

GUIDELINES FOR JURY TRIALS IN THE SIXTEENTH JUDICIAL CIRCUIT DUE TO COVID-19 PANDEMIC

Civil Division Recommendations



Chief Judge T. Clint Hull

Judge James R. Murphy

July 2020

This page intentionally left blank

Contents

Guidelines for Jury Trials in the Sixteenth Judicial Circuit Due to COVID-19 Pandemic: Civil Division Recommendations

A. Introduction	4
B. Resumption of Court Proceedings, Including Criminal and Civil Jury Trials Pursuant to Court and Health Professionals' Guidance.....	4
C. Pre-Planning and Scheduling of Jury Trials between September 8, 2020 and December 31, 2020.....	4
D. Limits on Size of Juries and Waiver of 12-Person Jury	5
E. Limits on Length of Jury Trial	6
F. Exceptions for Remote 12-Person Juries.....	7
G. Summary of Recommendations	8
APPENDIX A: Jury Summons Insert	10
Sample Comments to Jury Regarding COVID-19 Preparations.....	11
Special Jury Instructions during the COVID-19 Pandemic	12
Supplemental Jury Questionnaire Due to COVID-19 Pandemic	14
Supplemental Jury Questionnaire Regarding Technology	15

Guidelines for Jury Trials in the Sixteenth Judicial Circuit Due to COVID-19 Pandemic: Civil Division Recommendations

A. Introduction

Under federal and state constitutional and statutory law, citizens have the right to jury trials in cases to resolve civil disputes. Our civil justice system is unique in the world in affording citizens that right. Giving their time to serve on a jury is an important way for citizens to participate in the civil justice system and protect that important right. Trials are one of the bedrock principles of our justice system and serving as a juror is one the highest duties of citizenship. The accused has the constitutional right to a trial by a jury of one's peers. That said, the presence of the novel coronavirus/COVID-19 pandemic in our community requires us all to be vigilant in instituting what procedures we can to limit the spread of the virus.

B. Resumption of Court Proceedings, Including Criminal and Civil Jury Trials Pursuant to Court and Health Professionals' Guidance

In March 2020, and in the following months, the Illinois Supreme Court entered temporary orders and issued guidelines for court proceedings in Illinois courts restricting in-person hearings and appearances in court due to outbreaks of the novel Coronavirus (COVID-19). Those guidelines included the suspension of jury trials, but provided that the local circuit courts would develop procedures for the resumption of jury trials as soon as practicable and safe. This committee, along with the Chief Judge of the Sixteenth Judicial Circuit, has developed these guidelines for the resumption of jury trials in consideration of the Supreme Court directives, and guidance from Kane County, State of Illinois, and federal public health officials. The committee's considerations include balancing the safety of courtroom clerks, court reporters, bailiffs, security officers, witnesses, litigants, attorneys, and judges, as well as members of the public called to serve as jurors.

C. Pre-Planning and Scheduling of Jury Trials between September 8, 2020 and December 31, 2020

1. **JUDGES TO CONSULT AND PRIORITIZE JURY SETTINGS.** Civil Division judges shall cooperate to schedule, prioritize, and hold jury trials. The judges will inform the Presiding Judge of the Civil Division and/or the division judicial assistant of all jury settings between September 8, 2020 and December 31, 2020. The judicial assistant will inform the Jury Commission, the bailiffs, and security in a timely manner of jury trials that are expected to go.

2. **ONE JURY AT A TIME.** Only one jury trial may proceed in the Civil Division on any Monday available for jury trials. If more than one judge has a jury trial set, the judges involved shall confer at least two weeks prior to the date set and shall determine which case shall have priority. The relevant factors to be considered include the age of the case, whether the case has been previously set for jury trial and was continued, the likelihood of settlement, the expected length of the trial, the number of prospective jurors required to be summoned, the number of attorneys involved, the number of witnesses, and whether testimony will be live or on video.

D. Limits on Size of Juries and Waiver of 12-Person Jury

During this time period, juries in Civil Division cases will be limited to 6-persons. The trial of cases in which a party has filed a 12-person jury demand will be postponed until after the time period above stated, unless the party demanding waives the demand and agrees to either a bench trial or a 6-person jury. Considering health risks and guidelines, the assigned judge in his or her discretion may undertake 12-person juries in civil cases wherein the jurors selected are all able to connect remotely for all phases of the jury trial. In such a case, the parties will agree to waive the presence of the jurors on-site for the jury selection process. (See below, Section F, regarding fully remote 12-person jury trials).

