

Virtual Jury Trials: The Next Wave of Remote Legal Practice

By: David R. Zaslow and Mark Paladino

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One of the most obvious and unavoidable results of the COVID-19 crisis has been the postponement of jury service and, by extension, all jury trials. Given the inherent difficulties of convening juries in a world of social distancing, it is likely that multiple jurisdictions will be unable to conduct live jury trials for at least the next several months.

Recognizing the mounting delay and substantial docket backlog that is attendant to several months without jury trials, one court most recently permitted the litigants, upon consent, to try a new innovation – the nation's first virtual jury trial conducted entirely on the Zoom platform. More than two dozen potential jurors in Collin County, Texas attended jury selection from home by smartphone, laptop, and tablet, a process that was streamed live on YouTube. The presiding judge occasionally provided prospective jurors technical advice on how to best use their devices.

Once selected, the jurors virtually attended a one-day, "summary jury trial" of an insurance dispute in which they heard a condensed version of the case and delivered a non-binding verdict. The parties were then able to gauge how their cases would fare before a jury in a full-scale trial and, with that insight, agreed to proceed to a mediation in an attempt to reach a resolution. Court officials further touted the abbreviated, non-binding experience as an ideal test for the viability of remotely holding jury trials that would result in a final judgment. This real-world test, albeit in a non-binding exercise, may be an indication of things to come, as courts in Indiana and Arizona have already communicated an intention to conduct jury trials remotely once able.

How successful virtual jury trials can be remains an unknown. In a truncated, non-binding fashion such as that employed in Collin County, they may present parties with an opportunity to better assess the value of a case and result in settlement discussions. On a larger scale, though, their efficacy will largely turn on the abilities of trial attorneys to be able to pointedly and powerfully present the evidence in a remote and less personal fashion. Various practical considerations will need to be weighed in determining whether a virtual jury trial is more advantageous than waiting for the eventual return to traditional, in-person trials, including:

- The effectiveness of demonstrative exhibits and the ability to virtually publish exhibits to the jury;
- The impact of witness appearances and the ability of jurors to judge their credibility over video;
- The possible dilution of opening and closing statements due to a less personal delivery;
- The potential for technical problems that could affect the court, the trial attorneys, or the jurors;
- The probable distractions to jurors while in their homes; and
- The inability of prospective jurors to participate at all due to a lack of access to necessary technologies.

In the ever-evolving, COVID landscape, the legal profession has quickly become accustomed to conducting hearings, depositions and mediations by way of remote technologies. As the uncertainty surrounding the nation's return to normal continues, virtual jury trials may represent the next (and most fundamental-altering) wave of remote practice.

For questions or further information, please contact Dave Zaslow (zaslowd@whiteandwilliams.com; 215.864.6844), Mark Paladino (paladinom@whiteandwilliams.com; 215.864.6817) or another member of the Litigation Group.

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