

# Protocol for Virtual Jury Trials in the District of Minnesota

*(Draft as of February 5, 2021)*

This protocol is intended to apply to civil virtual jury trials in the District of Minnesota. We will continue to update this protocol as we gain experience with conducting virtual jury trials.

This protocol is based on the virtual jury trial being held on ZoomGov, using Box.com to facilitate the exchange of exhibits and share the exhibits with the jury during deliberations. References to a virtual jury room refer to the jury being placed in a breakout room in ZoomGov. References to the courtroom refer to the public court proceeding taking place in the main room in ZoomGov.

This protocol addresses the basic procedures for holding a virtual jury trial on ZoomGov. For guidance on how to use ZoomGov and Box.com for jury selection and the trial, please refer to the handbooks that have been prepared for staff, attorneys, and jurors posted on the Court's [internal](#) website. The handbooks for [attorneys](#) and [jurors](#) are also posted on the Court's public website. The staff handbook includes an appendix, with helpful materials to prepare for and conduct a virtual jury trial.

This protocol assumes that a second CRD or other court staff member will serve as a jury coordinator while court is in session. This jury coordinator will monitor the jurors on ZoomGov and immediately notify the presiding judge if a juror loses connection so that the proceeding can stop until the juror is reconnected.

## I. General Virtual Jury Trial Process and Timeline

The following are the general steps and timeline for a virtual jury trial:

Step	Timing
1. Juror summons sent, requesting that information and paper questionnaire are returned within 5 days	5-6 weeks before Jury Selection Day (6 weeks preferred)

2. Judge reviews questionnaires and excuses any jurors for extreme hardship	As questionnaires are received or at least 14 days before Trial Date
3. CRD schedules a mock jury selection and mock trial with the attorneys and court staff	7-14 days before Trial Date
4. Jury Clerk schedules a technology check with each potential juror and sends the Virtual Trial Handbook for Jurors by email to each potential juror. Juror ID verification should occur during this technology check.	At least 7 days before Jury Selection Day
5. Juror orientation and selection day	Jury Selection Day
6. Trial	Immediately after jury selection or as scheduled by the judge

**II. Juror Communications, Questionnaires, and Technology Check (Steps 1-2, and 4)**

All juror communications and website information has been reviewed and updated to reflect jury service for a virtual trial. Approximately 5-6 weeks before the Jury Selection Day, the jury team will mail the summons, Juror Information Form, and the virtual jury trial questionnaire, asking that they be completed within 5 days. The questionnaire will include an attestation clause making potential jurors subject to the penalties of perjury for submitting false information. All returned juror questionnaires must be maintained with the Court’s jury records.

After the judge and attorneys review the questionnaires, the jury clerk will notify all jurors by email or telephone who will be asked to appear for jury selection and arrange a technology check with each juror. The jury clerk will also email each potential juror the Virtual Trial Handbook for Jurors.

**A. Virtual Jury Trial Questionnaire**

The Court has developed a virtual jury trial juror questionnaire that is available on its internal website. The questionnaire can be modified by the presiding judge after consultation with counsel. The questionnaire includes biographical information typically asked during voir dire questioning, and

questions about whether serving on the jury may present a hardship, including a hardship that is related to the COVID-19 pandemic.

The questionnaire also includes technology questions, querying about the juror having access to a stable and fast internet connection, a quiet space to connect to the trial, a suitable device to connect to the internet, and if the internet connection will be shared by other household members during the trial.

The presiding judge may request that a member of the I.S. staff assist in reviewing responses to the technology questions. The Court will strive to work with individuals who are willing and able to serve as jurors but whose circumstances may make appearing for the trial from home challenging. Depending on the circumstances presented by the individual juror, the Court may wish to provide one or a combination of the following options:

1. Provide the juror a court-issued iPad, with or without a data plan.
2. Allow the juror to use his or her own device or a court-issued iPad in a dedicated space within a courthouse for jury selection and the trial.
3. Allow the juror to appear for jury selection or the trial in a different location from their home or a courthouse (e.g., a hotel).
4. Provide additional technology training for the juror.

