

Expect the Unexpected

By Audrey Priolo, Litigation Procedure Attorney

Attorneys nationwide are wondering what to expect next. The twists and turns of the current pandemic create many questions and few answers. As courts begin to resume operations, we are starting to see some trends, but attorneys have little clarity about the future. Recently, the U.S. District Court for the Eastern District of Louisiana conducted a survey of attorneys licensed to practice before the court. Here are some of the interesting responses:

When do you think in-person oral arguments should resume?

Fall 2020	32.44%
Summer 2020	26.77%
When there is a vaccine or the pandemic is otherwise considered over	18.26%
Winter 2020	8.22%
Spring 2021	7.37%
Other	5.90%
In-person oral arguments are no longer feasible due to COVID-19	1.02%

When do you think in-person jury trials should resume?

When there is a vaccine or the pandemic is otherwise considered over	29.63%
Fall 2020	24.35%
Spring 2021	17.99%
Winter 2020	12.32%
Summer 2020	9.25%
Other	5.39%
In-person oral arguments are no longer feasible due to COVID-19	1.08%

What precautions would make you feel comfortable participating in an in-person proceeding (jury trial, bench trial, hearing, etc.) during the current health crisis? (please check all that apply)

Hand sanitizer available at counsel table	75.27%
Parties argue from counsel table	68.41%
Limiting the number of attorneys at counsel table during trial	40.90%
No physical exchange of documents during the proceedings	37.38%
Parties wear face coverings during the proceedings	33.52%
Witnesses wear face coverings during the proceedings	25.47%

Having witnesses testify by video from another location in the courthouse	17.81%
Other	13.56%
None	13.27%

During the current health crisis, are you considering or would you consider advising your client to waive the right to a jury trial in any of your cases?

Yes	28.13%
No	71.87%

Would you be open to conducting a remote jury trial (via video conferencing service) if the option was available?

Yes	22.31%
No	77.69%

While this survey only contains a snippet of the country, it is interesting to see the variety of outlook among attorneys. We have also seen this variance among how judges are issuing orders. I expect that there will continue to be a discrepancy across the country and even across individual courtrooms. As we continue this journey together, we will keep you apprised of trends. We remain committed to providing support to help you along the way.

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