

**FIRST RECERTIFIED COVID-19 OPERATING PLAN FOR
CONDUCTING JURY TRIALS FOR THE MONTGOMERY COUNTY JUDICIARY**

In order to balance the need to protect the health and safety of prospective and selected jurors, litigants, attorneys, visitors, court staff, judges, and other individuals that may participate in jury proceedings with the necessity that parties and members of the public are able to exercise their fundamental right to a jury trial, the following measures are hereby implemented for the courts of Montgomery County and shall supplement the measures previously implemented in the First Recertified COVID-19 Operating Plan for the Montgomery County Judiciary, which remain in full force and effect:

General

1. In addition to the measures previously implemented in the First Recertified COVID-19 Operating Plan for the Montgomery County Judiciary, which remain in full force and effect, District Judges and County Court at Law Judges may conduct in-person jury proceedings between October 1, 2020 and December 1, 2020, and continuing thereafter as may be permitted by the Supreme Court of Texas and/or the Texas Court of Criminal Appeals, pursuant to this First Recertified COVID-19 Operating Plan for Conducting Jury Trials for the Montgomery County Judiciary (“First Recertified Operating Plan for Conducting Jury Trials”).
2. All judges (including District Judges, County Court at Law Judges and Justices of the Peace) are permitted to conduct virtual jury proceedings as long as permitted by order of the Supreme Court of Texas and/or the Texas Court of Criminal Appeals, as applicable. However, in criminal trials involving potential incarceration, virtual jury proceedings shall only occur with appropriate waivers and consent from the Defendant and Prosecutor made on the record. In any other virtual jury proceeding, consent is not required.
3. Any judge wishing to conduct a jury proceeding is required to obtain advance approval for each such trial from the Local Administrative District Judge and the Presiding Judge for the Second Administrative Judicial Region. All requests to conduct a jury proceeding must be submitted online at https://forms.office.com/Pages/ResponsePage.aspx?id=hVJgeubP20qJtf5e6-yxiA_FYdGXweROnKPiKWdluPJURVITN0pUNE9LOVY3OTNTQzRINVdWOUyszRS4u. A link will be provided on the webpage for the Montgomery County Office of Court Administration. A request to conduct a jury proceeding for a given week must be submitted no later than 5:00 p.m. of the 34th day prior to the Monday of the week requested, which will always be a Tuesday.
4. A judge who obtains approval for an in-person jury proceeding should schedule no more than ten (10) cases for that jury trial setting unless pre-approval for larger dockets is obtained from the Presiding Judge for the Second Administrative Judicial Region.
5. Judges should attempt to alert attorneys and/or parties who will not be proceeding prior to the day of trial to reduce attendance at the court facility.

6. The Local Administrative District Judge is required to consult with the local health authority not more than five (5) days prior to each such approved jury proceeding to verify that local health conditions and plan precautions are appropriate for such trial to proceed.

7. Each judge shall consider any motion or objection related to proceeding with a jury trial on the record at least seven (7) days prior to the trial. If any such motion or objection is made less than seven (7) days prior to the trial, the judge shall consider same on the record as soon as practicable.

8. Each judge should establish communication protocols with the applicable attorneys and/or parties prior to a jury proceeding to ensure that no participants (attorneys, parties, witnesses, etc.) have tested positive for COVID-19 within the last twenty (20) days, have symptoms of COVID-19, or have been exposed to COVID-19 within the last fourteen (14) days.

9. Any judge wishing to conduct a virtual jury trial is required to ensure that all prospective jurors have access to technology with which to participate.

Procedures for the Summoning of Jurors

1. All prospective jurors will receive a letter with their summons that provides information about this First Recertified Operating Plan for Conducting Jury Trials, and advises prospective jurors that they may claim exemptions or disqualification prior to their report for jury service. A copy of this letter is attached as Exhibit "A."

2. Prospective jurors will receive additional communications from each court regarding health and safety plans and expectations via email.

3. Excuses or requests to reschedule from in-person prospective jurors who have been potentially exposed, who are symptomatic and/or who are vulnerable or live with someone vulnerable to COVID-19 should be liberally granted.

Guidance on Appropriate Locations for Jury Proceedings

1. Each jury selection shall take place in a location large enough to allow for appropriate social distancing between each prospective juror. Such location will be assigned for each trial by the Director for the Montgomery County Office of Court Administration, Chad Peace.

2. The jury assembly room in the Keeshan building is the largest available room within the Montgomery County Courthouse buildings. Any jury selection for a twelve (12) person jury shall take place in this location on the date and at the time assigned by the Director for the Montgomery County Office of Court Administration, unless otherwise authorized by the Local Administrative District Judge and the Presiding Judge for the Second Administrative Judicial Region.

