

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE:

Department 1

CASE NO.:

DATE:

PROCEEDING: Order re Remote Trials

1. REMOTE TRIALS MAY CONTINUE TO BE NECESSARY IN MANY CASES.

- a. The Court finds that, because of the public health crisis resulting from the COVID-19 pandemic, the Court's ability to safely conduct in-person trials in civil trial courtrooms is severely limited.
 - i. Some of our courtrooms are too small to socially distance counsel, the parties, the witnesses, the jurors, and courtroom staff from each other. In those courtrooms that are large enough to do so, it would require most of the jurors to be spread throughout the audience section.
 - ii. In particular, in Department 1, the jury box can accommodate only five jurors if spaced six feet apart. The other seven jurors and any alternates would have to be seated in the audience section. It is 29 feet from the witness stand to the closest seat in the audience section, where Juror #6 would be seated. The first alternate would be seated at least 14 feet farther away from Juror #6, for a total of at least 43 feet from the witness stand. Any additional alternate jurors would have to be seated at an even greater distance from the witness. As a result, the distance between the juror and the witness stand, the fact that the attorneys would be between the witness and the jurors in the audience section, and the jurors' angle of view of the witness stand, would substantially impair the ability of most of the jurors to closely observe the witness while testifying and to accurately assess the credibility of that witness.
- b. The Court cannot predict with reasonable certainty when it will be able to conduct in-person trials in all cases. In particular, the Court cannot guarantee that it will be able to conduct an in-person trial in this case by the date on which trial is set to begin.
- c. The Court cannot simply continue all trials until the COVID-19 pandemic disappears and the pre-pandemic "normal" is restored. The conditions and practices that were normal at the beginning of 2020 may never fully return. Even if they were to return 6 or 12 months from now, the limited resources of the Riverside Superior Court would be unable to try the backlog of trials that would accumulate during that period, particularly in view of the backlog of trials that has accumulated from the beginning of the pandemic until now. As a result, many litigants would be denied their right to timely access to justice. In short, the Court cannot afford to postpone trials when it has the time and resources to hear those trials remotely now.
- d. Accordingly, if the Court cannot safely conduct an in-person trial in this case by the time that the trial date arrives, that fact by itself will not justify a continuance of the trial. If the

parties fail to establish good cause for a continuance of the trial, it will proceed as scheduled, but will be conducted remotely rather than by in-person appearances of counsel, parties, witnesses, and jurors in the courtroom. (See Cal. Rules of Court, emergency rule 3(a)(1) and rule 3.670(f)(3).)

- i. If the trial is to be presented to a jury, the parties shall be prepared to present the jury trial remotely. If the parties who requested a jury trial are not prepared to present the case to a jury remotely, then the Court may find that those parties have forfeited their rights to a jury trial, and the trial may proceed as soon as possible thereafter as a bench trial.
- ii. If the trial is to be presented to the Court without a jury, the parties shall be prepared to present the trial to the Court remotely.
 1. If all parties agree, the trial may be conducted by presenting all evidence through stipulated facts, declarations, deposition transcripts, or some combination thereof, and by presenting all opening statements, objections, and arguments remotely.
 2. To the extent that the parties are unable to agree to dispense with all live testimony, then the testimony that is to be presented live – together with any objections to that testimony, plus opening statements and closing arguments -- shall be presented remotely. If any party is not prepared to do so, then the Court may deem that failure to constitute a failure to appear at trial. If that party is a plaintiff, the Court may dismiss the case. (Code Civ. Proc., § 581, subds. (b)(5) & (l).) If the party is a defendant, the Court may bar that defendant from participating in the trial.
- e. If the parties can agree upon a referee who will agree to conduct an in-person trial in facilities outside any RSC courthouse, the parties shall file a stipulation for the appointment of such a referee. (Code Civ. Proc., § 638.) Any such stipulation shall be supported by a declaration of the proposed referee, consenting to such an appointment.

2. **AMENDMENTS TO THE TRIAL SETTING ORDER REGARDING REMOTE TRIALS**

In the event of a remote trial, the Trial Setting Order in this case is amended as follows: Those portions of sections A and C of the Trial Setting Order that require personal appearances on the day of trial of counsel, parties, and insurance representatives shall not apply. Those appearances will instead be conducted remotely, via Cisco Webex Meetings.

