

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

JUDGE EUGENE A. LUCCI

IN RE:	PROCEDURES IN THE CONDUCT OF) COURTROOM PROCEEDINGS DURING) CORONAVIRUS EMERGENCY PERIOD) FOR JUDGE EUGENE A. LUCCI)	<u>COURT ORDER</u> <u>(AMENDED)</u>
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During the COVID-19 pandemic and emergency, and until further order of the court, for all of Judge Eugene A. Lucci's in-person, in-court criminal proceedings:

1. No person who is scheduled or desires to appear in the courtroom for any proceeding may report to the courthouse or appear in the courtroom if the person has a fever, feels ill, or has any of the symptoms of COVID-19. Counsel shall be notified and appropriate motions or arrangements may be made to accommodate the person's absence, if feasible in the court's discretion. If counsel has a fever, feels ill, or has any of the symptoms of COVID-19, he/she shall notify the court's assignment commissioner and take steps to obtain a continuance. Courthouse officers shall screen and will take all persons' temperatures and deny admission to any person exhibiting a fever of 100.4°F/38°C or more, as determined by the sheriff's officers. Sheriff's officers may question any person who desires to enter the courthouse about coronavirus or COVID-19 relevant information, including general health, symptoms, travel, and contact with confirmed carriers, and the purpose of the person's visit to the courthouse. All persons shall obey the court's and sheriff's emergency protocols, or be denied admission and/or be expelled from the courtroom or courthouse.

2. Elevator rides are limited to one occupant per car. Participants shall report to all hearings, and be present and seated in the hallway outside of the courtroom, not later than 15 minutes before the time scheduled for the hearing and shall maintain proper social distancing (six feet circumference around each person) in the hallway, regardless of their practice of social distancing before arriving in the hallway. Participants and attendees shall not check in with the court's office reception; office staff can view the participants and attendees in the hallway via the court's cameras, and the bailiff will come out into the hallway to speak with those persons.

3. In addition to the prosecutor, defendant, defense counsel, victim advocate, victims (the number and definition as determined by the court), and any required interpreter, and with the court's permission, media representative(s), each party will be permitted only TWO persons in the courtroom at any given time.

4. The court's assignment commissioner shall be notified by counsel for the parties at the earliest opportunity, but not later than the day prior to the scheduled hearing, of the number and names of persons (not to exceed two) who wish to attend or address the court in person at any in-court criminal proceeding, exclusive of counsel, the defendant,

victim advocate, and any required interpreter. The court may exclude any undisclosed persons, other than those stated in this paragraph. The court shall advise courthouse officers of the expected number and names of permitted attendees and limit access to the courthouse accordingly.

5. Counsel shall notify the bailiff prior to the hearing of the identity of persons who wish to address the court during the hearing.

6. In lieu of any in-chambers discussion, all pre-hearing discussions will take place in the courtroom with counsel, probation, and the court, with the audio or sound system turned off on the video system.

7. After any pre-hearing discussion, the audio or sound system will be re-engaged and the hearing will proceed after any others who are waiting in the hallway are admitted to the courtroom.

8. All persons in the courtroom shall maintain proper social distancing of six feet circumference as established by the court's bailiff. The bailiff and court security officers shall enforce the court's social distancing protocols anywhere in the courthouse.

9. If persons desire to address the court, they will be permitted to do so one at a time, from the gallery.

10. Any person wishing to address the court during a hearing who is not permitted to enter the courthouse or courtroom, or who otherwise cannot attend the hearing, may reduce his or her statements to writing and email them, or record it on an electronic audio/video file and provide it, to the Lake County Adult Probation Department, which will forward it to the court and preserve it for the record. The court may play the audio/video recording in the courtroom during the hearing, in its discretion, or note that the court has reviewed the communication.

11. Any person wishing to attend court during a hearing who is not permitted to enter the courthouse or courtroom, or who otherwise cannot attend the hearing, may view the proceedings on a computer or smartphone by requesting an electronic link to access the courtroom proceeding; the court will, to the extent practicable, and within the limits of its available technology, live stream the courtroom proceedings and make it available to such person(s), contingent upon the equipment being fully functional at the time. The court will not postpone or continue hearings in the event that live streaming cannot be accomplished.

12. For jury trials, the court orders the following provisions, in addition to any of the foregoing provisions that are not inconsistent herewith. The practices set forth herein shall be observed for all jury trials during the coronavirus emergency. The court will conduct only criminal jury trials during the emergency, and only if necessary in the opinion of the court.

A. Jury voir dire shall be conducted in four sessions. The first three sessions shall be for voir dire and challenges for cause, with the third

session being optional depending on the number of jurors excused for cause in the first two sessions, and the fourth session will be for the exercise of peremptory challenges. The first session will commence at 8:00 a.m. with juror orientation and will be for those designated as Group 1 jurors. Group 1 shall not exceed a total of 14 prospective jurors, which is the juror loading capacity of the courtroom in the maintenance of social distancing requirements. Counsel and parties will have a staggered arrival and shall not be required to report to the courtroom until 8:30 a.m. Group 1 jurors who are not excused for cause shall be temporarily excused until 3:00 p.m., at which time they shall appear and be present to participate in the fourth session, the exercise of peremptory challenges.