The judge may require the potential juror to respond to additional questions if the answers provided on the original questionnaire are incomplete. The presiding judge must determine how the completed standard questionnaires will be shared with counsel and parties. If deemed appropriate, completed standard juror questionnaires may be filed in ECF, with access only given to attorneys and the Court. If such questionnaires are filed, access to the questionnaires will be removed after the trial.

## **B. Juror Reimbursement**

The Court will pay each juror an attendance fee for each day that they are asked to appear in a virtual setting or appear at a courthouse, including an appearance for the technology check, and to obtain any court-issued

equipment. Jurors who are not required to leave their homes will only receive the attendance fee. Jurors who are asked to travel will be reimbursed for their transportation fees and any allowable lodging, meals, and expenses.

### **C. Juror Technology Check**

At least 7 days before the Jury Selection Day, the jury clerk must arrange a technology check with each potential juror and a member of the I.S. staff. The court reporter(s) assigned to the jury trial should be provided the option to attend the technology checks. These technology checks may be conducted in small groups on ZoomGov or individually, based on the availability of each potential juror. The technology check should:

1. Ensure that the potential juror can connect to ZoomGov.
2. Ensure that both court staff and the potential juror can adequately see and hear, including testing the juror's headset, if available.
3. Verify that the potential juror knows how to mute and un-mute themselves, change the view from gallery to speaker, and can send/receive a chat.
4. Ensure that the potential juror knows how to change their screen name on Zoom.
5. Ensure that the potential juror can adequately see and hear a shared document and video.
6. Place the potential juror in a breakout room and bring them back to the courtroom.

The jury clerk should also use the technology check as an opportunity to verify the juror's identity, because it is difficult to see the identification when the potential juror is using a virtual background, as will be the case on selection day.

The jury clerk must immediately notify the presiding judge if there are any significant technology issues presented by a potential juror during the technology check so that the presiding judge can determine how to proceed with the potential juror.

### **III. Mock Jury Selection & Mock Trial (Step 3)**

The CRD must schedule a mock jury selection and mock trial ZoomGov session approximately 7-14 days before the Jury Selection Day. The purpose of the mock session is to help the presiding judge, CRD, court reporter, other court staff, and attorneys practice using ZoomGov to select the jury and hold the trial. The CRD should invite enough court-staff-volunteers to serve as potential jurors. A checklist for these mock sessions has been prepared and should be completed.

For the mock session, attorneys should be strongly encouraged to use the same equipment and space that they plan to use for the trial.

### **IV. Juror Orientation and Selection Day (Step 5)**

To limit the number of people who will be asked to participate in the virtual jury selection, we plan to ask only 24 potential jurors to appear for jury selection and use an 8-person jury. The presiding judge must determine how to conduct the jury selection. The judge may decide to have all potential jurors appear on ZoomGov at the same time or to elect to have the jurors appear in groups. The presiding judge is encouraged to review the [Best Practices for Making a Zoom Record](#) and have a discussion with the court reporter assigned to the trial on how best to handle jury selection.

Two business days before jury selection, the jury clerk will run a randomized list of all jurors who will be asked to appear and provide that list to the CRD and court reporter, along with the jurors' emails.

One business day before jury selection, the jury clerk or CRD will email all potential jurors the ZoomGov link, meeting ID, and passcode. Jurors will be asked to report approximately 90 minutes before the jury selection is scheduled to begin to accommodate any connection issues and juror orientation. The email to the jurors should be sent so that it cannot be forwarded. The email should include an instruction to not share the ZoomGov information with anyone and provide instructions for using a virtual background if the juror's technology allows, along with an image that may be used as a virtual background.

