

FHMS COVID-19 Resource Center:

The Future of Jury Trials in a COVID-19 World

FHMS has been actively monitoring the steps courts are taking to resume jury trials in the ongoing COVID-19 pandemic. There are primarily three ways courts are planning to safely resume jury trials: fully virtual, fully in-person, and a hybrid of virtual and in-person.

Below is an overview of the different methods. Specific courts are referenced as examples, but many other states and counties are currently evaluating and planning how to resume jury trials in their jurisdictions. For example, New Jersey has issued its detailed plan for resuming jury trials using a hybrid approach, as discussed below.

Fully Virtual

Bexar County, Texas is attempting to conduct its first remote jury selection for an entirely online civil trial. On July 24, 2020, summonses were mailed to 200 potential jurors to fill a six-person jury. The summons directs the individual to fill out an online questionnaire by August 12, 2020 and contains information about how to use Zoom. If a juror does not have a reliable internet-capable device, the county's BiblioTech library will provide the required technology for the selection process and the length of the trial if the person is seated. Any summoned juror who does not want to serve will be directed to speak to the judge via Zoom on the date they are to report. It is unclear if there are new exemptions due to the pandemic, but those over age 70 are not required to serve.

All trial participants will appear via Zoom, including the judge, attorneys, witnesses, and jurors. In an interesting twist, two judges will preside over the trial – one for issues of law and one for issues of technology. The success of this case will serve as a model for future civil trials, with a possibility of expanding to criminal trials.

Fully In-Person

The Middle District of Pennsylvania unveiled its proposal for the reinstatement of in-person jury proceedings on July 28, 2020. The earliest estimated date for the resumption of jury trials is August 17, 2020. The first trials will be dedicated to two-party criminal trials. Trials may be scheduled only if two courtrooms on the same floor of the same courthouse are available throughout the anticipated length of the trial. One room will be the designated "Trial Courtroom" and the other will be the "Jurors Courtroom." Trials may not be scheduled to begin within three days of the start date of any other trial in the same courthouse.

Pools of 52 qualified jurors will be drawn for each trial. Those jurors will be sent a health screening questionnaire as well as a letter from the court explaining the procedures and protocols adopted to protect against the transmission of COVID-19. Those precautions include:

- Placing hand sanitizer stations throughout the courthouse;
- Ordering a sufficient amount of personal protective equipment (PPE), such as face masks, gloves, and personal hand sanitizer, to be disbursed daily to each juror during voir dire and trial;
- Demarcating the seats in courtrooms to account for six-foot social distancing between individuals;
- Full cleaning and disinfecting of all facilities between sessions;
- Requiring all attorneys, staff, courtroom personnel, jurors, and parties to wear a face covering at all times, except while speaking or as otherwise permitted by the presiding judge;
- Taping or broadcasting the proceedings rather than allowing members of the public in the courtroom;
- Testing of criminal defendants for symptoms of, or exposure to, COVID-19 prior to the defendant appearing in court; and
- Prescreening of jurors each day to check for symptoms of, or exposure to, COVID-19.

If any juror responds to any question regarding physical or mental ability to serve based on his or her experience with or concern over COVID-19, the judge should advise jurors that fear of transmission is not a ground for dismissal. Having the judge address this subject and ask jurors who identify this concern to explain why it affects the ability to serve provides some assurance that the jurors will not be unnecessarily dismissed.

The two courtrooms will be prepared to conduct trials in a socially distanced and safe manner. This includes marking specific seats for jurors and witnesses, installing a microphone in front of the juror box, providing noise-cancelling wireless headphones for use during sidebar conferences, and installing video recording and projection equipment. Jurors will sit in the “Jurors Courtroom” in the first, third, and fifth rows of the gallery and must wear face coverings at all times.

Witnesses will testify from the middle seat of the front row of the jury box. The witness may remove his or her mask once seated. The projection equipment should lessen, if not eliminate, the need for attorneys to pass papers and exhibits to the witness. If the presiding judge permits the exhibit to be passed to the witness, both the witness and attorney must wear a mask and gloves while handling the exhibit. After the witness finishes testifying, the disposable cover on the microphone should be replaced and the area disinfected.

