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After 6 Months in Limbo, Philadelphia Court Sets January Date for Restart of Civil Jury Trials

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Of the Legal staff

After more than six months with no civil trials for Pennsylvania's largest court system, Philadelphia court leaders are planning to begin holding in-person civil trials starting in January.

The First Judicial District has announced plans to begin holding jury trials starting Jan. 21. According to the notice, the court will hear cases from the major jury, arbitration appeal, mass tort and commerce programs.

"Detailed protocols will be published regarding the operation of court business—including the conduct of in-person jury selection and jury trials—without creating unreasonable risks to the health or safety of jurors, court personnel, attorneys, court users and the general public," the notice, which was signed by Administrative Judge Lisette Shirdan-Harris, Supervising Judge of the Trial Division Daniel Anders and Judge Gary Glazer, supervising judge of the commerce division, said.

According to FJD spokesman Gabriel Roberts, the decision comes as the court leadership has been working with Philadelphia's City Hall

reopening committee, which, Roberts said, includes staff from the City's Department of Public Health, Office of Risk Management, Department of Public Property, Managing Directors Office and other city agencies.

The announcement was welcome news to many in the trial bar, as attorneys have seen the majority of their caseloads linger for months without any significant means of resolution.

"When there's a cessation of trials, everything else stops," Marciano & MacAvoy attorney Kevin Marciano said, echoing what numerous attorneys have told *The Legal*, which is that the looming threat of trial is the primary motivation for settlement and, without that incentive on the horizon, the majority of their cases have been in limbo.

"This is hopefully going to get things back running again," Marciano said. "There are so many cases that are going to settle as soon as a carrier understands that there's going to be a realistic trial date."

Some attorneys, however, were more skeptical about the decision.

Kline & Specter's Shanin Specter said it is "hard to be hopeful when we have high COVID rates. But this too shall pass. And I am optimistic

that Philadelphia's judges will do what can be done—including utilizing the Convention Center—to get trials up and running as soon as possible, so parties can get justice and closure."

In other venues where in-person trials have taken place, courts have been using convention centers, school gymnasiums and even casino conference rooms to hold trial proceedings. Roberts said the court, at least initially, plans to hold jury selection with a limited number of jurors in Room 195, which is the civil jury selection room.

The FJD in March suspended all criminal and civil trials, as well as most court functions, to help combat the spread of the coronavirus. Over the summer, leadership brought back many functions on the criminal side, including online preliminary hearings, and began holding several in-person proceedings as well. However, after the number of COVID-positive cases began to skyrocket in the city, court leadership last month decided to once again suspend criminal jury trials.

The move to begin civil jury trials also comes on the heels of recent leadership changes at the court, with Shirdan-Harris taking over as the new administrative judge in

mid-October. She replaced Judge Jacqueline Allen, who had been in the role for nearly five years. Anders was also named supervising judge of the civil division in early November.

Numerous jurisdictions in Pennsylvania have slowly begun bringing back jury trials, but problems have lingered.

In Lackawanna County in northeast Pennsylvania, courts have begun holding in-person trials, but the jury participation rate fell from 35% to 15%. That prompted judges on the bench to ask the Pennsylvania Supreme Court to allow curbs on peremptory challenges in civil trials. The high court granted the request, making Lackawanna the first and only county in the state to allow judges to eliminate the use of peremptory challenges.

While some attorneys said that decision struck a good balance between getting cases moving and ensuring the safety of those who come to the court, others said it could raise constitutional concerns.

In Philadelphia, Roberts said the court has an idea of what to expect, given the response rate for the criminal proceedings.

“Based upon the response rate for jurors in criminal jury trials heard between September and November, prior to the recent COVID-induced suspension, the court is currently satisfied with the composition of jurors who appear for jury selection,” he said.

Marciano noted that in civil trials, parties can agree to empanel juries with as little as six people on them, plus two alternates. Attorneys, he said, should work together to get the jury process moving again.

“Lawyers understand the challenges to get the juries there. The trial is willing to work with the court to get done whatever’s necessary, even slowly, to get the process started again,” he said.