

RESUMING JURY TRIALS IN THE SDNY

We as a Court are mindful of our obligation to maintain a safe and healthy environment for jurors, Court employees, lawyers and all who visit the Courthouses under pandemic conditions. Before resuming jury trials, we consulted with experts on proper safety measures, including social distancing, proper ventilation and cleaning protocols.

Everyone who enters one of our courthouses each day, including judges, must complete an electronic Covid questionnaire and pass a temperature check. Everyone must wear a mask at all times – not a bandana or face shield, but a mask that fits securely over the mouth and nose. And everyone must practice social distancing, which means that fewer people can be seated in our courtrooms and public spaces or occupy our elevators and hallways.

These rules necessarily impact our trial operations.

Our citizen jurors are essential to the nation's centuries-old promise of justice to prosecutors, defendants and those who are parties to civil lawsuits. Keeping jurors safe and helping them to feel safe are high priorities for the court. So jurors will be pre-screened for COVID warning signs prior to their arrival and given postponements in appropriate circumstances. Every juror who arrives at the courthouse will receive a pack containing masks, hand sanitizers, wipes, gloves and a forehead thermometer for personal use. Because it is desirable from a safety standpoint to minimize juror movement into, out of and around the courthouses, lunch will be provided to jurors free of charge each day.

Voir dires will be conducted in a socially distanced manner, either wholly or partly in the Jury Assembly Room, using procedures that will be discussed with counsel by the presiding judge at a final pre-trial conference or other, similar proceedings. In the Foley Square courthouses, larger courtrooms have been set aside for criminal trials so that jurors can be seated in a socially distanced manner. Some of our smaller courtrooms will serve as jury rooms, so that empaneled jurors can take their breaks, eat their meals, and deliberate in a space that accommodates social distancing. In White Plains, empaneled jurors will report to socially distanced courtrooms and will use spaces within the courthouse for breaks and deliberation that have been modified to allow for social distancing.

Courtrooms in all courthouses have been extensively retrofitted for the safety of trial participants. All trial participants (including judges) will wear masks, excepting only witnesses during their testimony and lawyers while questioning. Witness boxes will be surrounded with plexiglass and fitted with a HEPA filter, so that witnesses can testify without wearing a face covering. Podiums used by questioning attorneys will also be fitted with plexiglass and HEPA filters to avoid particulate spread. These precautions have been approved by our expert consultants; if their advice changes, we will change our protective measures. Microphones will be fitted with removable paper covers that can be changed between speakers, and counsel will be given anti-viral cleaning agents so they can wipe down plexiglass barriers and podiums whenever the speaker changes. The court expects exhibits to be displayed electronically, but anti-microbial misting sprays will be available for those (hopefully rare) occasions when paper must be used or objects passed back and forth between witnesses and counsel. Counsel table are equipped with special telephone-like “intercoms” so that lawyers can speak privately to their clients, using an interpreter, if necessary, or with others seated at the table, without violating social distancing rules. Lawyers seated at counsel table can communicate with members of their team who are seated in the gallery via text message using cell phones (subject to the rulings of the presiding judge) – again, to preserve social distancing.

Because of social distancing rules, gallery seating has been modified. As a result, only a small number of family members or members of the public and the press can be physically present in the courtroom where the trial is taking place. However, we will provide overflow courtrooms for gallery seating in appropriate cases, and we encourage the use of telephone call-in by press and public.

To spread out the arrival of jurors, lawyers and other trial participants, and to allow for the movement of jurors between the trial courtroom and the jury rooms, trials will be allocated specific start and end times during the day. This may result in trials taking a few days longer than originally anticipated by the parties, but will allow us to accommodate everyone in a safe manner.

Even with all these precautions in place, there are practical limits on the number of jury trials that can be conducted simultaneously under pandemic conditions. The judges of the court have agreed, for the duration of this emergency, to schedule their trials through the Clerk of Court, and have adopted a protocol to govern the order in which cases will be tried. The allocation of jury trial resources is based on objective criteria, in order to foster both the actuality and the appearance of fairness. The protocol used to allocate trial slots is not intended to, and does not, confer any right on a party to a proceeding; the protocol exists solely to promote the orderly conduct of business by the Court. As circumstances change – as more jurors can be accommodated, as more courtrooms become available, and as existing courtrooms are able to accommodate more defendants in a safe manner -- the court's protocols for calendaring trials will likely change as well. By the same token, if public health considerations compel us to suspend jury trials for a period, we will do so. The safety of everyone is paramount.

The ultimate decision whether a trial will proceed on a given date lies with the trial judge. All inquiries should be addressed to the judge presiding over the case.