B. The second session will commence at 10:00 a.m. with juror orientation and will be for those designated as Group 2 jurors. Group 2 shall not exceed a total of 14 prospective jurors. Counsel and parties will have a staggered arrival and shall not be required to report to the courtroom until 10:30 a.m. Group 2 jurors who are not excused for cause shall be temporarily excused until 3:00 p.m., at which time they shall appear and be present to participate in the fourth session, the exercise of peremptory challenges.

C. In the event that there are less than 26 jurors who are unexcused for cause from Groups 1 and 2, the third session will commence at 1:00 p.m. with juror orientation and will be for those designated as Group 3 jurors. Group 3 shall not exceed a total of 14 prospective jurors. Counsel and parties will have a staggered arrival and shall not be required to report to the courtroom until 1:30 p.m. Group 3 jurors who are not excused for cause shall stay and be joined by those unexcused jurors in Groups 1 and 2, at 3:00 p.m., at which time the parties shall participate in the fourth session, the exercise of peremptory challenges.

D. For the fourth session, the exercise of peremptory challenges, the following procedure shall be used. Jurors will be numbered and seated in the courtroom in the order in which they were summoned for jury duty. Fourteen jurors, Group A, will be seated in the courtroom. The parties shall alternately exercise their five peremptory challenges until both parties are satisfied with the remaining unexcused jurors in that group. Group A jurors will then be removed from the courtroom to the hallway with appropriate social distancing, and the remaining jurors, not to exceed 14 in number, Group B, will be seated in the courtroom, maintaining the original order on the summons. The parties shall then exhaust or waive any remaining peremptory challenges. The first 14 jurors not excused is the jury; the court will empanel two alternate jurors on each trial. Any excess jurors will be retained throughout the process of the exercise of peremptory challenges.

in the event unforeseen circumstances or challenges for cause unexpectedly develop.

E. All 14 jurors who are selected are regular jurors, without any juror being identified or named an alternate. Alternate jurors shall be selected by random drawing after the evidence is submitted and before the jury is given the case to deliberate; alternates shall not be discharged, but shall be retained sequestered in the courthouse during all deliberations until a verdict is announced in court. Counsel shall be mindful that the procedures employed by the court for conducting jury trials during the judicial emergency are temporary and necessary, and they should tailor their conduct of voir dire to fit within the confines of the time allotted. For the voir dire on each of Groups 1, 2, and 3 of prospective jurors, counsel shall be limited to one-half hour. The court shall strictly enforce the time limit. The court may employ a supplemental on-line questionnaire, if, in the court's opinion, one is advisable or appropriate. The court will communicate with prospective jurors by SMS (text) message, email, or phone call.

F. No evidence or witness testimony will be presented on the first day of trial, which shall be used only for jury selection.

G. After the jury is selected, during the start of each day of trial, at 8:30 a.m. unless instructed otherwise by the court, jurors shall report to the main entrance of the courtroom, and shall move directly to their assigned seats in the courtroom, unless otherwise accessing bottled water or refreshments, which will be made available for jurors in the courtroom.

H. The second day of trial will commence with opening statements of counsel, if the court has already provided preliminary instructions on the first day. Any jury view will be conducted prior to opening statements, if the court orders one. A request for jury view should be made at least two weeks in advance of trial, as the court will have to arrange for multiple buses to maintain social distancing.

I. Jurors shall be seated in the courtroom, in observance of social distancing requirements, as set forth on the attached diagram, which includes the majority of jurors sitting in the gallery. The witness chair may be moved forward slightly into the well of the courtroom to assist jurors in viewing the witness as he/she testifies, if needed.

J. Counsel and the parties shall maintain social distancing at the trial table.

K. An auxiliary table will be set up at the southwest corner of the courtroom for the placement of exhibits, so that the attorneys may maintain distancing requirements with the witness and the judge. Counsel should prepare its case so that exhibits are presented electronically on the court's

large presentation screen for all to view simultaneously. A supplemental monitor/screen may be employed so that the jurors at the far southeast corner of gallery can see the presentation. No jurors will handle evidence during the trial. The jury will be provided gloves to handle the evidence during deliberations.

L. Counsel shall remain at the trial table when questioning witnesses but may otherwise move through the well of the courtroom to access evidence and presentation tools. The court prefers that the parties bring their own devices to connect to the court's audio-video presentation system.

M. Sidebar conferences will not be held. Should there be any issue requiring discussion outside the presence of the jury, the judge and counsel may retire to the judge's chambers to engage in that discussion, and the jurors will remain in the courtroom, in which case, the court and counsel will use an alternate digital audio recorder, or if it is unavailable, recreate in writing for the record the salient aspects of the discussion, if necessary. For more lengthy discussions which must be on the record or necessitates the use of exhibits, the jurors will be removed from the courtroom and placed in the multipurpose courtroom, if it is available, while the judge and counsel engage in that discussion in the courtroom. If the multipurpose courtroom is unavailable, the jurors will stay in the hallway, maintaining distancing. The multipurpose courtroom and hallway are marked or designated for social distancing.