3. **CONDUCTING REMOTE TRIALS**

If any portion of the trial is to be presented remotely, all parties shall comply with the provisions set forth below to the extent applicable.

a. **Maintaining the Decorum of the Court**

- i. Participants appearing remotely must observe rules and procedures related to court appearances, including, without limitation, rules related to attire and the

consumption of food or drink during the proceedings. Participants appearing remotely shall eliminate all visual and auditory distractions.

- ii. Participants, if any, who have been allowed to appear in person must adhere to Court, Health Department and/or other government-issued requirements in effect at the time addressing the COVID-19 crisis, including, without limitation, any requiring wearing of masks or social distancing.

b. Pre-Trial Arrangements

- i. **Remote Platform.** For the remote presentation of the entire trial either to a jury or to the Court, the parties shall use Cisco Webex Meetings video. If the only portion of a trial to be presented remotely is the arguments of counsel – for instance, if the trial is solely on the basis of stipulated facts or written testimony – then the argument may be presented telephonically via Webex, just as is done for the telephonic hearings on the Court’s daily law-and-motion and case-management calendar.

- ii. **Court Management of Platform.** The Court will manage and control the proceedings, including being designated the “Host” of the video conference, and will exercise control over the various technological settings.

- iii. **Preparing to Meet Technological Requirements.** Parties and their counsel appearing remotely shall use their best efforts to ensure that they and their witnesses will provide a clear video and audio transmission during the trial, including adequate familiarity with the designated platform and related software and hardware, e.g., microphones, webcams, headphones, and multiple monitors.

iv. Adequate Equipment.

1. The parties are responsible for ensuring that each attorney, party, witness, and court reporter appearing remotely is familiar with the designated platform and has the equipment to participate in the remote proceeding without undue delays, including the following: speakers; microphone; webcam; and laptop or monitor. Counsel shall ensure that every witness that they intend to call is able to participate in the videoconference. Counsel may wish to ensure that each witness can testify on one device (or screen) and review exhibits on another.

2. The Court shall ensure that each juror appearing remotely is familiar with the designated platform and has the following equipment to participate in the remote proceeding without undue delays: speakers; microphone; webcam; and smart phone, tablet, laptop, or desktop computer.

v. Suitable Spaces.

1. Counsel shall ensure that all counsel and each witness have suitable spaces from which to participate in the trial. A suitable space is one in which the attorney or witness will not be interrupted or distracted. It shall be free of any background noise that will interfere either with the person hearing others clearly or with the person being clearly heard by others.

2. Having multiple participants appear from the same room is discouraged because the use of multiple electronic devices in the same room often results in audio feedback and other distortion. In addition, it would generally mean that those participants would need to be masked.
 3. When a witness is testifying, no one else may be present in the same room as that witness.
- vi. **Test Sessions.** In advance of the remote proceeding, at least one test session must be conducted by counsel with each of their witnesses appearing remotely in which the witness practices using the designated platform, becomes familiar with the process for viewing electronic exhibits, and tests all audio and video equipment (including settings) that will be used at trial.
- vii. **Court Reporter.**
1. The court reporter may appear remotely. After conference with counsel party and the reporter, the Court will determine whether the reporter will be unmuted for the duration of the proceeding to allow for timely and effective requests for clarification.
 2. If the court reporter is being supplied by the court, court reporter fees (\$756 for a full day, \$378 for a half day) shall be paid daily, either: by mailing a check to the clerk's office; by depositing a check in the clerk's drop box; or by submitting them via eSubmit along with a Notice of Deposit of Court Reporter Fees.
- viii. **Interpreter.** A court interpreter may appear remotely. After conference with counsel and the interpreter, the court will determine the protocol for those proceedings involving an interpreter appearing remotely for any "Limited English Proficient" participant. When interpreting for a witness, the court will determine if the interpreter will use the consecutive mode.
- ix. **Camera/Remote Venue Set Up.** The faces of each participant in the trial must clearly be visible while speaking. No masks shall be worn for any participant in the trial appearing remotely. To the extent possible, each participant's webcam should be positioned at face level relatively close to the participant. The background must be neutral.
- x. **Party Identification.** All participants shall use their full first and last name when signing on to the designated platform.
- xi. **Confidentiality.** The Parties shall meet and confer in advance of the start of trial regarding a protocol for the use of sealed exhibits or any other confidential information at trial. The Parties shall provide a joint recommendation to the Court before trial commences.
- xii. **Procedure for Sidebars.** The Parties shall meet and confer in advance of the start of trial regarding a protocol for conducting virtual sidebars at trial. The Parties shall provide a joint recommendation to the Court before trial commences.

