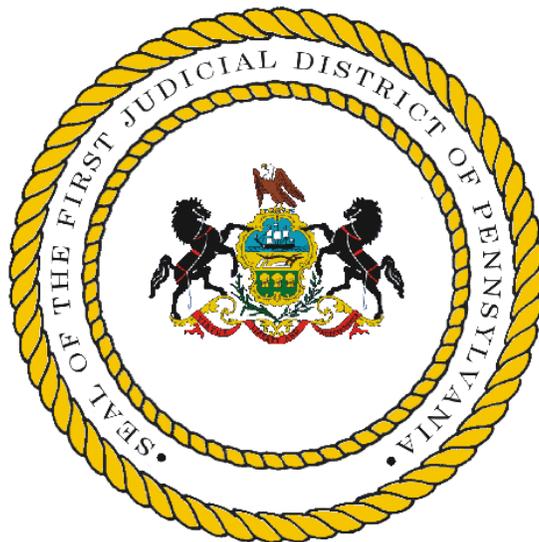


**First Judicial District of Pennsylvania
Court of Common Pleas of Philadelphia
Trial Division - Civil**

**Protocols and Guidelines for Conducting
In-Person Civil Jury Trials in City Hall
During the COVID-19 Pandemic**



Preamble

The United States and Pennsylvania Constitutions guarantee all persons the right to a trial by jury. Jury trials are essential to our system of justice and are one of the cornerstones of our democracy. The right to trial by jury also provides citizens with the opportunity to participate in the judicial process.

On March 17, 2020, the First Judicial District suspended civil jury trials for the health and safety of judges, judicial staff, counsel, parties, jurors and the public. During this time, the Court's leadership has closely monitored public health guidance provided by the Centers for Disease Control and Prevention, the Pennsylvania Department of Health and the City of Philadelphia's Department of Public Health.

With the continued guidance from public health officials and current COVID-19 statistical data, the Court will resume in-person civil jury trials in March 2021 consistent with the following guidelines:

- All persons shall wear a CDC compliant face mask that properly fits over the nose and mouth at all times when inside City Hall even if the person is vaccinated.
- All persons shall maintain a proper social distance of six feet from any other persons when inside City Hall.
- Trial procedures have been modified to reduce contact during trial including requiring the use of electronic display of exhibits and wireless microphones for each attorney.
- Courtrooms have been reconfigured to ensure proper social distance seating of six feet from any other seating.
- Courtrooms and jury selection rooms have enhanced cleaning/disinfecting protocols and increased ventilation; hand sanitizer stations are located throughout City Hall and courtrooms.
- Judicial staff will ensure compliance with each courtroom's occupancy limit, which was established in accordance with public safety guidance. Livestreaming of the entire trial is available via YouTube.
- COVID-19 screening questions are conducted each day of every trial participant, and appropriate contact tracing protocols are in place.

Recognizing that the pandemic is not a static event, these protocols and guidelines are subject to updating and revision. The Civil Division invites comments and improvements to these protocols and guidelines to ensure the safety of jurors, judges, judicial staff, counsel, parties, witnesses and the public. Any comments and suggestions may be emailed to daniel.anders@courts.phila.gov. For the most recent version, please visit: <http://www.courts.phila.gov/covid-19/>

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1. Jury selection in City Hall

The Jury Commission developed the following plan to select jurors for the resumption of civil jury trials on March 4, 2021. Starting in March, jury selection will commence with two juries on Thursday and two juries on Friday. Starting in April, jury selection will increase to three juries on Thursday and Friday for a total of six juries per week.

a. Prospective jurors' arrival in City Hall

Prospective jurors will enter City Hall through the West Gate and report to the jury assembly room (CH 195). Prior to entering CH 195, each prospective juror will be asked three COVID-19 screening questions¹ by jury staff. Anyone who answers "Yes" to any question will immediately be excused from jury duty by the jury staff.

Jurors who pass their COVID-19 screening will be assigned a specific seat in the room where jury selection will occur. That seat is the juror's seat for that juror's sole use. When a juror returns from a break, the juror must return to the same seat. Jury staff and judicial staff must reinforce this rule when they are interacting with prospective jurors. Once seated, jury staff will provide prospective jurors with *voir dire* questionnaires to complete. Jury staff will provide each juror with a pen and ensure that no jurors share pens.

b. Conduct of general and individual *voir dire*

Counsel shall initially report to CH 232 by 9:00am to receive instruction on which of three rooms will be used for jury selection for their case, *i.e.*, CH 195, 243/232 or 195/380.

