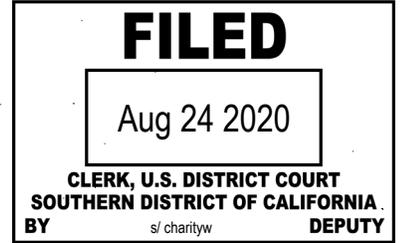


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



In the matter of)
)
ADOPTING DISTRICT TRIAL)
REOPENING PLAN)
_____)
)

Order of the
Chief Judge No. 36

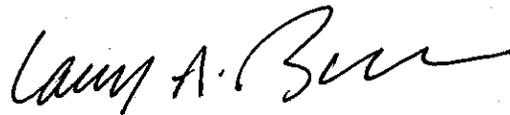
With the unanimous consent of the District Judges, the attached protocol for conducting jury trials is adopted.

This Order is effective immediately and will remain in place until further order of the Court.

* * *

IT IS SO ORDERED.

Dated: 8.24.2020



LARRY ALAN BURNS,
Chief United States District Judge

CASD TRIAL REOPENING PLAN

With jury trials reopening, the Court needs a plan to be able to proceed while maintaining the integrity of our health and safety protocol. Simply stated, we cannot have judges setting trials without coordination. We have only one large enough room to assemble the summoned jurors for one trial and one large enough room to hold a jury selection for one trial safely. We also have limits on the elevator capacity and must maintain appropriate social distancing in the hallways and public spaces. Based upon these and other considerations, the Strategic Committee on Reopening recommends the following plan.

General Concept

1. The Target Date to commence jury trials under this plan is August 31, 2020, absent pandemic related events or restrictions. Until in custody defendants can be brought to court daily without quarantine, civil cases and criminal cases with out of custody defendants can proceed with trial.
2. One jury selection per day may be scheduled Monday through Thursday of each week.
3. Priority will be given to criminal cases due to the Speedy Trial Act.
4. Only one trial will be set to start per floor per week so that:
 - a. The hallways can be used for jury breaks and the bathrooms would not be overwhelmed. Coffee for breaks could be provided for the jury to enjoy in the hall, or in a nearby courtroom, at safe distances. A bailiff or CSO might be utilized to ensure the jury maintains social distancing and refrains from discussing the case.

- b. Use the hallways for the lunch service for one panel in Carter Keep and the Enright Conference Center for another. A courtroom that is not in use could also serve as a lunch area. In Schwartz, use the hallways or an unused courtroom since no larger enough space exists in that building. Once again, a bailiff or CSO might be utilized to ensure the jury maintains social distancing and refrains from discussing the case.
 - c. Juries will deliberate in the trial courtroom with the courtroom locked and external sound systems shut down to ensure juror privacy. The Courtroom Deputy will ensure that the U.S. Marshal's courtroom security camera will be disabled during deliberations.
 - d. All air systems will be at 100% fresh air, no recycled air. Fresh air through windows should be allowed where available (e.g. The Jury Selection Room) unless the open windows compromise the privacy of discussions between the court and counsel intended to be outside of the juror's presence (e.g. side bars, private discussion with jurors or deliberations).
5. The Clerk of Court will maintain a calendaring system and judges must consult the system before booking their jury trial to avoid conflict with this plan.
- a. A rotation plan or program will be established by the District Judges consistent with starting just one trial per day and holding one trial per courthouse floor. The number of trials which may proceed per week will be limited by available resources, including without limitation, audio visual

equipment, internet bandwidth, overflow viewing space and jury break and lunch space.

- b. Judges may freely trade or give up weeks or transfer trial-ready cases to judges who have openings as long as the one day one trial start and floor separation plan is maintained.
- c. Judges without assigned courtrooms could consider using the courtrooms of other district judges or those assigned to magistrate judges and not in use. This will help to ensure social distance and space limitations of the overall plan. 3A, 3B and 5C are examples.
- d. When pending appointees are confirmed, a 5th week or Friday start days may need to be added to the rotation.
- e. The judges may adopt any other rotation or reservation plan they desire keeping in mind the one day one trial and one floor model.

