

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Guidelines for the Reinstitution of Civil Jury
Trials

PREAMBLE

These guidelines are being prepared for the purpose of assisting Presiding Judges in the reinstatement of civil jury trials. This is a fluid process and the guidelines are certainly subject to revisions as additional information becomes available and as current conditions change. These guidelines will assist the Presiding Judge when conducting a jury trial in following the four major restrictions put into place due to the COVID-19 crisis. These restrictions are as follows:

1. The wearing of masks by all persons entered the courthouse
2. Maintaining a proper social distance of 6 feet from other individuals
3. Reducing the number of touch points for any individual and then the cleaning and sanitizing of such touch points for the next individual to occupy that area and;
4. Pennsylvania currently limits room occupancy to not more than 15% of the maximum room occupancy allowing 6' of social distancing. As room size varies, we are using a limit of 25 people in a room to provide adequate social distancing. Recognizing that this is a changing process, the Jury Committee welcomes input from all presiding judges and other judges who may have information or experiences that will contribute to improving the process.
5. The Chief Judge reserves the right to not begin the jury trial process if the current situation would warrant it.

TABLE OF CONTENTS

| | |
|---|----|
| 1. Scheduling of Jury Trials..... | 1 |
| 2. Juror Summons and Drawing of Jury Pools | 1 |
| 3. Voir Dire | 3 |
| a. Preparation for Voir Dire..... | 3 |
| b. Processing of Jurors | 4 |
| c. Commencing Voir Dire..... | 5 |
| d. Conducting Voir Dire | 6 |
| e. Concluding Voir Dire | 7 |
| 4. Trial | 7 |
| a. Preparation for Trial..... | 7 |
| b. Processing of Jurors and Other Individuals | 9 |
| c. Conducting Trial | 10 |
| d. Deliberations | 12 |
| e. Concluding Trial..... | 12 |

1. Scheduling of Jury Trials

- Civil jury trials will initially be scheduled in Ceremonial Courtroom of the Byrne Courthouse after April 5, 2021. During the initial test period, only one trial will take place at a time due to staffing concerns. If the Court remains in Phase II of the reconstitution plan, we will remain in the test period for civil jury trials.
- After the initial test period for civil jury trials and the Court moves to Phase III of the reconstitution plans, trials will also be scheduled in Courtroom 16A. Due to staffing concerns, until the Court has moved to Phase IV of the reconstitution plan, trials will not expand beyond two floors of the Byrne Courthouse.
- Jury trials will be scheduled to commence with voir dire on Thursdays.
- The Chair of the Jury Committee will maintain and make available to all judges of the court a list of all scheduled jury trials and their anticipated length.
- The Chief Judge reserves the right to halt the jury trial process if the current situation would warrant it.

Note: These requirements will limit the number of jurors in the courthouse at any single time, and ensure that sufficient space is available (i.e., two courtrooms) for voir dire and trial proceedings with appropriate distancing in place.

2. Juror Summons and Drawing of Jury Pools

- We are hoping to assemble a pool of not more than 25 qualified jurors for each civil jury trial.
- The clerk will include with the materials sent to each drawn juror:
 - A health screening questionnaire, which will ask the following:
 - Have you been diagnosed with, or had close contact with, anyone who has been diagnosed with COVID-19 within the last 14 days?
 - Have you experienced any cold or flu-like symptoms in the last 14 days (including fever, cough, sore throat, respiratory illness or difficulty breathing)?
 - A letter from the court, which will:
 - Explain the procedures and protocols adopted by the court to protect against transmission of COVID-19 (including the Chief Judge's order requiring masks must always be worn, except as

directed by the presiding judge);

- Jurors will be required to wear a mask or face covering that covers the wearer's nose and mouth when entering the building and when in common or public areas of the courthouse. Jurors are expected to supply their own mask or face covering but will be provided a mask if they do not have one. Jurors should still maintain safe distancing from others.
- Direct that, if the juror experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19, the juror must notify the Court immediately at this number (Jury Administration 267-299-7299) and must not report for service at the courthouse unless specifically instructed to do so.
- Once a pool is drawn, the clerk will (i) exclude from the pool any juror who reports symptoms consistent with COVID-19 or has had recent exposure to an individual diagnosed with COVID-19, (ii) notify the juror by letter that he or she is excluded and must not report for service, and (iii) notify the Chief Judge and presiding judge of the juror's exclusion.