3. Any jury selection for a six (6) person jury shall take place in the location on the date and at the time assigned by the Director for the Montgomery County Office of Court Administration.

4. Only one jury selection proceeding will be permitted in the following district courts (9th, 221st, 359th and 435th) on any given day in order to reduce the number of people in the building where these courts are located at one time.

5. Only one jury selection proceeding will be permitted in the following county courts at law (CCL1, CCL2, CCL 4 and CCL5) on any given day in order to reduce the number of people in the building where these courts are located at one time.

6. Only one jury selection proceeding will be permitted in the following district courts (410th and 418th) on any given day in order to reduce the number of people in the building where these courts are located at one time.

7. Only one jury selection proceeding will be permitted in the following district courts and county court at law (284th, 457th and CCL3) on any given day, in order to reduce the number of people in the building where these courts are located at one time.

8. Only one jury selection proceeding will be permitted in the Ninth Court of Appeals, the Title IV-D court and the overflow courtroom and jury assembly room in the Keeshan building on any given day in order to reduce the number of people in the building where these courts are located at one time.

9. Another courtroom in the immediately vicinity of the location of any jury selection shall be available for the socially distanced assembly of the prospective jurors for each jury selection described above.

Requirements for Screening

1. When a prospective juror attempts to enter a court building or the location where jury selection will take place, he/she will be instructed to disclose to county personnel if he/she is feeling feverish; has a cough, shortness of breath, or difficulty breathing; or has been in close contact with a person who is confirmed to have COVID-19. Individuals making such a disclosure, subject to the next paragraph, will be refused admittance to the court building or the location where jury selection will take place, and will be directed to contact the applicable court regarding his/her situation.

2. Every prospective juror attempting to enter a court building or the location where jury selection will take place will have his/her temperature taken by county personnel. Individuals whose temperature equals or exceeds 100.0°F will be refused admittance to the court building or the location where jury selection will take place, and will be directed to contact the applicable court regarding his/her situation.

3. Staff who are screening prospective jurors attempting to enter a court building or the location where jury selection will take place will be provided personal protective equipment, including face masks, gloves, tissue and hand sanitizer.

Requirements for Face Coverings

1. All prospective jurors entering a court building or the location where jury selection will take place will be offered a free, disposable face mask if they do not already have their own face covering.
2. Until such time as Executive Order No. GA-29 is modified, amended, rescinded or superseded, all participants (judges, court staff, attorneys, parties, witnesses, prospective jurors, jurors, alternate jurors, etc.)(unless excepted by Executive Order No. GA-29) will be required to wear a face covering over their nose and mouth when inside a court building or the location where jury selection and/or the jury trial will take place.
3. Court participants who may need to lower their face mask to speak or for a short period of time will be required to wear a face shield and/or remain immobile and appropriately socially distanced. When speaking, the judge of each court will permit a court participant to lower his/her mask so long as a face shield is worn and/or the person speaking is immobile and appropriately socially distanced.

Social Distancing Protocols

1. Upon entry of a court building or the location where jury selection will take place, all prospective jurors will be required to maintain adequate social distancing of at least 6 feet.
2. The judge of each court will situate counsel tables in such a way to maintain adequate social distancing of at least 6 feet, and will also limit counsel and/or parties to certain areas of the courtroom to maintain adequate social distancing.
3. To exercise peremptory strikes and conduct other pretrial matters during jury selection, the judge and attorneys (and/or parties) will either exit the jury selection room or utilize “white noise” while the venire panel remains inside the jury selection room.
4. Long breaks for prospective jurors are discouraged. Prospective jurors should remain in the jury selection room unless temporarily permitted to leave by the judge, such as for a bathroom break.
5. After a jury is selected, remaining panel members shall be released row by row, limiting the number of persons leaving the courtroom at one time. Any remaining panel members desiring work excuses will remain seated in his/her row upon release, and the clerk will thereafter provide each such panel member his/her work excuse again following a row by row method.
6. Opening statements, presentation of evidence and closing arguments will be held in the courtroom regardless of the location where jury selection took place. Unless the applicable jury room is large enough to provide for appropriate social distancing, jury deliberations will be held in the courtroom, which will be secured during such deliberations with no other individuals present in the courtroom other than the jurors.

7. The judge of each court will ensure that appropriate social distancing for the seating area within the gallery of the courtroom is monitored and enforced by court staff. Public access will be available in the courtroom only in compliance with these social distancing protocols.