N. Face masks for personal health protection may be worn by any juror, the defendant, and counsel; provided however, that the defendant will be required to remove any face mask he/she may be wearing, when requested for the purpose of witness identification. Witnesses may wear face masks when not testifying, but shall lower or remove them when testifying. Counsel shall lower or remove their masks when asking questions of any witness or when addressing the court, so that their speech may be accurately heard by the judge and jurors, persons can read lips to assist understanding, and the voice sounds picked up by the court's digital audio recording system. The board of county commissioners shall order face masks which will be provided to anyone who requests or requires one to comply with this order.

O. The jury shall deliberate on the verdict in the courtroom. During jury deliberation, all video and audio feeds from the courtroom will be deactivated, to the extent possible. The courtroom door will be locked to the outside to prevent unintentional entry by unauthorized persons. The jurors shall be instructed to knock on the office suite entrance door of the courtroom when needing the assistance of court personnel, or indicating that they have reached a verdict.

P. The court will ensure that appropriate social distancing is maintained throughout the trial, both inside and outside the courtroom.

Q. The court will ensure that no individual entering the courtroom is exhibiting symptoms of COVID-19, including a temperature of 100.4°F/38°C or more. All persons are subject to relevant COVID-19 questioning, including general health, symptoms, travel, and contact with confirmed carriers.

R. The court prefers to defer a potential juror's service to a period later in the year, but will excuse any potential juror who is concerned that participation in the trial will jeopardize his or her health or safety, provided that the potential juror notifies the court before 4:00 p.m. **more than three business days** before the day set for reporting for jury duty. The court will document the demographic characteristics of the jury pool and track the reasons for deferral or request for excusal.

S. Jurors, while on a comfort break during the trial shall be in the hallway on the second floor, restrooms, or outside the north entrance to the courthouse for fresh air, shall have no communication with anyone other than fellow jurors, and will observe social distancing requirements. Additional procedures such as restroom protocol, and other logistical matters shall be addressed during the trial as circumstances dictate. The court will encourage proper personal hygiene, including frequent washing of hands.

T. Jurors, at or before the time they are notified to report for duty, will be provided a copy of this order, a link to this order on the court's website, or a reference to the order on the court's website, so that they may know what measures the court has taken to protect their health and safety while on jury duty, including social distancing and other personal protective policies established by both the state and federal authorities, which may have the effect of reducing the number of requests to be excused, thereby increasing the pool of prospective jurors to approximate a fair cross-section of the community. The Health Commissioner of the Lake County General Health District has reviewed the provisions set forth in this order and has approved it. Jurors will be advised of this fact at the time they are notified to report for duty.

U. During trial, no spectators, victim's advocate, media, or others will be permitted inside the courtroom, as the courtroom size is sufficient only for the judge, counsel, defendant, state's representative, bailiff, security officers, and jurors, in the maintenance of social distancing requirements.

V. If an interpreter is necessary, the court will have to address that circumstance when it arises.

W. Witnesses shall not be on the second floor of the courthouse, except as otherwise permitted, until they are called into the courtroom to give testimony. Witnesses may be present on the first floor of the courthouse, the conference room on the second floor, the jury room on the second floor, victim's assistance offices, wherever directed by the bailiff, and shall maintain social distancing, but shall not communicate with or be in the presence of jurors except in the courtroom when testifying.

X. The court will endeavor to provide live streaming of its proceedings for spectators, victim's advocate, media, and others, to the extent that the available technology will permit. Witnesses shall not view any live streaming of the court's proceedings.

Y. In the event that the court determines that more than 14 jurors are needed for a trial (more than two alternates), the court will consider moving the trial to an alternate location outside of the courthouse, such as a school or the county administration assembly room, or have an auxiliary courtroom in the courthouse with appropriate technology, for overflow.

Z. Defense counsel and the defendant shall wear masks or other appropriate personal protective equipment when conferring at a distance of less than six feet.

AA. Court personnel will not touch or handle jurors' cell phones or drivers' licenses.

BB. The board of county commissioners shall instruct the building and grounds personnel to sanitize daily the courthouse entryways, courtroom and hallway outside of the courtroom, and provide hand sanitizer and sanitizing wipes as needed.

13. A copy of this order shall be provided to the sheriff's deputies at each entrance to the courthouse, along with the court's daily schedule and the names of permitted attendees, and the sheriff's officers shall enforce this order at the door to the courthouse. If there is any question on the part of sheriff's officers as to whether any person seeking admission to the courthouse to attend a hearing in Judge Lucci's courtroom shall be admitted or excluded, the officers shall contact the judge's office to verify whether the person should be admitted or excluded.

IT IS SO ORDERED.



JUDGE EUGENE A. LUCCI

Courtroom Diagram showing seating with social distancing of six feet