Note: An additional number of qualified jurors will likely need to be drawn to account for those dismissed for COVID-related reasons. The goal is to ensure that the pool available for selection, after dismissal of those individuals, is approximately 18 jurors.

The COVID safety information should be communicated to prospective jurors as early as possible, and at every opportunity including in communications from the court and on the court's website.

3. Voir Dire

a. Preparation for Voir Dire

- In advance of the date on which voir dire is scheduled to commence:
 - Sanitizer stations will be placed in appropriate locations throughout the courthouse, including entrances to the building and individual courtrooms, and personal protective equipment – including facial masks and gloves will be available for jurors during voir dire and trial.
 - The Ceremonial Courtroom and the jury assembly room will be utilized for civil jury voir dire. Initially, the Ceremonial Courtroom will be designated as trial courtroom and Ceremonial Courtroom Robing Room will be the jury room. The Magistrate Judge Robing

Room will be utilized as the presiding judge's robing room. Jurors will be directed to report to the jury assembly room.

- Markers will be affixed to the gallery and blue chairs by the robing room in the courtroom, indicating places where jurors should sit and allowing for at least six feet of separation. Markers will be affixed to the blue chairs closest to the Magistrate Judge's robing room and seat for witnesses.
 - Microphones will be placed by the blue chairs by the robing room for the juror box and in the gallery at points equidistant from the seating markers. Additionally, a microphone will be setup in the well to be utilized for voir dire.
 - The gallery area of the Ceremonial Courtroom will be utilized for the general voir dire.
 - The rooms will be fully cleaned and disinfected.
- On the date voir dire is scheduled to commence, courthouse staff will be assigned to the Ceremonial Courtroom to assist and direct jurors.

Note: Designation of the courtrooms and seating will allow the jurors to be grouped and seated more quickly and easily, while ensuring that safe distancing is maintained.

The seating markers will ensure that jurors are assigned specific seats that are a safe distance from one another.

- The Clerk's Office will utilize the Ajis Jury System to direct each summoned juror to report to the jury assembly room.
- Courthouse staff will (i) ensure that jurors maintain safe distancing from others after entry into the courthouse from the 6th street entrance, (ii) provide each juror upon arrival to the jury assembly room with a clear protective facial mask and gloves, (iii) instruct each juror upon arrival to wear a mask at all times within the courthouse except as directed by the presiding judge.
- Courthouse staff will ask jurors upon arrival if they answered the daily health assessment that day and to also state whether they are experiencing any symptoms of illness. If any answers to the questionnaire are unsatisfactory and the jurors are experiencing any type of medical symptoms of the virus they should be instructed to leave immediately and then the staff member will advise the Jury Staff of the name and number of that juror.

- Upon completion of the juror orientation, courthouse staff will escort the jury panel from the jury assembly room down the escalator to the Ceremonial Courtroom.
- Courthouse staff in the Ceremonial Courtroom will advise each juror that a mask must be worn at all times and that the juror should request permission to leave the courtroom if necessary (for instance, to use the restroom) prior to leaving his or her seat.

Note: This process is intended to get the jurors in the courthouse and to their seats as quickly as possible, without compromising safety or exposure unnecessarily. Courthouse staff may also consider directing jurors to arrive at the courthouse at staggered times, to avoid (so far as possible) large congregations outside the courthouse.

b. Commencing Voir Dire

- Voir dire may proceed once all jurors in the trial courtroom have been seated.
- Before questioning commences, any juror(s) not assigned a seat in the jury assembly room will be dismissed and instructed to leave the courthouse at the discretion of the presiding judge.
- Questioning will commence within the Ceremonial Courtroom. After initial questioning where prospective jurors may answer questions by raising their juror numbers, the presiding judge at that time may escort individual jurors to the Robing Room for individual voir dire.
- Those jurors who are selected will be escorted to Robing Room where they will be provided instructions for further reporting and those not selected will be dismissed from service.
- Attorneys and their staff, courtroom personnel, jurors, and parties must wear masks while entering and exiting the courtroom, and in the courtroom as directed by the presiding judge; no other persons may be admitted into the courtroom during the proceeding, except as permitted by the presiding judge.