## **A. Juror Check-In and Orientation**

On the day of jury selection, jurors will be asked to report before any other trial participants. The ZoomGov host or co-host will admit each juror from the waiting room, verify identification if not done at the technology check, and then place the juror in the virtual jury room. When all jurors are checked in, the jury clerk will enter the virtual jury room and proceed with orientation.

The orientation will include the customary videos and provide basic information to the jurors for how the virtual trial will work. The jury clerk, jury coordinator, and a member of the IS staff will be present to assist with juror orientation. In addition, the court reporter assigned to cover the trial may attend orientation to ensure that he/she can adequately hear and see each potential juror.

After orientation, the jurors should be provided with a brief break, with a set time to return to their devices. During orientation, the jury clerk or jury coordinator must rename each juror to identify each juror by number and a consistent naming convention.

## **B. General Voir Dire Process**

When everyone in the courtroom is ready, the CRD will close the virtual jury room so that jury selection can begin. The judge should confirm that everyone can see and hear the proceedings, the CRD will swear-in the potential jurors, and the judge will explain the voir dire process.

After questioning, all potential jurors should be moved back to the virtual jury room. Strikes and peremptory challenges should then be exercised. When all potential jurors return to the courtroom, the CRD will announce the jurors who are chosen. The judge will then excuse and thank jurors who are not chosen. The CRD or jury coordinator will then notify each juror of their juror number and rename the selected jurors in ZoomGov to identify them by only their assigned juror number.

### **C. Private Juror Communications During Voir Dire**

Jurors will be instructed to inform the judge if they wish to share a concern privately with the Court during voir dire. The CRD will then create a breakout room for the juror, judge, lawyers, and court reporter.

### **D. Technology Needs**

A member of the IS staff who is knowledgeable about ZoomGov and Box.com will always be available to help troubleshoot any technological issue. An IS staff person should join the juror orientation session to help troubleshoot any technology issue that may arise.

## **V. Trial (Step 6)**

The presiding judge must determine when the trial will begin, which could be immediately following jury selection or on a different day.

Trial will consist of the standard components of Opening Statements, Direct and Cross-Examination of Witnesses, Closing Arguments, Final Jury Instructions, and Deliberations.

The presiding judge may wish to provide the selected jurors with preliminary jury instructions at the beginning of trial. Such instructions may be emailed directly to the jurors, made available to the jurors using Box.com, and read verbally and shared using the Share Screen functionality in ZoomGov.

Before the trial, the presiding judge and CRD should consult with the court reporter covering the trial to discuss how many breaks the court reporter needs and when. They may also wish to discuss whether a second court reporter should be assigned to cover half days.

### **A. Virtual Jury Room**

The CRD or jury coordinator will check-in jurors each day when admitting them from the waiting room to the virtual jury room. Please note that the CRD or jury coordinator should rename the jurors so that they are identified by their juror number, rather than their name each day of the trial.

Jury coordinators and CRDs are encouraged to prompt the jurors to conduct icebreakers or otherwise facilitate the jurors visiting with each other. Taking the time to encourage jurors to interact with each other during breaks and while waiting to be let into the courtroom will help prepare the jury for deliberations.

A one-page “tip sheet” for the jury is included in the Appendix to the staff handbook. The tip sheet includes a place for contact information of various Court staff, so that the jurors can easily find that information.

## **B. Witnesses and Evidence Presentation**

Before trial, counsel must confer regarding how witnesses will obtain access to exhibits during trial. Also, before trial, the presiding judge and counsel must decide how to handle exhibits that have not yet been admitted. Please consult the handbooks for options. Before trial, the presiding judge must determine who will track the exhibits during the trial. Because it is very difficult for a CRD who is serving as host of the ZoomGov session to also track exhibits, the presiding judge or a law clerk should perform this function.

During trial, witnesses will remain in the waiting room on ZoomGov until it is time for them to testify, unless the presiding judge has authorized a witness to observe other testimony. During testimony, exhibits will be displayed to the jury using the Share Screen functionality on ZoomGov.

