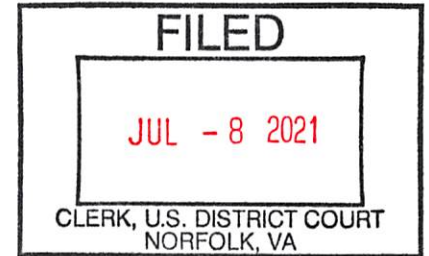


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA



In re:
COURT OPERATIONS UNDER THE EXIGENT
CIRCUMSTANCES CREATED BY THE OUTBREAK
OF CORONAVIRUS DISEASE 2019 (COVID-19):
DISCRETIONARY DISTANCING POLICY DURING
JURY TRIALS AND GRAND JURY PROCEEDINGS

Case No. 2:20mc7

General Order No. 2021-10

The United States District Court for the Eastern District of Virginia has continued to closely monitor the outbreak of Coronavirus Disease 2019 (COVID-19), as well as the developing guidance from the Centers for Disease Control and Prevention (CDC) and state and local health authorities. As a result of ongoing COVID-19 vaccination efforts in Virginia, current conditions support a modification to this Court's distancing policy applicable to jury trials and grand jury proceedings.

In May of 2020, after a national emergency was declared by the President of the United States and a state of emergency was declared by the Governor of Virginia, this Court adopted a mask and social distancing policy for all individuals entering our Courthouses and Court facilities, see Gen. Order No. 2020-14, and such policy remained in place for approximately one year. On June 7, 2021, in light of updated CDC guidance and guidance from local public health officials, this Court adopted a modified mask and social distancing policy, which no longer required fully

vaccinated individuals to wear masks in our Courthouses and Court facilities. See Gen. Order No. 2021-06. While the CDC eliminated its recommendation that fully vaccinated individuals maintain six feet of distancing, this Court maintained its universal distancing requirement of six feet based primarily on guidance from local health officials, with the intent to revisit such issue as Virginia's vaccination effort progressed. Id.

Since that time, Virginia reached the milestone established by the President of vaccinating at least 70 percent of the adult population with at least one dose by July 4, 2021.¹ Additionally, based on the successful vaccination effort in Virginia and improved pandemic conditions, the Governor of Virginia has ended the state of emergency in place since March of 2020, thus ending state-level masking and distancing requirements.

In light of the gains achieved in Virginia through widespread COVID-19 vaccinations, the Court finds that, consistent with guidance provided by national and local health officials to certain public school districts, it is appropriate to loosen the universal social distancing requirements during jury trials and grand jury

¹ While limiting the focus to the percentage of adults that are vaccinated does not provide a complete picture on the risk of future COVID-19 outbreaks in the broader community, the reality is that virtually all participants in criminal and civil proceedings in our Courthouses are over the age of 18, rendering such data point particularly useful when making operational decisions regarding the manner in which civil and criminal proceedings will be conducted in this District.

proceedings in order to provide individual judges the flexibility needed to foster the improved efficiency of our Court. Having carefully considered updated guidance from various public health officials, the Court finds that it is appropriate to relax the six-foot universal distancing requirement in the following ways:

(1) During jury voir dire, a process that requires the Court to collectively address a relatively large number of prospective jurors in our courtrooms, as well as during the grand jury empanelment process, distancing may be reduced to three feet in jury assembly areas and courtroom galleries/grand jury rooms in order to allow for the more efficient functioning of our jury trial system. However, upon the advice of public health officials, universal masking among the prospective jurors or grand jurors must be used during the voir dire or empanelment process in order to compensate for the reduced distancing and the fact that the vaccination status of some members of the jury pool or grand jury pool may be unknown. Judges may, of course, use appropriate means to excuse particularly vulnerable individuals before they are brought into a jury assembly room, grand jury room, or courtroom.

(2) After a jury or grand jury is selected, the presiding judge has the discretion to, but is certainly not required to, allow the selected panel of jurors or grand jurors to be seated in the courtroom or grand jury room less than six feet apart, although at least three feet of distancing shall be maintained. Additionally, the

presiding judge has the discretion, based on what can be learned of the vaccination status of those selected to serve on the jury or grand jury, to permit (but not require) jurors or grand jurors that are fully vaccinated to remove their masks during trial or grand jury proceedings notwithstanding the fact that such jurors or grand jurors are following a reduced distancing requirement of at least three feet.

