



METHFESSEL & WERBEL

A Professional Corporation

The Leading Insurance and Claims Attorneys

C A S E A L E R T

NEW JERSEY TO BEGIN "VIRTUAL" CIVIL JURY TRIALS IN FEBRUARY

Parties may opt-out in First Phase – Opts Outs Precluded in Phase Two Beginning in April

Last week the New Jersey Supreme Court issued an Order implementing a two-phase approach to virtual civil jury trials during the ongoing Covid-19 pandemic. Implementation of the first phase of virtual civil jury trials starts on or after February 1, 2021 in Atlantic/Cape May; Cumberland/Gloucester/Salem; Monmouth; Passaic; and Union Counties. Counties participating in Phase 1 virtual jury trials require attorneys to consent to a virtual jury trial. Consent cannot be withdrawn within 10 days of jury selection. If attorneys do not consent in Phase 1, the case may proceed to trial on or after April 5, 2021 as part of the Phase 2 initiative.

Phase 2 applies to all counties and begins on or after April 5, 2021. There is no consent requirement for Phase 2. Phase 2 will continue until further order, but only as long as necessary based on the Covid-19 pandemic.

All civil case types are eligible for virtual civil jury trials. However, early virtual civil jury trials generally will involve a single plaintiff, a single defendant, limited issues in dispute, and a limited number of live witnesses. More complex matters will be

scheduled after the first straightforward civil jury trials.

Pretrial Conference and Order

Virtual jury trials will include a comprehensive pretrial conference that will address whether the judge, attorneys, parties and witnesses will be in the courtroom or will be participating remotely. The pretrial conference also will address methods of presenting evidence, including witness testimony and a trial schedule which will include scheduled breaks to minimize "Zoom fatigue" for jurors and other participants.

A pretrial order will be issued that will address the general daily trial schedule and may include a date and time for a test run with all attorneys, parties, and witnesses. It will detail when and how admitted evidence will be accessed by jurors. Attorneys may agree, and the court may authorize, the use of hard copies of evidence in binders for reference during deliberations. Electronic evidence also may be shared with jurors, with security protocols to prevent manipulation of files which will be detailed in the pretrial order.

Importantly, the pretrial order will provide that trial proceedings may be paused to address technical issues.

The pretrial order may address the presentation of witness testimony, including whether witnesses will testify in-person from the courtroom or remotely. Witnesses who testify remotely may be required to demonstrate that they are in a private location and to affirm that they will not send or receive communications during testimony.

Judiciary staff will be responsible to monitor the virtual trial proceedings and to bring to the attention of the judge any concerns about jurors such as loss of internet connection or potentially inappropriate conduct. In virtual trials, like in-person trials, no one other than jurors will be present during deliberations.

The judge will provide an enhanced jury charge, emphasizing the need for jurors to give their full attention to the trial and to maintain secrecy. Additionally, jurors may be required to scan the room with their tablet to show that they are alone and to affirm compliance with the existing policy that prohibits use of other electronic devices during trial.

Virtual Jury Selection

Jury selection is to be conducted 100% virtually. The judge, attorneys and parties may be present in the courtroom for jury selection, but jurors will not come to the courthouse. The standard model *voir dire* questions will be expanded to include open-ended questions about: Covid-19 public health precautions such as spacing between in-court participants during a “hybrid” trial, juror capacity and

commitment to participate. As part of the virtual jury selection process the judiciary will provide standard technology to summoned jurors during the selection process and to all empaneled jurors. Jurors who prefer to use their own technology may do so as appropriate.

There will also be juror technology, training and support available. In addition to juror onboarding, empaneled jurors will receive instructions on using technology and informing the judge and judiciary staff if they experience technical problems. Designated judiciary staff will be responsible to monitor and address technical issues during the course of the trial. The judiciary will address any late-discovered technology needs by supplying tablets (with broadband if needed) before the trial starts. Jurors may participate in selection using a phone with video, but larger screen devices are required for trial. Jurors can complete self-onboarding or receive assistance from staff to connect to Zoom.

Any for-cause and peremptory challenges will be conducted in breakout rooms outside of the presence of other jurors, but in the presence of attorneys and parties.

Virtual trials will be viewable by the public via the judiciary website. Importantly, the Zoom moderator will control the public feed to avoid showing the faces of the jurors.

At Methfessel & Werbel our technological infrastructure is fully prepared for the deployment of resources in virtual jury trials where appropriate and in our clients’ best interests. The infusion of technology into trial presentation has long been a staple of the M&W approach to trial work, and the new challenges of virtual trial work

Methfessel & Werbel

present an opportunity to enhance our advocacy in a manner that will ensure efficiency and maximize the chances of a favorable outcome.

Of course, not all cases will be amenable to a virtual disposition, and the unique circumstances of each claim will have to be considered before we consent to a virtual jury trial during Phase 1. Although consent is not required for a virtual trial to proceed in Phase 2, objections based on legitimate

concerns will always be available and we will have no reservations articulating claim-based objections where appropriate. As with all major decisions relating to venue and final adjudication of a dispute, we will consult with you prior to taking a position on the efficacy or appropriateness of a virtual resolution to your claims.

As always, you should feel free to [contact any of our partners](#) with any questions regarding these important developments.

The Methfessel & Werbel Case Alert is published solely for the interest of friends and clients of Methfessel & Werbel and should in no way be relied upon or construed as legal advice or counsel. For specific information on recent developments or advice regarding particular factual situations, the opinion of legal counsel should be sought.

Methfessel & Werbel

2025 Lincoln Highway · Suite 200 · P.O. Box 3012 · Edison, NJ 08818 · (732) 248-4200
450 Seventh Avenue · Suite 1400 · New York, NY 10123 · (212) 947-1999
1500 Market Street · 12th Floor East Tower · Philadelphia, PA · (215) 665-5622