If the judge allows the jury to ask questions of the witnesses, the CRD should make the judge a co-host and invite jurors to send a question using the chat feature. The judge can ask the question, refer the question to counsel to ask, or decline to ask the question. If necessary, before the question is asked, the judge and counsel may discuss the proposed question when the jury is in the virtual jury room.

## **C. Sidebar Conferences**

The presiding judge has three main options for handling sidebar discussions during trial:



1. Place the jury in the virtual jury room and address the sidebar issue in the courtroom. With this option, the public will hear the sidebar conversations.
2. Place the jury in the virtual jury room and the public in the waiting room and address the sidebar issue in the courtroom. With this option the sidebar discussion will not be heard by the public.
3. Place the jury in the virtual jury room and request the CRD to create a breakout room for the judge, attorneys, and court reporter to address the sidebar issue. With this option, only the individuals placed in the breakout room will hear the sidebar conversations. Remember that ZoomGov does not record breakout room sessions, only the main room.

#### **D. Breaks**

Focusing on a screen can be tiring. In addition, jurors need to have downtime so that they can connect with each other before they are asked to deliberate. The presiding judge should consider providing a ten-minute break every hour, and take a 1-hour lunch. It is also recommended to end the trial before 5:00 each day.

#### **E. Virtual Backgrounds**

Virtual backgrounds are helpful to easily associate courtroom participants with their respective roles and to reduce potentially distracting background images. The Court has provided a different virtual background for attorneys, witnesses, and jurors to use. Please note that some devices will not support a virtual background in ZoomGov and some participants may experience intermittent issues with a virtual background. Virtual backgrounds should be required for jurors and witnesses unless intermittent technology issues cause disruptions. The attorney handbook requires virtual backgrounds for attorneys.

## **F. Public Viewing**

The public and the media must be provided access to attend jury selection and the trial. Under current Judicial Conference policy, if they are attending remotely, they may only have audio access. If they are observing the proceeding from a location within the courthouse, they may observe the video. The CRD should make sure to instruct all public and media attendees that they cannot record the proceeding or take any images of the proceeding.

There may be instances when it is inappropriate to have the public and media observe portions of the trial. In such instances, the CRD should be prepared to move the jury into the virtual jury room and the public participants into the waiting room.

When we are providing a location within the courthouse for members of the media and public to observe the trial, the CRD must communicate with designated members of IS and Operations staff to ensure that the room is unlocked and available when trial resumes after the jury is done deliberating or after other significant delays with the trial.

## **F. Final Jury Instructions and Deliberations**

While the final jury instructions are being given to the jurors, the CRD should use the Screen Share function to display the instructions to the jury.

The CRD should share the final instructions and the juror verdict form with the jury by sharing the Box.com link. The CRD must also share all admitted exhibits with the jurors by sharing the Box.com link with view-only permissions. From the virtual jury room, the CRD should confirm with the jurors they can access the admitted exhibits, the final jury instructions, and the juror verdict from Box.com.

If the jury has a question or needs assistance while deliberating, they can use the “help” button to reach the CRD. They should also have the CRD’s phone number in case anyone gets disconnected from the ZoomGov session. (This information should be included in the one-page tip sheet referenced above.) When the jury reaches a verdict, they should contact the CRD. The CRD can

then join the virtual jury room and instruct the jury how to email the completed PDF verdict form to the CRD.

If the jury needs to deliberate into the next day, the Judge should determine if the jury will continue to have access to the documents in Box.com or if a new link will be provided the next day. The CRD should let the jurors know when the virtual jury room will be closed at the end of the deliberation day and what time to report to continue deliberations the next business day.

#### **G. Feedback from Trial Participants**

A brief online survey has been developed to solicit feedback from trial participants on their virtual civil jury trial experience. We will continue to modify our procedures as we receive this important feedback.