



United States District Court District of Hawaii

DRAFT: June 24, 2020

PLAN FOR RESUMPTION OF JURY TRIALS IN THE DISTRICT OF HAWAII



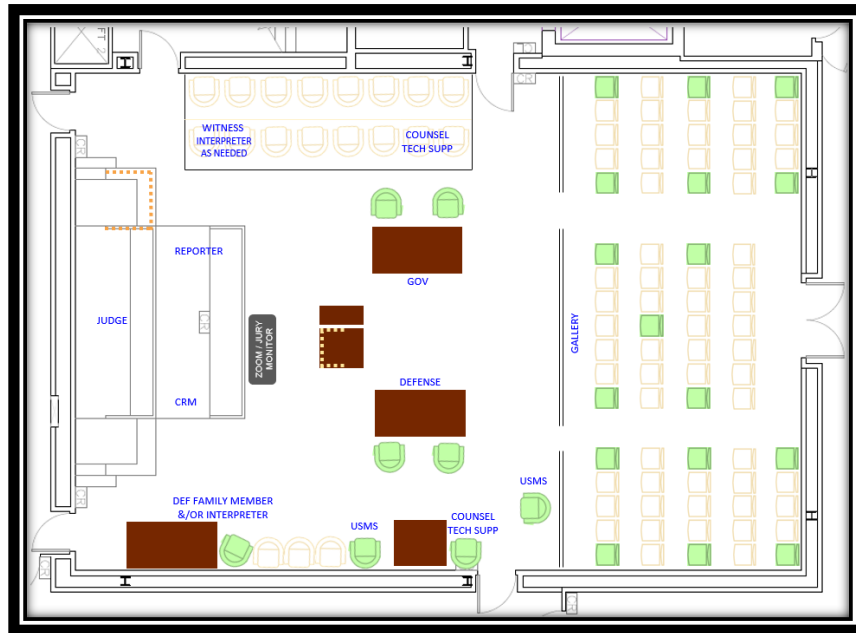
Jury trials are the bedrock of our justice system in both criminal and civil cases. Conducting a jury trial during the current COVID-19 pandemic must be done in a manner to address and minimize the risks to all participants and spectators, including jurors, attorneys, witnesses, parties, members of the public, the press, and court employees. This Plan for Resumption of Jury Trial (“the Plan”) sets forth guidelines on how to hold a jury trial during the pandemic. It will likely be changed as the court and counsel learn from initial trials, and as we learn more about COVID-19. Individual presiding judges, in consultation with counsel, are free to deviate from the Plan given a judge’s preference in a particular case. Finally, if anyone has any suggestions to improve the Plan, please send an email to COVID19@hid.uscourts.gov. The Plan begins by setting forth some general mitigation measures that will apply in the courthouse at all times (including during a jury trial), and then addresses specific parts of a jury trial.

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I. GENERAL MITIGATION MEASURES

- A. With limited exceptions, everyone in public areas of the courthouse, including the courtrooms, will be required to wear a facemask. Facemasks will be made available to anyone entering the courthouse without one. Testifying witnesses, attorneys addressing the court or jury, and judges addressing attorneys/parties/jurors will be required to wear a facemask, face shield, or speak from behind a plexiglass barrier.
- B. With limited exceptions (as specifically approved by the court or presiding judge) everyone in the courthouse will be required to maintain a 6-foot social distancing. For jury trials, courtroom seating will permit the 6-foot social distancing, with jurors sitting in the gallery portion of the courtroom. The following is an example of a fourth floor courtroom seating chart for a criminal case (*see also* Exhibit A: Full Size Image):



- C. Hand sanitizer or sanitizing wipes will be made available throughout the courthouse, including near the elevators on all floors, at the entrance to courtrooms in use, and at the juror check-in areas.

- D. The court is in the process of hiring an entity to provide enhanced cleaning throughout the courthouse.

