

Jury Trials in the Age of COVID-19

By Alyse N. Windsor,
Attorney at Sirote & Permutt, PC

As businesses across the country have reopened and attempted to get back to “normal” operations during the COVID-19 pandemic, so too have our courts. I recently tried a civil case before a jury in the Northern District of Alabama with my colleague, Chris Christie, and wanted to share my experience as we all learn to navigate this new (hopefully temporary) normal.

Our trial took place in the federal courthouse in Anniston on Nov. 9. Unfortunately, the main courtroom in the Anniston courthouse is small, so the setup is not ideal for social distancing. However, Chief Judge Coogler and his staff did everything they could to make the trial as safe as possible for everyone involved.

Voir dire was conducted in a different location than the trial, in the bankruptcy courtroom on the first floor of the courthouse. The bankruptcy courtroom also served as the jury room throughout the day so that jurors could convene in a larger space than the jury room.

During voir dire, potential jurors were seated at an approved distance from each other in spots that were pre-marked with a bag of COVID “goodies” — a mask, a pen, and hand sanitizer. Defense counsel and the defendant were seated at one table, and we were seated at another, with our client appearing remotely on a television screen to our right. Jurors answered questions into a microphone brought to them by the Judge’s courtroom deputy. Jurors were instructed to use hand sanitizer after handling the microphone. Everyone stayed masked at all times.

The trial took place in the main, second-floor courtroom of the Anniston courthouse. Six jurors were seated in the jury box, with an empty chair in between each juror, and two jurors were seated in front of the jury box. Attorneys were seated at tables with just enough room for two people, and a plexiglass divider was placed between plaintiff’s and defendant’s counsel’s tables. Microphones were placed at each table, and attorneys were instructed to stay seated during their questioning, so their mouths



Plexiglass dividers used during the trial

would not be above the plexiglass divider when speaking. A podium was placed in the middle of the courtroom for opening and closing statements. Attorneys were permitted to remove their masks during opening and closing. Otherwise, attorneys (and jurors and court staff) were expected to and did keep their masks on at all times.

Plexiglass was placed around the witness box for those witnesses who appeared in person. Witnesses were permitted to take their masks off during questioning because of their distance from others while on the stand. An opening in the plexiglass allowed documents to be shown to the witness, if needed. Otherwise, attorneys stayed seated at their table, with their masks on, and asked witnesses questions through the microphone at their table.

Our client and one other witness testified remotely at the trial. The court staff was equipped and ready to handle this remote testimony, which was projected to the jury through two large television screens positioned at the sides of the jury box. Court staff operated a switchboard and controlled what was presented to the jury. Witnesses also appeared on screens on the plaintiff’s and defendant’s tables.

Our client was able to watch the trial remotely through the court’s

video-conferencing feed. However, there was only one camera on in the courtroom, which was pointed at the attorneys, so our client could not watch the attorneys, the witness, the Judge, and the jury simultaneously, as he would have been able to if he had been there in person.

At the conclusion of the trial, jurors returned to the bankruptcy courtroom for their socially-distanced deliberations. Once they reached a decision, jurors returned to their pre-marked seats in the upstairs courtroom, and the foreman delivered the verdict.

Overall, the trial ran smoothly. Many things were the same as normal, but many things were different. Lawyers who are preparing to try a case under similar constraints should consider the following takeaways from my COVID-19 trial experience:

Masks are likely to be required for the foreseeable future. Attorneys should consider the impact that masks will have on their case and should make sure that they are able to convey their message to jurors and to demonstrate the credibility of witnesses, even if their faces are covered by masks.

Attorneys should plan carefully for voir dire to ensure that they get the best read possible on potential jurors.

Attorneys should prepare for smooth and

Seating arrangements for voir dire



effective technological presentations of exhibits and remote testimony.

Attorneys should be flexible in their presentation style. Here, we were required to sit masked at our tables during witness examinations and to stand at a podium during opening and closing. While it would probably be more effective to stand during witness examinations and to walk and make eye contact with jurors during opening and

closing, safety trumps trial effectiveness in the COVID-19 era, so lawyers should be prepared to abandon any stylistic crutches they have and to go with the flow.

Attorneys and clients should also weigh the pros of pre-trial resolution against the cons of a trial under these constraints. If a continuance is possible, attorneys should consider whether waiting for the trial until after the pandemic would benefit their

client. The benefits of a continuance may be particularly significant if the client or key witnesses are elderly or immunocompromised and would need to appear via video-conferencing rather than in person.

What is best for each attorney and each client will depend on the specific circumstances of the case. Some individuals' need for resolution may outweigh the inconveniences associated with a trial under these conditions, but there likely are no easy answers. In making this determination, attorneys should be aware of all the factors at play, so that they can carefully plan for success.



*Alyse N. Windsor, Attorney
at Sirote & Permutt, PC*