

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
SECOND JUDICIAL DISTRICT**

IN RE: VIRTUAL SUMMARY JURY
TRIALS DURING COVID-19
PANDEMIC

: No. A.D. 17 - 2021
:
: Supreme Court Docket No. 44 MM 2020

ADMINISTRATIVE ORDER

AND NOW, this 26th day of March, 2021, upon consideration of the Pennsylvania Supreme Court's May 27, 2020 Order specifically empowering President Judges to continue to exercise emergency powers under Rule 1952(B)(2) of the Rules of Judicial Administration, and consistent with Rule 212.3(a)(6) of the Pennsylvania Rules of Civil Procedure, this Court, recognizing the need to provide a forum for the fair adjudication of civil disputes while safeguarding public health, hereby ORDERS that for the duration of the COVID-19 pandemic, and until further Order, summary jury trials may be conducted in a virtual format as follows:

Preliminary Considerations

1. To efficiently dispose of cases in a cost-effective and speedy manner and to address the backlog of cases resulting from the COVID-19 pandemic, by stipulation of the parties with approval of the Court, a case may be selected for a one-half day virtual summary jury trial as part of the settlement process for civil cases.
2. In virtual summary jury trials, the parties, counsel, witnesses, and jurors will not be physically present in the courtroom and will appear and participate virtually via video. In all cases where a virtual summary jury trial may be appropriate, the assigned trial court judge will hold a pre-trial conference to discuss the procedures for the trial.

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3. The following shall be considered, but shall not be controlling, in determining if a civil case is amenable for summary jury trial.

(a) Time Necessary for Regular Trial, Number of Parties, Damages, Legal Issues Involved, Need for Interpreter. The Court shall determine if the regular trial time would be three days or more, including time for jury selection and closings and charge. The Court shall also consider the number of parties involved, the amount of damages involved, whether complex legal issues are involved, and whether interpreters for parties and/or witnesses will be required.

(b) Credibility. The Court shall determine if the major issues must be resolved based on credibility.

(c) Existing Offer and Demand. The Court shall consider the existing offer and demand, if any, in assessing the suitability of a case for summary jury trial.

(d) Settlement. The parties must be committed to serious, good faith efforts to amicably resolve the case, and the Court will determine if settlement is a reasonably likely result of a summary jury trial.

(e) Arbitration Appeals. Cases appealed from arbitration will be presumptive candidates for summary jury trials.

4. The parties must stipulate to the online platform, which must create a secure, technically viable virtual courtroom that allows all participants to perform their essential job functions.

5. More detailed protocols of how to virtually conduct a civil summary jury trial in Lancaster County are forthcoming and will be posted on the Court's website at <https://court.co.lancaster.pa.us/>.

Jury Selection

6. Summary juries shall consist of no less than six jurors and two alternates unless the parties stipulate to fewer jurors. The jurors shall be selected in the regular term of Court but through an abbreviated process. After questioning by the assigned trial court judge, each side shall have ten minutes to also *voir dire* the potential jurors. The Court shall allow each side two peremptory challenges. Challenges for cause are not permitted.

Selected jurors will be directed to log in to the summary trial on the specified day at the specified time.

Supplemental Virtual Summary Jury Trial *Voir Dire* Questions

7. In addition to the written juror questionnaire completed by each juror, the Court will utilize a supplemental questionnaire asking potential jurors about a quiet and private space to participate in the trial, access to a computer with a camera, a microphone, speakers and/or headphones, and broadband access, as well as COVID-related hardship issues.

Presiding Officer

8. The parties shall agree on who shall preside over the summary jury trial. The presiding officer may be the assigned trial court judge, a retired judge appointed to preside over the proceeding, or a special hearing officer. If the parties agree that a retired judge should be assigned or a special hearing officer should preside, the assigned trial court judge shall enter an order naming the presiding officer.

9. If the presiding officer is someone other than the assigned trial court judge, the parties agree to pay the costs associated with that presiding officer. The parties and the presiding officer, by agreement, shall determine the compensation of the presiding officer and how that cost will be allocated between the parties.

