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DAILY REPORT

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Virtual Voir Dire Workarounds Might Be for the Permanent Good

SENIOR JUDGE GAIL TUSAN

CHIEF JUSTICE HAROLD D. Melton of the Supreme Court of Georgia announced a statewide judicial emergency on March 14, 2020 (“the judicial branch of government to suspend all but essential court functions”). With cautious reluctance, we complied in varying degrees. Judges directed court personnel to postpone motion hearings and jury trial calendars, attorneys canceled depositions and work-related travel, national and local ADR companies such as JAMS, Miles Mediation and Henning touted their preparedness to work through the judicial pause and continue helping their clients to resolve disputes using technology and already developed virtual platforms, and law schools scrambled to transition to online, virtual learning for their law students.

Bracing for what was to come, court administrators and

government in general conservatively estimated this unprecedented judicial pause would last a few months. In hindsight most everyone was unrealistically optimistic, thinking that by the summer 2020 the legal profession would return to normal and resume the hectic pace of business as usual.

Professionally, I began entertaining requests to reschedule arbitrations and mediations. For the first month, “better safe than sorry” became the standard for gauging whether to grant a continuance for a few to several weeks or, in fact, push case resolution further into the early fall. Initially, it felt like I was able to wield the judicial case management gavel and set new dates based on what I thought was reasonable, but quickly the reality that firms and companies had suspended travel for their employee witnesses, attorneys and support staff compromised my ability to establish



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concrete timelines. We were all homebound, like it or not.

Chief Justice Harold Melton entered his first of some 15 monthly 30-day extensions of his emergency order in mid-April, and by the May 2020 extension, we realized this pandemic was going to last for much, much longer and


engineering safe, effective litigation workarounds were needed.

The original statewide judicial emergency order also paused the voir dire process. The chief justice only provided for “criminal trials in which a jury has already been empaneled” to be continued. Thus, criminal and civil voir dire were suspended with this original order, as they were not considered essential court functions. This was likely because many did not know the extent this pandemic would reach and expected the emergency order to end at its original deadline of April 13, 2020. In May 2020, the chief justice established a jury trial plan born after his executive order from May 14, 2020, creating a judicial COVID-19 task force to evaluate how courts should operate safely statewide).

Justice Shawn LaGrua, while still a Fulton County Superior Court judge and president of the Counsel of Superior Court Judges, served on the statewide task force. I am proud of the decision by the Fulton County courts to be proactive and ready to safely recommence jury trials when authorized by the Georgia Supreme Court. Early on, the chief judge of the Atlanta Judicial Circuit and immediate past Chief Judge Robert McBurney initiated what has been described by the Fulton County

jury services director, Amy von Kelsch as “metered, measured and methodical” planning of how to recommence jury trials. Herself a former litigator, she appreciated the need to proceed cautiously, with the safety of the jurors, parties, attorneys and court staff being paramount.

Everyone I spoke to credits what has become a model for the country in terms of virtual voir dire



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as the brainchild of Fulton State Court Judge Wes Tailor. I am not surprised because, during my tenure as chief judge, he chaired the Joint Governance Committee—an earlier collaborative of the Fulton County courts which resulted in many customer service-focused initiatives such as the unified Jury Services, the upgrading of directional and informational signage throughout the Judicial Complex and more. He and I were aligned in our desire to prioritize all means for access to justice.

Judge Tailor and Superior Court Judge Rachel Krause took over the planning of how to recommence jury trials in the age of COVID-19. They formed a jury task force which included Superior Court’s IT director, Adejuwon Anjoorin, and von Kelsch and her Jury Services team. It took approximately 10 months, but as of this past April, the jury task force was ready to test the bathwater. It felt like they had devised a feasible way for attorneys and their clients to examine and ultimately select jurors through a new, efficient, creative process utilizing Zoom.

Fulton County citizens could now report for jury duty and never leave their homes or offices. Revolutionary, right? Instead of driving through early morning rush hour traffic to arrive in downtown Atlanta and remaining captive in the courthouse until late in the day while hundreds of jurors are screened, routed to designated courtrooms, examined and ultimately selected or not, over the past two months, citizens have been qualified, questioned and advised as to their ultimate fate as petit jurors all using the Zoom platform, email and text communications.

And you bet, the jurors who have experienced this modern approach to voir dire are not complaining.

In fact, there has been a high level of cooperation by the jurors who received a new juror postcard bearing the scan code which connects them to their virtual gallery jury. They show up timely, mostly dressed appropriately, alert and ready to answer under-oath questions from the court and the attorneys. You may wonder, where is that bailiff who from time to time would stare down or bark at the inattentive juror during the traditional in-person jury selection? Surprisingly, it has been sufficient for the trial judge to warn citizens that the fate of this new convenient process for voir dire rests in their hands (or homes).

As the senior judge who conducted virtual voir dire No. 5 in May 2021, I just have to say that we are on to something quite marvelous, here. I was excited to give it a try because of my success as an arbitrator/mediator in resolving matters using Zoom, and unique learning experience teaching Emory law students how to conduct an entire jury trial using Zoom for their final examination. Here, instead of the regular long jury summons with information about where to park, civil trial jurors receive a postcard with only the relevant information and the scan code. Von Kelsch

recalls pulling an all-nighter as she researched and, using Adobe Photoshop, designed the postcard currently mailed to prospective jurors. Further information is located at the Jury Services website, www.fultoncourt.org/jurors.

On the day a juror is subpoenaed to report, they use the scan code which connects directly to Jury Services which assigns them to a courtroom where the judge and staff are waiting. Jurors are assigned a juror number which is their “display name.” General questions are propounded to the gallery at large, and then follow-up questions proceed in groups of 12, each group being assigned to a breakout room. Jurors are free to multitask at home or in their office muted and with their video off until they are alerted that they are needed for questioning.

We were able to seat a juror for a two-day civil trial in a couple of hours. Each trial brings improved technique and enhanced proficiency by the court and the attorneys. No, it was not perfect and of course, there are arguments to be made for why this is not a permanent solution. No doubt this is not a one-voir-dire-fits-all-trials solution. Yet, my sense is that this creative, proactive method of jury

selection is—or at least I argue it should be—here to stay, long after the COVID-19 pandemic is over, everyone is vaccinated and/or herd immunity prevails and the years’ worth of case backlogs have been eliminated.

Fulton County is a standout among other court systems not only in Georgia but throughout the country in recognizing that time is up, and waiting to get past the pandemic to begin the hard work of reducing the case backlog created by necessary court closures is neither cost-effective nor reasonable. Court administrators from all over are calling on the visionaries and pragmatics that serve as our judges and court professionals right here in Atlanta, Fulton County, Georgia. Let’s keep an open mind on virtual voir dire and see where this new procedure takes us. I guess you could say, the jury’s still out, but this senior judge has a hunch the basic concept is here to stay. ☎