Hybrid Approach

The Florida Supreme Court selected five trial-court circuits to test its virtual civil jury trial pilot program based on criteria including geographic diversity, level of contagion, and technological capacity within the trial court. The group in charge of the program selected civil cases involving individuals instead of criminal cases that may implicate complex constitutional and civil rights issues.

The first case to test the new system was an insurance dispute about a house damaged by Hurricane Irma. Jury selection was conducted via Zoom, which originally consisted of more than 600 individuals. The trial was held in person at the Dade County Courthouse and all jurors reported. Safeguards included assigned parking, social distancing, and mandatory face masks and gloves. Trial participants wore face shields when moving around and witnesses testified behind plexiglass. Each juror had an exhibit binder to reference to avoid passing documents around. Attorneys communicated via text messages. The trial lasted one full day and was livestreamed on YouTube. The jurors awarded \$12,000 to the plaintiff. The verdict was non-binding due to the experimental nature of the proceedings.

Jury selection for the first fully remote civil trial in Florida began on August 6, 2020. This will be the first binding verdict from a remote trial in the United States. The entire trial, from jury selection to the final verdict, will be conducted via Zoom. The trial will be livestreamed on Courtroom View Network.

New Jersey's Hybrid Process with Virtual Jury Selection and Socially Distanced In-Person Trials

The Supreme Court of New Jersey issued a [Notice to the Bar](#) on July 22, 2020 regarding the incremental resumption of criminal and civil jury trials. The first jury selections and trials will be held in the Atlantic/Cape May, Bergen, and Cumberland/Gloucester/Salem Vicinages, with statewide expansion dependent on the success of the first vicinages. The first cases to go to trial will be criminal cases with one defendant where the defendant is detained, and the trial is expected to be less than two weeks. Jury selection will be a four-step process as follows:

- *Summoning Prospective Jurors – July/August 2020*

Juror summons will be issued consistent with standard practices and with information about the new process. The mailed summons will direct the prospective juror to fill out an online qualification questionnaire, which now includes questions about the juror's ability to participate in a virtual selection process and an in-person trial, as well as other COVID-19-related questions.

High-risk prospective jurors will have their service deferred, although medical excuses will still require a doctor's note. If a juror is unwilling to serve for reasons unrelated to their health, the individual will be scheduled to speak with a judge through advanced communication technology (ACT). If a prospective juror qualifies for service and passes the prescreening, but does not have access to a smartphone, tablet, or computer with a functioning web camera and reliable internet, the Judiciary will provide the technology.

- *Virtual Jury Selection – Mid-September 2020*

The first phase of jury selection will be facilitated using Zoom. IT staff will assist jurors as needed during the session and will offer onboarding for jurors who request same. The panels will start with 30 participants so that all jurors can be seen on-screen. The judge will question jurors as a group and then individually as needed. During this phase, jurors will be excused for cause and may be peremptorily challenged.

Jurors not excused for cause but requiring additional questioning will be individually questioned by the judge in the presence of the attorneys, either during their initial virtual session, or on a future scheduled date. This phase will be similar to the process used in a "struck jury," and will hopefully yield a small group of pre-questioned jurors who will move on to the next phase of in-person selection. To obtain the requisite number of jurors for a single case, it is expected that the judge will hold morning and afternoon sessions for up to one week.

- *In-Person Jury Selection – Mid-September 2020*

The second phase of jury selection will be conducted at the courthouse. The limited number of pre-questioned jurors will report at one time for the final round of questioning and peremptory challenges. During this phase, social distancing will be observed, using as many rooms as necessary to facilitate six-foot spacing. The judge and attorneys in the main courtroom will be provided a live feed view of the jurors in the additional rooms. If sidebar discussions are necessary, courtroom staff and the judge should determine the safest way to facilitate them depending on the available facilities.

- *In-Person Trial – Late September 2020*

Trials will be held in person. Jurors will receive text messages with COVID-19 screening questions reminding them not to report if they are sick. In addition, jurors will report on staggered schedules with point-of-entry screening. All persons entering judicial facilities will be required to wear face masks, observe social distancing, and follow any other recommendations from the CDC that may be in affect at the time of trial. It is expected that some trials will need to be conducted in multiple courtrooms. If that becomes necessary, a live feed screen will be set up in the additional rooms so that jurors can view the proceedings in real time.

We continue to monitor this development and the ability to conduct jury trials with COVID-19 precautions. As always, please do not hesitate to contact us with any questions or concerns.

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