

**Operating Plan, Procedures and Practices for Jury Trials and
Other In-Person Court Proceedings during the 2020 Public
Health Emergency and Pandemic-COVID-19 Pursuant to
Wisconsin Supreme Court Orders of May 22nd, 2020**

Effective Date: May 26, 2020

The Circuit Court for Bayfield County

Bayfield County Courthouse

117 E 5th Street

Washburn Wisconsin

Hon. John P. Anderson

I

The Purpose

To develop reasonable practices to ensure the rights of all parties and the public who come before the court, while recognizing the extraordinary public health concerns regarding a contagious virus commonly referred to as COVID-19. The court must accommodate practices designed to attempt to avoid exposure and infection of jurors, litigants, attorneys, witnesses and court staff through interpersonal contact in a jury trial or other court setting. These procedures and practices are developed with the intent to be proactive, recognizing we must provide all constitutional and statutory protections to the litigants and interested parties as well as the public's right to access. In so doing, we understand it is not possible to ensure absolute safety, but we can be expected to take reasonable and necessary steps to protect the health of all participants within the physical limitations of our building and resource allocation available to the court and county. These procedures are also intended to instill public confidence in the Bayfield County Court System and that we are providing for the public's safety. Furthermore, if necessary, these policies will be strictly enforced by the

circuit court to the full extend of its authority to reduce risk and promote the safety of all those who access the court system.

II

Planning Committee

On April 10th 2020, the Circuit Court for Bayfield County began developing a limited term subcommittee under the existing Facilities and Securities Committee. Video conference meetings via Zoom began the week of April 13th, 2020 and draft procedures were developed by the week of April 18th. The court included in the planning committee various criminal justice stakeholders, local bar representation, the District Attorney, the Bayfield County Sheriff and court security, medical professionals, courthouse facilities managers, County Administrator, the District Court Administrator the Health Department, Emergency Government and others to address jury service safety issues and other safety issues involving jury trials and other large court related gatherings. Prior to the effective date of these policies the planning committee met several times via Zoom and the court spent many hours consulting with committee members, the Chief Judge for District 10, as well as established, viewed and approved off sight jury assembly areas at the Washburn High School Gymnasium and associated faculties. The court has also acquired the service of a retired medical doctor to help facilitate medical screening at jury trials. This subcommittee will continue to meet regularly during the current public health emergency and remain in contact with the Bayfield County Health Department, to remain updated in the event this operating plan requires modifications.

III

General Public Education Regarding Jury Service

It will be necessary to provide public information through press releases, county web pages, social media and other public sources informing people that jury trials will be held during the COVID-19 Public Health Emergency and what steps and procedures are being implemented to address safety concerns. The court may partner with the Office of State Courts, the State Bar of Wisconsin, Wisconsin Eye and the Ashland-Bayfield Counties Bar

Association, Bayfield County Media Coordinator and other media outlets to inform the public and remind the same of the importance of jury service, even during this emergency.

IV

Juror Deferral Policy

It is not unusual for jurors to request to be excused from jury service before a trial. This court has always made efforts to accommodate reasonable juror requests for deferrals or excusals due to planned vacations, medical treatment, out-of-state employment, seasonal employment, annual planting and harvests, tourist season requirements, commercial fishing seasons and other related requests. Now, it is anticipated juror deferral requests will include specific COVID-19 related issues. It will be the policy of this court to grant reasonable deferments or excusals if a summoned juror provides information that reasonably relates to the juror's underlying medical condition with susceptibility to COVID-19 infection. Furthermore, summoned jurors who indicate they are currently experiencing COVID-19 like symptoms will be excused before jury service begins. Jurors who have sheltered in place and believe they cannot or will not comply with a summons due to extraordinary fear will be given a deferral to a future month or next year to serve as a juror, but will be advised of the precautions in place and their civic duty regarding jury service.

The court will also give special consideration to any of the following groups: healthcare workers, elderly/vulnerable populations, individuals providing care for the elderly/vulnerable populations, individuals caring for school age children at home or certain essential working groups. Summoned jurors in these groups will be granted deferrals or excusals if requested prior to appearing for a trial.

V

Jury Assembly

The Bayfield County Circuit Courtroom is approximately 1,700 sq ft. with a public seating capacity in the gallery of approximately 52 people. Jury assembly often encompasses 35-70 or more jurors summoned at one time for a particular trial. Until such time as it is deemed appropriate to use the large courtroom for jury assembly, alternate spaces will be considered.