c. Public Access and Prohibition of Recording

- i. All trial proceedings shall be live-streamed by the Court on its website, where the public may observe the trial. However, the general public must not be provided with access codes provided to case participants.
- ii. Unless authorized by the Court, recording of a court proceeding held by video or teleconference, including “screen-shots” or other visual or audio copying of a hearing, is prohibited. However, exhibits may be copied as addressed later. Violations of these prohibitions may result in sanctions, including restricted entry to future hearings, denial of entry to future hearings, removal of Court-issued media credentials, or any other sanctions deemed appropriate by the Court.

d. Jury Assembly

- i. For trials scheduled to occur in Department 1 of the Historic Courthouse, prospective jurors will be summoned to the jury assembly room in the Hall of Justice in Riverside
- ii. To reduce the number of people in the jury assembly room at any one time, the prospective jurors will be instructed to appear at staggered times.
- iii. The jury commissioner will ask the prospective jurors, either in writing or orally, whether they have access to sufficient equipment and internet service with which to participate in the trial, and whether they have access to a suitable room from which to do so. Those jurors who do not have that access may be excused from serving in this trial. As currently phrased, those questions are:
 1. Do you own or have access to any of the following devices with a speaker, microphone, and camera? (a) A reliable and modern computer (desktop/laptop with a recent version of Window 10, macOS, or ChromeOS). (b) A reliable and modern tablet/smartphone (iPhone/iPad/Android which is less than 3 years old).
 2. Do you have consistent access to a reliable, high-speed internet connection? (At least 5Mbps, or fast enough to support video streaming using services like Netflix, Hulu, Prime Video, or Disney+).
 3. Do you have consistent access to a room: (a) in which you can use the computer/device to access the internet, (b) in which you would be free from interruptions or distractions, and (c) free of any background noise that may interfere with you hearing others clearly or others hearing you clearly?
- iv. To reduce the number of prospective jurors who must appear at the trial, and thus to avoid unnecessary delay in the selection of the jury, hardship examinations shall be conducted in writing. The prospective jurors shall complete written hardship questionnaires, either before coming to the courthouse or after they arrive. The jury commissioner shall provide the completed questionnaires to trial judge who shall consider and rule upon any claims of hardship. If any juror’s request to be excused is denied, counsel will be provided with a copy of that juror’s questionnaire. Those jurors who are not

excused shall be given instructions on how to appear remotely for jury selection, and shall be told to expect an email from the courtroom assistant informing them when they are to appear.

- v. The jury commissioner will collect contact information from all members of the venire panel before releasing them from jury assembly room.

e. Jury Selection

- i. In conjunction with the Issues Conference required by RSC Local Rule 3401, and to minimize the length of jury selection, the parties shall meet and confer in an attempt to agree upon one or more of the following:
 - 1. To voluntarily conduct the trial as an expedited jury trial (Code Civ. Proc., § 630.01, et seq.);
 - 2. To impanel a jury of less than 12 jurors (Code Civ. Proc., § 220);
 - 3. To limit the length of *voir dire* by counsel (Code Civ. Proc., § 222.5);
 - 4. To waive all or part of the peremptory challenges to which the parties are otherwise entitled (Code Civ. Proc., § 231, subd. (c));
 - 5. To waive all alternate jurors, and in the event one or more jurors need to be excused after the jury is sworn, to allow for fewer jurors to render a verdict (Code Civ. Proc., § 234); or
 - 6. To try the case to a jury selected by the parties privately.
- ii. To avoid unnecessary delay in the jury-selection process, basic *voir dire* shall be conducted via a written questionnaire.
 - 1. The Court has drafted a questionnaire that is similar to Judicial Council Form Jury-001 (Juror Questionnaire for Civil Cases).
 - 2. Counsel shall draft a supplemental questionnaire covering other topics that are specific to the particular case to be tried. In conjunction with the Issues Conference required by RSC Local Rule 3401, counsel shall meet and confer in an effort to agree upon the language of the supplemental questionnaire.
 - a. The supplemental questionnaire shall begin with a statement of the case upon which all parties agree. The statement of the case shall be followed by a question asking whether the juror knows or has heard anything about the facts of the case other than that statement.
 - b. The supplemental questionnaire shall include a list of the names of the parties, attorneys, and witnesses, and shall ask whether the juror knows or has heard anything about any of those individuals.
 - c. If counsel cannot agree on the language of the supplemental questionnaire, they shall submit to the Court those portions on which they agree and separately submit those portions on which they cannot agree. Any disagreements shall be resolved by the

