

# COVID Court Leadership Fatigue Dealing with the Delta Variant

September 30, 2021

*NAPCO Webinar Series*



# Presenters



**Gordon Griller**  
Executive Director, NAPCO  
Scottsdale, AZ



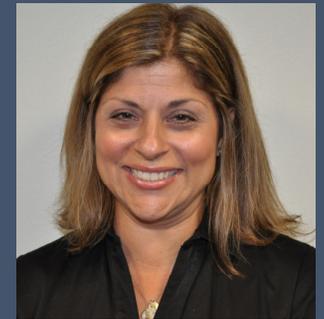
**Hon. Stan Whitaker**  
Chief Judge  
2nd Judicial District of New Mexico  
Bernalillo County (Albuquerque)



**Katina Watson**  
Court Executive



**Hon. Sheila Venable**  
Assignment Judge  
Superior Court of New Jersey  
Essex Vicinage (Newark)



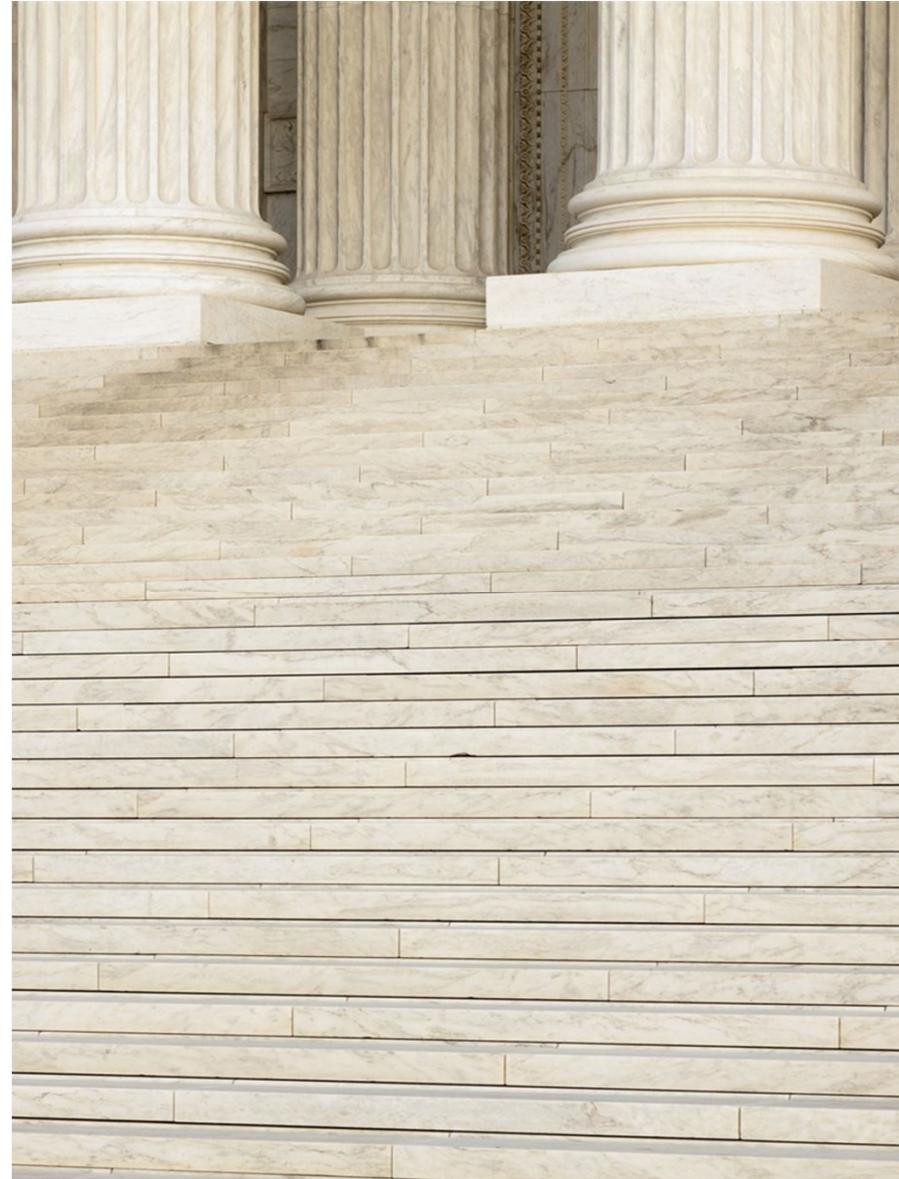
**Amy DePaul**  
Trial Court Administrator