The Washburn School District has agreed to allow its gymnasiums to be utilized for this purpose, assuming the facilities are available and will not create any other concerns for the school district. The court will also consider other possible venues, including the City of Bayfield Pavilion, the Northern Great Lakes Visitor Center, the South Shore School District Gymnasium, and the County Board Room.

VI

Juror Summons and Information Prior to Jury Service

It is anticipated that summoned jurors will have more and varied questions and concerns about serving on a jury during this public health emergency. Requests to be excused may increase. It may be necessary to summons more prospective jurors than in the past to make sure there are enough to select a jury. Also, additional information will be provided with the jury summons, such as availability of court provided personal protective equipment, location of jury assembly, and what procedures are being taken to reduce exposure to COVID-19 while serving on a jury.

VII

Juror Information Regarding Public Health Precautions and Personal Protective Equipment

Personal protective equipment, commonly referred to as "PPE," is equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. With regard to the COVID-19 Public Health Emergency, Bayfield County will consult with the Bayfield County Health Department to determine the type, acquisition and usage of the appropriate PPE for jurors, litigants, attorneys, witnesses and court staff and court security. Such equipment may include, but not limited to, face masks, face guards, gloves, and hand sanitization systems.

All summoned jurors will be given written information regarding the precautions being taken to reduce the risk of exposure to COVID-19 and what PPE will be provided at the jury assembly area and courtroom. The judge will send a letter to all summoned jurors in conjunction with the summons, explaining the precautions and planning that has occurred and remind citizens of their civic duty even during these difficult times.

VIII

Courtroom Cleaning and Disinfection

The Bayfield County Maintenance Department will clean and disinfect the courtroom and all spaces used for jury trials and court proceedings after every business day in which court was in session. Court staff will, in between court sessions, surface clean with disinfectant wipes, courtroom tables, chairs, benches, microphones and equipment used in a court session with disinfectant wipes. Further, the Bayfield County Maintenance staff has adjusted the air handling and fresh air exchange system in the courtrooms to operate at double the usual capacity and it will now continuously operate 24 hours per day to aid in the removal of airborne particles. The Bayfield County court staff will make efforts to routinely monitor cleaning schedules and effectiveness and will assist as needed to keep surfaces clean by using county supplied disinfectant wipes and other cleaning agents.

IX

Juror Health Screening

The Bayfield County Circuit Court and the Clerk of Court's office will work in conjunction with the Bayfield County Health Department to seek qualified personnel to be available to do COVID-19 health screens for all summoned jurors, litigants, witnesses, attorneys, court staff and security participating in the jury trial. The health screen will include both questions and noninvasive body temperature checks using inferred thermometers.

Persons screened as a potential risk of having COVID-19, based on symptoms or known exposure, will not be allowed into the courtroom, jury assembly area or any other court related facility. If a summoned juror is deemed to be symptomatic or otherwise thought to be a medical risk to others, they will be excused from jury service for a particular trial. Litigants, witnesses and attorneys deemed medically at risk will be subject to further determination by the court as to how to provide reasonable access to the court, such as video conferencing, telephone conferencing or other method approved by the court. Reasonable recesses and adjournments may be necessary to accommodate a particular situation. The court will expect attorneys, as officers of the court to use sound judgement and be forthcoming if they know of any person entering the courtroom who appears symptomatic.

X

Non-traditional Voir Dire

The court will inquire of the parties to any jury trial if a six person jury could be utilized to help assure adequate social spacing and allow for other health precautions to be implemented more easily. However, a six person jury will only be allowed, unless otherwise authorized by statute, if all of the parties consent on the record.

The court will consider using COVID-19 related jury questionnaires for the limited purpose of determining whether summoned jurors require special consideration, as described in section IV above, and to help determine any potential risk factors that should be considered regarding an individual juror. This questionnaire would be used to reduce the potential number of jurors who would otherwise have to appear for jury service and would likely be excused for cause prior to preemptory strikes or substantive challenges.

If all parties agree, the court will attempt to utilize a virtual method of jury selection to allow some or all prospective jurors to appear by video, such as through the court Zoom account, at a time prior to trial to select the jury. However, the court is cognizant that this will only be feasible if all jurors have access to a video capable computer, tablet or smartphone. Not all prospective jurors in Bayfield County will have such access or knowledge to appear in such a fashion, which means the jury panel may not represent a random cross section of the population.

Great caution must be taken when artificially engineering a prospective jury pool by limiting certain individuals who would otherwise have access to the court for jury service but for the COVID-19 Public Emergency. The parties to the action must be consulted and be given an opportunity to be heard before any virtual juror voir dire or juror questionnaire is used.