Note: Members of the public will be allowed into the last row of blue chairs closest to the Magistrate Robing Room during the jury selection process. Once voir dire has been completed, there will be some seating available in the back of the trial courtroom for members of the public. Any additional seating available for the public and any such determinations will be made at the discretion of the trial judge.

c. Conducting Individual Voir Dire

- Questioning of jurors will be conducted by the presiding judge and at the discretion of the presiding judge, by attorneys.
- Judges or counsel will start with general questions to the panel. Jurors who respond affirmatively will be asked to provide their jury number and then respond to follow up questions.

Note: The selection of jurors in this manner will decrease the number of touch points for a juror. It will also maintain social distancing requirements.

- If any juror responds to any question regarding ability to serve by reference to his or her experience with or concern over COVID-19, the judge should (i) remind jurors of the procedures and protocols adopted by the court to protect against transmission of COVID-19 precautions, (ii) advise jurors that fear over transmission – while legitimate – may not be a ground for dismissal, and (iii) ask the juror(s) who responded to explain whether and how the experience or concerns constitute a physical or mental condition that would impact ability to serve, giving the juror(s) an opportunity to speak to the judge individually if necessary.

Note: The “standard” questions concerning physical and mental conditions and ability to serve should invite any responses regarding concerns over COVID, and asking specifically about such concerns might encourage jurors to raise those fears as a basis for dismissal when they might not otherwise do so. Even then, it seems likely that a number of jurors will object to service on grounds of a generalized fear of transmission, a fear anyone could credibly claim to have. Having the judge address this subject in response to such a fear, and then ask any jurors who identify a concern of this type to explain why it rises to the level of a condition affecting ability to serve. It will then be up to the Presiding judge to evaluate whether a particular juror’s fear of contracting COVID would impede their ability to serve. This may provide some assurance that the jurors will not be unnecessarily dismissed. The presiding judge retains discretion to do otherwise, including allowing the attorneys to ask questions about COVID-19.

d. Concluding Voir Dire

- Once all jurors have responded to the general voir dire, selection of

jurors will be conducted in the manner prescribed by the presiding judge.

- Generalized concerns over exposure to or transmission to COVID-19 should not, without more, generally warrant dismissal of a juror for cause.
- Selection will continue until a total of 8 jurors have been selected.
- The remaining jurors will be dismissed and directed out of the courtrooms individually by courthouse staff, to ensure safe social distancing from others.
- The selected jurors will be escorted to the jury area designated within the Ceremonial Courtroom where they will be advised of their responsibilities, by the presiding judge, and then directed out of the courtrooms individually by courthouse staff.

4. Trial

a. Preparation for Trial

- In advance of the date on which trial is scheduled to commence:
 - Markers will be affixed to seats in the “Trial Courtroom,” indicating places where jurors and others should sit, as follows:
 - In the gallery, to points allowing for at least six feet of separation for the jurors for voir dire and public seating.
 - In the blue chairs to be used as the jury box and witness box, allowing for at least six feet of separation for jurors and witnesses.
 - The courtrooms will be fully cleaned and disinfected.

Note: At the discretion of the presiding judge, witnesses may also be called to testify at a podium or stand-up microphone if it is anticipated that they will only be called for short durations

- On the date trial is scheduled to commence, courthouse staff will be assigned to each courtroom, to assist and direct jurors.
- After court is adjourned at the end of the day's proceedings, the trial courtroom will be fully cleaned and disinfected

Note: The trial courtroom will be set up so that the eight

principal jurors will sit in the blue chairs by the robing room. Witnesses will testify from the designated blue chair. The witness should be visible to all jurors, as well as the presiding judge and court reporter, and the testimony will be picked up by the microphone.