II. JURY SELECTION

A. PRE-TRIAL CONTACT WITH POTENTIAL JURORS:

1. Approx. 7 weeks prior to jury selection: court and counsel are to review a proposed juror questionnaire. The questionnaire addresses COVID-19 related questions, and many questions often asked during voir dire. The attached sample questionnaire has been approved by the United States Attorneys' Office and Federal Public Defenders (*see* Exhibit B). Because the answers to the questionnaire will contain medical information, the answers will be sealed.
2. Approx. 6 weeks prior to jury selection: court and counsel will finalize juror questionnaire.
3. Approx. 5 weeks prior to jury selection: court will mail questionnaires with instructions and letter from court explaining court's COVID-19 mitigation measures. Jurors will be instructed to complete the questionnaire either:
 - Electronically via eJuror (on court's website); or
 - By filling out the paper form and returning in provided postage paid envelope.
4. Approx. 4 weeks prior to jury selection: Postmark deadline for jurors to return questionnaire.
5. Approx. 2-3 weeks prior to jury selection: court and counsel will review juror questionnaires, and the court will rule on requests to be excused
6. 3 business days prior to jury selection: Jury staff contacts remaining jurors (who have not been excused) to determine if, in the prior 14 days, any of them have been diagnosed with COVID-19, have experienced any symptoms consistent with COVID-19,

or have been in contact with anyone who has been diagnosed with COVID-19.

7. 2 business days prior to jury selection: Day 1 jurors will be contacted via text (NAPP) and will be notified to report on Day 1 at assigned time.
 - 15 jurors will be instructed to report to 4th Floor Lobby Check at a time. The presiding judge, with input from counsel, will determine how many groups of 15 to report per day. For example, 15 jurors could be instructed to report in the morning and another 15 in the afternoon (for a total of 30 per day), or the report times could be span three different times during the day (for a total of 45 per day).
 - Jurors will be told to report in groups of five in 15-minute intervals.
 - Jurors will be given options for transportation, including parking and taxi/Uber/Lyft.¹
 - Repeat procedure for Days 2 and 3 of jury selection, if needed.

B. REPORTING TO THE COURTHOUSE:

1. The following measures will be implemented at the entry pavilion and first floor lobby elevator:
 - The US Marshals Service will require 6-foot social distancing for anyone entering the security pavilion of the courthouse, with stanchions and floor decals in place.
 - Once through security, Court Security Officers (“CSOs”) will escort jurors to the first-floor elevator lobby and instruct them to proceed directly to the fourth floor. Social distancing floor decals will be placed on the first-floor lobby, and CSOs will insure that social distancing is maintained for those waiting

¹ Taxis and ride sharing services are not reimbursable as a public transportation equivalent “unless in an emergency situation the clerk of court specifically authorizes the use of a taxicab as essential to the expeditious performance of a juror’s duties.” Guide to Judiciary Policy, Vol. 4, sec. 365.50.25(b).

for an elevator.

- Generally, two individuals will be permitted per elevator, and social distancing floor decals will be placed inside the elevators. The State Department of Health approved four individuals in an elevator, if needed to keep the lobby area clear.

2. Large signs will convey courthouse entry requirements:

- Mask or other facial covering must be worn while in courthouse:
 - If someone shows up without a mask, a CSO will provide that person with a court-provided mask;
 - If someone (other than a child too young to wear a mask or someone who cannot do so for medical reasons) refuses to wear a mask while in the courthouse, the CSOs will not allow the person to enter the courthouse or will escort the person out of the courthouse.
- Any individual entering the courthouse will be denied entry if, in the prior 14 days, that person was diagnosed with COVID-19, was in contact with someone diagnosed with COVID-19, has experienced specific COVID-19 symptoms, has travelled outside the State of Hawaii during the last 14 days, or has been asked by the State or a health care professional to quarantine in the last 14 days.

