



**CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

**DADE COUNTY COURTHOUSE
7 3 WEST FLAGLER STREET
MIAMI, FLORIDA 33130**

**JENNIFER D. BAILEY
CIRCUIT JUDGE**

June 29, 2020

To the lawyers, litigants and citizens of Miami-Dade County:

As we enter the fourth month dealing with the COVID-19 pandemic, I would like to provide this Circuit Civil Division update as part of our commitment to continued access to justice while protecting public health.

This entails working closely with the Florida Supreme Court and Chief Justice Canady for operational guidance and Miami-Dade County on facility issues to plan how best to serve the citizens of Miami-Dade County through the pandemic.

The Eleventh Circuit is committed to following the science. Every operational decision is reviewed with epidemiologists and infectious disease physicians. We know that the court processes we describe are not what judges, lawyers, litigants and our public are used to. We also recognize that cases must continue to move towards final resolution. Our customers cannot wait until the pandemic is over. The operational plan described below represents the best balance of safety and justice.

Q: When will we return to live hearings?

A: Our Courthouse will remain Virtual for the foreseeable future for public safety. Hearings and evidentiary proceedings, including bench trials will continue on Zoom.

In-person hearings continue to be suspended except in the most exigent of circumstances. If we are able to attempt jury trials, our limited space must be used for that purpose as opposed to routine hearings. There are severe physical limitations due to social distancing throughout the spaces in Dade County Courthouse. Only two persons may ride in an elevator at a time, which makes movement through the courthouse very difficult. Our largest courtroom, 6-1, can hold 37 people with social distancing.

These realities require us to use our Zoom Virtual Courtrooms for our proceedings for the foreseeable future. CourtMAP has enabled judges to digitally access all materials, and our Clerk has developed procedures for the digital handling and marking of evidence. Nearly 8,000 Zoom hearings have been held by the Circuit Civil Division in order to guarantee that your cases can move forward during the pandemic. We have also pioneered the use of text messaging for Zoom notifications to assure that everyone has access to the hearings. Given

the issues with jury trials, this is a unique opportunity to get your special sets scheduled as judges have additional time that otherwise would have been assigned to jury trials.

Q: What about current trial orders and deadlines? How do I keep my case moving towards resolution?

A: Every event that was originally set as a live in-person hearing or trial is subject to COVID-19 limitations and uncertainty. We urge utilization of Case Management Orders as a means to move your case under Florida Rule of Civil Procedure 1.200.

A trial order is an order. It requires you, and your clients, to expend resources to be ready to go to trial on a date certain. But with COVID-19, nothing is certain. Every trial order you receive is subject to the public health precautions at the time it is set to be heard. We don't know when we will be able to resume traditional live jury trials at our normal rate. It seems unlikely that substantial public health solutions will be found before next year. We don't want to force you, through orders, to expend your client's scarce resources preparing for an in-person trial that is unlikely to proceed.

For that reason, we urge use of case management plans and orders to set the necessary deadlines for discovery, depositions and mediation to let parties fully evaluate their cases without waiting for a trial date certain. Our recently concluded Civil Justice Pilot Project proved that case management closes cases earlier and resulted in an 86% increase in cases resolved within time standards. We know that structured case management will help move your cases. If you don't have a case management order, propose a plan and set a conference and ask your judge for an order for your case. This is particularly appropriate where opposing counsel is not cooperating on moving your case or taking depositions.

Only 2% of cases are resolved by jury trial. 98% resolve by other means. COVID-19 forces all of us to acknowledge that it is the deadlines created by a jury trial order, not an actual trial, that produces resolution. For many cases, when it comes to a trial date, it's the date, not the trial. Parties must use interim measures to move, value and resolve their cases during this pandemic.

If you do not prepare your case until we return to "normal"-if you refuse to take depositions or otherwise engage-then your case will become part of a backlog that will take years to clear. This backlog will exist even without considering the avalanche of cases that are expected as a result of current economic circumstances and the cases that job loss and foreclosures and contract breaches will cause, which will make it worse. Now is the time to take advantage of the structure offered by case management and increased access to court time afforded by use of Zoom.

Q: When will Civil Jury Trials resume?

A: We do not anticipate that live civil jury trials will return to "normal" numbers and frequency for the foreseeable future, perhaps even until a vaccine for COVID-19 is developed.

When Civil jury trials do resume, it will be under significant limitations regarding the safety of all concerned, including jurors summoned to the courthouse, which is likely to substantially reduce the number of jury trials we are able to hold at any given time. A pilot trial is in the planning stages; however, the timing and logistics of the pilot are subject to COVID-19 conditions. In addition, we are developing alternatives which we urge parties to consider.

Jury trials are the crown jewel of participatory democracy. We are committed to live jury trials. However, jury trials pose difficult problems in balancing safety and justice and are very limited under the Florida Supreme Court operational guidance.

We are one of five jurisdictions chosen by the Florida Supreme Court to explore how jury trials may proceed in the pandemic environment which requires us to limit the number of people in our courtrooms. The pilot project is currently underway, exploring a Zoom/live hybrid trial, subject to COVID conditions.

After completion of the pilot, we will have a better idea of our ability to schedule additional trials. We are optimistic that lessons will be learned that will help us explore ways to return to jury trials. However, assuming success, jury trials will still be limited by facility issues.

Given the limited availability of in-person jury trials for the foreseeable future, we encourage all to consider creative alternatives that will move your case to resolution. If you have ideas, we are eager to hear them. Currently, we are developing plans for multiple options including bench trials, expedited summary jury trials, and nonbinding arbitration and potentially, judicial settlement conferences. This is an opportunity to creatively explore different avenues to resolution.

The judges and staff of the Circuit Civil Division have done an extraordinary job of continuing the delivery of justice and nimbly pivoting to our new reality. We all want to get back to normal, and we are all exhausted by COVID. We will continue to work with the doctors to protect everyone in the court system. We cannot let our frustration compromise safety or continued access to justice. We will continue to explore every option and look forward to working with all.

Sincerely,



Jennifer Bailey
Administrative Judge
Circuit Civil Division