



September 2, 2020

As life in the Commonwealth of Pennsylvania continues its slow march toward fully reopening during the pandemic, the judiciary is one of the last facets of society to welcome the public. For obvious reasons, jury trials have been most affected by the social distancing requirements of the pandemic. The Administrative Office of Pennsylvania Courts recently published a detailed report advising courts throughout the Commonwealth on how to prepare for and conduct jury trials. This publication will summarize that report and then offer an update on the status of the resumption of jury trials in the greater Philadelphia area, where our firm mainly practices.

AOPC Report

The outset of the AOPC report discusses how to prepare courthouses for jury trials to resume. It recommends that courts implement policies for employees to follow with regard to the reporting of symptoms related to COVID-19 and in the event an employee tests positive for the virus. Now-standard guidelines for social distancing and limiting physical contact are also recommended. Courts have a responsibility to inform employees if a co-worker has tested positive, although the employee's name may not be disclosed. The report also addresses how to clean and prepare the court for the public's return, including requiring security personnel to take temperatures of visitors and require face masks be worn. Additionally, each individual court is left to handle whether witnesses and jurors should wear masks during examination and voir dire, respectively. The evaluation of facial expressions during those phases are of course essential when conducting a jury trial.

The second section of the report addresses the critical task of advising potential jurors of the changes to jury trials, via the summons issued to them. The report recommends that the summons state the precautions being put in place in courthouses, in addition to including a questionnaire solely related to COVID-19 issues. A myriad of positive responses to the questionnaire may establish a basis for "for cause" recusals, including exposure to COVID-19 and hardships imposed by being an essential worker, caring for children or suffering a financial impact from the pandemic.

In light of the potential difficulty with empanelling juries in person, the report's third section proposes alternative methods of jury selection. Noting that some courthouses may not be large enough to accommodate a jury panel under current social distancing guidelines, the report mentions the possibility of using hotel ballrooms, conventions centers or other large areas to conduct jury selection. Once the panel is chosen, they can then report to the

courthouse. The report also recommends that in person jurors be well-informed about the precautions being taken by the court and of their own responsibility for taking such precautions in the courthouse. The report also poses the possibility of conducting jury selection remotely. While this method would certainly pose the benefit of eliminating the risk of virus transmission, the report acknowledges that many challenges would arise from that method, not the least being that many potential jurors would not be able to access the means necessary to participate.

Finally, the last section of the report addresses considerations to be taken during the conduct of the trial. The chief concern is the maintaining of social distance among all participants. This will likely require jurors to be seated throughout the courtroom. The handling of exhibits is also important, as steps should be taken to eliminate any handling of exhibits by either the judge or jury. And as noted above, the report recommends that each judge consider whether it is feasible for witnesses to wear clear masks, or use other means such as plexiglass barriers, during testimony. In this regard, judges should be guided by the U.S. Supreme Court's test set forth in Maryland v. Craig, regarding the Confrontation Clause of the Sixth Amendment. Remote testimony may also be permitted, assuming the identity of the witness and their lack of contact with counsel or other individuals is verified.

The resumption of jury trials in Pennsylvania is essential to maintaining one of the bedrock principles of our democracy, but it must be undertaken with great caution and care during this pandemic.

Current Status of Jury Trials in Greater Philadelphia

The Philadelphia Court of Common Pleas recently announced that jury trials will resume for criminal cases only, beginning September 8th. The legal community at large will be closely observing the impact on juror turnout and how the court implements all of the necessary protocols and safeguards. Civil trials in Philadelphia are still postponed indefinitely.

The Montgomery County Court of Common Pleas has also not set a date for when either civil or criminal trials will resume. The same is true for the Delaware County Court of Common Pleas.

Both civil and criminal cases requiring twelve jurors can proceed to trial in Bucks County, beginning no sooner than September 28th. At the present time, civil juries may proceed with eight jurors if all parties consent. Similarly, jury trials in both types of cases have resumed in Chester County.