▪ Jury selection in CH 195

- When one jury is being selected for the day, jury selection will occur in CH 195.
- When counsel arrive at CH 195, they will be escorted to a large private room where they will meet with judicial staff to prepare for jury selection.
- Once all 40 jurors have been seated in CH 195, the presiding trial judge or judicial staff will – from the podium at the front of the room – give a general description of the case, introduce counsel and the parties, and ask general *voir dire* questions to all 40 jurors.
- Counsel and parties will stand on either side of the podium when they are introduced. Judicial staff may ask counsel and parties to switch sides when they are introduced so that all jurors in the room can see them.
- Once general *voir dire* is completed, judicial staff will excuse everyone except for counsel who will conduct individual *voir dire*. Thus, any parties who were introduced to the jury in CH 195 as part of the general *voir dire* must leave City Hall before individual *voir dire* starts.

¹ The three screening questions are: (1) Are you currently experiencing symptoms of COVID-19 (fever, cough, shortness of breath, fatigue, loss of taste or smell); (2) Have you tested positive for COVID-19 within the past 14 days; and (3) Have you recently come into contact with somebody who tested positive for COVID-19 within the past 14 days.

- Individual *voir dire* will be conducted in a separate room directly behind the podium located in CH 195. The juror, counsel and judicial staff must remain socially distant in the separate room during individual *voir dire*. After each juror is questioned, judicial staff shall disinfect the chair before calling the next juror for individual *voir dire* with either a disinfectant spray or disposable wipe. Due to occupancy limits, only counsel, judicial staff and the prospective juror shall be inside the room where individual *voir dire* is conducted.
- **Jury selection in CH 243/232**
 - When two juries are being selected for the day, jury selection will occur in CH 195 or CH 243/232.
 - When CH 243 is used for jury selection, counsel and parties shall report to CH 232 where they will meet with judicial staff to prepare for jury selection.
 - Once the 40 jurors have been seated in CH 243, the presiding trial judge or judicial staff will – from the bench – give a general description of the case, introduce counsel and the parties, and ask general *voir dire* questions to all 40 jurors.
 - In CH 243, counsel and parties will stand on either side of and – if needed – in front of the bench and jury box – when they are introduced. Judicial staff may ask that counsel and parties to switch sides when they are introduced so that all jurors in the room can see them.
 - Individual *voir dire* will take place in CH 232, where judicial staff, counsel and the prospective juror will be socially distant. Due to occupancy limits, only counsel, judicial staff and the prospective juror shall be inside CH 232. Thus, any parties who were introduced to the jury in CH 243 as part of the general *voir dire* must leave City Hall before individual *voir dire* starts.
- **Jury selection in CH 195/380**
 - When three juries are being selected for the day, jury selection will occur in CH 195, CH 243/232 and CH 195/380.
 - When CH 195/380 is used for jury selection, counsel and parties shall report to CH 380 where they will meet with judicial staff to prepare for jury selection.
 - Once all 40 jurors have been seated in CH 195, the presiding trial judge or judicial staff will – from the podium at the front of the room – give a general description of the case, introduce counsel and the parties, and ask general *voir dire* questions to all 40 jurors.
 - Counsel and parties will stand on either side of the podium when they are introduced. Judicial staff may ask that counsel and parties to switch sides when they are introduced so that all jurors in the room can see them.
 - Individual *voir dire* will occur in CH 380; jury staff will escort 5 jurors at a time to CH 380. There will be five chairs lined up outside of CH 380, socially distanced, for the prospective jurors. Jury staff shall disinfect each chair prior to seating a new set of 5 jurors who are brought from CH 195 to CH 380 for individual *voir dire* with either a disinfectant spray or disposable wipe. Judicial staff will bring one juror at a time into CH 380 for individual *voir dire*. Due to occupancy limits, only counsel, judicial staff and the prospective juror shall be

inside CH 380. Thus, any parties who were introduced to the jury in CH 195 as part of the general *voir dire* must leave City Hall before individual *voir dire* starts.

c. Exercise of peremptory strikes

After all prospective jurors have been individually questioned, judicial staff will provide a document whereby counsel will exercise their peremptory strikes. Instead of counsel “passing the pad” between themselves, judicial staff shall put the document on a table where counsel will – in turn and using their own pens –exercise their peremptory strikes by identifying the juror by their juror number that they desire to strike. Counsel shall not use the same pen and also shall not pick up the paper with their hands.