1. **PEREMPTORY CHALLENGES.** It is expected that the number of prospective jurors that may be assembled at one time for *voir dire* for a 6-person jury will be no more than 18. During the time period above stated, the assigned judge in his or her discretion may limit peremptory challenges to no more than two per side, in order to limit the number of prospective jurors to be summoned.
2. **USE OF COURTROOMS IN CIVIL DIVISION.** This depends on the number of attorneys and litigants that are expected to be present for the *voir dire* process. Each courtroom is marked for socially distant seating positions and each has a maximum occupancy limit (see Sec. D-3, below). The judge who conducts a jury trial may have to convene the *voir dire* process in a courtroom other than his or her own courtroom due to occupancy limits. Jurors may have to be seated both inside and outside of the jury box in each courtroom, even when the 6-person jury has been selected, due to social distancing measures.
3. **MAXIMUM OCCUPANCY OF CIVIL DIVISION COURTROOMS.** The maximum occupancy limits for each courtroom holding jury trials, considering the social distancing markings, are as follows:

i. Courtroom 250	15
ii. Courtroom 310	12
iii. Courtroom 320	13
iv. Courtroom 340	24
v. Courtroom 350	17

The maximum occupancy number includes staff (judge, clerk, bailiff), court reporter (if applicable), attorneys and party representatives. As an illustration, if for a given trial Courtroom 340 has three staff, one court reporter, two attorneys, and two party representatives, and a maximum occupancy of 24, there would be room for 16 potential jurors maximum at a time. (However, see Sec. D-6, below, regarding limitations on gatherings.)

4. **PUBLIC ACCESS.** Judges should keep in mind that these trials are public, and therefore if any citizens wish to attend, there needs to be available seating in the courtroom. Otherwise, accommodations would need to be made for remote broadcasting of the trial in another courtroom in the building, or remote hearing methods available on Zoom and YouTube.
5. **SEPARATE PANELS OF JURORS.** Based on the maximum occupancy of courtrooms, as listed above in Sec. D-3, and considering the above illustration, it is anticipated that the *voir dire* process will be held in Courtroom 340 for all civil jury trials scheduled during the relevant time period. It is further expected that the judge will have to split the potential jurors into two or three groups or panels to be examined separately one group at a time. Once a jury of six is selected, the judge may return to his or her own courtroom for the remainder of the trial, assuming that maximum occupancy limits are maintained. The judge may also wish to remain in Courtroom 340 for the remainder of the trial, and other judges will accommodate as appropriate. If a judge is able to stay within occupancy limits in his or her courtroom for all phases of the trial, such as by examining potential jurors in panels of four, one panel at a time, he or she may conduct all phases in his or her own courtroom.
6. **STATE LIMITATIONS ON GATHERINGS.** The holding of 6-person jury trials and all aspects of the trial, including the *voir dire* process, is subject to the then-current state health department guidelines limiting the number of persons in public gatherings. The Civil Division shall stay within the then-current guideline restrictions for persons physically present in each courtroom, whether there is an on-site bench trial, partially on-site, partially remote bench trial, 6-person on-site jury trial, or 12-person remote jury trial.

E. Limits on Length of Jury Trial

1. **EXPECTED LENGTH OF TRIAL.** During the relevant time period, only civil jury trials that are expected to be completed within three days will be allowed to proceed. As such, judges may exercise discretion to limit questioning time on *voir dire* examination of potential jurors, and placing time limits on witness examination, cross-examination, opening statements, and closing arguments, to ensure completion of trial within time limitations.
2. **USE OF TECHNOLOGY OR OTHER METHODS TO LIMIT TRIAL LENGTH.** In the event a jury trial is expected to last more than three days, it may only proceed during the relevant

period if measures are taken to reduce the overall time of trial via technology or other methods. These measures may include, for instance, conducting final pre-trial conferences including conferences on jury instruction via remote hearing prior to trial, obtaining stipulations from the parties as to testimony or evidence, and conducting conferences to go over cause challenges and exemptions or excusals of jurors prior to trial. In any event, the actual time jurors should be present in the courthouse should be no longer than three days.