Pre-trial Submissions and Conference

10. At least ten days prior to trial, counsel shall confer regarding documentary evidence, including but not limited to accident reports, medical records, and lost income records, and reach such agreement as is possible as to the use of such digitized exhibits at trial.

11. Counsel shall agree upon the proposed jury instructions and verdict slip, which shall be submitted to the judge or presiding officer not less than ten days before trial. Reference to Pennsylvania Standard Civil Jury Instructions shall be sufficient on points for charge; however, the charges may be reduced to their essential elements. The parties shall make efforts to limit the number of instructions read to allow the instructions to be presented in ten minutes or less.

12. Not later than five days before the scheduled date of the summary jury trial, the judge or presiding officer assigned to the case shall conduct a pre-trial conference at which time the judge or presiding officer shall address:

- (a) Objections, in writing, to any evidence, including proposed redactions, motions *in limine*, and other evidentiary issues;
- (b) Jury instructions and the jury verdict slip; and
- (c) Any other matters the judge or presiding officer, or parties consider important in governing the summary jury trial process.

Attendance of Parties

13. Individual parties and an officer or other representative of a corporate party or a claims adjuster for an insurance carrier with sufficient settlement authority shall attend the trial, unless excused by the judge or presiding officer.

Presentation of the Case by Counsel

14. It is expected that a summary jury trial shall last no longer than one-half day. Each side will be entitled to a 10-minute opening statement and a 10-minute closing argument, with the plaintiff having an additional 3 minutes for rebuttal.

Each side shall be entitled to one hour for presentation of its case unless counsel presents a compelling reason at the pre-trial conference why more time for each side should be allowed. The plaintiff shall proceed first and may be granted a short rebuttal (five to ten minutes) following the defendant's presentation, as determined by the judge or presiding officer.

Presentation of the case by counsel will involve a combination of argument, summarization of the evidence to be presented at the standard trial, reasonable inferences that may be drawn from the evidence, and a statement of the applicable law, but only to the extent it is needed to be known by the jury in answering the special verdict questions. In making their statements to the jury, counsel are limited to presenting representations as to evidence which would be admissible at trial. Statements, reports and depositions may be read from, but not at undue length.

Live Testimony

15. No live testimony will be presented except in cases where credibility will determine the major issues. In such cases, no more than two witnesses for each side may be called for full direct examination and cross examination. Time spent by counsel in examination of witnesses shall be assessed against their respective one-hour allotted times.

Evidence

16. Documentary, physical, and demonstrative evidence shall be admitted as stipulated by the parties and approved by the Court. All materials to be submitted to the jury as part of the presentation of the case must be pre-marked and exchanged with opposing counsel and provided to the judge or presiding officer ten days in advance of trial or be excluded. Medical records which are not certified or affirmed are admissible on consent or by court order.

Rules of Evidence

17. The parties may offer evidence that is relevant and material to the dispute. The Rules of Evidence and procedural rules shall be relaxed subject to any determination at the pre-trial conference. The judge or presiding officer shall not require authentication of documentary evidence for purposes of admissibility. Counsel may present summaries of evidence, factual allegations, and inferences from discovery. Counsel are encouraged to stipulate to factual and evidentiary matters to the greatest extent possible. Evidentiary objections should be raised primarily during the pre-trial conference and are generally discouraged during the summary jury trial presentation, given the non-binding nature of the proceeding. However, proper objections will be received if during a presentation counsel goes beyond the limits of propriety in presenting statements as to evidence or argument thereon.

Note-Taking by Juror

18. Jurors shall be allowed to take notes.

Recording of Proceedings

19. A court reporter shall not be present unless requested by all parties and ordered by the judge or presiding officer.

Jury Instruction

20. At the conclusion of the presentations, the jury will be given an abbreviated charge on the applicable law to the extent it is appropriate and needed to be known by the jurors in answering the special verdict questions.

