



The Painfully Slow Return to Commercial Jury Trials

Getting a commercial case in front of a jury has always been a long process. In the last decade, scheduling orders issued in Harris County District Courts have commonly reflected at least a 12-month journey to an initial trial setting, with jury trials rarely being reached on their first setting. Following Hurricane Harvey, damages to the courthouses resulted in even longer schedules. Now, with the continuation of the COVID pandemic, jury trials have, until very recently, ground to a complete halt.

Fortunately, recent efforts by several judges and county officials have resulted in jury trials slowly resuming in Harris County. To make this a reality, the District Clerk's office has formulated a new process by which it pre-registers and calls potential jurors to jury duty after multiple levels of COVID screenings. To facilitate the paneling of jurors, several jury assembly rooms have now been built at NRG where a relatively small number of jurors are asked to report for jury duty each day. With all this in place, the State's Office of Court Administration ("OCA") has approved plans submitted by several Harris County District Courts to conduct a limited number of jury trials.

Despite these steps, the return to "normal" has been, and will continue to be, painfully slow. For the month of September, only 21 jury trials were authorized by the OCA to proceed throughout the entire Harris County court system. Of those 21 scheduled jury trials, only seven were civil cases, with the rest being in the criminal or family courts. As of September 20, only three of those seven cases had actually seated a jury, with several others being continued. In a recent roundtable featuring several district court judges discussing the return of jury trials, it was reported there were less than 90 jury trials being approved by the OCA for October across all of the civil, criminal, and family courts in Harris County. For the foreseeable future, only four juries will be empaneled each day in Harris County, and only two cases will be allowed to proceed simultaneously on each floor of the courthouses. With thousands of jury trials already backlogged because of COVID, and new cases being filed every day, one has to wonder whether clearing the backlog is even mathematically possible.

Strategically speaking, for some defendants, the prospect of having a trial delayed indefinitely may not be particularly concerning. In fact, it may present a significant strategic advantage in terms of negotiating a settlement. However, for parties needing to have a dispute adjudicated on a timely basis, the current situation can be extremely frustrating, and potentially devastating. If you find yourself in this latter category, and your particular judge is either unable or unwilling to schedule your case for a jury trial in the near future, several options may be available to you.

First, if all parties will agree, consider withdrawing the jury demands in your case, and agree to try your case to the bench. Several Harris County judges report having current capacity to take on bench trials via Zoom (and possibly in person), even if the case is not currently scheduled for trial.

Second, if all parties will agree, consider removing your case from the judicial system entirely and contractually agree to submit your dispute to binding arbitration.

Lastly, consider mediating your case, even if a pre-COVID mediation failed. With the prospect of jury trials being delayed, possibly for years, a mediated result may now seem more appealing to everyone involved. Many mediators are currently conducting Zoom mediations with success.

As with all important legal issues, consult with your attorney about the pros and cons of taking an alternative path to resolving your dispute before abandoning your constitutional right to a jury. If you need assistance in evaluating your legal options in these uncertain times, the commercial litigation team at Andrews Myers stands ready to help you develop the best possible resolution strategy for your particular case.

For more information please contact [Jim Aycock](#).