Alternatively, counsel may use the room where individual *voir dire* occurred (CH 195, 232 or 380) and alternate announcing their peremptory strikes to court staff, who will record the strikes.

After counsel have exercised all of their strikes, judicial staff will collect the document and announce the jurors who were selected for trial.

d. Excusing jurors

Regardless of where individual *voir dire* is conducted, if all counsel agree to excuse a juror, that juror will be immediately excused by the judicial staff and may leave City Hall immediately and without returning to CH 195. If the juror is not excused following individual *voir dire*, the juror will return to their seat in the jury selection room until the entire panel is individually questioned.

After counsel have exercised their peremptory strikes, judicial staff will announce the jurors who were selected for trial. Any jurors who were not selected for trial shall be immediately excused and may leave City Hall without returning to CH 195. Any jurors who were selected for trial shall be given instructions on when and where to report to City Hall for trial. Regardless of how a juror is excused, no juror needs to return to CH 195.

All trials will commence on the following Monday unless otherwise ordered by the presiding trial judge. On the first day of trial, selected jurors shall report to the “jury” courtroom, not the “trial” courtroom. Judicial staff shall advise selected jurors that both the “trial” and “jury” courtrooms have windows that are partially opened to ensure proper ventilation; as such, jurors shall be advised to wear layers of warm clothes in case of cold weather outside.

e. COVID-19 protocols during jury selection

A face mask is mandatory whenever a person is inside City Hall even if the person is vaccinated. Thus, the presiding trial judge, all jury staff, judicial staff, prospective jurors, counsel and parties must wear a CDC compliant face mask that is properly fitted over the nose and mouth when inside City Hall. No one may remove their face mask at any point including when

they are participating in individual *voir dire*. The only exception to this policy is when a person is actually drinking from a water bottle.

All persons are encouraged (but not required) to wear two face masks, *e.g.*, one surgical face mask and one cloth face mask. Participants may wear a face mask that has a clear window provided that the face mask is CDC compliant and properly fitted over the nose and mouth. Finally, a plastic face shield is not a replacement for a face mask but a plastic face shield may be worn in **combination** with a face mask. Also, a person must wear a face mask even if they are vaccinated.

All operable windows shall remain partially open during jury selection. CH 195, 232, 243 and 380 have operable windows that shall remain partially open during jury selection in order to increase ventilation and bring fresh outside air into the jury selection rooms.

Note: All participants are encouraged to wear layers of warm clothes as the temperature inside the courtroom may not reach a comfortable level during jury selection if the outside temperature is particularly cold.

2. Conduct of Trial in City Hall

a. Physical reconfiguration of courtrooms & compliance with social distancing²

Every trial requires two courtrooms: a “trial” courtroom and a “jury” courtroom. All trials will occur in the largest courtrooms, which are referred to herein as “trial” courtrooms. Smaller courtrooms will be used solely for the jury to assemble during trial and also to deliberate at the end of trial. These courtrooms are referred to herein as “jury” courtrooms.

To comply with social distance requirements, all jurors have assigned seats in the public gallery of the courtroom, instead of the jury box where social distancing is not possible. No juror chairs shall be moved or relocated at any point during the trial. The juror chairs must remain in their original location, which is marked by green tape on the floor. Jurors also have assigned seats that are socially distant in the “jury” courtroom.

In the “well” of the courtroom, all lawyers, paralegals, parties and party representatives will sit at tables where each chair is at least six feet away from any other chair. With the approval of the presiding trial judge, counsel may move or relocate chairs and tables in the “well” of the courtroom but any relocation must abide by social distancing requirements unless a mobile plexiglass barrier is used. At the end of trial, all relocated chairs and tables shall be moved back in the original location in the “well” of the courtroom, which is marked by the green tape on the floor.

