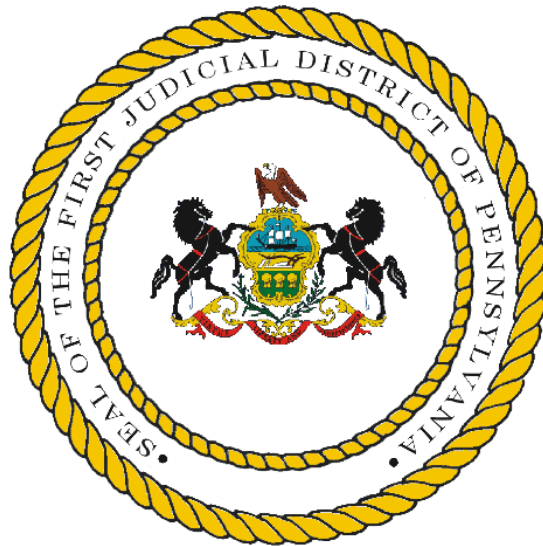


**First Judicial District of Pennsylvania
Court of Common Pleas of Philadelphia
Trial Division - Civil**

**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.

On March 4, 2021, the Court resumed in-person civil jury trials in City Hall. With the continued guidance from public health officials and current COVID-19 statistical data, the Court conducts in-person civil jury trials consistent with the following guidelines:

- All persons shall wear– at a minimum – a disposable surgical mask (typically light blue) that properly fits over the nose and mouth at all times when inside any courtroom **even if the person is fully vaccinated**. Cloth face masks are no longer permitted unless worn in combination with a disposable surgical mask. KN95 or N95 masks are encouraged by not required.
- All persons shall maintain a proper social distance of three feet from any other persons when inside any courtroom in 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 of three 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.
- 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 Administrative Judge Lisette Shirdan-Harris at Lisette.shirdan-harris@courts.phila.gov. For the most recent version, please visit: <http://www.courts.phila.gov/covid-19/>

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TABLE OF CONTENTS

1. Jury selection in City Hall..... 4

 a. Prospective jurors’ arrival in City Hall..... 4

 b. Conduct of general and individual *voir dire*..... 4

 c. Exercise of peremptory strikes..... 5

 d. Excusing jurors..... 5

 e. COVID-19 protocols during jury selection..... 5

2. Conduct of Trial in City Hall..... 7

 a. Physical reconfiguration of courtrooms..... 7

 b. Preparation for trial by counsel..... 7

 c. Entry into City Hall..... 8

 d. Conduct of trial..... 8

 (1) Opening statements and closing arguments

 (2) Examination of witnesses

 (3) Presentation of evidence

 (4) Sidebars

 (5) Breaks and lunch recess

 (6) Use of cell phones during trial

 e. Jury Deliberation..... 9

 f. Conclusion of trial..... 10

 g. COVID-19 protocols during trial and deliberation..... 10

 h. COVID-19 screening and contact tracing..... 11

 i. No livestreaming of trial via YouTube..... 12

 j. Failure to comply with COVID-19 protocols..... 12

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. In general, jury selection for civil jury trials occurs on Thursday and Friday.

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 241 by 9:00am to receive instructions as to which courtroom will be used for jury selection. In general, jury selection will occur as follows:

- When counsel arrive, they will meet with judicial staff to prepare for jury selection including reviewing the latest COVID-19 trial protocols.
- Once all prospective jurors have been seated for jury selection, the presiding trial judge or judicial staff will give a general description of the case, introduce counsel and the parties, and ask general *voir dire* questions to all prospective jurors.
- Counsel and parties will stand in the front of the room when they are introduced. The presiding trial judge or 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 unless otherwise permitted by the presiding trial judge.
- Individual *voir dire* will be conducted in a separate room. 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 will disinfect the chair

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.

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.

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. 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 will be immediately excused and may leave City Hall without returning to CH 195. Any jurors who were selected for trial will 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.

e. COVID-19 protocols during jury selection

All persons shall wear– at a minimum – a disposable surgical mask that properly fits over the nose and mouth at all times when inside any courtroom **even if the person is fully vaccinated**. Cloth face masks are no longer permitted unless worn in combination with a disposable surgical mask. KN95 or N95 masks are encouraged by not required.

Thus, the presiding trial judge, all jury staff, judicial staff, prospective jurors, counsel and parties must wear a face mask. 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.

Participants may wear a face mask that has a clear window so long as the face mask provides the same protection as a disposable surgical mask and properly fits 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 an appropriate face mask.

All operable windows 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

To comply with social distance requirements, all jurors have assigned seats in the public gallery of the courtroom. 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 assigned jury room.

In the “well” of the courtroom, all lawyers, paralegals, parties and party representatives will sit at tables where each chair is at least three 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. At the end of trial, all relocated chairs and tables shall be moved back in the original location in the “well” of the courtroom.

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 3’ 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 courtroom before trial commences. Counsel are also encouraged to arrange for all technical/AV setup to be done in the courtroom on the Friday before trial, provided that the courtroom is not in use.

Unless otherwise permitted by the presiding judge, counsel must 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 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 except by permission of the presiding judge.

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.

² Per Public Property’s guidance, the 3’ social distance is measured from the center of one chair’s seat to the center of the next chair’s seat.

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.

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 3' social distance requirements. Otherwise, counsel must remain seated when making their opening statement and closing argument.

(2) Examination of witnesses

With the permission of the presiding trial judge, counsel may use a podium to make conduct examination of a witness provided that they abide by 3' social distance requirements. Otherwise, counsel shall remain seated during 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 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.

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

(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

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

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 will announce a recess and take the jury to the jury room. 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

Except for jurors, no trial participant may eat inside City Hall including eating inside any courtroom or jury room.

During any breaks or recesses, jurors must either go to the jury room 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 remove their face mask only when they are outside of City Hall.

(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.

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 room. Judicial staff will sanitize their hands before picking up the evidence. Judicial staff will place the evidence on the table and instruct the jurors that they will 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.

g. COVID-19 protocols during trial and deliberation

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

All persons shall wear– at a minimum – a disposable surgical mask that properly fits over the nose and mouth at all times when inside any courtroom **even if the person is fully vaccinated**. Cloth face masks are no longer permitted unless worn in combination with a disposable surgical mask. KN95 or N95 masks are encouraged by not required.

Thus, the presiding trial judge, all jury staff, judicial staff, prospective jurors, counsel and parties must wear a face mask. 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.

Participants may wear a face mask that has a clear window so long as the face mask provides the same protection as a disposable surgical mask and properly fits 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 an appropriate face mask.

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

Every courtroom has operable windows that will 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 courtroom and jury room have enhanced cleaning and disinfecting protocols that will be performed by City employees in accordance with CDC guidelines.

Hand sanitizer bottles are 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.

- **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 courtroom. Unless otherwise permitted by the presiding judge, 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 unless otherwise permitted by the presiding judge.

- **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 will inquire privately with the juror what has changed. Judicial staff will 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 will 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 will maintain a daily record of every court employee who was in the courtroom including the court reporter and interpreters.

- i. No livestreaming of trial via YouTube**

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.

From March 4, 2021 to July 2, 2021, all civil trials were livestreamed via YouTube, which complied with the Court's public access policy as well as provided the opportunity for non-essential persons to observe the trial, *e.g.*, insurance adjusters, paralegals, additional client representatives and family of the parties.

As of July 6, 2021, there is no livestreaming of the trial via YouTube due to the fact that there is sufficient seating in courtrooms to accommodate public access requirements.

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.