Court prior to the distribution of the supplemental questionnaire to the prospective jurors.

- d. After the text of the supplemental questionnaire has been decided upon, counsel will be provided with links granting them access into the Court's Jury View program, through which counsel will create the supplemental questionnaire.
3. The questionnaire and supplemental questionnaire shall be distributed by the jury commissioner to the prospective jurors who were not excused on grounds of hardship. It shall be in either a digital or paper format, as the Court shall determine after consultation with counsel. After all prospective jurors have answered the questionnaires, the jury commissioner shall forward the completed questionnaires to the trial department. The courtroom assistant shall provide counsel with access to those questionnaires within the Court's Jury View system.
 - iii. Without leave of the Court, oral examination by counsel shall be limited to following up on the prospective jurors' responses to the questionnaire, and to exploring new issues reasonably suggested by either the written or oral responses.
 - iv. The courtroom assistant will provide counsel with a copy of the random list of prospective jurors. The courtroom assistant will provide each prospective juror with a video conference link to the trial proceedings. All prospective jurors will be given staggered times at which to report for oral *voir dire*, at least six at a time. Counsel will have a predetermined amount of time with each round of six prospective jurors. At the beginning of each round, each party may make a brief non-argumentative "mini-opening" statement of up to one minute for each party; if there are multiple defendants, the plaintiff may use up to two minutes.
 - v. After examination of two or more groups of six prospective jurors, court and counsel will adjourn to a virtual meeting room where any challenges for cause will be ruled upon, followed by peremptory challenges. The process will repeat until sufficient jurors and alternates are selected.

f. Preliminary Jury Instructions

In addition to the usual preliminary jury instructions (CACI Nos. 100-118), prior to opening statements the Court will instruct the jury substantially as follows:

- i. Generally, you must conduct yourselves as if you were in a courtroom.
- ii. You will appear each morning for the trial by joining the WebEx meeting reserved for this trial.
- iii. While you are observing the proceedings, no other member of the household may interrupt or influence your service. You should try to be isolated, if you can.
- iv. There may be times when our technology fails. If for any reason you are unable to hear the proceedings, please let us know immediately. Often a hand

gesture works to get our attention if audio does not work. You also have the courtroom assistant's phone number, which you can call to let the assistant know of the problem.

- v. Similarly, if during the trial you are not properly excluded during private conferences between the court and counsel, immediately mute or disconnect yourself from those proceedings. After the private conference is concluded, immediately report that event to me.

g. Opening Statements and Closing Arguments

- i. Counsel may use the "share screen" function in the designated platform to display demonstrative items – i.e., exhibits or other visual aids – during openings and closings.
- ii. Counsel shall meet and confer to exchange any such demonstrative items to be used in the opening statements. Any disputes regarding items sought to be used by a party shall be addressed with the Court. Counsel may not display any image to the jury unless either opposing counsel has stipulated or the Court has overruled any objection.

h. Witnesses and Presentation of Testimony

- i. **Witness Lists.** In addition to the witness list to be filed, the parties shall provide the courtroom assistant with a witness list annotated with the telephone number and email address of each witness.
- ii. **Joining the Trial.** Witnesses must access the trial proceedings using the credentials provided by the Court at least 10 minutes before the scheduled start time for their examination. The witness will be directed to the virtual waiting room where he or she will remain until the Court is ready to admit the witness to the virtual courtroom.
 - 1. Nonparty witnesses are only permitted in the virtual courtroom while they are testifying; unless the Court orders otherwise, a nonparty witness is not permitted to view or listen to the testimony of other witnesses prior to their testimony.
 - 2. Absent the express leave of court, no other person may be in the same room as the witness. If an exception is allowed, the witness and the other person must observe social distancing guidelines as applicable to the witness's physical location, and the other person must be seated behind the witness, in view of the camera.
 - 3. Counsel shall relay these orders to every witness counsel intends to call.
- iii. **Conduct During Testimony.** The attorney calling the witness is responsible for ensuring the witness has a separate video and audio feed. Attorneys should not attempt to "share" a connection with a witness. Witnesses may not have any notes or documents with them at the time of the remote appearance, other than the trial exhibits exchanged by the parties or notes or documents that have been shown to opposing counsel at least 24 hours in advance of the witnesses'

