at sentencing to be able to do so via video conferencing. If that occurs, there will be a significant delay before the defendant involved in the next triable case can be made available at the JBA. We will jointly work through any such developments as they occur.

**COLUMBIA COUNTY**

1. Many of the issues that are true for Richmond County trials will be applicable for Columbia County trials, depending upon the room in which the trial is to be conducted. Courtroom 2 is much larger than the other courtrooms and can accommodate more people while adhering to social distancing concerns.
2. Jury selection will occur in Courtroom 2 for every trial. Therefore, it is entirely possible that a jury will be selected in Courtroom 2 but moved to a different courtroom for the actual trial. It will depend upon whether another trial is scheduled for that week in Columbia County. Only one judge will select juries on any given day.
3. For jury selection, 46 potential jurors can be placed in Courtroom 2 for voir dire. Some will be seated in the jury box, some in the “voir dire box” and the rest will fill the remainder of the gallery. There will be jurors behind and on both sides of the trial participants.
4. If a juror is excused and we feel the need to bring in another juror (beyond the initial 46), that chair will be sanitized and there will be a new Juror Number 4 (for example). Therefore, the jury sheets that are typically used by the Clerk and distributed to the trial participants may prove inadequate. Lawyers may want to prepare their own version of a jury sheet for selection purposes.
   1. For the sake of clarity, when I reference the “jury sheet,” I am contemplating the grid document which has the name of each juror of the panel and their respective juror number. The document initially provided by the Clerk may prove inadequate if many of the initial 46 jurors are excused for cause.
5. The jury selection will be simulcast in another room within the courthouse because no one other than the trial participants and court staff can be seated in the courtroom during voir dire.
6. After the jury is selected and we begin the actual trial, we will use the witness stand. In smaller courtrooms, the jury will be located in the first two rows of the gallery. In Courtroom 2, the jury will be seated in the jury box and in a few seats of the voir dire box. Lt. Berry has confirmed that there is an adequate sight line from the seats in the voir dire box and the witness stand.
   1. This configuration allows the trial participants to use the existing evidence presentation system and exhibits can be simultaneously seen by everyone.
   2. In the smaller courtrooms, there will be a row of the gallery behind the jurors which can be occupied by the public. If more people want to observe than can fit in that single row, the trial can be simulcast into another room of the courthouse.
   3. In Courtroom 2, the jury will be seated in the jury box and in the voir dire box so the entire gallery can be used by members of the public.
7. Be aware of the “personal space” concerns referenced in the Richmond County section above. Ask if you need to approach a witness.
8. We will mutually discuss whether to begin the trial immediately following jury selection or on another day.

**BURKE COUNTY**

1. Jury selection will occur in the largest of the 4 courtrooms, Courtroom 1. Again, 46 potential jurors can be accommodated in that courtroom but some may be in the jury box and the majority in the gallery.
2. Just as in Columbia County, if multiple jurors are excused for cause, we will be required to sanitize the seat that is vacated and it is entirely possible that a “new” Juror Number 4 will occupy that seat. Therefore, it would be advisable for lawyers to create their own jury selection sheet for Burke County trials as the sheet initially provided by the Clerk may prove inadequate.
3. If another judge plans to try cases that week in Burke County, the actual trial may occur in another courtroom. We will mutually discuss whether to begin the trial immediately following jury selection or on another day.
4. Depending on the size of the courtroom where the actual trial is to occur, the jury may again be seated in the gallery. We will use the witness stand during the trial. The evidence presentation system will be used extensively. For reasons noted above, please ask before approaching the witness so we can mutually ensure that any examination that requires the lawyer to be close to the witness is accomplished safely.
5. If necessary, the proceedings can be simulcast into another area of the courthouse if the courtroom proves too small to accommodate members of the public wishing to observe the proceedings.

1. See *Martin v. State*, 205 Ga. App. 591, 592 (1992) (“We reject defendant's argument that the trial court erred in refusing his request to have the prospective jurors present during the striking of the jury. The record shows the defendant was afforded ample opportunity to question and observe each juror during voir dire and thus the requirements of OCGA § 15-12-163 were met.”). [↑](#footnote-ref-1)