C. JUROR CHECK-IN AND ORIENTATION:

1. Jurors will proceed directly to 4th floor lobby to check in.
 - Stanchions and social distancing floor decals will be placed in 4th floor lobby for juror check-on.
 - Two tables will be used at far end of 4th floor lobby (between Kupono and Kaulike):
 - Each table will have one jury staff, seated 6 feet apart, with one laptop and scanner on each table;

- Jury staff will check-in the jurors, and provide the jurors with disposable juror badges; and,
 - Hand sanitizer or sanitizing wipes will be available at juror check-in tables.
2. After checking in, jurors will be directed to Kanawai for orientation and start of jury selection.
 3. Upon arrival in Kanawai, jurors will be directed to take an assigned seat, with each occupied seat at least 6-feet away from another assigned seat. Assigned seats will be clearly marked.
 4. Once all 15 jurors have been checked in, jury staff will start orientation process, including showing jury video and COVID-19 mitigation video.
 5. Spectators/guests/media/members of the public will be permitted to observe voir dire (and the rest of trial) by video from another courtroom.

D. VOIR DIRE:

1. The overall voir dire process in the Plan is intended to avoid juror sidebar and allow the entire process to take place with social distancing.
2. Group Voir Dire
 - Judge will conduct general voir dire of all 15, covering only further hardship excuses and matters not raised in the questionnaire. No sidebar will be held during the group voir dire.
 - Kanawai will be set up with “shotgun” microphones such that jurors can speak from a distance of approximately 3 feet away.
 - Judge will excuse jurors for cause after group voir dire (should only last 20-30 minutes).
3. Individual Voir Dire

- If not excused for cause, the remaining jurors will move to Kuponu.
- Jurors will be called to Kanawai one at a time for individual voir dire.
- Additional court staff will be present to have jurors brought from one courtroom to the other.
- Before each juror is called, counsel may ask the court to cover particular questionnaire answers.
- Court will conduct individual voir dire (and, as necessary, permits attorney follow-up or attorney voir dire).
- At the end of each individual voir dire, counsel must pass the juror or move to strike for cause.
- When done, the selected jurors will check-out at fourth floor hallway table and will be instructed that they will be notified when to return.
- Jurors will depart courthouse.

4. Peremptory Challenges:

- After a sufficient number of jurors have been passed for cause, the parties will exercise peremptory challenges without the jurors present. Each judge could consider taking photos of jurors before individual voir dire so that counsel can refer to photos when exercising the preemptory challenges.

5. Empaneled jury:

- For each juror selected, provide an individual bag with pens, notepad, and hand sanitizer. At the end of the day, the juror could replace the items in the bag and leave under the juror's chair or be collected by the CRM.

II. TRIAL:

A. HOURS

- Trial will be held 8:30am to 1:30pm with two breaks. During breaks, jury can stay in courtroom for out-of-custody defendants. For in-custody defendants, jurors could be taken to the Judges' Conference room, deliberation room, and/or jury lounge to maintain 6-foot distancing. Social distancing markers will be placed in each of these rooms.

B. COURTROOM SET UP FOR TRIAL

- Counsel tables will be rotated to face each other (parallel to the jury box):



- Parties and counsel seated at each counsel table will maintain 6-foot separation from each other.
- There are two microphones mounted on the lectern. The left lectern microphone will be designated for use by Defense. The right microphone will be designated for use by Plaintiff/Prosecution.
- Water will no longer be provided to counsel.
- Jurors will be in assigned seats in the gallery with social distancing.

- Anyone, including attorneys and witnesses, not speaking in the courtroom will wear a facemask. The court will not provide facemasks or face shields to counsel.

C. OPENING AND CLOSING ARGUMENTS

- The Lectern will be turned to face jurors seated in gallery.
- The Attorney will face the jury, with her back to Judge.
- The attorney will be required to wear a face mask or a face shield.
- An AV camera will display view of attorney, which the jurors and Judge will be able to see on their display.

**During
Opening and
Closing**



D. WITNESS EXAMINATION

1. Witness and Attorney:

- Attorney will face witness on witness stand.
- Attorney will be required to wear a face mask or face shield, unless the court is able to install plexiglass on the lectern.

The witness will not wear a face mask or face shield. Plexiglass will be placed around the witness stand to protect others in the courtroom, including the judge and CRM.