**Deborah Taylor Tate**  
Director, Administrative Office of the Courts  
Supreme Court of Tennessee

# Agenda

1. Latest DELTA Facts – What the Science Says
2. Discussion: Mitigation Strategies
  - Behaviors      Employees; Court Users
  - Vaccines      Policies and Actions
  - Proceedings    Virtual; In-Person
  - Workplaces    Courthouse; Hybrid
3. DELTA Burn-Out on Judges, Staff and Lawyers
4. State Court Administration Help; Guidance
5. Criminal Jury Trial Backlogs
6. Audience Q & A





## Latest Delta Facts

- ✓ Delta is 2 times more contagious than previous variants.
- ✓ 2 in 10 U.S. adults remain unvaccinated.
- ✓ Vaccinated people can spread the virus.
- ✓ Hyperlocal outbreaks are occurring due to patchwork vaccination levels.
- ✓ Unvaccinated are at greatest risk for severe illness, hospitalization, and death.
- ✓ More variants will likely appear (Lambda in South America)
- ✓ Pfizer booster shots OK'd for people 65+ yrs., immunocompromised, those in jobs at high risk for exposure to COVID.

## Current Hot Spots

- States with highest percent of unvaccinated... WV; WY ID; AL and MS.
- American Indian / Alaskan Native populations.
- Ages 18-29 is the largest Delta infected cohort.
- Densely populated & rural low socio-economic areas have high infection rates.



Nighttime Photo of United States from Space

## Mitigation Update

- Courts can require masks be worn indoors and in high transmission areas by everyone.
- Courts can require social distancing by all.
- Courts can incentivize vaccinations for staff.
- Unvaccinated staff can be required to work remotely, test weekly, and quarantine if sick.
- Courts can mandate vaccinations for staff based on *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Some states are banning option.
- Employees who refuse to be vaccinated can request reasonable accommodations based on medical or religious grounds.
- Vaccine refusal, without good cause, may lead to disciplinary action, including termination.



**“Don’t be deceived that ‘I got this far and I’m OK.’ [Delta] is a very different variant. It will find you. This virus will find everybody who is not immune.”**

**Dr. Gregory Poland  
Mayo Clinic Chief Virologist**



## \*Discussion\*

### Mitigation Strategies in the Time of the Delta Variant

Behaviors	Employees; Court Users
Vaccines	Policies and Actions
Proceedings	Virtual; In-Person
Workplaces	Courthouse; Hybrid



# BEHAVIORS

*Physical distancing*

## **Face Masks**

*Clean high-touch  
Services regularly*

**HAND  
HYGIENE**

**Cover your coughs  
and sneezes**

**AVOID CROWDS  
AND LARGE GATHERINGS**

*Make food items take-away  
only (not for eating on-site)  
or for eating outdoors.*



# VACCINES

Vaccine Mandates  
'no jab, no job'

## Vaccine Incentive Programs

Health insurance companies are considering insurance surcharges for unvaccinated COVID policyholders

*Range of court vaccine strategies largely dependent on state policies*

## **VAX UP !**

State laws; gubernatorial orders ban COVID-19 proof-of-vaccination requirements in 20 states ('vaccine passports') Sep. 22, 2021



Second Judicial  
District Court

Vaccine Incentive  
Program Video



<https://www.youtube.com/watch?v=BqCcSLmS8wA>



# PROCEEDINGS

## Virtual Court Hearings are Widespread

- Initial Appearances / Arraignment
- Motions; Status Conferences

## More Courts Moving to Remote Judicial Support

- Remote Interpreting
- Video Transcript & Virtual Court Reporting

## New ODR System Lets Parties Settle Financial Disputes Without Going to Court

How have Jury Trials been Held?

**NOTICE TO COURT USERS**  
The court will be conducting hearings via teleconference among the new measures to keep the justice system open during the COVID-19 crisis

# Covid-19 and the Tennessee Courts in the most extraordinary way



Metro Government of Nashville and Davidson Co. Et Al. v. Tennessee Department of Education, Et Al.