Audio-visual technicians have two designated chairs that shall not be relocated except by approval of the presiding trial judge. Any relocation of the AV technician chairs must abide by social distancing requirements unless a mobile plexiglass barrier is used.

Plexiglass is installed in areas where social distancing cannot be observed. For example, plexiglass is installed above the court reporter (on the bench and around witness stand) because the court reporter’s seat is closer than 6’ from the presiding trial judge and testifying witness and also lower than the presiding trial judge. Mobile plexiglass barriers are available in each courtroom if an unanticipated need for plexiglass arises.

b. Preparation for trial by counsel

Courtrooms have been significantly reconfigured to comply with COVID-19 protocols. As such, counsel are strongly encouraged to see the “trial” courtroom before trial commences either by emailing Stanley Thompson at stanley.thompson@courts.phila.gov or, more simply, by requesting to see it after jury selection. Counsel are also encouraged to arrange for all technical/AV setup to be done in the “trial” courtroom on the Friday before trial, provided that the courtroom is not in use.

Counsel must review and comply with the agreed to courtroom occupancy limits that are contained in the pre-trial order. Judicial staff will strictly monitor and enforce these occupancy

² Per Public Property’s guidance, the 6’ social distance is measured from the center of one chair’s seat to the center of the next chair’s seat.

limits during trial. Any persons that exceed the number previously agreed by counsel at the pre-trial conference will not be admitted into the courtroom, and will be directed to observe the trial through the livestream on YouTube. The livestream is available at <https://www.courts.phila.gov/livestreams/>

Also during the pre-trial conference, counsel agreed to the number of days for trial (exclusive of jury selection but inclusive of deliberation). Because courtroom assignments are no longer fungible – *i.e.*, each trial has been scheduled months in advance for a specific courtroom for a specific number of trial days – it is imperative that counsel adhere to the agreed upon number of trial days.

c. Entry into City Hall

Jurors – all jurors selected for a trial shall enter City Hall via the West Gate and show their juror badge.

Authorized badge holders – any trial participant that has an active, City-issued badge that allows them entry into City Hall – including counsel and legal support staff – may enter any entrance of City Hall.

All other persons – All other persons must enter City Hall through the public entrance in the Northeast Corner of City Hall. All persons shall provide the name of the case that requires their in-person participation in a City Hall courtroom. The guards will have a list of all trials that are occurring that day. The list will contain the names of the parties, lead counsel, the case number (*e.g.*, 190704594), courtroom number and presiding trial judge. The list will not identify the names of the witnesses who are expected to testify including any experts. Anyone denied admission to City Hall should contact counsel who summoned them to City Hall. Counsel may then notify judicial staff to arrange for the admission of that person to City Hall.

d. Conduct of trial

(1) Opening statements and closing arguments

With the permission of the presiding trial judge, counsel may use a podium to make opening statements and closing arguments provided that they abide by 6’ social distance requirements. Otherwise, counsel must remain seated when making their opening statement and closing argument.

(2) Examination of witnesses

All testimony must be presented in-person except as otherwise permitted by the Pennsylvania Rules of Civil Procedure or Rules of Evidence. In other words, counsel may not present any witness by advanced communication technology such as through Zoom.

In order to reduce the time between witnesses who are called to testify, the next witness that will be called to testify may enter City Hall 15 minutes before they are expected to testify.

Upon entry to City Hall, the witness shall go to the assigned “trial” courtroom and sit in one of two chairs immediately outside of the courtroom. The witness shall not enter the courtroom until instructed to enter by judicial staff.

Counsel must remain seated during the entire trial including when examining witnesses. The ONLY exception to this requirement is that – with the permission of the presiding trial judge – counsel may use a podium to make opening statements and closing arguments provided that they abide by 6’ social distance requirements.

All trial participants will use either microphone stands that are contactless or wireless microphones that are for the sole use of each trial participant.³

To the extent that a sequestration order is in effect, counsel must advise all trial participants to abide by any sequestration order by not watching the livestream of the trial on YouTube.

(3) Presentation of evidence

Counsel must display all documents and other evidence on a television or projection screen unless otherwise permitted by the presiding trial judge. If paper documents are permitted by the presiding trial judge, counsel shall ensure that there are sufficient copies for each person in the room to review including jurors, other counsel, witnesses and the presiding trial judge. Judicial staff will distribute paper materials by first sanitizing their hands and then handing documents to trial participants.