3. **OTHER METHODS OF LIMITING RISK AND REDUCING EXPOSURE.** Subject to the court's schedule and the convenience of all parties, the judge assigned shall consider other possible methods of limiting the time that jurors are present in the courthouse. It is recommended that jurors be kept together as much as possible during breaks, and they must be kept together when in deliberation. It is also recommended that, if possible and practicable, arrangements be made for jurors to eat lunch off-site. In the alternative, if time permits, the court could schedule only a morning or an afternoon session each day and the jury could be dismissed for the rest of the day, so that lunch would not have to be served. It is unlikely that the latter alternative would be available, even for jury trials with 6-person juries.
4. **USE OF TECHNOLOGY TO REDUCE TIME OF JURY ATTENDANCE.** The assigned judge, in consultation with the attorneys and litigants, shall explore all possibilities regarding remote hearings of parts or all of jury trials. If the parties and judge agree, for instance, the entire jury trial, or parts thereof, may be held remotely on Zoom.

F. Exceptions for Remote 12-Person Juries

1. **GENERALLY.** As mentioned in Sec. D, above, if the court and the parties agree, and if there are sufficient available prospective jurors with access to the necessary technology, the court may conduct a 12-person civil jury trial even though on-site restrictions call for 6-person juries.
2. **JURY COMMISSION TO SEND QUESTIONNAIRES TO DETERMINE PROSPECTIVE JURORS' ACCESS TO TECHNOLOGY.** The Jury Commission will add a questionnaire to its pre-summons mailing that will contain questions to determine the availability to prospective jurors of wi-fi networks, devices such as laptops, desktops, tablets, and smartphones, and quiet spaces at home to participate without interruption. The questionnaires may be useful for both 6-person jury trials (or parts thereof) and 12-person jury trials (in full or in part).
3. **VOIR DIRE PROCESS FOR JURY SELECTION.** The court shall conduct any remote *voir dire* and jury selection keeping in mind potential jurors' privacy concerns. The court shall take such precautions as necessary to limit the live-streaming of *voir dire* so that identification and private information of prospective jurors is not published, except to the extent necessary for equal fairness to the litigants. The court may have to confine any public

viewing of the *voir dire* process to the courtroom space. Similarly, the court may have to conduct questioning of panels of jurors in Zoom breakout meeting rooms.

4. **LENGTH OF TRIAL.** Any restrictions on the length of trial, such as the three-day restriction provided in Sec. E, above, would not apply to a fully remote civil jury trial. However, the court may in its discretion, place time limits on the *voir dire* questioning process, direct examination and cross-examination, opening statements and closing arguments.
5. **JUROR EXCUSALS.** In the case of a fully remote civil jury trial, prospective jurors who are in risk classifications that would ordinarily allow the deferral or excusal of jury service during the pandemic may still be available to serve, since they would not be required to travel to or participate physically at the courthouse. The Jury Commission questionnaire and correspondence shall advise of the possibility that a jury trial or parts thereof may be conducted remotely. The Chief Judge should enter a General Order setting forth in writing the excusal and deferral policy for the 16th Circuit, both for short term purposes, considering the Covid-19 pandemic, and for the long term, when COVID-19 restrictions can be lifted.

G. Summary of Recommendations

1. The recommendations herein shall apply from the re-starting of civil jury trials on September 8, 2020 until at least December 31, 2020. The limitations recommended herein are subject to extension and modification, as circumstances during the COVID-19 pandemic evolve, and as public health guidelines change.
2. During the applicable period and any extension thereof, the Civil Division will hold only 6-person jury trials, with the possible exception of a fully remote 12-person jury trial. The party demanding a 12-person jury will waive such a demand in writing to obtain a 6-person jury trial or bench trial.
3. Prospective jurors for 6-person jury trials will be limited to a maximum of 18 persons summoned for on-site service. Subject to the court's discretion, peremptory challenges will be limited to two per side. Prospective jurors will have to be examined during *voir dire* in separate panels, one panel at a time. The Civil Division shall follow then-current guidelines on maximum numbers of persons in the courtroom.
4. Six-person on-site civil jury trials will be limited to a maximum of three days in length. The maximum would not apply in the case of a remote 12-person jury trial. The litigants, attorneys, and judge will strive to reduce in-person attendance for as many parts of the jury trial as possible.
5. The Civil Division will review its policies as the COVID-19 situation evolves and as the Illinois Supreme Court or other applicable governmental agencies issue new policies and guidelines.
6. The Chief Judge should enter a General Order directed to the Jury Commission setting forth in writing the excusal and deferral policy for the Sixteenth Circuit, both for short

term purposes, considering the COVID-19 pandemic, and for the long term, when COVID-19 restrictions can be lifted.