b. Processing of Jurors and Other Individuals

- Courthouse staff will ask any person seeking to attend the trial whether the person is a juror or otherwise.
- If the person is a juror, and the person's status is confirmed, courthouse staff will:
 - Provide each juror upon arrival with a clear protective facial mask and gloves and instruct each juror upon arrival to wear a mask at all times within the courthouse except as directed by the presiding judge.
 - Ask each juror upon arrival whether he or she is experiencing any symptoms of illness, instruct them to leave if so, and advise the clerk of the name of the juror.
 - Direct each perspective juror to a marked seat in the gallery in the trial courtroom.
 - If the person is a witness or other participant in the trial, and the person's status is confirmed (including by an attorney for a party), courthouse staff will:
 - Provide the witness with a clear protective facial mask and gloves and instruct the person wear a mask at all times within the courthouse except as directed by the presiding judge.
 - Direct the person to the trial courtroom where they will remain in a public area outside of the courtroom and instruct the person to maintain safe distancing from others until directed to enter the courtroom.
 - Once in the courtroom, witnesses are to be seated in accordance with the directions of the presiding judge.
- If the person is neither a juror, a witness, nor another participant in the trial, courthouse staff will:
 - Instruct the person wear a mask at all times within the courthouse.
 - Direct the person to the gallery area of the Ceremonial Courtroom and advise the person that the proceedings may be viewed and

instruct the person to maintain safe distancing from others.

c. Conducting Trial

- Trial may proceed once all jurors have been seated, at the discretion of the presiding judge.
- Courthouse staff will ask each juror upon arrival, on every day of trial, whether he or she is experiencing any symptoms of illness, instruct them to leave if so, and advise the clerk of the name of the juror.
- The presiding judge will instruct all persons in the courtroom to notify the clerk (or other designated judicial officer or courthouse employee) immediately if the person experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19, with assurance that the person's identity will be kept confidential.
- Attorneys and their staff, courtroom personnel, jurors, parties, witnesses and other trial participants must wear masks as directed by the presiding judge.
- Attorneys and their staff will remain at or near their assigned counsel table throughout trial, except as directed by the presiding judge.
- When a witness is called to testify:
 - The witness will approach the witness chairs box, while wearing a clear mask, and sit in the marked seat, after which the witness may remove the mask at the direction of the presiding judge.
 - The witness will testify by speaking into the microphone installed in front of the seat.
 - 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.
 - At the end of the day, upon conclusion of proceedings, the disposable cover of the microphone will be replaced by courthouse staff, and the area disinfected.
- When a "sidebar" is called by the presiding judge:
 - (Option 1) The presiding judge may also direct that the sidebar be conducted in the trial courtroom and excuse the jury to the robing room.
 - (Option 2) The presiding judge and counsel may use the Magistrate Judge Robing Room.

- When a recess is called:
 - Courthouse staff will direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the robing room, the doors of which will remain open.

Courthouse staff will instruct jurors to stay in the robing room until recalled, to maintain safe distancing from others, and to signal courthouse staff if a need arises.

 - Once the recess is concluded, and jurors are recalled by the presiding judge, courthouse staff will direct jurors to return to their seats in the trial courtroom, the first juror in line being the one farthest from the courtroom door.
- If at any time during trial a juror, other participant, staff member or attendee has begun to experience symptoms consistent with COVID-19 or has been exposed to an individual diagnosed with COVID-19;
 - The presiding judge may decide after consultation with counsel, whether the trial may be resumed safely, whether there will be a delay due to a quarantine period or whether a mistrial may be declared. The Presiding Judge should immediately report any incident to the Clerk's Office. If any such incident happens, the procedure is as follows: 1. Report the incident 2. Investigate the incident 3. Consult with the attorneys involved and court personnel and 4. Decide how to proceed from there.
 - The clerk will contact each juror individually and instruct each juror to notify the clerk immediately if he or she experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19 during the quarantine period.
 - The presiding judge will decide, after consultation with counsel, whether trial may be resumed after the quarantine period or whether a mistrial should be declared.

d. Deliberations

- Once the parties have concluded their presentations, the jurors will be instructed to commence deliberations in the manner prescribed by the presiding judge.
- Courthouse staff will direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the robing room, the doors of which will thereafter be closed.
- Courthouse staff will instruct jurors to stay in the robing room until recalled, to maintain safe distancing from others, and to signal

courthouse staff if a need arises (including if the jury has a question or reaches a verdict).

- Whenever jurors are recalled by the presiding judge, including for the purpose of returning a verdict, courthouse staff will direct jurors to return to their seats in the trial courtroom, beginning with those farthest from the courtroom door.

Note: It seems unnecessary to determine or designate where the jurors should sit in the jury room, although the robing room should be inspected beforehand so any sensitive materials or equipment are removed or sealed.

e. Concluding Trial

- Once trial has concluded, the jurors will be dismissed, and directed out of the courtrooms individually by courthouse staff, ensuring to maintain safe distancing from others.