testimony. Witnesses may not do any research, review any materials, or communicate with anyone else in any manner, including by text, cell-phone, chat, or other means while the witness is virtually “on the stand.” The Court may require witnesses to back up from their webcam so the Court and counsel can see their hands for the duration or portions of their testimony

- iv. **Witness Oath/Affirmation.** In addition to the oath and standard admonitions, before each witness testifies, the Court will ask the witness to affirm that:
 - 1. No one else is present in the remote room where the witness is testifying other than those, if any, authorized by the Court;
 - 2. The witness will advise the Court immediately if anyone enters the room;
 - 3. All communications with the witness during his or her examination will be on the record, other than communications with the witness and his or her attorney of record during breaks;
 - 4. The witness will not engage in any direct or indirect communications with anyone during his or her examination other than those communications made on the record; and
 - 5. The witness will advise the Court immediately if, during the witness’s testimony, the witness receives any chat, email, text, or other electronic message from any party, attorney, or anyone associated with any party or attorney.
- v. **Objections.** The witness must stop speaking when either counsel objects. After the objection is made, the Court will be the first to speak and will instruct counsel how the Court wishes to proceed.
- vi. **Juror Questions.** Before each witness is excused, the Court will request jurors to submit any questions they may have for that witness to the judge using the chat or comparable function. The Court will use a virtual break-out room to discuss the questions posed by the jurors with counsel and shall determine whether the question or a modification of the question will be asked.
- i. **Exhibits.**
 - i. The Parties shall meet and confer in advance of the trial to discuss a protocol for use of exhibits at trial and shall present a joint recommendation to the Court at the pretrial conference. The joint recommendation must address the form of exhibits (e.g., electronic and/or paper), acceptable file formats (e.g., .pdf; .doc; .jpeg; .mpeg; *etc.*), how exhibits will be exchanged among the parties, court and presented to jurors (e.g., via email, electronic joint repository, or in-meeting file transfer, *etc.*), and any procedures that may be required for “oversized” exhibits, deposition transcripts, or “non-standard” exhibits of any kind. The Court will give significant weight to the Parties’ joint recommendation.
 - ii. If the Parties fail to reach agreement on a joint protocol, the Court will implement a protocol along the following lines, subject to modifications, as appropriate for each matter:

1. All exhibits to be used on direct or cross examination, except for impeachment, shall be submitted electronically to the Court, all counsel, and the court reporter at a time to be designated by the Court, unless otherwise ordered by the trial judge. Each exhibit shall be accessible as an individual document, named electronically according to its exhibit number (e.g., Ex. 1). It is the responsibility of the attorney offering the witness to ensure that the witness has the link to the proceedings and to electronic copies of all exhibits that will be used with that witness, including those of the opposing parties and will be accessible to all jurors whether appearing in person in court or remotely.
2. **Form.** All exhibits to be used on direct or cross examination, except for impeachment, shall be submitted in tabbed binders to the Court, all counsel, and the court reporter, and/or submitted electronically via jump drive or any other method agreed by the parties and the Court. Printed exhibits shall be printed single sided and in black and white, provided that the exhibit shall be printed in color where reasonably necessary to ascertain its meaning in the context of the proceedings. It is the responsibility of the attorney offering the witness to ensure that the witness has copies in paper form of all exhibits to be used with the witness, including those of the opposing parties, and that those exhibits are available to the witness in the same form that has been provided to counsel and the Court.
3. **Original Documents.** If a true “original” document needs to be entered into evidence, the original should be submitted to the Court as part of its copy of the evidence binder. Such a document should be clearly identified as a true “original.”
4. **Impeachment Exhibits.** If counsel wishes to use a document for impeachment purposes that was not previously disclosed as an exhibit, counsel must email an electronic copy of the document to the Court, trial counsel, and the witness at the time counsel seeks to use the document with the witness. In lieu of email, counsel may use the chat function in the designated platform or other platform as designated by the court to send the document to the Court, counsel, and the witness or post the document on a secure document repository that counsel has made available to the Court, counsel, and the witness.
5. **Sealed Paper Copies.** If counsel prefers, he or she may also send a paper copy of the documents that counsel anticipates using for impeachment purposes to the Court and counsel for the other parties at least one business day before the anticipated use of those documents. Two copies of each document must be provided to counsel for the witness with whom the documents will be used. Counsel may enclose the documents in an envelope or box that is sealed and marked DO NOT OPEN UNTIL FURTHER NOTICE. Counsel may package each document in its own sealed envelope so long as it identifies the inner