With the permission of the presiding trial judge, counsel may use poster boards/flip charts on an easel. Any such use must comply with social distance requirements.

(4) Sidebars are strongly discouraged

Sidebars are strongly discouraged during trial. Counsel must raise all evidentiary and other trial issues with the presiding trial judge before trial commences, during any recess, or after trial adjourns for the day. In the limited circumstance when a sidebar is required during the examination of a witness, judicial staff shall announce a recess and take the jury to the “jury” courtroom. The presiding trial judge should not confer with counsel during a sidebar in a manner that would violate social distance requirements.

(5) Breaks and lunch recess

No trial participant may eat inside City Hall including eating inside the “trial” or “jury” courtrooms. All trial participants includes lawyers, parties, court reporters, jurors, judicial staff and judges with chambers in the Stout Center. All of these individuals must eat outside of City Hall.

³ Judicial staff will disinfect microphones at least twice each day with either a disinfectant spray or disposable wipe.

During any breaks or recesses, jurors must either go to the “jury” courtroom or outside of City Hall for any breaks. Any other trial participant must remain in their seat in the courtroom or leave City Hall; no person may loiter in the hallways of City Hall.

No person may remove their face mask while they are on a break or recess in City Hall. Persons may only remove their face mask when they are outside of City Hall.

Courtroom participants must abide by all posted City of Philadelphia guidance regarding the use of public bathrooms. Such guidance is publicly posted outside of each public bathroom. Courtroom participants are not permitted to use any bathrooms located within a courtroom complex, *i.e.*, in the robing room area.

(6) Use of cell phones during trial

In order to reduce the time between witnesses who are called to testify, counsel may use their cell phones during trial to text or email with any other counsel, legal support staff or witnesses. Such communication with witnesses shall be limited to instructing when the witness should enter City Hall. Counsel also may use cell phones to text or email with any other counsel during trial about stipulations, scheduling issues and other trial related issues.

e. Jury Deliberation

During deliberation, jurors shall remain in their assigned seats and abide by social distance requirements. Jurors are also required to wear a face mask at all times during deliberation.

If the presiding trial judge permits the jury to view any evidence that was admitted during trial, such evidence shall be placed on a table that is in the center of the “jury” courtroom. Judicial staff shall sanitize their hands before picking up the evidence. Judicial staff will place the evidence on the table and instruct the jurors that they shall inspect the evidence one-by-one and not touch the evidence.

f. Conclusion of trial

At the conclusion of trial, all seats and chairs that may have been moved in the “well” of the court with the presiding trial judge’s permission shall be returned to their original location as outlined on the floor with green tape.

g. COVID-19 protocols during trial and deliberation

- **Every trial participant must wear a face mask at all times when inside City Hall even if they are vaccinated**

At all times when inside City Hall, every trial participant must wear a CDC compliant face mask that is properly fitted over the nose and mouth. This requirement applies to counsel, parties, parties’ representatives, witnesses, experts, AV technicians, court reporters, judicial staff and the presiding trial judge. A person must wear a face mask even if they are vaccinated.

No trial participant may remove their face mask at any point while they are inside City Hall. Thus, counsel may not remove their face mask when conducting examination of a witness; similarly, a witness may not remove their face mask when testifying from the witness chair.

Trial participants are encouraged (but not required) to wear two face masks, *e.g.*, one surgical face mask and one cloth face mask. The wearing of two face masks approximates a single N95 face mask that filters more than 95% of particulates carrying the COVID-19 virus.

Participants may wear a face mask that has a clear window provided that the face mask is CDC compliant and properly fitted over the nose and mouth. Finally, a plastic face shield is not a replacement for a face mask but may be worn in **combination** with a face mask.

- **Operable windows shall remain partially open during the entire trial**

Every courtroom has operable windows that shall remain partially open during the entire trial in order to increase ventilation and bring fresh outside air into the courtroom.

Trial participants are encouraged to wear layers of warm clothes as the temperature inside the courtroom may not reach a comfortable level during trial if the outside temperature is particularly cold.

- **Cleaning and disinfecting protocols**

Each “trial” and “jury” courtroom has enhanced cleaning and disinfecting protocols that will be performed by City employees in accordance with CDC guidelines.

