

SIRI, PLEASE CONNECT ME TO THE COURTROOM – THE FUTURE OF CIVIL TRIALS IN MARICOPA COUNTY SUPERIOR COURT



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Last week, Presiding Civil Judge Pamela Gates hosted a virtual town hall to address the present and future of civil litigation in Maricopa County Superior Court in light of COVID-19. Although there were few certain answers provided regarding civil trials in Maricopa County, we do know one thing: things are about to change, in a big way.

Assuming Arizona starts to “re-open” in the coming weeks and months, there are three major issues impeding the resumption of civil trials in Arizona. First, courts have yet to come up with a practical solution for social distancing inside the courthouse. From the outset of the case, when several dozen potential jurors are questioned regarding the ability to serve on the jury, to the final jury deliberations, individuals including lawyers, judges, courtroom staff and the jury itself are packed in a small area that is not easily adjusted to meet the current CDC guidelines. The most sensible and discussed solution to this problem is to have “virtual” trials, with the lawyers, jurors, and judge all appearing remotely throughout the case. Although there is no known data on using virtual trials, there are several jurisdictions testing this model, and it is expected that Maricopa County Superior Courts would first try this in a bench trial before using in an actual jury trial. The problems with a virtual trial are many: What if the Plaintiff and his attorney are not able to appear remotely? How will the jury perceive a defense team that is better adjusted to the virtual setting? Will the jury pay attention and be free from distractions such as cell phones or television? How much will this cost and where will the funds come from in light of the current economic conditions? Regardless, virtual courtrooms might be the only feasible solution for civil trials in the post COVID-19 era, when the courts have already declared that the safety of the jury and courthouse staff is paramount.

Second, there is a significant backlog of cases in both the criminal and juvenile court systems that, by constitution, take scheduling precedence over civil cases. In Maricopa County, judges serve on one of five judicial calendars: civil, criminal, juvenile, family, and probate. When trials resume, judges assigned to civil calendars could be reassigned to criminal or juvenile cases to reduce the backlog of those cases. Moreover, due to constitutional issues like the right to confront one’s accuser, criminal attorneys could demand an entitlement to in-person jury trials. Prosecutors and defense attorneys are actively trying to resolve as many cases as they can, but there will undoubtedly be many cases that will require a jury trial. It is anyone’s guess how long it will take to reduce the backlog of criminal cases, but it will certainly take several months. At that point, there could be a significant backlog of civil trials.

Third, when civil trials do eventually resume, litigants will face new issues regarding whether the jury will truly represent a “cross-section” of the community. There are indications that judges will initially be very lenient with allowing citizens to opt out of jury service due to COVID-19 concerns, but it remains unknown if that will apply to all people over the age of 65 or who are immunocompromised. It is highly likely that neither plaintiffs nor defendants would be satisfied with a jury in which a large portion of the population is excluded due to potential health concerns. This is a major concern in Maricopa County where over 15% of all people are over the age of 65.

At this point, there are more known problems than solutions due to COVID-19 regarding the resumption of civil jury trials in Maricopa County. On April 24, 2020, the Arizona Supreme Court extended the prohibition against empaneling jurors until at least June 1, 2020. The Arizona Supreme Court also stated, however, that it is “anticipated that Arizona courts will be able to begin a phased-in approach to conducting in person hearings and jury trials in late Spring or early Summer.” When civil trials do eventually resume, there will be major changes to the way information is delivered to the judge or the jury.

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Patrick Gorman concentrates his practice in the areas of bad faith and extra-contractual liability, breach of contract claims, insurance coverage, professional liability and other general civil litigation matters.