contents in such a way that the recipient can be directed to open a specific envelope. Each envelope shall have a marking across the seal. The envelope shall not be opened unless and until counsel and the witness are instructed to do so by the questioning attorney or the Court. The questioning attorney has the right to request that all recipients return each and every package that they were not authorized to open.

j. Technological Considerations During the Hearing.

- i. **How to Join.** Each attorney, witness, party, and juror who plans to attend any portion of the trial will be a “case participant” and will receive log-in credentials from the Court. Case participant log-in information is not public and must not be shared with anyone other than counsel of record and the Court. Everyone who is not a “case participant” will be an “attendee” (*i.e.*, a member of the press or public). Attendees will be able to hear the court proceeding by live stream from the court’s website and will not be able to participate in it beyond observing. As stated above, nonparty witnesses may not see or hear the court proceeding until they are called to testify.
- ii. **Chat Features.** The chat function allows participants to type text (comments) during the proceeding and also allows participants to send files to other participants. The Court will determine whether the use of the chat function will be allowed during trial after discussion with counsel. If allowed, the Court will enable the chat function for case participants only and the following rules shall apply:
 1. Counsel may not initiate *ex parte* “chats” with the Court.
 2. Counsel may not “chat” with a witness at any time while the witness is “on the stand” for any purpose unless authorized by the Court.
 3. Except for juror questions submitted to the Court via the “chat” feature, messages relayed through the “chat” feature will not become a part of the Court record unless ordered by the Court.
 4. Documents transmitted through the chat feature, such as a document to be used for impeachment purposes, will be made part of the Court record but the text of the message transmitting them will not. If counsel transmits a document through the chat feature, counsel must so state on the record and must identify the document for the record and ensure that the court reporter has a copy of it.
- iii. **Break-out Rooms.** The Court may use virtual break-out rooms for “side bar” discussions with counsel during trial, to discuss proposed juror’s questions to witnesses, for witness waiting rooms, for hearings outside the presence of the jury, or for any other proceedings as needed. The Court will determine if discussions that take place in the break-out rooms are to be made part of the record.
- iv. **Addressing Technological Difficulties.** If a participant is disconnected from the videoconference or experiences some other technical failure, the participant

shall use best efforts to promptly re-establish the connection and shall take no action which threatens the integrity of the proceeding (e.g., communications with a third party related to anything other than resolving the technical issue). If the connection cannot be re-established within approximately five minutes, the Court may take steps to “pause” the trial, which may include moving participants into the virtual waiting room or one or more separate break-out rooms, at which time counsel shall meet and confer in good faith to develop a joint proposal regarding how to proceed. If the Court deems it unfair to any party to continue the proceedings because of a technical failure, the Court may postpone or terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.

