

Turks and Caicos Islands

Supreme Court: Practice Direction 5 (Amendment provisions), 2021 Government Notice 703 of 2021

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AUTHORITY: This Practice Direction is issued by the Chief Justice pursuant to section 17 of the Supreme Court Ordinance, and the Jury (Amendment) Ordinance 2020.

DURATION: This Practice Direction will continue in force from the 19th of July 2021 until it is further varied, revoked or suspended, or replaced by the Chief Justice, for any reason, including COVID-19 pandemic realities.

Whereas the duty of the courts to ensure the proper administration of justice in a safe and healthy environment remains paramount;

And Whereas the necessity to remove, reduce or limit human to human contact in response to the COVID-19 pandemic, has been significantly reduced;

Now Therefore this Practice Direction is made to vary Practice Direction No. 5 which provided for the resumption of Jury Trials in the Turks and Caicos Islands.

1. Commencement date

The commencement date of this amendment shall be 19th July 2021.

2. Jury trials – Venue

Jury trials shall be held on both Islands of Grand Turk, and Providenciales; one jury trial may take place at any time at Courts 1 and 2 in the Supreme Court Building, Providenciales, and another at the Supreme Court, Grand Turk.

3. Mode of Jury Trials

Jury Trials shall be held in a hybrid manner: partly remote and partly in person; the court which will conduct in person proceedings, shall include the jury which will participate in the trial by audio-visual link.

In person trials

3A. In the exercise of his/her discretion, a Judge may, having regard to the severity or otherwise of the Covid-19 pandemic, conduct in-person hearings.

3B. In-person hearings will mean that judge and jury, defendant and counsel as well as any other person as may be permitted in the courtroom by the Registrar, be in one courtroom.

Provided that the number of persons in the courtroom shall not exceed twenty persons.

4. The Hybrid trial – Providenciales

1. In the trial at Providenciales, the Judge, Court Staff, Interpreter, Counsel on both sides, defendant(s), and one witness at a time, one Prison Guard (Officer), will be in Court 1.

Provided that where the defendant is in custody in Her Majesty's Prison at Grand Turk, the defendant will participate in the trial from a courtroom in Grand Turk via video link.

The Attorney of a defendant in Her Majesty's Prison at Grand Turk who participates in his/her trial at Providenciales may opt to be with the defendant in person at Grand Turk, or be in Providenciales as the justice of the case may require.

2. The jury will participate in the trial from Court 2 in the presence of a court official assigned by the Registrar.
3. All jury deliberations as well as refreshment may be done or carried out in Court 2, but in the absence of the designated court official.

Provided that the persons in either courtroom shall not exceed ten persons at any time.

Special jury

4. Where a special jury of twelve persons is assembled for a trial, the entire jury shall where the Supreme Court Annex is not in use by the SIPT trial, be placed in the courtroom of the Supreme Court Annex and shall participate in the trial from that courtroom.
5. If in the case of a twelve-person jury, the Supreme Court Annex cannot be accessed or is otherwise unavailable, then eight members of the jury shall be placed in Court 2, and four members of the jury, in Jury/Remote Access room in the Supreme Court Building.

Special measures

6. Where at the hearing, it becomes apparent that a witness is a vulnerable witness, as defined by the sections 3 and 4 of the Vulnerable Witnesses Ordinance 2020, or one in respect of whom the Director of Public Prosecutions under section 5 thereof has applied for relevant arrangements to be made for special measures, or in respect of whom the court makes a special measures direction under section 6 thereof, that witness shall be placed in Jury Room/Library from where he/she will be led in evidence, cross-examination as the case may be, via audio visual link in accordance with sections 12 and 13(1) and (2) of the Vulnerable Witnesses Ordinance 2020.

