

COURT OPERATIONS DURING COVID-19 TASK FORCE

Guidelines on Remote Jury Selection in Civil Trials

Preamble

Selecting a civil jury in the face of the immediate threat presented by the novel coronavirus (“COVID-19”) global pandemic presents uncharted challenges that have never been confronted by our system of justice. In considering remote jury selection, the Court Operations During COVID-19 Task Force (“Task Force”) recognizes that this proposed method of selecting jurors solely for civil matters is a departure from the traditional procedures and understands that the Seventh Amendment right to trial by jury must be fiercely protected for any modifications to the jury selection process to be successful. “The right of trial by jury as heretofore enjoyed shall remain inviolate.”¹

Courts must continue to provide equal justice under the law while adjusting to a new and challenging environment. It is critical that we anticipate the difficulties ahead and proactively develop solutions for them so that we continue to comply with the Constitution and provide equal access and justice under the law.

It is of the utmost importance that any jury pool summoned for remote jury selection consists of diverse members, well representative of every cross section of our Illinois communities and population.²

Unquestionably, the COVID-19 pandemic continues to have an enormous impact on our citizenry, litigants, and the entire Illinois court system. These guidelines are consistent with the judiciary’s mission to educate, engage, and execute by providing recommendations aligned with the Illinois Judicial Conference’s vision. It is in this spirit of our mission, embracing the core values of the Illinois Judicial Branch Strategic Agenda of fairness, accountability, integrity, and respect, that we have formulated these guidelines.

I. Background and Task

The Task Force provides these guidelines on how Illinois trial courts can implement a video jury selection process (herein “remote jury selection”) in civil trials considering the diversity of practices and available technology of the State’s various circuits. The Task Force makes no recommendations with regards to conducting any other portion of a civil jury trial remotely and assumes that remotely selected jurors will serve the remainder of the trial in-person, unless both sides consent to a fully remote jury trial.

In framing these guidelines, the Task Force built upon the foundation of core values and strategic goals/initiatives enumerated in the Illinois Judicial Branch Strategic Agenda 2019-2022. *Id.* The Task Force’s recommendations are specifically in line with and incorporate the following Illinois Judicial Branch goals and initiatives:

¹ Article I, Section 13 of the Illinois Constitution.

² [Illinois Judicial Branch Strategic Agenda 2019-2022](#).

1. **Strategic Goal 1**: *Accessible Justice and Equal Protection Under the Law*
 - a. Initiative: Remote Appearances in Civil Cases
2. **Strategic Goal 2**: *Procedural Fairness, Timeliness, Operational Efficiency*
 - a. Initiative: Innovative Court Access and Dispute Resolution Methods
 - b. Initiative: Procedural Fairness

In light of these core values, the Task Force agreed on the paramount importance of the need to ensure representation reflective of the community throughout jury pools. It considered the impact of the pandemic upon prospective jurors while also balancing the significance of face-to-face interaction in the *voir dire* process. Concerns regarding difficulty in effectively assessing a prospective juror's nonverbal affect, body language, reactions, feedback, and ensuring the quality and veracity of responses by potential jurors were taken into account when studying whether jurors may be selected remotely, masked, socially distanced, etc.

According to a national public opinion poll conducted by the National Center for State Courts (NCSC), older individuals, racial minorities, and women are less likely to be comfortable with in-person jury service during the pandemic than are young white males.³ Perhaps in-person jury selection may not be impacted as, anecdotally, the number of women and minorities in the certain jury pools were already under-represented, and in some of the larger circuits, only a small fraction of potential jurors responded to jury summons by coming to court pre-COVID. Much of this will vary by jurisdiction and local COVID trends. Remote jury selection would allow people who did not participate in the past to engage in the process. However, it could also preclude those who lack the access to the requisite technology from participating, unless the courts provided them with such technology.

An attorney poll conducted in June 2020 by one Illinois circuit was not in favor of remote jury selection.⁴ However, additional research and data is necessary, and as the pandemic continues to limit traditional jury trials, attorneys' opinions may shift. We will not be able to attain this research or data without at least trying it out on a representative sample of civil cases where remote selection has been agreed upon.