- The plastic cover on the microphone on the witness stand will be removed by each witness when the witness' testimony is complete. Disposable gloves, hand sanitizer and wipes will be provided.
- The next witness to testify will place a new cover over their

microphone prior to testifying. Disposable gloves, hand sanitizer and wipes will be provided.

- The desk surface of the witness stand and witness chair (armrests, seat cushion, and backrest) will be wiped down by each witness when the witness' testimony is complete. Disposable gloves, hand sanitizer and wipes will be provided.
- If a witness is unable or unwilling to perform any of the above tasks, the courtroom manager shall remove the microphone cover and wipe down the witness stand desk, and witness chair as described above.
- If a case requires the need for a witness to attempt to identify a criminal defendant, consider how to do so when the defendant is wearing a mask.

2. Jurors' View

- On each individual iPad, jurors will see a split-screen showing witness on one side of screen and attorney on the other side.



3. Remote Testimony

- In the event a witness must testify remotely via video conference, the witness will have the ability to join the video and see the same view being shown to the jurors on their iPads.

- A separate device/display would be placed on the actual witness stand in the courtroom (facing the gallery) that would display the witness as if the witness were sitting up on the witness stand. This will allow the parties, attorneys, and jurors to see the witness's face while testifying.

H. PARTIES AND THEIR COUNSEL

1. For Criminal Defendants:

- A system of communication will be set up for a defendant and counsel to communicate. The simplest system would permit some sort of chat on an iPad or laptop. For actual discussions, the court has purchased an encrypted listening assisted device system (*see*, listentech.com);

2. For Civil Litigants:

- The same system of communications can be set up for civil litigants, if needed.

E. EXHIBITS

- Paper exhibits, unless oversized, must be presented digitally, although counsel will be permitted to use the Elmo. Jurors will use iPads for evidence presentation. Counsel can upload admitted exhibits to laptop for deliberations. Counsel will not be permitted to approach the witness stand.
- Counsel must prepare a separate binder for each witness called to testify, for both direct and cross-examination. This binder must contain every exhibit or document that counsel anticipates using in the examination of that witness. Any exceptions would have to be cleared with the presiding judge. Cross-examination binders need not be provided to the court or opposing counsel in advance of the start of the cross.
- If either side uses an assistant to aid with evidence display, and to allow all to maintain social distancing, IT will provide an HDMI extension cable that will run from counsel table to either:

- For defense counsel assistant, the chair up against the wall.
- For plaintiff/prosecution assistance, the jury box.

F. DISPLAY OF EVIDENCE

- Jurors will see evidence displayed on the full screen of their iPad.
- Each juror’s iPad will be mounted on a stand far enough away from juror so that it isn’t a tripping hazard, yet close enough for the juror to see.

During Presentation of Evidence



G. SIDEBAR:

- If needed, sidebars will be conducted in the Judges’ Conference Room (JCR – Room C-452).
- Prior to jury selection, IT will establish a video conference connection between the JCR and the Court Reporter’s iPad.
- During sidebar, the Court Reporter will switch the audio feed from the courtroom A/V system to their iPad (connected to the JCR video conference).
 - The Court Reporter will be able to see and hear the JCR

(via video conference feed on their iPad) and will be able to speak and let the JCR know if she cannot hear.

- No one in the courtroom, except the Court Reporter, will be able to see or hear the JCR.
- The JCR (and anyone in courtroom) will be able to hear the Court Reporter if they speak.

I. VIEW OF THE “JUROR BOX”:

- The camera on each juror’s iPad will be turned on so that the juror’s face is viewable.
- A large monitor will be set up in front of the lower bench that will display the faces of each juror (as captured by the camera on their respective iPads) in grid layout:



- This monitor will allow the presenting attorney to see the jurors faces while they are questioning a witness or addressing the court (with their back to the jurors sitting in the gallery).
- If desired, IT can provide the judge with a device on the

upper bench that will allow the judge to see the same grid layout of the jurors faces.