k. Jury Instructions, Deliberations, and Discharge

- i. The party designated by the Court at the Trial Readiness Conference or other pretrial conference shall submit to the Court via email a single Microsoft Word file containing all jury instructions – whether form or special, and whether agreed upon or opposed – by the date specified by the Court. The instructions shall be completed and organized in the fashion prescribed by the Trial Setting Order and RSC Local Rule 3401.
- ii. After determining each sitting juror’s ability to appear remotely, and consideration of all other relevant factors, the Court will determine whether jurors will be required to deliberate in person or remotely, or by a combination of the two. If the jurors will be required to deliberate in person, deliberations will be conducted in a courtroom, because a normal jury-deliberation room is too small to permit social distancing.
- iii. If the deliberations are to be conducted remotely, in addition to the usual instructions concerning deliberations (CACI No. 5000, et seq.), the Court will also instruct the jurors in substantially the following form:
 1. Generally, you must conduct yourselves as if you were in court. All jurors must participate in the deliberations. No juror may be excused by the foreperson or by the other jurors – even momentarily - to do any other work or perform any other activity while jurors are deliberating.
 2. You will appear each morning for court as you normally would by joining the WebEx meeting reserved for this trial. Once all jurors are present, the courtroom assistant will admit you into the virtual deliberation room.
 3. When in deliberation, no other person may be in the same room that you are in because no other person may be listening in on the conversations and discussions among you and your fellow jurors. Nor may you be engaged in any other tasks, including phone calls or responding to email.
 4. If any juror needs to take a short break – to go to the restroom, answer an urgent knock at their door, respond to any emergency, or for any good reason – deliberations must pause. All 12 of you must be present together in the Jury Deliberation Room to discuss this case.

5. You may as a group decide to take a break to have lunch, get a snack, take a rest or for any other reason, including ending the day for your evening recess. Your foreperson shall notify the Court Attendant via chat or email that you want to leave the Jury Deliberation Room. All jurors will then be invited to leave the Jury Deliberation Room. Jurors cannot leave the room on their own. It is important that you do this, so the we can terminate the meeting.
 6. If a juror is disconnected during your deliberations, you must pause until that juror is able to reconnect. The Foreperson should immediately notify the Court Attendant which juror has been disconnected so that the Court can contact that juror to reconnect to the virtual meeting/courtroom. The court will re-admit the juror to the Jury Deliberation Room as soon as possible. The Court Attendant will inform the jurors whether he/she has been able to contact the juror and if possible will provide an estimate of when that juror will be able to reconnect. Jurors may take a formal break from proceedings and leave the Jury Deliberation Room while waiting for the juror who dropped off to return to court. Or, jurors may remain in the Jury Deliberation Room but if so, jurors may not continue to discuss the case while any juror is missing. Remember all 12 jurors must be present to continue to deliberate.
 7. If you have a question or if you request a read-back by the Court Reporter, please send your question or request to the Court Attendant via email. Follow the court's prior instructions regarding juror's questions or requests during deliberations.
 8. Each of you will receive copies of Jury Instructions, Verdict form, and all Exhibits admitted into evidence in this case, along with an index of the exhibits and instructions. When you receive these documents, you may open the attachments to confirm you have access to these materials but do not review or consider these documents when you are not deliberating in the Jury Deliberation break out room.
 9. When the jury has arrived at a verdict, your foreperson shall notify the Court Attendant and shall email a copy of the completed Verdict to the courtroom assistant. Counsel and their clients will be informed. Once counsel and parties are all present in the courtroom, all jurors will be readmitted to the courtroom where the verdict will be reviewed and then placed on the record. As indicated you may be polled as to your individual vote on each question, so it is important that you have your answers available, if asked to report on your individual votes.
- iv. Prior to closing argument, the Court will provide each juror with a copy of the jury instructions. If the deliberations will be remote, the instructions will be sent to each juror electronically in .pdf format. If the deliberations will be in person, then the instructions will be on paper. In either event, the Court will read the instructions to the jurors.

- v. Upon discharge of the jury, the Court shall provide instructions to remotely-appearing jurors regarding notes jurors may have taken during the course of the trial. These instructions may include an instruction that juror notes taken during the trial are to be destroyed.

4. **PROTOCOL FOR CONDUCTING REMOTE CIVIL TRIALS**

- a. To assist counsel and self-represented litigants, the Court has prepared a manual to explain how to use the Court's software – Cisco Webex Meetings – to conduct remote civil trials. Although entitled "Protocol for Remote Jury Trials," the techniques described are relevant to all unlimited civil trials, whether presented to a jury or to the judge without a jury.
- b. The protocol may be found on the Court's website. From the home page, go to the page for the Civil Division by clicking on the large "Civil" button. On the civil webpage, click on the large blue button labelled "Remote Civil Jury Trials." The protocol will appear. Alternatively, the protocol may be found on the lower portion of the civil webpage. Under "Find Information About," click on "Remote Civil Jury Trial Protocol."

Craig G. Riemer, Judge of the Superior Court

v. 1