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CLIFFORD'S NOTES

The courts are treading carefully through the treacherous waters of the pandemic. Uppermost in everyone's minds is the health and safety of the public.

At the same time, the rights of individuals who seek their day in court must not be denied. Zoom court appearances and depositions by remote means with precautions for all parties in place are the new normal.

In June, a federal court ruled that although an in-person deposition cannot be compelled, there is no prejudice to either party when a deposition is taken remotely. *Valdivia v. Menard Inc.*, No. 19 CV 50336. Chief Judge of the Northern District of Illinois Rebecca R. Pallmeyer is among the chief judges across the country who have given trial judges approval to conduct criminal and civil proceedings through videoconferencing. (Fifth Amended General Order 20-0012.)

Until there is a vaccine or a cure for COVID-19, it appears the effects of this pandemic are likely to be with everyone for quite some time. Courts continue to assess how to make trials work. Even conducting voir dire sounds like it may be an insurmountable task; however, with masks, proper sanitizing and social distancing, it can succeed. These safety measures may result in fewer trials or a longer wait for a plaintiff's day in court, but eventually courts are likely to figure out what works best in each jurisdiction and in each courtroom.

Several bar associations, including the American College of Trial Lawyers, have brainstormed and put together ways that will help jury trials get underway. The American Board of Trial Advocates has assembled a white paper with pages of requirements for the courts to follow in order to safely conduct an in-person trial.

Safety precautions must be observed from voir dire to verdict with persistent masking, sanitizing and social distancing.

Most courts in major cities closed down in mid-March with no clear answer as to when jury trials may return. The first in-person trial in Florida was successfully conducted — a one-day trial over a dispute over insurance proceeds due following Hurricane Irma damage. Florida's 11th Judicial Circuit Court seated eight jurors who were present in a carefully laid-out courtroom. It was part of a pilot project to determine how this might be accomplished on a more widespread basis going forward. *People's Trust Insurance Co. v. Yusem Corchero, et al.*, 2019-CA-018363.



COURTS MUST GO FORWARD

Figure out the protocols so justice can be served prudently

By **BOB CLIFFORD**

Although the trial was non-binding on the parties, the judge and others, including Chief Judge Bertila Soto, expressed that the process was "astoundingly normal" considering the country remains in the throes of a pandemic.

Voir dire was conducted via Zoom teleconferencing. Selected jurors were assigned a time to arrive at the courtroom and were personally escorted to the courtroom. Their temperatures were taken prior to entry on a daily basis. Masks were worn by everyone at all times. Face shields were provided for times when people were moving about the building. Witnesses testified behind plexiglass. Proceedings were streamed live so that the public would have access to the proceedings.

The 11th Circuit is one of five jurisdictions in the state of Florida selected to participate in the initiative, meant to address how to safely return to jury proceedings as hopes for a quick return to more traditional trials dim.

Although three additional courtrooms were required for use for breaks and parties to gather at a socially safe distance, this showed that it is possible to conduct a trial for simple cases, particularly when the alternative might be to wait indefinitely. In many jurisdictions, including Cook County, motion status calls have been conducted via Zoom teleconferencing without any problems.

Certainly, COVID-19 has presented obstacles that many never dreamed would test our democracy the way it has, but preserving one's right to a trial by jury cannot be compromised because as ABOTA points out it "is an institution that needs to be preserved."

These unprecedented times call for unprecedented responses and solutions to problems that smart folks in the legal profession surely can overcome. Responsible procedures must be put in place to protect everyone — jurors, judges, court administrators and employees, lawyers, witnesses, parties — an array of people who must be involved in the fair administration of justice.

It is up to each jurisdiction to develop solutions that work for them — there is no panacea or one-size-fits-all solution. Court facilities differ and there are multiple types of cases. The answer lies in finding a functional, individual approach that works so that justice is administered fairly and so that all parties and the community feel that no one was deprived of due process or liberty.

Justice delayed is justice denied. CL

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