XI

Court Security

The court will consult with the Bayfield County Sheriff's office to determine if additional security or assistance is needed during offsite jury assembly. Special security concerns may

arise for any litigant or witness who is presently incarcerated and in need of transportation to the court or other off-site jury assembly area. The Bayfield County Sheriff Department has provide continuous court security for over 20 years and has a strong institutional knowledge and experience in the affairs of proper security and training.

XII

Social Distancing in the Courtroom

The court will make all reasonable efforts to comply with state, federal and local recommendations and orders regarding social distancing and group functions. However, courtroom activities often do not lend themselves to strict adherence to such principles when considering the need for attorney-client confidential discussions, adequate view and sight lines for conducting witness examination, jury's view of proceedings in the courtroom, rights of due process, victim rights, and the public's right to access. The Bayfield County courtroom has limited space and there is no guarantee jurors selected for this important function can, or will, at all times be at least six feet away from each other or participants in the trial. Furthermore, there is no guarantee litigants, witnesses, parties and the public will at all times avoid coming within six feet of another person within the confines of the court facilities. The court will take steps to space jurors in the jury box and bring in additional chairs to be placed in front of the jury box for jurors. The court will take steps necessary so that all jurors will be able to see video monitors used as part of an evidence presentation system, even if sitting outside the confines of the jury box, and to have adequate sight lines to the witness stand. Witnesses will enter the courtroom by separate entrance, near the witness stand, thereby avoiding coming into close proximity with the jurors, the public or the parties. Witness will be subject to the same health screening as set forth in paragraph IX.

XIII

Public Access

If restrictions and recommendations to avoid gatherings in excess of 10 people are in effect, it is a foregone conclusion that jury trials and many court proceedings will require more than 10 people in the courtroom at one time. The public still has a right to view open public court

proceedings that are not otherwise closed or confidential according to law. All courtrooms have space limitations and the public does not have the right to enter the courtroom if the number of people in the courtroom exceeds safety limits, fire codes or other legal restrictions. Similar safety concerns regarding the number of people who can safely enter a courtroom during a contagious disease public health emergency also apply and it may be necessary to limit the number of people who can enter the courtroom to view proceedings. However, the court will take steps necessary to allow the public to view courtroom proceedings via live video stream to another large room and by Zoom video through an internet connection. Any public access by live stream shall be controlled by the court and reasonable public access to hear and see will be allowed during all on-the-record proceedings. The public will have no right to participate verbally, as all audio access will be muted so as to avoid unintended interruptions.

XIV

Prioritization of Jury Trials

The court will attempt to prioritize jury trials during the COVID-19 Public Health Emergency to avoid overuse of a jury pool and available facilities. The court will take into consideration the nature of the cases, the extent to which the cases involve liberty interests, cases with time limitations, victim's rights and input, and the length of time a case has been pending.

XV

Jury Deliberations/Breaks

Reasonable efforts should be made throughout a jury trial to accommodate social distancing between the jurors. In that regard, the Bayfield County jury deliberation room is not well suited from a size perspective to accommodate social distancing for a 12 person jury. Therefore, alternate spaces will be considered, including allowing the jury to remain in the courtroom during breaks and during deliberations. Litigants, attorneys, staff and judge will reconvene to the smaller courtroom to hear matters out of the jury's presence. Final deliberations may take place in the jury courtroom. Bayfield County will provide all juror meals to minimize travel in and out of the courthouse, eliminating additional juror interaction with others outside of the courthouse during the course of the trial.

Resumption of In-Person Proceedings

A. General

The Wisconsin Supreme Court issued orders May 22nd, 2020 effecting the ability of the circuit courts to begin to schedule in person proceedings and jury trials. In an effort to safely and cautiously reengage personal appearances in court proceedings, the Bayfield County Circuit Court will promote and enforce these policies to the full extent of its authority.

The Circuit Court for Bayfield County has, in the last several weeks, aggressively adopted video conference and audio/phone proceedings via Zoom to almost entirely eliminate in person appearances. The use and incorporation of this technology has worked remarkably well and has allowed the court to continue functioning at a high level of efficiency while providing access and equal justice under the law. It will be the policy of this court to continue to use video conference, phone and other means to allow people to gain access to the courts if personal appearances are not otherwise necessary, requested or needed. Recognition is always given that certain important matters flowing across multiple case types will certainly require personal appearances. The court will, whenever possible, ask the parties and attorneys what their preference is regarding in person appearances.