8. The judge of each court will ensure that appropriate social distancing for the counsel tables, witness stand, judge's bench, clerk, court reporter, bailiff and jury is monitored and enforced by court staff.

Alternate Jurors

1. All of the measures within this First Recertified Operating Plan for Conducting Jury Trials shall apply equally to alternate jurors, with the exception that such alternate juror(s) may not participate in jury deliberations unless called upon to serve as a replacement juror.

Arrangement of Courtroom

1. Each judge shall arrange and mark his/her courtroom in a manner to ensure proper social distancing.

Microphone Protection Protocols

1. The judge of each court will ensure that microphones within the courtroom are regularly disinfected during working hours of each business day. This will specifically include the disinfecting of (1) the microphone at the witness stand following each witness' testimony, and (2) the microphone at the bench following each bench conference.

2. The judge of each court will limit, to the degree possible, the shared use of microphones during the jury proceeding.

3. If a microphone must be shared, the judge of each court will limit the passing of the microphone unless the microphone is cleaned between each user.

4. Disposable microphone covers will be made available as needed from the Director for the Montgomery County Office of Court Administration.

Exhibit/Evidence Management

1. Counsel and/or parties shall use the court's camera projection system, as applicable, to present admitted exhibits.

2. All counsel/parties will have provided opposing counsel/parties proposed exhibits electronically, and each counsel/party shall utilize same during the course of the trial so that exhibits will not be handled between counsel during trial.

3. When necessary, gloves will be utilized by counsel, parties and/or jurors to handle exhibits. Such gloves will be provided by the court.

4. The court will provide gloves to all jurors to handle any exhibits and papers during deliberations.

Vulnerable Witnesses

1. Any witness who is a member of the vulnerable population as defined in the First Recertified COVID-19 Operating Plan for the Montgomery County Judiciary shall be permitted to testify remotely, i.e. video conference and/or telephone.

Food Precautions

1. Unless the applicable jury room is large enough to provide for appropriate social distancing, any meals, snacks, water, drinks or coffee will be provided to the jurors in the courtroom.
2. Any meals, snacks, water, drinks or coffee to be provided to the jurors shall be only provided to each juror on an individual basis, i.e. no commonly shared food, snacks, beverages, etc.

Cleaning Requirements

1. Hand sanitizer dispensers have been placed at the entrances to each building, outside of the elevators on each floor of each building, outside of public bathrooms in each building, near all vending machines, outside of each courtroom, and within each courtroom.
2. The Department of State Health Service's "Stop the Spread of Germs Flyer" has been posted in multiple locations on each floor of the court buildings.
3. Court building cleaning staff will clean the common areas of each court building so that common spaces are regularly disinfected during working hours of each business day.
4. Court building cleaning staff and court staff have been provided cleaning supplies shown to be effective with this coronavirus.
5. Court building cleaning staff and court staff have been provided with appropriate cleaning supplies and personal protective equipment, such as face masks, tissue and hand sanitizer.
6. All participants (attorneys, parties, witnesses, prospective jurors, jurors, alternate jurors, etc.) will be required to sanitize his/her hands before entering the location utilized for jury selection and/or the courtroom.
7. The judge of each court will ensure that the location utilized for jury selection is thoroughly cleaned and sanitized prior to jury selection.

8. The judge of each court will ensure that the courtroom is thoroughly cleaned and sanitized each day before proceeding with a jury trial.

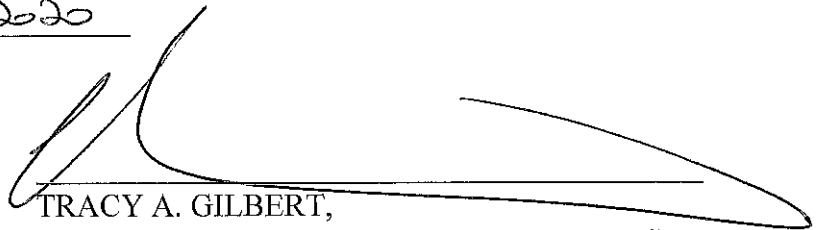
9. The judge of each court will ensure that frequently touched objects and surfaces within the courtroom are regularly disinfected during working hours of each business day. This will specifically include the disinfecting of (1) the witness stand following each witnesses testimony, and (2) the bench following each bench conference.

10. The judge of each court will ensure that tissues have been placed in the jury box or in the location where the jury will be seated during a jury trial.