Pretrial Practice

- 6. Jurors should be prescreened by the clerk on COVID-19 issues before the first day of trial.
- 7. Pretrial jury questionnaires on case specific matters will be at the discretion of the trial judge.
- 8. The Court and parties should review any juror requests to be excused before the first day of trial and consider excusing those jurors who show good cause to avoid their presence at the courthouse.

9. Jurors should be summoned to arrive at staggered times on the first day of trial to avoid large queues at the court entrance and jury administrator area.
10. All witnesses, parties, jurors, attorneys and the public must adhere to the INTERIM SAFETY PROTOCOLS FOR IN-PERSON COURT PROCEEDINGS set forth in Order of the Chief Judge No. 29 (OCJ 29), and any extensions thereto, which is incorporated herein.
11. Mask and face coverings must be standard medical masks or other appropriate materials, colors, and content neutral as determined by the trial judge.
12. Due to inadequate space for all victims, family members, media or the general public to observe the proceedings in the courtroom, a secondary space will be provided with an audio-visual streaming of the trial. That secondary space will require social distancing, masks and all other safety protocols in effect at the time. A CSO should be assigned to supervise the crowd size and compliance with OCJ 29. Witnesses must be instructed by counsel to not enter the overflow seating space.
13. Voir Dire should be conducted in Jury Room 230, with the jurors socially distanced and wearing masks except when answering questions. When answering questions, jurors should use the floor microphones placed in the aisles. Jurors should remove the mask and use a shield, so they can be seen and heard adequately.
14. Any juror who wants to discuss a private, confidential or sensitive matter "side bar" should be addressed during a break

in the jury selection room to maintain social distancing. Any counsel who wants to discuss any matter outside the presence of the jury "side bar" will be heard at a break or recess with the jury out of the courtroom.

15. Once a jury is impaneled they should be directed to the courtroom for the trial and dispatched in small groups to avoid crowding at the elevators. A member of the jury staff should accompany the jurors to ensure social distancing is maintained in the hallways and elevators.
16. Once a jury is impaneled they will be sequestered during the day. They will be provided breaks and lunch in a safe and separate area as determined by the trial judge.
17. Members of the venire not selected to serve should be returned to the jury assembly room where they can be discharged in small groups by jury staff.
18. Where jurors are seated and spread out in different areas in a courtroom, and less than equal view of the participants in the trial, the court could consider allowing them to change seats each day to compensate.
19. Counsel must always wear masks except when addressing the jury or a witness. When addressing the jury or a witness, and with the court's permission, counsel may wear a protective shield in lieu of a mask.
20. Witnesses should always wear a mask except during testimony. A face shield or social distancing should be used during the witness's testimony, so the jury can view the demeanor of the witness.

21. Judges should consider setting arrival times for each day's trial sessions to allow for social distancing in the hallways and elevators. For instance, for a 9 a.m. start, order half the jury to arrive at 8:30 a.m. and the other half to arrive at 8:45 a.m. These groups could alternate each day thereafter.
22. Judges should regularly inquire about the health and well-being of the jury and admonish them to advise the Court immediately if a change in their health, travel or an exposure to COVID-19 occurs. Jurors must be admonished to advise the Courtroom Deputy Clerk or the Bailiff in this regard.
23. Judges should regularly inquire if the jury members can adequately see and hear the testimony and exhibits when a non-traditional seating and spacing of the jury is utilized.
24. Should a juror, party, counsel or witness become ill during the trial, the trial judge will suspend, delay or postpone the proceedings or declare a mistrial as the facts and conditions warrant.
25. The Jury Administrator will survey the jurors upon discharge concerning their service including the health precautions employed by the Court. The responses should be considered by the Chief Judge and the Clerk of Court in ensuring Courthouse safety.