Provisions I – XV above will be incorporated and followed once in person proceeding are allowed, and in addition, the Bayfield County Circuit Court will:

1. Schedule court proceedings that allow in-person appearances; however, the court will continue to allow and encourage appearances by Zoom phone and video conference, as requested and as necessary to avoid having large groups in the courtroom at one time. All statutory and constitutional requirements for in person proceedings will be honored, unless duly waived by the parties.

2. Review staffing needs. Staffing requirements will be determined by the Clerk of Court and Judge, as necessary. Remote job functions will be considered, as necessary to help reduce the number of court staff in the courtroom at one time.

3. Utilize a modified block scheduling format to reduce the number of individuals in the courtroom at a particular time.

4. Continue to monitor the health of court staff and judge.

5. Require all who enter the courtroom to wear a face covering, either their own or one provided by the court and to practice social distancing and appropriate hand hygiene. Gloves will be made available, but are not required. Any one member of the public who refuses to comply with these procedures may be excluded from the courtroom, but will be given information regarding how to access public court proceeding via Zoom or other means.

6. Judges and court staff shall be required to wear face coverings, practice social distancing and appropriate hand sanitization at all times when litigants, attorneys, victims, law enforcement or any other person or member of the public is present in the courtroom.

The court recognizes that attorney client confidentiality and trial strategy may be hindered in the court if strict compliance to social distancing is required at all times. The court will make exceptions to allow attorneys and clients to deviate from social distance protocols to consult with each other in the courtroom when necessary.

B. Vulnerable Populations

1. Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable populations.

2. The court and the clerk of court will include information on orders setting hearings, docket notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations.

3. Vulnerable populations who are scheduled for court will be accommodated by providing access via Zoom phone and video conferencing or other remote access option. Reasonable adjournments may be necessary.

C. Social Distancing

1. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least six feet.

2. The Bayfield County Board of Supervisors have created policies governing the common areas and offices of the courthouse and annex building in regard to COVID-19 precautions.

3. Each court related restroom has been evaluated to determine the appropriate capacity to ensure social distancing and the maximum capacity has been posted on each restroom door.

4. The maximum number of persons permitted in the gallery of each courtroom has been determined and will be posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.

5. The gallery of the courtroom will be marked to identify appropriate social distancing and seating requirements.

D. Hygiene

1. Hand sanitizer dispensers have been placed at the entrances to the building, outside of each courtroom, and most offices. The court will post signs outside courtrooms notifying the public and all persons entering the courtrooms of the availability of hand sanitizers.

2. Disinfectant wipes or spray have been placed near the door of the courtroom, at counsel tables, at the witness stand, on the judges' benches, and in the hallways.

3. Center for Disease Control flyers outlining appropriate hygiene, social distancing, or public safety will be posted in multiple locations near all court related offices and courtrooms.

E. Screening

1. When individuals attempt to enter the courtroom, efforts will be made to ask the individuals if they are feeling feverish; have a cough, shortness of breath, or difficulty breathing; or have been in close contact with a person who is confirmed to have COVID-19. Individuals who indicate yes to any of these questions will be refused admittance to the courtroom. If the person answering yes to any these questions is required to appear in court, the clerk of the circuit court will be immediately notified and if necessary the presiding judge will be notified and alternate methods for access will be arranged and, if necessary, the case will be adjourned to best accommodate the situation.

2. Inmates being transported from the jail to the court building will be screened for symptoms of COVID-19 and have their temperature taken prior to transport. Inmates with symptoms or an elevated temperature will not be transported to the court building.

3. Staff who are screening individuals entering the courtroom will be provided personal protective equipment, including face masks, gloves, hand sanitizer and other similar PPE.

4. Staff who are doing the screening will have a listing of court official phone numbers in order to notify the courts of individuals who may have been denied entrance.

F. Face Coverings

1. All individuals entering the courtroom will be required to wear face coverings at all times. The court will enforce this policy to the full extent of its authority. Refusal to wear face coverings by members of the general public will result in being denied entry into the courtroom, however, the individual will be given information regarding how to access public courtroom proceedings in an alternate method such as viewing and or listening to the proceeding via Zoom session access.

2. Individuals will be encouraged to bring face coverings or masks with them, but if the individual does not have a face mask or suitable face covering, a disposable face mask will be provided by Bayfield County before entrance will be allowed.

