

## Jury Trial Update – September 2022

Litigation Quarterly Advisor

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At the beginning of the COVID-19 public health emergency, the New Jersey state judiciary halted in-person jury trials for the safety of the public. Approximately fourteen months later, on May 11, 2021, the New Jersey Supreme Court entered an Order permitting in-person criminal jury trials to resume on June 15, 2021. While in-person criminal trials resumed, civil trials continued to be conducted in a virtual format, unless an assignment judge determined there were compelling circumstances to warrant an in-person trial. Jury selection remained partially virtual in criminal trials and completely virtual for civil jury trials.

On November 18, 2021, the New Jersey Supreme Court entered an Order providing criminal jury trials shall continue to proceed in-person, with jury selection remaining partially virtual. The Court stated it would provide further guidance at a later time about how to conduct civil jury trials. As such, civil jury trials continued to be conducted virtually.

On March 9, 2022, the New Jersey Supreme Court entered an Order requiring all participants in in-person jury trials to wear a face mask, subject to certain exceptions. The Court further ordered all participants in in-person jury trials to maintain social distancing of at least three feet, subject to certain exceptions, including when an attorney and client are seated close together and separated by a clear barrier. The Court instructed that civil jury selection would begin virtually, and that potential jurors reporting virtually could speak with the judge, in the presence of the attorneys and parties, as to any concerns about reporting for an in-person trial.

On March 18, 2022, the New Jersey Supreme Court entered an Order providing that jury selection for all trials would continue to begin in a virtual format in the presence of the attorneys and parties. In criminal cases, the exercise of peremptory challenges would continue to be conducted in-person. After the initial virtual phase, and before the in-person exercise of peremptory challenges in criminal cases, the court would have discretion to determine whether to continue jury selection in a virtual format or to transition to an in-person format.

...the New Jersey Supreme Court entered an Order effective September 1, 2022, eliminating the social distancing and face mask requirements for participants in in-person jury proceedings.

On August 24, 2022, the New Jersey Supreme Court entered an Order effective September 1, 2022, eliminating the social distancing and face mask requirements for participants in in-person jury proceedings. The Order further provides that all prospective jurors will have an opportunity to raise any general concerns about reporting in-person based on COVID-19 concerns during the virtual juror orientation phase. After the initial virtual stage, and before the in-person exercise of peremptory challenges in criminal cases, individual trial judges will have discretion to conduct voir dire virtually or in-person, taking into consideration all relevant factors. The Court expects that these adjustments will enable the Judiciary to support more jury trials, especially trials involving detained criminal defendants, while continuing to protect the health of prospective jurors.

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