



F28 Jury Trials During the COVID-19 Pandemic: Lessons Learned From Texas

David Slayton, MPA, Texas Office of Court Administration, Austin, TX 78701*

Learning Overview: After attending this presentation, attendees will understand Texas' approach to addressing challenges faced by the court system during the COVID-19 pandemic, including special considerations regarding remote expert testimony and efforts to keep testifying experts safe.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by demonstrating one state's response plan to facilitating the effective ongoing administration of justice during the COVID-19 pandemic.

Texas' constitutional bill of rights provides that "the right of trial by jury shall remain inviolate." As many Texans were celebrating the dawn of a new decade on December 31, 2019, the original cluster of cases of the COVID-19 disease ("COVID-19") was identified in China. Less than three weeks later, the first diagnosed case of COVID-19 was identified in the United States. While Texas would not see its first diagnosed case of COVID-19 until March 4, 2020, the Texas judiciary began its involvement with the Governor's COVID-19 response in February. Based upon the information gathered during early briefings, the Texas judiciary activated its response plan, which has ultimately incorporated both limited in-person jury trials and the extensive use of online technology.

Before the pandemic, Texas courts averaged 186 jury trials per week. Beginning in mid-March, jury trials were suspended by the Texas Supreme Court except for in limited cases. During this presentation, attendees will learn about efforts undertaken by the Texas Office of Court Administration (OCA) to facilitate the effective ongoing administration of justice. Specific attention will be paid to considerations regarding remote expert testimony as well as challenges involved in keeping testifying experts safe, especially those with pre-existing conditions that may make them especially susceptible to COVID-19.

Remote Hearings: The COVID-19 pandemic created a technological revolution in Texas courts. OCA's first step in facilitating remote proceedings was to evaluate various technology platforms. OCA ultimately determined that Zoom would be the best platform for the Texas judiciary. To test this determination, OCA requested 20 judges test the platform with remote hearings during the week of March 16–20. Almost 100 proceedings were conducted during that week, with judges providing positive feedback about the platform's utility for remote hearings. With this feedback, OCA procured enough licenses for every judge in Texas to have a license so the full features and security of the Zoom platform would be available to those judges. Texas judges quickly embraced the technology, with approximately 440,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 1.3 million participants lasting almost one million hours held in the six-month period.

On August 12, 2020, Texas successfully held the nation's first virtual criminal jury trial in a misdemeanor case involving a traffic violation. Over 20,000 people tuned in via YouTube® to watch the trial proceedings.

In-Person Jury Trials: On May 27, the Texas Supreme Court issued an order prohibiting courts from holding in-person jury proceedings, including jury selection or a jury trial, any time before August 1. In addition, the Court required OCA to coordinate with the Regional Presiding Judges and local administrative judges to assist trial courts in conducting a limited number of in-person jury proceedings. In the May 27 order, the Court required consent from all parties to proceed with the limited jury trials. The consent requirement was later removed in the Eighteenth Emergency Order on June 29. The Court required OCA to submit a report to the Court outlining its observations regarding those jury proceedings and making recommendations regarding procedures. In subsequent emergency orders, the Court further delayed jury proceedings (with certain exceptions) until October 1. Before reviewing any jury proceeding requests, OCA consulted with infectious disease experts at the Texas Department of State Health Services (DSHS). Those meetings resulted in several best practices and answered questions that greatly assisted OCA in its efforts. DSHS staff were available to OCA staff throughout the spring and summer to assist with providing advice on matters affecting public health. This includes reviewing the local COVID case data in each county several days before the trial is scheduled to begin and relaying any concerns about moving forward.

On August 28, 2020, OCA issued its report and recommendations to the Court on the successes and challenges in addressing the COVID-19 pandemic.

COVID-19, Courts, Expert Testimony