Davidson and Shelby Counties v. Tennessee Board of Education 2020-04-29



<https://www.tncourts.gov/Coronavirus>

Navigation menu: COURTS, PROGRAMS, ADMINISTRATION, FORMS & PUBLICATIONS, BOARDS & COMMISSIONS, CALENDAR

TENNESSEE STATE COURTS  
**TNCOURTS**.gov



Information for:  
JUDGES  
ATTORNEYS  
CITIZENS  
MEDIA  
STUDENTS

SEARCH TNCOURTS.GOV:  
 Search

CONNECT WITH US ON TWITTER  
HELP CENTER  
OPINIONS & NEWS FEEDS  
VIEW PHOTOS ON FLICKR  
PODCAST  
SUBSCRIBE TO OUR YOUTUBE  
APPELLATE E-FILEING

## CORONAVIRUS & COURT LEADERSHIP

**[Approved judicial district plans to expand in-person hearings are available here.](#)**

The Tennessee Administrative Office of the Courts is open and is prepared to assist judges, court staff, and others to the best of its ability during the coronavirus outbreak. Almost all AOC staff has the ability to work remotely and will continue to work in the office or remotely. Per the CDC Guidelines, the AOC is limiting the number of individuals in our Nashville office and is unable to receive visitors at this time. If you need assistance, please call (615) 741-2687 or email [webmaster@tncourts.gov](mailto:webmaster@tncourts.gov)

If you have a concern about a court's compliance with the Tennessee Supreme Court COVID-19 Orders, please [click here](#) to send us an email.

If you are looking for legal help for a legal situation you are in please visit: [Help4TN.org](http://Help4TN.org)

If you are looking for eviction resources click [here](#).

### **Tennessee Court Orders, Rules, Policies Related to Coronavirus**

- [Order Regarding 2020 Continuing Legal Education](#) - September 15, 2021
- [Tennessee Supreme Court Order Encouraging Facial Coverings and Other Means Of Conducting Business](#) - August 26, 2021  
[Tennessee Supreme Court Order Encouraging Facial Coverings and Other Means of Conducting Business - Concurrence/Dissent](#) - August 26, 2021
- [Tennessee Supreme Court Order Modifying Capacity, Distancing and Facial Covering Requirements](#) - May 14, 2021
- [Tennessee Supreme Court Order Modifying Certain Provisions of TN SCT R7 In Order For July 2021 Bar Exam To Be Virtual](#) - February 16, 2021
- [Tennessee Supreme Court Order Easing Suspension on In-Person Proceedings](#) - February 12, 2021
- [Tennessee Supreme Court Order Extending State of Emergency and Suspension of In-Person Proceedings](#) - January 15, 2021
- [Tennessee Supreme Court Order Extending State of Emergency and Reinstating Suspension of In-Person Court Proceedings](#) - December 22, 2020
- [Tennessee Supreme Court Order -Supplementing Nov. 17 Order Clarifying Restrictions On Entering Courthouse](#) - December 7, 2020
- [Tennessee Supreme Court Order Regarding 2021 Continuing Legal Education](#) - December 3, 2020
- [Tennessee Supreme Court Order Extending State of Emergency Suspending Jury Trials](#) - November 17, 2020
- [Tennessee Supreme Court Order Temporarily Modifying Certain Provisions of TN SCT R7 Related to the February 2021 Bar Examination](#) - October 23, 2020
- [Tennessee Supreme Court Order Temporarily Modifying Certain Provisions of TN SCT R7 Related to the February 2021 Bar Examination](#) - October 8, 2020



# By the numbers

**22,477 Zoom sessions**

9,949,518 meeting minutes

**Over 15,000 virtual training hours for  
11,000 participants**

**189,523 Zoom participants**

**9.6 million views**

on [tncourts.gov](https://tncourts.gov) since Jan. 1, 2020

**109,000 views of livestreamed  
appellate oral arguments**



# First in history – oral argument by video conf.



Carolyn Coffman Et Al. v. Armstrong International, Inc. Et Al.

1<sup>st</sup> livestream oral argument in TN history

First oral argument by video conference in Supreme Court history

Courts remain open and accessible





## WORKPLACES

### **SJDC holding civil trials at South Valley Multipurpose Senior Center**

#### **Jury Trials To Begin Outside Of Courthouses In April 2021**

In Norfolk County, the venue is the banquet hall Lombardo's in Randolph. In Hampden County, trials will be held at the Eastfield Mall Cinemas. In Barnstable County, the state will use the Cape Coddier Resort in Hyannis.

#### **Minnesota v. Derek Chauvin (Mpls.)**

We removed the jury box, platform, and barrier [railing] between the well and public seating. This was enough so the wall didn't come down and the jurors could be six feet apart. We identified this need the summer of 2020 before the trial began."