The Task Force evaluated whether there are Constitutional, statutory, and case law prohibitions specific to our task. It found no Illinois or other reported state case that specifically addressed the question of whether civil *voir dire* can be held in a virtual setting, and we are aware of no precedent prohibiting such a method for questioning a civil jury panel.⁵ Though the law does not prohibit remote methods of questioning a jury panel, we acknowledge that trial practitioners may prefer in-person

³ [National Center for State Courts \(NCSC\), State of the State Courts in a \(Post\) Pandemic World, Results from a National Public Opinion Poll; Michael Pressman, The Challenge of Achieving a Representative Cross-Section of the Community for Jury Trials during the Pandemic, July 2020 Vol. 5, Issue 7.](#)

⁴ [19th Judicial Circuit Task Force to Safely Resume Jury Trials Survey to Lake County Bar Association.](#)

⁵ [American Board of Trial Advocates \(ABOTA\), Guidance for Conducting Civil Jury Trials during the COVID-19 Pandemic, at 8; Michael Pressman and Michael Shammas, Memorandum: The Permissibility & Constitutionality of Jury Trial by Videoconference, May 4, 2020.](#)

voir dire and may want to return to the traditional procedures for selecting a jury when this unprecedented crisis and period of uncertainty is over.

II. Educate

It is vital to **educate** all stakeholders to the process and issues surrounding remote jury selection. Stakeholders include potential jurors, trial attorneys, litigants, and judges. Further, at the start of remote *voir dire* and after it has concluded, everyone involved must be informed of the precautions taken by the court and the court staff to mitigate the risks of in-person trial participation. Courts and counsel should take care to keep all stakeholders informed and involved in the process.

Education could include trainings and presentations to:

- a. Judges and judicial partners, including the Illinois College of Judicial Education;
- b. Attorneys, including the ISBA, CBA, and local bar associations; and
- c. Prospective jurors, particularly on what they can expect during remote jury selection.

As other states have taken the lead on remote jury selection, judges and attorneys from those jurisdictions could provide valuable guidance and training from their experiences.⁶

Public messaging reassuring the general public that appropriate precautions have been taken to minimize the risk of serving on a jury is of utmost importance. This could include press releases, videos, content on court websites and social media, and signs throughout the courthouse.⁷ It should also be done in correspondence to each individual prospective juror who receives a summons.

III. Engage

It is important that the Court **engage** stakeholders in the process of remote jury selection. When diverse perspectives are incorporated into each circuit's policy and protocols for remote jury selection, it gives stakeholders more confidence in ensuring a safe trial that protects the constitutional rights and health of everyone involved. Pilot programs can provide invaluable feedback as each circuit develops its own best practice standards for remote jury selection.

Washington's King County Superior Court conducts remote jury selection in civil cases (beginning the first week of August)⁸ and other states like Florida have piloted remote jury selection in mock cases.⁹ Videos of mock remote jury selections are available at:

- <https://www.youtube.com/watch?v=FiTujavuADQ> (King County (WA) Superior Court, Jul. 30, 2020);
- <https://www.youtube.com/watch?v=GRkFlShuZ9k&feature=youtu.be> (17th Judicial Circuit, Florida, Jul. 10, 2020);

⁶ See *infra* at II. Engage.

⁷ See [19th Judicial Circuit, Serving Safely Plan Video](#); [Maricopa Superior County, Jury Service During COVID-19 Pandemic Video](#); [17th Judicial Circuit, Florida, Remote Jury Summons Instructions](#).

⁸ See [Materials from Jul. 30, 2020 Remote Jury Selection in King County Superior Court CLE](#); E-mail from Beth Taylor, Project/Program Manager, King County Superior Court, to author (Aug. 28, 2020, 16:48 CST).

⁹ See [Jack Tuter, Chief Judge 17th Judicial Circuit, Florida, Remote Jury Selection During a Pandemic](#).

- <https://civiljuryproject.law.nyu.edu/virtual-mock-trial/> (Civil Jury Project, May 28, 2020).

In Illinois, the 19th Judicial Circuit (Lake County) completed the first mock remote jury selection on August 28, 2020. Eleven volunteer jurors logged on from their homes or offices, and volunteer attorneys from the private bar were able to question and select a six-person jury using Zoom. The volunteers conducted a second mock remote jury selection on September 21st with all participants, including the attorneys, participating remotely. The outcome of the project was well received by the participating attorneys, and more formal feedback is forthcoming. Excerpts from the September 21st mock remote jury selection can be found at:

https://drive.google.com/drive/folders/1cKvz98g4A_Tckj_RiNV-v-qwcYfBmi4C. The 19th Judicial Circuit's Remote Jury Selection Protocol (for attorneys participating in the courtroom and remotely from their offices) is available at Appendix 1, but it is undergoing revisions based on the results of the recent mock remote jury selection.