- All courtroom AV monitors will display the same view the jurors will be seeing on their iPads.
- The existing large gallery monitors will be removed from the courtroom to allow jurors, attorneys, and judge full line of sight.

J. PUBLIC VIEWING / OVERFLOW ROOM:

- An “overflow courtroom” will be set up for every trial and made available to anyone who would like to observe trial.
 - Those seated in the “overflow courtroom” will be able to see and hear the trial via large monitors in the gallery and at counsel tables in the overflow courtroom.
 - Those seated in overflow courtroom will have the same view as that displayed on the jurors’ iPads and trial courtroom displays.
- Should a Defendant’s family member request to be present in the actual trial courtroom, accommodations can be made including possibly sitting in a chair behind the defense table, if available pursuant to social distancing guidelines.

K. INTERPRETERS (IF NEEDED)

1. For the Defendant: the interpreter would sit behind the defense counsel table but socially distanced using the court’s assisted listening device.
2. For the witness: the interpreter would sit in the jury box seat closest to the witness stand.
3. For a witness testifying remotely: a regular telephone call will connect the interpreter and remote witness.

III. JURY DELIBERATION

The jury would deliberate in Kanawai, with the windows on the door darkened. The verdict would then be taken in Kanawai well.

EXHIBIT A

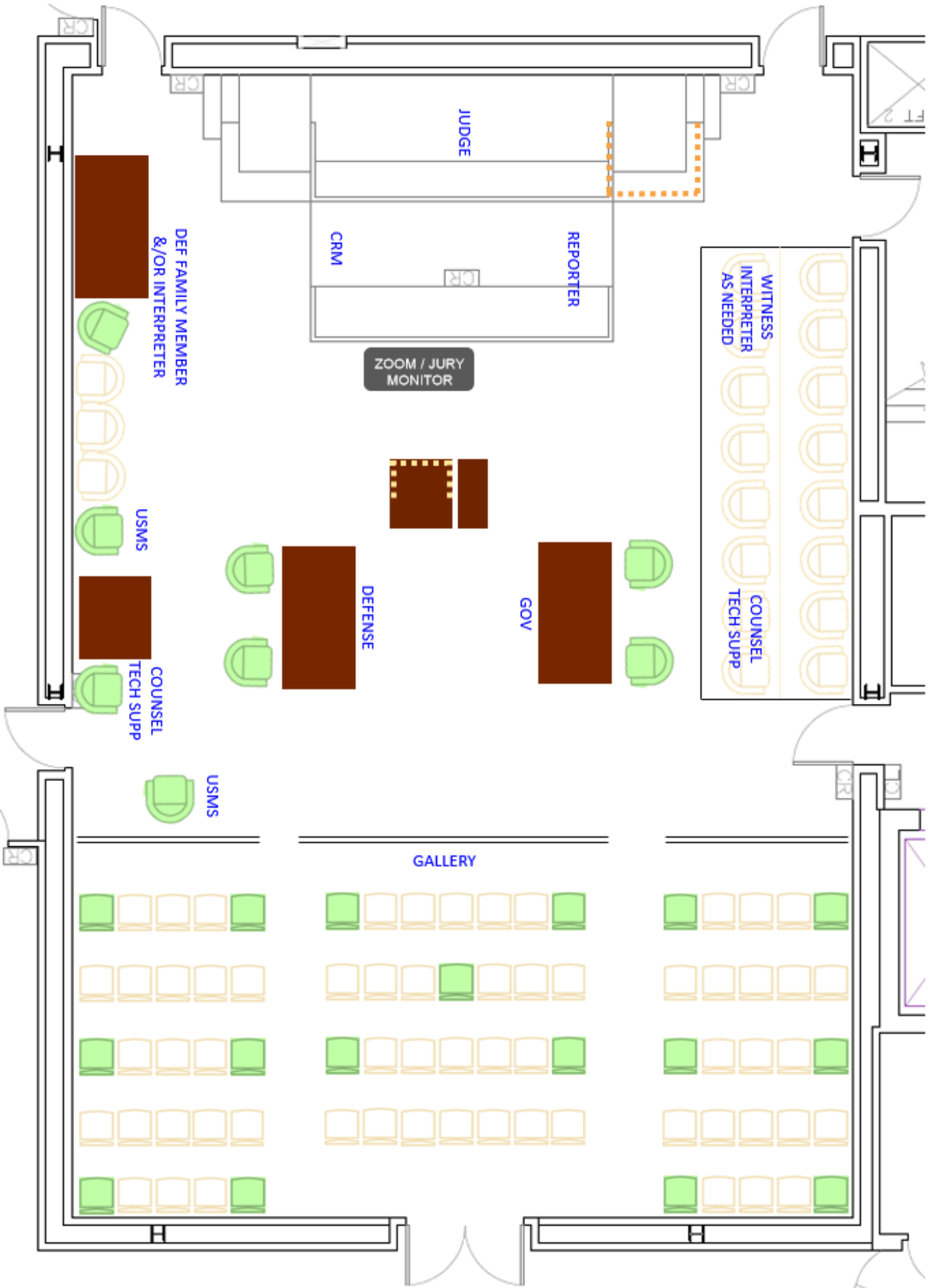


EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE JURY QUESTIONNAIRE

CR. NO. ____ - _____

JURY QUESTIONNAIRE

INSTRUCTIONS

You are being asked to complete this questionnaire to assist the court and parties in selecting a jury for an upcoming criminal trial.

Please answer the questions to the best of your ability. You are simply asked to consider the questions and provide truthful and honest answers. Please answer each question fully. If you need more space, use the blank pages attached to the end of the questionnaire. Please identify the question number next to your continued response (otherwise, the court and parties will not know which question you are answering).

If you do not understand a question, please respond “I do not understand.”
If you do not know the answer to a question, please respond “I do not know.”

[include instructions here about mailing, emailing, ejuror?]

Do not discuss the questionnaire, your answers, or anything to do with this case with anyone else, including family, friends, and co-workers. Do not do any research regarding this case, including searching the internet or engaging in any

