



State of South Carolina

The Circuit Court of the Ninth Judicial Circuit

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MEMORANDUM

To: Members of the Charleston and Berkeley County Bar Associations
From: Judge Roger M. Young, Sr.
Subject: Date certain jury trials update
Date: September 7, 2021

Labor Day weekend 2021. Wasn't this pandemic thing supposed to be over by now?

I've come to realize that epidemiological predictions are a lot like meteorological predictions. They are based on the best information available at the moment they are made, but they change as conditions change. If you want to know what the weather is right now, step out on the porch and look around. Want to know where that tropical storm forming out in the Atlantic is going? Go study a hurricane forecast cone graphic. It gets bigger the further out in the future it predicts a path. This is where we find ourselves with higher Covid-19 infection numbers today than we had a year ago this same weekend. Just as I hope every hurricane goes somewhere else, I had hoped we'd be talking about COVID-19 in the past tense by now. I just finished reading an article in which people with very important-sounding credentials predict this thing may be over somewhere between mid-October and several years. Guess which is my favorite. Guess which is least likely to be correct.

Here's what I know. As court officials we are tasked with opening the doors to the courthouse and operating it as close to normal as we safely can. The health and safety of those who work at the courthouse and those who come inside must be our top priority. While some government jobs require people to put their lives on the line every day, we don't typically think of court clerks, bailiffs, and administrative personnel in that manner. Nor do we think of jury duty as high-risk public service. If we ever expect citizens to show up for jury service, we must assure them that we have taken every measure possible to protect their health.

Napoleon Bonaparte is credited with saying "An army marches on its stomach." He was referring to the importance of logistics. Logistics drive most of our decisions about how courts

operate daily. When people show up for a trial, they expect certain things to be in place and justifiably take a lot for granted. Extraordinary events cause us to focus on the details.

For instance, people ask why we haven't been able to conduct more than one jury trial at a time. It's a fair question. When you think about what goes on "behind the curtain", you begin to see how logistics dictate certain actions. The biggest issue is what to do with the jury. For starters, not every courtroom has jury boxes. In other words, they were never designed to have a jury trial conducted in them. Second, the "social distancing" aspect of operating safely has the biggest impact. If you've been inside a courtroom during a jury trial since May, you will have noticed the jury does not sit in the jury box; they sit in the area where the audience usually sits because they must be spaced out six feet in every direction (as well as wear masks). Another often overlooked factor is where the jury goes during breaks and to conduct their deliberations. Obviously, they cannot go into the traditional jury deliberation rooms because those rooms are too small to fit everyone while following social distancing guidelines. Therefore, we must put them in a room large enough to accommodate them safely, which in practice means another courtroom. When you look at it that way, you realize it takes two courtrooms to conduct one trial. Let's not forget jury qualification. In Charleston we bring them in three staggered groups. In Berkeley we have the jury panel in three rooms and conduct qualification and *voir dire* using video streaming. I held court in Chesterfield County a few months ago and we conducted jury qualification 15 miles from the courthouse in the Pageland Community Center. After we picked the jury for the first case, we all drove to the courthouse for the trial. Necessity is the mother of invention.

This is where we find ourselves today. I still hope we'll look at something resembling "normal" by the end of the year. As we sit today that looks a bit optimistic. However, it doesn't mean we are stuck where we are forever.

Clerk of Court Julie Armstrong, Judge Jefferson and I recently met with some of Julie's senior people to explore a path forward to conducting two jury trials during a term of court while doing our best to insure the health and safety of the public and the courthouse employees. Starting the week of September 13th, we will convert the jury assembly room into a courtroom after the jury has been qualified. This gives us room to safely space everyone out while using the grand jury room for jury deliberations. This won't be an ideal situation, and we'll only be able to conduct a civil trial in that room due to security. However, it gets us a second 12-person jury trial, which will help us move cases on the jury trial roster. Criminal jury trials will still only take place in Courtroom 4-C for the present.

Thank you for bearing with us. I know everyone would like for things to be the way they were before the pandemic. However, we believe this is the best way forward for now.

I still plan to begin assigning date-certain civil jury trials for 2022 in early October, assuming we get the trial calendar assignments for 2022 by the end of September.