Special Verdict Questions

21. The case will be submitted to the summary jury by way of special verdict questions. Counsel shall submit to the judge or presiding officer, not later than ten days prior to the scheduled trial, a joint statement of proposed special verdict questions for use at the summary trial. If counsel cannot agree on a joint statement, the judge or presiding officer will select the special verdict questions to be used. Special verdict questions for the summary trial need not be the same as those for the formal jury trial. The judge or presiding officer will determine the verdict slip format to be used and rule on disputed questions.

Jury Verdict

22. Agreement by at least five of the six jurors shall constitute a verdict. The same five-sixth majority must be in agreement with respect to each special verdict question.

Length of Deliberations

23. The jury shall be given a maximum of one hour to deliberate. If the jury does not reach a consensus verdict within that time, the Court will consider polling the jurors individually.

Oral Questions to the Summary Jury

24. After the verdict, counsel and the judge or presiding officer may address questions to the jury. No juror is required to answer. Any juror may address any comment or question to the Court or counsel. Participation by jurors is strictly voluntary.

Non-binding Effect

25. Summary jury trials are for settlement purposes only and are non-binding, unless the parties agree otherwise. Nothing said or done by counsel or the parties with reference to the summary jury trial shall be binding or shall constitute a waiver of a full jury trial on the merits, unless specifically stipulated to or agreed upon by the parties. There will be no official record of the proceeding by a court reporter, nor will a transcript of a trial be produced. The advisory verdict shall be sealed until settlement or jury verdict after full trial.

If the parties agree to a binding trial, damages can be floored and capped with a high/low by agreement of counsel and parties.

Existing Offer and Demand

26. Should counsel agree to conduct a summary jury trial, the existing offer and demand shall remain unaltered through the summary jury trial until the settlement conference.

Non-Attendance of Public and Non-Release of Summary Verdict to Media

27. The summary jury trial is an extension of the settlement conference and, as such, the public shall not be permitted to attend nor shall the advisory verdict be released to the media.

Settlement Conference

28. If the action is not resolved by counsel at or immediately following the non-binding summary jury trial, a settlement conference shall be held before the assigned trial court judge within ten days of trial to discuss settlement. Parties, representatives of corporate parties, and claims adjusters with authority to settle the case are required to attend the settlement conference.

It is anticipated that cases not disposed of through summary jury trial will be called for trial on the merits within 60 to 90 days of the summary jury trial.

Modification of Procedures

29. Any of the above-described procedures may be modified by stipulation of the parties with approval of the judge or presiding officer.

Costs

30. The Court will establish an actual, per diem cost for use of court personnel and facilities, and attendance of jurors which may be imposed in multiples against any party who violates this Order. 42 Pa.C.S.A. § 1726(a)(3).

COVID-19 Safety Precautions, Protocols and Requirements

31. Proceedings requiring in-person appearances, such as jury selection, shall be conducted in a manner that employs all safety measures consistent with the United States Centers for Disease Control and Prevention (CDC) and the Pennsylvania Department of Health (DOH) guidelines.

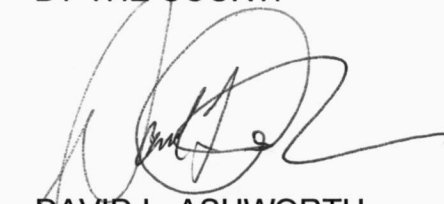
32. Individuals permitted access to any Court facility shall be required to maintain appropriate social distancing of at least six feet, to wear protective face masks or appropriate face coverings in public settings, and to comply with all safety directives provided by the Court or County staff.

33. All coronavirus related safety precautions, protocols and requirements described in this Court's prior Administrative Orders will continue to remain valid and applicable to Lancaster County Court operations.

Effective Date of Administrative Order

34. This Administrative Order shall be effective immediately, and shall remain in effect until further order of this Court.

BY THE COURT:



DAVID L. ASHWORTH
PRESIDENT JUDGE

ATTEST: Mark Karmin - Deputy.

Copies to: Lancaster County Board of Judges
Lancaster County District Court Administrator
Lancaster County Prothonotary