Because the Court is authorizing the minimum distancing requirement to be reduced to three feet in the above-described situations, all other portions of this Court's multi-layer response aimed at reducing the likelihood of a COVID-19 exposure event must remain in place, as advised by local public health officials. These strategies include Courthouse-wide masking of unvaccinated individuals and individuals that elect not to share their vaccination status, temperature checks available on arrival at our facilities, employee health self-monitoring, increased ventilation, hand sanitizer stations, increased cleaning of high-touch areas, and the use of plexiglass dividers where appropriate. Six feet of distancing shall be maintained whenever possible in our Courthouses/facilities for vaccinated and unvaccinated individuals in all other circumstances, and presiding judges may, of course, continue to require six feet of distancing during jury assembly, jury voir dire and grand jury empanelment proceedings,

and/or when seating a jury or grand jury.² Allowing a presiding judge the flexibility to reduce the required distancing between jurors and grand jurors to a distance of less than six feet, but at least three feet, when deemed appropriate, will both increase efficiency and reduce the physical space necessary to conduct jury trials and grand jury proceedings, thereby allowing for more civil and criminal trials/hearings to be conducted simultaneously in our Courthouses.³

Similar to operational decisions made by various public school districts that necessarily serve unvaccinated individuals due to the young age of their students, this Court finds that allowing some distancing flexibility during jury trials and grand jury proceedings at this stage in the pandemic strikes the proper balance between recent CDC guidance eliminating all social distancing requirements for fully vaccinated individuals, see <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully->

² Likewise, as previously stated in General Order 2021-06, “[v]accinated individuals may, of course, continue to choose to wear a mask while in our Courthouses/facilities” for their own safety and/or for the safety of family members who may not be eligible for vaccination.

³ The Courthouse in each of this Court’s Divisions is unique, and the relaxed distancing requirements for jurors and grand jurors render it imprudent to continue any numerical requirement on the number of jury trials that can be conducted simultaneously and/or that can begin on the same day as selecting a jury or grand jury may no longer require the use of multiple juror “panels” and/or the use of multiple courtrooms. Consistent with the terms of this General Order, each presiding judge will have to determine, based on available space, staff, and employee/participant safety, whether a specific jury trial or other proceeding can go forward.

vaccinated.html (last visited July 8, 2021), the advanced stage of the vaccination effort and the end of the state of emergency in Virginia, and the advice of public health officials as informed by local conditions.⁴ During this Court's consultations with public health officials, such officials acknowledged that they have approved the use of three feet of distancing in certain school settings when: (1) pandemic conditions were sufficiently favorable; and (2) other mitigation strategies were in place, including mask requirements, podding/cohorting, etc.⁵ Cf. <https://www.cdc.gov/media/releases/2021/p0319-new-evidence-classroom-physical-distance.html> (last visited July 8, 2021). Just as the critical importance of in-person instruction in public schools may outweigh the fact that certain physical facilities do not allow for maintaining universal distancing of six feet, the ability to efficiently select a jury or grand jury is of such critical operational importance that moving to a minimum of three feet of distancing with a universal mask requirement during voir

⁴ Such local conditions are on one hand very favorable as compared to any other stage of the COVID-19 pandemic, but on the other hand require the Court to acknowledge the unknowns associated with the more transmissible "Delta" COVID-19 variant currently spreading in Virginia and throughout the United States.

⁵ While the Governor of Virginia has ended the state of emergency, the State Health Commissioner has issued a Public Health Emergency Order that "continues to require all students, teachers, staff, and visitors to wear a mask over their nose and mouth while indoors on school property through July 25, 2021." <https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/k-12-education/>.

dire and grand jury empanelment is appropriate based on current pandemic conditions in Virginia. Similarly, the fact that the size and layout of both the jury boxes in our courtrooms and the grand jury rooms in our Courthouses varies so greatly, and the fact that the vaccination rate of an individual jury or grand jury may diverge widely, affording presiding judges additional discretion regarding the seating of jurors and grand jurors, and the masking of fully vaccinated jurors and grand jurors, is appropriate. As more is learned about the effectiveness of the various COVID-19 vaccines against the Delta variant, and any other future variants of concern, the loosening of distancing restrictions as set out herein may ultimately be revisited and/or reversed.

It is so ORDERED.

/s/ 

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 8, 2021