*Sarah Lindahl-Pfjeffer, Administrator  
Fourth Judicial District, Minnesota*



**The delta variant arrived at a time that broke our spirits. It created new divisions and conflicts among policymakers and people. And it sunk the hopes of many for normalcy.**

- ❑ Overall, tell us about morale in your state or court. Are we back on a merry-go-around of distrust, anxiety and over/under reaction?**
- ❑ How do we as court leaders help judges and staff in their resolve, wellbeing and stamina to stay positive as the pandemic wears on?**

**DELTA BURN-OUT**



Caseflow management help

Statewide court services

Administering court payroll

*Trial court operations support*

eCourt services

*Educational services*

Data and statistics

Annual budget development

Information technology

Grants and financial aid

*Managing indigent defense systems*

Case assignment assistance

# SCAO GUIDANCE

# CARES Act

**\$3,892,911.00**

From the state's  
Coronavirus Relief Fund

- Laptop bundles
- Computer hardware
- SD-WAN upgrade



# ARPA

**Request Submitted**

**Court System Recovery**

- 2 retired judges per grand division
- Court date reminders
- \$1.4m

**Hybrid Education  
Conferences**

- One time purchase of video conferencing equipment
- \$25k

**TnCIS Refresh**

- Upgrade for greater efficiency for e-filing, accounting and receipting of fees, and case management
- \$8.5m

# Taking care of our Judges!

## TJC Wellness Committee

Meditation

Chair Yoga

Tai Chi

TJC Flu Shots

Health and Wellness CLE

Hospitality Suite- LAUGHTER is the best medicine





# **Moving Criminal Cases Advice During COVID**

**Second Judicial District Court**  
Albuquerque, New Mexico

**National Center for State Courts**  
Williamsburg, Virginia

- **The Pod System involves a manually created calendar that is time-intensive.**
- **All in-custody cases are carefully tracked to ensure hearings are held timely and that they are moving forward.**
- **Though complicated, the system has been highly effective in ensuring criminal cases don't fall through the cracks during COVID.**
- **It has also enabled the jail to minimize COVID transmission among inmates by isolating their movements.**



- The Pod system involves six different court hearing dockets running simultaneously every day of the week.
- Except for the Preliminary Hearing Pod, each Pod represents a geographic housing location of inmates.

**Pod D**

**Arraignments  
Motion Hearings  
Detention Hearings  
Status Conferences  
Pleas & Sentencing**

**Pod E**

**Arraignments  
Motion Hearings  
Detention Hearings  
Status Conferences  
Pleas & Sentencing**

**Pod F**

**Arraignments  
Motion Hearings  
Detention Hearings  
Status Conferences  
Pleas & Sentencing**

**Pod R**

**Arraignments  
Motion Hearings  
Detention Hearings  
Status Conferences  
Pleas & Sentencing**

**Pod P**

**Arraignments  
Motion Hearings  
Detention Hearings  
Status Conferences  
Pleas & Sentencing**

**Pod**

**Preliminary Hearings**

- **In this system, case assignments to any particular judge does not drive case management. Rather, case management is driven by the housing location of an inmate.**
- **Every judge shares in the Pod hearing rotation.**
- **The assigned Pod judge hears every case in that Pod, regardless of which judicial officer is assigned.**
- **Judges move through Pods on a weekly basis.**
- **Every judge that is not assigned a Pod docket, shares rotations for other pre-determined hearing dockets for out-of-custody defendants.**