Hand sanitizer bottles will be placed on a table immediately outside the entrance to each courtroom as well as on the judicial staff’s desk inside the courtroom. Disinfectant spray or disposable wipe will be used by judicial staff to disinfect the witness chair after each witness testifies and as appropriate for other surfaces throughout the trial.

All clipboards, notebooks or pens provided to jurors must be sanitized by judicial staff after each use. Judicial staff must direct jurors not to share any of these materials with any other jurors.

- **Water coolers have been removed; small water bottles are available upon request**

All water coolers have been removed from courtrooms; trial participants will be provided small bottles of water upon request.

- **Judicial staff must enforce the agreed upon occupancy limit for each courtroom**

Each courtroom has a strict occupancy limit. During a pre-trial conference, counsel agreed to the occupancy limit for the assigned “trial” courtroom. As a result, the only persons permitted inside the courtroom during trial are the previously agreed upon number of counsel, parties and client representatives. Any persons that exceed the number previously agreed by

counsel at the pre-trial conference cannot be admitted into the courtroom, and shall be directed to observe the trial through the livestream on YouTube.

- **Judicial staff will conduct a daily COVID-19 screening of every juror**

Judicial staff will conduct a daily COVID-19 screening each morning for every juror by asking if any of their previous responses to the COVID-19 screening questions⁴ have changed. If any juror indicates that their response has changed, judicial staff shall inquire privately with the juror what has changed. Judicial staff shall advise the presiding trial judge of any changed responses so that appropriate action can be taken.

- **Judicial staff must enforce social distance requirements when bringing jurors into the courtroom**

Judicial staff shall enforce social distance requirements at all times including when lining up jurors for entry into a courtroom.

h. COVID-19 screening and contact tracing

The Court has contact tracing protocols that must be followed by all trial participants. Counsel are required to conduct a daily COVID-19 screening for every person that they require to participate in-person during trial. If any person answers “yes” to any of the screening questions, counsel must advise the presiding trial judge’s staff so that appropriate action can be taken. For each person that counsel requires to participate in-person during trial, counsel shall maintain a list of each person’s name, email address and cell phone number, which shall be provided to judicial staff upon request.

Judicial staff shall maintain a daily record of every court employee who was in the courtroom including the court reporter and interpreters.

i. Livestreaming of trial via YouTube

All Civil trials will be livestreamed via YouTube, which complies with the Court’s public access policy as well as provides the opportunity for non-essential persons to observe the trial, *e.g.*, insurance adjusters, paralegals, additional client representatives and family of the parties.

Judicial staff shall ensure that the audio and visual components of the livestream are operational before starting trial, preferably when they first arrive in the courtroom. Judicial staff shall also ensure that the livestream is broadcast only when trial is occurring and not during recesses or side bars.

⁴ The three screening questions are: (1) Are you currently experiencing symptoms of COVID-19 (fever, cough, shortness of breath, fatigue, loss of taste or smell); (2) Have you tested positive for COVID-19 within the past 14 days; and (3) Have you recently come into contact with somebody who tested positive for COVID-19 within the past 14 days.

Judicial staff are encouraged to announce to all trial participants that the trial is being livestreamed via YouTube, and that no recording of the trial is permitted. Any recording of a court proceeding is a violation of the Rules of Civil Procedure and will subject individuals to sanctions.

Judicial staff shall remind counsel that – to the extent that a sequestration order is in effect – all trial participants must abide by that sequestration order by not watching the livestream of the trial on YouTube. The livestream is available at <https://www.courts.phila.gov/livestreams/>

j. Failure to comply with COVID-19 protocols

All persons participating in any trial in City Hall shall comply with all COVID-19 protocols as published on the Court’s website (<http://www.courts.phila.gov/covid-19/>) and as directed by the presiding trial judge.

Counsel is under a continuing obligation to review all COVID-19 protocols, which are published and updated from time to time. Any failure to comply with the Court’s COVID-19 protocols may result in the imposition of sanctions.

Following the review of all protocols, counsel shall direct any questions regarding trial procedures to the chambers of the presiding trial judge. If a presiding trial judge has not been assigned, any questions may be emailed to Supervising Judge Daniel Anders at daniel.anders@courts.phila.gov with a copy to all counsel.