IV. Execute

The Task Force recognizes that each circuit is uniquely positioned to address COVID-19 challenges. **Execution** of a remote *voir dire* should be based on local conditions. There is no single approach to execution, and not all recommendations may be necessary, practical, or feasible in all circuits. Each circuit should move forward with remote jury selection in civil cases in a way that will protect jurors while also promoting justice.

Execution of remote civil jury selection will cut down or potentially cut out the number of prospective jurors needed at the courthouse. It may allow a greater cross section of the community into the jury pool while instilling the public with confidence in the process. The issue of ensuring a cross section of the community into the jury pool existed pre-COVID. The pandemic may or may not change this issue. However, we will not actually know until summonses and letters are sent out and prospective jurors respond.

Judges and lawyers must quickly become proficient enough with the technology for remote *voir dire* to move forward smoothly and fairly. The process should begin with those judges and lawyers who are comfortable with using remote platforms for court proceedings and are willing to proceed with remote selection. The Task Force's consensus is to seek out cases where both parties will consent to remote jury selection and allow parties to petition for remote jury selection with the court having the ultimate discretion to require remote jury selection in compelling circumstances, after weighing the factors of public safety and the parties' rights to access to justice.

However, remote jury selection in civil cases need not be limited to only certain types of cases or cases under or above a certain dollar amount. As long as there is consent by all parties, there is no need to limit remote jury selection. This should be decided on a case by case basis.

Moreover, circuits or counties interested in broader use of remote jury selection may apply to the Supreme Court for permission to undertake a pilot project in which remote jury selection could be ordered by the judge without the parties' consent or a compelling circumstance.

a. Technology Issues

Every effort must be made to ensure that the courthouse technology necessary to seamlessly select remote jurors has been tested and can deliver uninterrupted service during the *voir dire* process. Courts may also find it helpful to assign court personnel who can assist with technical issues or juror misconduct. If a potential juror experiences technical issues, courts should be prepared to excuse the juror or ask the juror to appear for in-person jury selection. Courts should also provide clear instructions to remote jurors if the court begins to experience technical issues.

Jurors who are participating in remote jury selection should be permitted to use their own devices during remote jury selection. Although the experience of potential jurors may not be uniform, uniformity at this stage in the trial is unnecessary and impractical. It may also be more convenient to ask jurors to identify themselves by their juror number or juror seat number.

Courts may consider asking all potential jurors to apply a specific virtual background so that their personal backgrounds are not visible. Doing so might better replicate the in-person experience of selecting jurors. Additionally, it would allow jurors' responses to be assessed without subjecting their personal environments to viewing by the public and other potential jurors, and it may allow everyone involved in the selection process to stay focused rather than on anything irrelevant or potentially prejudicial. On the other hand, providing and requiring the use of virtual backgrounds could reduce the court's ability to monitor jurors' behavior and the presence of other people in the room who might influence them. Moreover, it is possible that the space the juror is responding from could reveal subtle, valuable information about the person. Lawyers and judges should weigh the pros and cons of each approach on a case by case basis.

If the attorneys and judge are participating from the same courtroom, there should only be one source of audio input to avoid feedback. For example, the 19th Judicial Circuit used a [polycom sound station with two expansion microphones](#) to collect and transmit audio from the bench and counsels' table during their first mock remote jury selection. The polycom system is connected to the judge's audio, and the judge can mute his or her audio to hold conversations that are not heard by the potential jurors (e.g., sidebars with counsel).

Courts should also consider how the public may observe remote jury selection. Options may include permitting the public to (1) call in and listen to the audio of the proceedings, (2) view a video stream of the proceedings remotely (e.g., YouTube's live streaming option), or (3) observe the remote jury selection in the courthouse where a video feed of the proceedings is displayed.

b. Alternatives

Remote jury selection may not be feasible or appropriate in all circumstances. For potential jurors who do not have access to a device that allows for videoconferencing or reliable internet service or who lack the technical aptitude to videoconference, courts may consider providing free and reliable internet, equipment, and technical support. This can be done either at the courthouse, or in partnership with local entities like government agencies, public libraries, non-profit organizations, and

community centers. By providing these points of access, more prospective jurors may have the opportunity to participate in jury selection remotely.