Accessibility

7. The courtrooms and the rooms assigned for use by the jury will all be fitted with electronic capability to enable jury deliberations by audio-visual link.
5. **The Hybrid trial – Grand Turk**
1. At the trial at Grand Turk, the Judge, Court Staff, Interpreter, Counsel on both sides, defendant(s) and one witness at a time will be in the Supreme Court courtroom.
 2. For due compliance with the physical distancing protocols, the jury may participate in the trial and conduct their deliberation from the Jury Room and the Judicial Education Institute (JEI) Office by means of video link, in the presence of a court official in each room; separated for both trial and deliberation for the purpose of observing the physical distancing protocols.

Provided that the persons in either Jury assigned room shall not exceed ten persons at any time.

Special jury

3. Where a special jury of twelve persons is assembled for a trial, seven members of the jury shall be placed in the Jury Room and shall participate in the trial from that place; the other five members

shall be placed in the Judicial Education Institution Room from where they shall participate in the trial by video link.

Special measures

4. Where a witness is a vulnerable witness as defined by the sections 3 and 4 of the Vulnerable Witnesses Ordinance 2020, or one in respect of whom the Director of Public Prosecutions under section 5 of the Vulnerable Witnesses Ordinance 2020 has applied for relevant arrangements to be made for special measures, or in respect of whom the court makes a special measures direction under section 6 thereof, that witness will be in the Vulnerable Witness' Room from where he/she will be led in evidence or cross-examined as the case may be, via video link in accordance with sections 12 and 13(1) and (2) of the Vulnerable Witnesses Ordinance 2020.

Accessibility

5. The Jury Room and additional room (s) assigned for use by the jury will be fitted with electronic capability to enable jury deliberations by video link.
6. **The Hybrid trial: Jury selection – Providenciales**
 1. For every jury trial, in order to observe the six feet physical distancing protocol, the jury pool will be placed in both jury rooms in the Supreme Court building at Providenciales, as well as in designated space outside the courtroom.

Provided that it is understood that no court business relating to the jury trial, shall be conducted from designated space outside the courtroom.
 2. For jury selection, the Judge will address the court using a public address system which must be heard outside the building, in the tent. The Clerk of Court/Registrar, will call the roll using the public address system.
 3. When a potential juror is called, he/she will be ushered into one of the jury rooms in the Supreme Court Building where he will communicate with the court by video link.
 4. Attorneys will be in the courtroom from where they will make their challenges.
 5. From the jury room, the potential juror shall respond by video link to questions if any, posed in the courtroom.
 6. Where a potential juror wishes to speak to the judge about concerns sitting on a trial, this may be done via video link.

Provided that where he/she has to support his/her request to be excused with documentation, he/she may, if the Judge so directs, be escorted into the courtroom for the purpose of being questioned on the documents.
 7. As a potential juror is excused and leaves the Jury Room, his/her place will be taken by another person waiting in the designated place outside the court building until the selection process is completed.
 8. Once selected, the successful juror will be shown to a seat in a place designated as jury reserved space in the assigned courtroom for the trial.
7. **The Hybrid Trial: Jury selection – Grand Turk**
 1. For every jury trial, in order to observe the six feet physical distancing protocol, the jury pool will be placed in the Jury Room, and another assigned room within the Supreme Court Building, as well as in designated space outside the courtroom.

Provided that it is understood that no court business relating to the jury trial, shall be conducted from under designated space outside the courtroom.

2. For jury selection, the Judge will address the court using a public address system which must be heard outside the building, in the tent. The Clerk of Court/Registrar will call the roll using the public address system.
3. When a potential juror is called, he/she will be ushered into one of the jury rooms in the Supreme Court Building where he will communicate with the court by video link.
4. Attorneys will be in the courtroom from where they will make their challenges.
5. From the Jury Room, and the assigned room, the potential jurors shall respond by video link to questions posed in the courtroom.
6. Where a potential juror wishes to speak to the judge about concerns sitting on a trial, this may be done via video link from the Jury Room or the assigned room.

Provided that where he/she has to support his/her request to be excused with documentation, he/she may, if the Judge so directs, be escorted into the courtroom for the purpose of being questioned on the documents.