social media. From this point forward, do not read or watch any news reporting about this case. In short, you may not gather any information, of any sort, about the case outside of the courtroom.

The answers to your questions that relate to personal health information will be kept private, and only used by the court and the parties to the case.

The court is deeply appreciative of your jury service.

United States District Judge

Name: _____

Full Name: (Please Print)

(Last)

(First)

(Middle Initial)

I declare under penalty of perjury that the answers set forth in this Juror Questionnaire are true and correct to the best of my knowledge and belief. I have not discussed my answers with others or received assistance in completing the questionnaire.

Signed this ____ day of _____, 2020.

(Signature)

Name: _____

BACKGROUND INFORMATION

1. What is your age? _____ Place of birth? _____

Cellular telephone number? _____

Are you capable of receiving text messages and responding to them?

Yes No

2. How long have you been a resident of the state of Hawaii? _____

3. What is your current status?

Single Married Living together
 Divorced Separated Widowed

4. What is your current occupation? Check all that apply:

Work full-time Work part-time
 Homemaker Student
 Disabled Retired
 Unemployed
 Other (please specify) _____

5. If employed, please indicate your employer, the type of work you do and how long you have been employed in that capacity. If you are retired or unemployed, describe the work you used to do and how long you have been retired or unemployed.

6. What other full-time employment have you had during your working life?

Name: _____

7. How far did you go in school, and what was your major field of study if you went to college or graduate school? (If you are currently a student, what is your field of study?)

8. How far did your spouse/partner go in school, and what was his or her field of study?

9. For each member of your household or any adult children living outside the household, please provide the following information:

Relationship

Occupation

Example: Husband

Teacher

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name: _____

10. Have you ever served in any branch of the armed forces (including the military reserves, National Guard, or ROTC)?

Yes

No

If yes, when and in what capacity?

ISSUES RELATED TO COVID-19

11. Are you age 65 or older?

Yes

No

If you answered "Yes," are you seeking to be excused from service as a juror because of your age and concerns about COVID-19?