Further, hybrid jury selection, in other words, a combination of in-person and remote jury selection, may be a viable option for some jurisdictions. For example, in King County Superior Court, jurors are instructed and questioned in panels of 12-18 with at least one of the panels used for in-person jurors.

Prior to beginning hybrid jury selection, the court should be mindful of making sure that potential in-person jurors and potential remote jurors are instructed, questioned, and selected in a manner that is as comparable as possible. Court personnel should be aware of the potential for implicit bias that may favor the treatment and selection of in-person jurors to the detriment of remote jurors.

If courts do not have the capacity to conduct jury selection remotely and courthouse facilities cannot safely accommodate in person jury selection, courts should consider exploring the availability of larger venues, such as theaters, school auditoriums and gyms, and hotel ballrooms that are currently underutilized.¹⁰

c. Juror Issues

i. *Summons Information*

For the public to be engaged and invested in jury service during these challenging times, courts should consider including language that explains to jurors that their service is essential to the functioning of our justice system during the pandemic and that courts have implemented precautions to ensure safety, security, and fairness when jurors serve. Model language that can be modified for each court's local purposes can be found in Appendix 2.¹¹

Courts must also consider whether they will need to summon a larger number of potential jurors as more people will be disqualified, excused, or deferred because of COVID-19 related reasons (e.g., experiencing symptoms, directed to quarantine, in a high risk population, essential healthcare worker).

ii. *Juror Questionnaire*

Remotely surveying potential jurors before conducting any kind of jury selection will be key. This will allow the court to determine which jurors should be removed from the jury pool because of COVID-19 related reasons, as mentioned above, and which jurors have the necessary technology and proficiency to participate in remote jury selection. Further, courts may consider using remote

¹⁰ See Ari Bendersky, *COVID-19 Has Crushed Convention Business for Hotels, an Overlooked Part of the Hospitality Industry*, Eater Chicago, Apr. 9, 2020; David Oliver, *Last-minute trips? Hotel guests booking only days in advance as COVID-19 pandemic continues, Hyatt CEO says*, USA Today, Aug. 4, 2020 ("Full-service hotels had 5.2% occupancy, down 74% from 2019; limited-service hotels saw 21.6% occupancy, down 57.7% from last year.").

¹¹ See also [Cook County Remote Jury Service Preference Postcard](#), [Edgar County COVID-19 Precautions for Petit Jurors](#), at 28, and [Vermillion County Precautions for Grand Jurors and Petit Jurors](#), at 52-53; [Administrative Office of Pennsylvania Courts, COVID-19 Guidelines for Pennsylvania's Judiciary: Resuming Jury Trials](#), at 9-10.

questionnaires to narrow the venire by eliminating potential jurors who may be excused for obvious “for cause” reasons. A model juror questionnaire can be found in Appendix 3.¹²

iii. *Juror Expectations*

Successfully choosing a jury remotely requires jurors’ participation and agreement to comport themselves as if they are reporting for in-person jury selection. Courts should make clear their expectations of jurors’ behavior during remote jury selection and provide admonishments that are understandable and concise. Juror admonishments with a variety of topics to consider and customize for local conditions can be found in Appendix 4. Moreover, the Court should consider producing a short video of model admonishments for remote jury selection that covers the basics and can be used statewide (or even nationally) in conjunction with traditional admonishments courts already provide to jurors during jury selection prior to the pandemic.

V. Conclusion

The health and safety of jurors and court participants is a priority for the Illinois courts. As civil jury trials resume, the Task Force’s recommendations to educate, engage and execute can be a template for review and implementation in a manner that best suits each individual circuit. The Task Force suggests that each circuit or county proceed with remote jury selection pursuant to administrative order or local rule. The current circumstances surrounding the pandemic are fluid, and circuits will need to continuously identify and evaluate issues that may need further analysis. This Task Force may supplement or modify these guidelines as health standards and court operations change.

¹² See also [Cook County Remote Jury Service Qualification Form](#); [Cook County Electronic Summons Form](#); [Administrative Office of Pennsylvania Courts, COVID-19 Guidelines for Pennsylvania’s Judiciary: Resuming Jury Trials](#), at 11; [Sample Juror Questionnaire from Minnesota v. Bell](#); [NCSC, Technology Options for Jury Trials and Grand Jury Proceedings](#), a Pandemic Resource from NCSC, Jun. 3, 2020, at 4 and 9.