Other

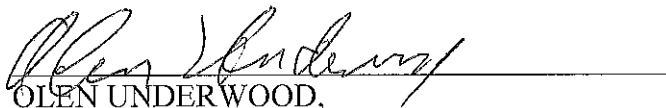
This First Recertified Operating Plan for Conducting Jury Trials has been created based upon the facts, circumstances and current guidance related to COVID-19. I have conferred with all judges of courts with courtrooms in the court buildings regarding this First Recertified Operating Plan for Conducting Jury Trials and/or its predecessor. In developing this plan, I have consulted with, and received the approval of the local health authority, documentation of which is attached to this plan as Exhibit "B." I will encourage that the judges of courts with courtrooms in the court buildings covered by this First Recertified Operating Plan for Conducting Jury Trials conduct jury proceedings consistent with this plan.

SIGNED on December 22, 2020



TRACY A. GILBERT,
LOCAL ADMINISTRATIVE DISTRICT JUDGE
MONTGOMERY COUNTY, TEXAS

SUBMISSION ACKNOWLEDGED ON THE 22nd DAY OF DECEMBER, 2020:



OLEN UNDERWOOD,
PRESIDING JUDGE FOR THE SECOND
ADMINISTRATIVE JUDICIAL REGION OF TEXAS



TRACY A. GILBERT
Judge, 418th Judicial District Court
SCHARLENE W. VALDEZ, *Associate Judge*

Kimberly Perry
Court Administrator
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Lisa Shanahan
Court Coordinator
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Christa Townes, CSR, RMR
Official Court Reporter
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Kathryn Davis Aaron, CSR
Associate Court Reporter
kathy.aaron@mctx.org

To All Prospective Jurors:

As detailed in the document enclosed with this letter, you have been summoned to appear for jury service. I want to assure you that your wellbeing is extremely important and will not be compromised. In anticipation of this trial, I have reached out to the Public Health District for Montgomery County to ensure that all necessary precautions will be taken to ensure the safety and health of all participants.

Everyone entering any courthouse building will be screened and will also be required to wear a face covering. Additionally, appropriate social distancing will be required during jury selection and in the courtroom. Immediately following check-in, prospective jurors will be seated. This will help avoid jurors congregating and ensure social distancing throughout the selection process. Jurors are encouraged to bring bottled water. For those persons selected to serve as jurors, individual snacks and/or lunches will be provided. If you are unable to serve due to an underlying condition, sickness or matter related to COVID-19 or if you have a pre-existing obligation that cannot be rescheduled, please immediately contact the court identified on the back page of the enclosed summons.

The right to trial by jury is a cornerstone of our democracy, and jury trials necessarily involve sacrifice from those citizens called upon to serve. This has always been true, but it is especially true during these unique and trying times. It is my personal conviction that jury service is the second highest form of public service that any American can perform (second only to service in the Armed Forces). The right to trial by jury has been enshrined within the Seventh Amendment to our U.S. Constitution since 1791, and it was one of the stated principles in the Declaration of Independence which ignited our struggle to become an independent nation. As such, only those persons with extreme hardships should seek to be excused based on pre-existing obligations.

I want you to know that the courts of Montgomery County are mindful of these challenging times and have taken every reasonable precaution to protect your health, as well as that of the parties, lawyers and staff during this upcoming trial. I hope this letter is helpful and I thank you in advance for your participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy A. Gilbert", written over a horizontal line.

Tracy A. Gilbert,
Local Administrative District Judge

Montgomery County Courthouse ♦ 301 North Main, Suite 217 ♦ Conroe, Texas 77301
(936) 538-3618 or (281) 364-4200 ext. 3618 Fax (936) 538-3660
www.mctx.org/departments/departments_d_-_fdistrict_courts//418th_district_court

EXHIBIT "A"



Public Health

Prevent. Promote. Protect.

Montgomery County
Public Health District

December 22, 2020

To Whom It May Concern:

I am the Chief Operating Officer for the Montgomery County Hospital District, which oversees the Public Health District for Montgomery County. I have met with Tracy A. Gilbert, Local Administrative District Judge for Montgomery County, Texas, regarding the First Recertified COVID-19 Operating Plan for the Montgomery County Judiciary (“the First Recertified Operating Plan”), and its predecessor, and the First Recertified COVID-19 Operating Plan for Conducting Jury Trials for the Montgomery County Judiciary (“the First Recertified Jury Plan”), and its predecessor. Modifications have been made to the prior operating plans as has been requested by Dr. Charles Sims, Local Health Authority and Medical Director of the Montgomery County Public Health District Clinic.

Given local COVID conditions, I do hereby certify that the First Recertified Operating Plan and the First Recertified Jury Plan provide sufficient health and safety protocols to permit in-person proceedings and jury proceedings. Additionally, I do hereby approve of the First Recertified Operating Plan and the First Recertified Jury Plan.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Miller".

Melissa Miller