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Jury Trials During COVID: A Will to Get It Done Is Essential

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Special to the Legal

I recently tried one of the first jury trials of the COVID-19 era. Having done so, I'm happy to report that a jury trial may be readily accomplished if the court and counsel have one essential ingredient: the will to get it done.

There was no playbook for what a jury trial during a pandemic would look like. How would I conduct a trial through a mask or face shield? Would I be able to see, hear and speak clearly? Would the jurors be able to hear me? Would a mask or shield affect my confidence? Should I drag my witnesses into court or put them on video?

Would anyone appear for jury selection in state court in Lycoming County? Fearing being unable to seat a jury, I proposed a panel of six, but my adversary would not agree to less than 10. Since I was committed to getting this case tried, I took what I could get. My fear was justified when only 29 people appeared for jury selection, which then required a second day that yielded an extra 36. Not a single person voiced a concern about COVID, perhaps welcoming the opportunity to fulfill their civic duty, or maybe just to get out of their homes. We successfully selected our jury of 10.



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In the courtroom, lawyers and jurors were required to wear face shields. The judge and his staff wore masks. The witness stand was encased in plexiglass. Our 10 jurors were spread out in the jury box built for 14. There was an obligatory hand sanitizer pump at the entrance to the courtroom and bottles of it on the tables.

This was a straightforward case involving a catastrophic injury. My then 74-year-old client rented a lawn tractor from a local business on the recommendation of a salesperson who was unfamiliar with the machine's slope limitation. During his first use of the mower, he lost balance on a slope and suffered a partial amputation of his left foot.

I was concerned that unnecessarily bringing witnesses into the courtroom could be unsafe and perceived as such. On the other hand, I couldn't fathom placing my four experts on video and have them testify through a mask or face shield. I decided to record

their testimonies via Zoom from the comforts of all of our respective homes and offices in the weeks before the trial, so no mask, shield or suit bottom half needed. In making that decision, I assumed the role of trial tech to cycle through various documents and photographs, including highlighting and enlarging them. It took me about an hour of fiddling around on Zoom in preparation for the first expert to become proficient at it. I recommend everyone learn this.

I have been a lawyer for more than 20 years and have tried many cases. I like to think that I'm comfortable and confident in a courtroom by now, but I worried that the face shield would affect my performance. I wore different face shields at home to find the right one and grow accustomed to it. The first shield was attached to a head band that messed my hair when I removed it and had very poor visibility. The next shield was attached to an eyeglasses-style

frame and was almost completely transparent, but the curved plastic reverberated my voice back into my ears. Opting for better vision and hair, yet accepting the downside of adding my speaking voice

to the voices already present in my head, I went with the reverberator. What I didn't foresee was wearing a shield attached to plastic glasses without nose pads every day, all day, for a week, would create large painful blisters on each side of my nose. Next time, nose pads.

Under normal circumstances, I have a trial entourage of a second chair, paralegal and enough bankers boxes to fill a courtroom gallery

row. Not wanting to increase anyone else's risks of infection, I chose to go this one alone. I packed all of my binders and supplies. I marked and organized my exhibits. I streamlined my process and realized I never knew what was in most of the boxes that

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Turns out face shields, masks and social distancing won't get in the way of the administration of justice for your clients, and if counsel and the court have the will to try the case, a way can be found.

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accompanied me at prior trials. Apparently, I only needed three boxes, and I transported them to court on a luggage cart that was borrowed from the hotel. Everything else was saved and organized on my laptop, which I promoted to my second chair at trial.

In my opening, I explained how COVID would affect my presentation of witnesses. I presented my two clients, who attended trial every day, albeit socially distanced from me, called two employees of defendant as on cross, and played my four expert Zoom videos. I rested in less than three days. I wanted to be quick and mindful of the jurors' service under these conditions. The jurors were attentive and, to their

credit, remained committed to the trial even after one of their members was dismissed after reporting a contact with a potentially infected person.

Throughout all of this, I worried that a jury would be reluctant to award money while so many across our country were struggling financially. I tried not to think of that too often, but constant reminders of our new normal,

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both in and out of the courtroom, made forgetting that difficult. In the end, the jury found in my clients' favor with a substantial verdict. Since then, I've been proud to give

my aging clients their day in court, especially during these challenging times.

Turns out face shields, masks and social distancing won't get in the way of the

administration of justice for your clients, and if counsel and the court have the will to try the case, a way can be found. Just don't forget the nose pads. •