3. Individuals who are required to be in the courtroom for a judicial proceeding will be required to wear face masks or face coverings, or face shielding if a witness, and if the person does not provide their own adequate face mask or covering, a disposable mask will be provided. In the event the court finds on the record that face masks or face coverings for witness will interfere with the fact finders ability to judge credibility or believability of the witness, a transparent face shield will be provided for the witness or a transparent barrier will be located around the witness stand. The court will enforce this policy to full extent of its authority.

G. Cleaning

1. Court building cleaning staff will clean the common areas of the court building so that common spaces are cleaned at least every work day, Monday through Friday.

2. Court building cleaning staff will thoroughly clean the courtrooms every evening or morning. Court staff will surface clean all chairs, tables, benches and equipment used during a court proceeding in between court sessions or hearing.

3. Court building cleaning staff have been provided cleaning supplies shown to be effective with this coronavirus.

4. Court building cleaning staff have been trained on proper cleaning techniques and provided appropriate personal protective equipment.

H. Conclusions

This particular court was faced with a difficult task of managing and planning for a criminal jury trial scheduled before any emergency orders of the Wisconsin Supreme Court were issued. This class C felony jury trial was scheduled to begin on May 26th, 2020. The case involved previously delayed jury trials, multiple defense attorneys being fired, a defendant held on high cash bond since August of 2018, a speedy trial demand was made in late winter of this year and the unavailability of the States expert witness between June 1st and

September 1st, 2020. There were also significant victim rights issues making further delay problematic.

Even before the Chief Justice of the Wisconsin Supreme Court created a Task Force to study and recommend how best to reengage both jury trials and in person proceedings in the face of a protracted COVID-19 Public Health Emergency, this court undertook significant planning and research in conjunction with public health authorities and close consultation with the Chief Judge and the District Court Administrator. Time was of the essence. A planning process had to begin knowing there was no certainty the suspension of jury trials would be extended. At the conclusion of the last video conference meeting of our planning committee on May 21st, 2020 and after reviewing draft versions of this plan, the committee authorized Judge John P. Anderson to finalize a written operating plan and procedures in preparation for the upcoming jury trial(s) and a resumption of in person proceedings. In the event the prohibition of jury trials was not otherwise extended by the Wisconsin Supreme Court, this court and members of the planning committee (with the presence of the defense attorney in the May 26th Jury Trial) made on site inspections of the local high school gym to prepare for jury assembly and selection.

Out of necessity, Bayfield County has made significant plans to help reduce the risk to all those who participate in court proceedings, and has undergone extensive collaboration to create and effectuate these policies and procedures.

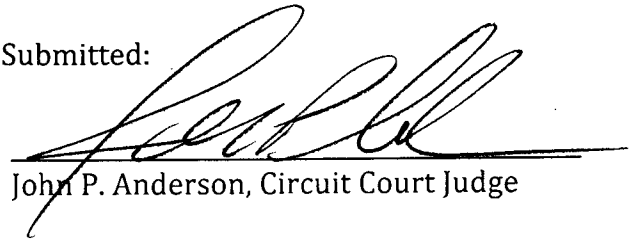
Review and Approval by the Presiding Judge and the Chief Judge for the 10th Judicial District of the State of Wisconsin

In developing this plan, I, the Hon John P. Anderson, Circuit Court Judge for Bayfield County, have consulted with Bayfield County's Planning Committee referenced above. This final version of our plan was modified slightly to comply with the Wisconsin Supreme Court orders issued May 22nd, 2020. A list of members of the committee is set forth below. I will

ensure that all visiting judges who conduct proceedings in our courtrooms covered by this Operating Plan will be given a copy of the plan, so they may conduct proceedings consistent with the plan. This plan may be modified by the Court and Planning Committee should the circumstances of the COVID-19 Public Health Emergency require modifications to address changing conditions and safety issues.

Date: 5-24-2020


Submitted:



John P. Anderson, Circuit Court Judge

Date: 5-24-2020

Approved:



Maureen D. Boyle, Chief Judge
Wisconsin 10th Judicial District

Bayfield County COVID-19 Stakeholder Subcommittee Members

Mark Abeles-Allison, County Administrator
John Anderson, Circuit Judge
William Appleton, State Public Defender
John Carlson, Corporation Counsel
Kay Cederberg, Clerk of Court
John Gary, Court Security Officer
Paul Houck, Information Technology Director
Kimberly Lawton, District Attorney
Becki Nelles, Public Health Nurse
Craig Parks, Maintenance Supervisor
Dr. Kate Stolp
Paul Susienka, Sheriff
Jan Victorson, Emergency Management Coordinator
Sara Wartman, Health Department Director