7. The Jury Commission shall enclose with both its pre-summons questionnaire and with its summons, an additional questionnaire including health/safety questions and availability of technology for participating in remote virtual hearings.

APPENDIX A: Jury Summons Insert

JURY SUMMONS INSERT: PLEASE READ

WE ARE IN THE PHASE OF RESUMING JURY TRIALS. WHILE WE ARE DOING SO ON A VERY LIMITED BASIS AND TAKING PRECAUTIONS TO PROTECT EVERYONE IN THE PROCESS, WE ASK YOUR COOPERATION IN RESUMING THIS ESSENTIAL SERVICE.

After reading the information in the attached special jury instructions and/or viewing the video(s) on our COVID-19 preparations online at

<https://www.illinois16thjudicialcircuit.org/helpful-videos>

if you still have any questions regarding your jury service during COVID-19 restrictions, you may call the Jury Commission office at 630-232-3466 during office hours.

Sample Comments to Jury Regarding COVID-19 Preparations

Welcome to Courtroom _____, where you may be called upon to sit as a juror in this case.

This is a most unusual time for all of us. Because courts provide “essential services,” we have never been subject to the Governor’s shut-down order. Out of an abundance of caution, however, the Illinois Supreme Court reduced court activity in mid-March.

There are some things, however, that cannot wait indefinitely. The Supreme Court has authorized courts to attempt to return to regular schedules. There are, however, a number of procedures we have implemented to guard against spread of the coronavirus:

- Courtrooms have been cleaned and sanitized, and frequently touched surfaces will be cleaned and re-sanitized throughout the day.
- Hand sanitizers are available throughout the Judicial Center.
- This courtroom is set up to maximize social distancing.
- Jury deliberations will take place in the jury assembly room, which will also be set up to maximize social distancing.
- It is necessary that you wear masks during the trial. You may remove your mask when speaking on the record, such as when you are answering questions during the jury selection process.
- Lawyers and testifying witnesses may remove their masks when speaking on the record.
 - Judge Option A: As you can see, because I am up here separated from the rest of you by more than six feet, it is not necessary for me to wear a mask.
 - Judge Option B: As you can see, I am up here separated from the rest of you by more than 6 feet, so I might not need to wear a mask at all times, especially when I am speaking (like now).

We will proceed today because doing so is essential, but we have taken these additional steps to make things as safe as reasonably possible for all.

Special Jury Instructions during the COVID-19 Pandemic

You have received a summons for Petit Jury. **It is important to call our office at 630.232.3466 between 8:30am and 4:30pm Monday thru Friday if you have any questions regarding your jury service.**

Jury trials will start again at the Kane County Judicial Center on August 3, 2020 and at the Courthouse on September 8, 2020. The presence of the COVID-19 pandemic in our community requires vigilance from us all. Illinois Courts temporarily paused the summoning of jurors in response to guidance from public health officials. Consistent with the public health guidelines, we are limiting capacity based on the sizes of our spaces. For the protection of jurors, the Jury Commission is implementing the following protective measures including:

- Benches/pews and floors are marked to maintain social distancing between persons in the Judicial Center or Courthouse.
- All persons (including court security and staff) are required to wear masks/face coverings while inside the Judicial Center or Courthouse. All staff, visitors, and jurors will be screened daily to check for symptoms of COVID-19. Security will refuse access to the Judicial Center or Courthouse to any person who has experienced fever, cough, shortness of breath, muscle pain, sore throat, or loss of taste or smell within the previous 72 hours.
- The number of persons in the jury assembly areas, cafeteria, and courtrooms are limited.
- Increased cleaning of all surfaces in the courtrooms, jury assembly areas, cafeterias, washrooms, and all other areas of the Judicial Center or Courthouse.
- Increased supply and availability of hand sanitizers for all persons present in the Judicial Center or Courthouse.