7. As potential jurors are excused and leave the Jury Room and the assigned room, their places will be taken by the persons waiting in the designated place outside the court building until the process of selection is completed.
8. Once selected, the successful juror will be shown to a seat in a place designated as jury reserved space in the assigned courtroom for the trial.

8. General provisions

1. Potential Jurors shall at all times observe the six feet physical distancing protocol, as indicated under the tent, in the Supreme Court Building, or as directed by the court's security guards.
2. If the six feet physical distancing protocol remains in force, same shall be observed by the marking of such in the area outside the court building, the courtrooms, in the Jury Rooms and additional assigned rooms, and hallways.
3. Potential users will be required to sanitize their hands by accepting and using the hand sanitizers provided at the entrance to the court building; any person who refuses to comply with these general protocols for court attendance will be denied entry to the court building.
4. All surfaces in the jury assembly areas, courtrooms, public hallways and restrooms are to be cleaned and sanitized before any jurors arrive in the morning, and at the end of the day.
5. All potential jurors, Attorneys and Court Staff, shall submit to temperature checks by use of a handheld thermometer; any person displaying flu-like symptoms or whose temperature exceeds 99.5(°F)/37.5 (°C) will be denied entry to the court building.
6. All potential jurors and all participants in a jury trial must access the court building wearing masks.
7. All Attorneys, Interpreters, Court staff and court users are required to wear a mask in and around the court premises and during court proceedings.
8. A Judge may wear a mask at his/her discretion.
9. Counsel may give opening and closing speeches in masks unless otherwise permitted by the Judge.
10. Jurors may take the oath with their masks on, except where the Judge requires them to do otherwise.

11. A Judge may permit the removal of masks or dispense with the wearing of masks in these circumstances:
 - i. Where physical distancing has been observed and Attorneys, Interpreters, and Court Staff, address the court; ii. Where it is necessary to confirm identity of a person for security purposes; authorised officers may request face coverings be removed temporarily for that purpose;
 - ii. Where the Judge in his discretion requires a witness giving evidence to remove a mask; or
 - iii. Where it is important and/or is a legal requirement that a person's face be seen in court, such as: where identification is relevant for the hearing, or during the empanelling of the jury.
12. By reason of the size of the dock in all our courts, at most two defendants can occupy one dock.
13. In trials in which there are more than two defendants, the area immediately outside the dock may be designated "the dock" by the Judge.
 - i. Accordingly, and in keeping with the limit of twenty persons in the courtroom, the Judge may determine who will be asked to leave the court in order that more defendants may be placed in the courtroom.
 - ii. Where the discretion of the judge is exercised for the aforesaid reason, such shall not be construed as a dereliction of the Judge's duty to give a fair, hearing in an open court.
14. Where in the course of the trial, or during jury deliberation, the jury separated from the court seeks to ask questions of the Judge, the said question may be:
 - i. Sent by text messaging from the mobile phone that will be supplied to the Jury Foreman and the Clerk of Court; or
 - ii. Written down and given to the Court Clerk assigned to the jury, who will then take leave of the jury, attend the court, hand same to the Judge and return with a response, or make arrangements for any court official or officer, to hand the question so written, to the judge and return with a response.

Provided that the use of text messaging shall be the first course of action unless it is impracticable for reasons of connectivity or otherwise.
15. Jurors may use their own Bible/Religious book to take the oath or may be given a court copy encased in plastic and sanitised for the purpose.
16. Jurors will be provided with the oath either on the screen in the assigned room(s), or on a sheet of paper laminated or encased in plastic, duly sanitised.
17. The Court may take as many breaks as possible to aerate the courtroom as deemed necessary by the Judge.
18. The public may observe the trial by livestreaming (where such is available), or under the tent provided outside the courtroom.
19. The link for livestreaming will be made available to the public through social media as well as on the Judiciary website.