Yes

No

12. Are you a person of any age with an underlying medical condition that puts you at higher risk of developing health complications from COVID-19?

Yes

No

If you answered "Yes," are you seeking to be excused from service as a juror because of concerns about COVID-19?

Yes

No

Name: _____

13. Are you a healthcare worker or first responder involved with COVID-19, or do you have regular contact with COVID-19 patients?

Yes No

If you answered "Yes," are you seeking to be excused from service as a juror?

Yes No

14. Are you seeking to be excused from jury service for any other reason related to the COVID-19 pandemic?

Yes No

If you answered "Yes," what is the reason?

I have a household member who is at high risk for COVID-19 complications. (Please explain below)

Service at this time would pose an undue financial hardship for me. (Please explain below).

Other. (Please explain below).

Name: _____

YOUR EXPERIENCE WITH JURY SERVICE, COURTS, AND THE LAW

15. Have you ever served on a trial jury?

Yes

No

If yes, please state for each case (if you served but cannot recall the details, please state "do not recall"):

<u>Year</u>	<u>Charges or Type of Case</u>	<u>If a verdict was reached, what was it?</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

16. Is there anything about your prior jury service that would make it difficult for you to serve on this case?

Yes

No

If yes, please explain:

17. Have you ever testified in a criminal or civil trial?

Yes

No

If yes, please explain:

Name: _____

18. Do you have any legal training?

Yes

No

If yes, please describe that training:

19. Have you, a family member, or a close personal friend worked as a private criminal defense attorney, public defender, legal aid lawyer, or been involved in criminal defense work?

Yes

No

If yes, please state your relationship to that person and for whom he or she worked and/or works:

20. Have you, or any family member or close friend, ever been employed by any of the following:

(a) Federal, State or County Prosecutors' Offices Yes No

(b) Federal or State Correctional agencies such as a prison, jail or probation or parole office Yes No

(c) Any Federal law enforcement or investigative agency (examples: FBI, DEA, BATF, Customs, DHS, etc.) Yes No

(d) Any state or local law enforcement agency (examples: Local police departments, sheriff's departments, etc.) Yes No

(e) Law office or law firm Yes No

Name: _____

If your answer to any of the above is yes, please explain who was so employed, the agency/office, the approximate dates, and describe the employment:

21. Have you ever appeared in any court proceeding as a plaintiff, defendant, victim, or witness?

Yes No

If yes, please state when and explain your role in the court proceeding:

22. Have you or someone close to you ever been the victim of a crime?

Yes No

If yes, please describe each incident and your relationship to the crime victim:

If yes, was anyone arrested? Yes No

If there was an arrest, what was the outcome of the case (if you know)?

Name: _____

If there was a trial, did you testify? Yes No

Were you satisfied with the way law enforcement handled the matter?

Yes No

Why or why not?

23. Have you, a family member, or a close personal friend ever been arrested for, accused of, charged with, or convicted of any crime, except a minor traffic offense?

Yes No If yes, please state the person, date, crime, and the outcome:

Name: _____

YOUR VIEWS ON THE LAW

24. Do you have any moral, philosophical, or religious beliefs that would prevent you from sitting as a juror and deciding whether a person is guilty or not guilty?

Yes No

25. Do you have any difficulty speaking, understanding, reading or writing the English language?

Yes No If yes, please explain:

26. Do you suffer from any physical or mental condition(s) that would affect your ability to pay close attention to the evidence and to render an impartial verdict?

Yes No If yes, please describe:

Name: _____

27. Do you know of any reason whatsoever why you cannot sit as a fair and impartial juror in this case?

Yes

No

If yes, please explain:

28. Attached is a list of attorneys in this case, and persons who are potential witnesses in this case. If you know, or think you know, any of the persons listed, please circle any name that is familiar to you and explain how any circled name is familiar to you here.

[INSERT LIST HERE]

Name: _____

Use these pages to finish any answers for which you ran out of space earlier in the questionnaire. **Indicate by number which question you are continuing.**

Name: _____

Name: _____

Name: _____

Name: _____