Jury trials are the bedrock of our justice system; you have been summoned to serve because your service is essential. If you are called and selected, you will be asked to hear one case. ***If you are selected as a juror for the trial, please understand that your jury service may require you to stay later than 6:00 p.m. during the trial and during jury deliberations. Please plan accordingly.***

After 5pm on the Friday evening before your scheduled jury date, you are required to call 630.444.3150 or access the website at <http://www.ijuror.co.kane.il.us> to make sure you are needed on your scheduled date. You may also register with the Court's mJuror texting service to receive up to the minute information concerning your jury service via your smartphone. To register for this service, text your juror number to juryduty@co.kane.il.us from your smartphone.

Prior to reporting for jury duty, watch helpful videos on Jury Service and the Courts Response to COVID-19:

<https://www.illinois16thjudicialcircuit.org/helpful-videos>

Report to the Kane County Judicial Center or Courthouse, as indicated on your jury summons, at **7:30 a.m.** on the date your jury service is scheduled to begin. **Please bring: reading materials for the time you are not in the courtroom, any coffee or non-alcoholic beverage that you want to drink while in the jury assembly area, your filled out supplemental jury questionnaire, your jury summons, a valid photo ID, and a mask/face covering.** A limited amount of masks will be available for persons who do not have their own mask/face covering. Due to the COVID-19 pandemic, the Jury Commission will not provide donuts and coffee as they had in the past.

IF YOU OR ANYONE IN YOUR HOUSEHOLD IS ILL, DO NOT REPORT FOR JURY DUTY

Supplemental Jury Questionnaire Due to COVID-19 Pandemic

Please answer the following questions as they relate to your scheduled jury service:

1. Are you currently experiencing any symptoms of COVID-19? (fever, persistent dry cough, shortness of breath, muscle aches and pains, sore throat, loss of smell, loss of taste)
 YES
 NO
2. Is any member of your family currently experiencing any symptoms of COVID-19?
 YES
 NO
3. Are you a person who is considered to be at high risk for severe illness from COVID-19? (1) 65 years and older; (2) living in a nursing home or long-term care facility; (3) have underlying medical conditions, particularly if not well controlled, including: chronic lung disease or moderate to severe asthma; serious heart conditions; immunocompromised conditions; severe obesity; diabetes; chronic kidney disease undergoing dialysis; liver disease.
 YES
 NO
4. Are you living with persons who are considered to be at high risk for severe illness from COVID-19?
 YES
 NO
5. Are you a health care professional who is currently working with COVID-19 patients?
 YES
 NO

PLEASE BRING THIS FILLED OUT QUESTIONNAIRE WITH YOU WHEN YOU REPORT TO JURY DUTY.

If you or anyone in your household is ill, do NOT report for jury duty. If you have any questions or concerns regarding jury service, please contact the Jury Commission at (630) 232-3466 between 8:30 a.m. and 4:30 p.m. Monday thru Friday.

Supplemental Jury Questionnaire Regarding Technology

These questions are being asked to determine your ability to remotely participate in the jury process. This includes being able to watch jury orientation videos remotely before arriving at the jury assembly room, as well as potentially participating in the jury selection process or trial remotely (this is not currently occurring in Kane County).

Do you have EACH of the following?

1. A private and quiet space?
 YES
 NO
2. Access to a reliable internet connection?
 YES
 NO
3. Access to a tablet, smart phone, or desktop or laptop computer with a camera?
 YES
 NO
4. The physical ability to watch and listen to court proceedings using a computer or phone (typically trial occurs between 9:00 a.m. and 5:00 p.m. excluding breaks and lunch)?
 YES
 NO
5. The general ability to watch and listen to court proceedings without interruption or distraction (typically trial occurs between 9:00 a.m. and 5:00 p.m. excluding breaks and lunch)?
 YES
 NO

I cannot serve as a juror-from-home because:

PLEASE BRING THIS FILLED OUT QUESTIONNAIRE WITH YOU WHEN YOU REPORT TO JURY DUTY.

If you or anyone in your household is ill, do NOT report for jury duty. If you have any questions or concerns regarding jury service, please contact the Jury Commission at (630) 232-3466 between 8:30 a.m. and 4:30 p.m. Monday thru Friday.