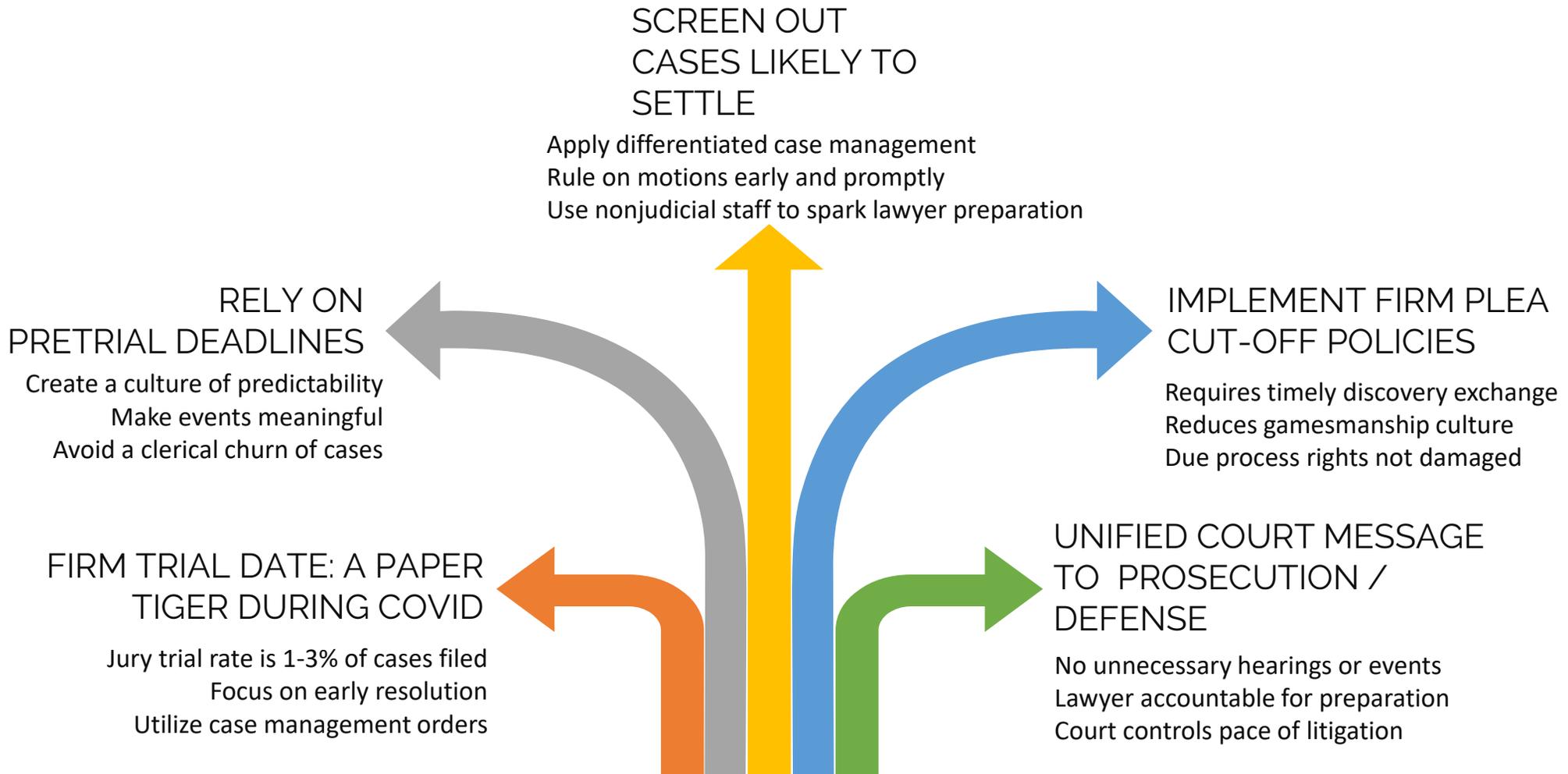


## **Jury Trials**

- **For jury trials, a form was developed wherein all parties are required to complete and submit. This form addresses trial readiness, custody status and other applicable information.**
- **Jury trials are prioritized and scheduled, regardless of judge assignment, based on the information contained in the form, the custody status of a defendant, and a defendant's length of stay in the jail.**
- **Like the Pod system, the judicial officer assigned to the case might not be the judge that tries the case. All judges share in a trial rotation and hear each others cases.**



# CRIMINAL JURY TRIAL BACKLOG BEST PRACTICES



## Legal Issues & Challenges

- ✓ Grand juries: challenges regarding secrecy; ability to assess credibility
- ✓ Petit juries: issues regarding risks vs constitutional right to fair trial and confronting witnesses (wearing masks)
- ✓ *Constitutional Considerations* are outlined in a CCJ/COSCA Rapid Response Team monograph concerning speedy trial, public trial, fair cross section of jurors, impartial jurors, the Confrontation Clause, and grand jury secrecy. The monograph is available at:  
[www.ncsc.org](http://www.ncsc.org)  
[www.napco4courtleaders.org](http://www.napco4courtleaders.org)



- **Expect legal challenges...if you wait the backlog will only get worse.**
- **Don't let absence of clear legal precedent prevent modified procedures.**
- **Make a clear record for use of modified procedures for appellate court purposes.**



# Advice on Juries / Jury Trials

- Priorities are the safety of all participants and a just outcome. Without rigorous public health compliance, a jury trial is a potential “super spreader event.”
- Provide COVID protections to all in the courtroom and STRICTLY enforce COVID protocols
- Explain safety measures to the all jurors in advance
- Consider selecting alternate jurors
- Livestream proceedings to provide public access
- Develop a “Plan B” to deal with instances where a trial participant tests positive for COVID or exhibits symptoms
- Control timeliness of trial
  - Limited voir dire
  - Limited opening and closing arguments

# Looking to the Future: Post-Covid for the Courts and Those We Serve!





Next NAPCO Webinar:  
Thursday, October 28, 2021 – 3 p.m. EDT

*Developing an Updated Playbook  
to Adjudicate Self-Represented Cases*

<https://napco4courtleaders.org/>

