

Trial News

Special Coverage

Start, Stop, and Start Again

One trial lawyer recounts what it was like to pause a trial due to COVID-19 and then resume three months later.

By Ricardo Echeverria | October 22, 2020

On March 16, I headed into the Yolo County, Calif., courthouse ready to start the third week of a civil jury trial. At the time, we were about three days from closing arguments. The case involved a catastrophic personal injury where liability was disputed—my client lost his right leg below the knee in a forklift incident.

As I walked into the courtroom, the trial judge informed us that in light of the state's stay-at-home orders issued over the weekend, our trial was immediately suspended. However, rather than declaring a mistrial, the judge asked the 12 jurors and two alternate jurors if they would agree to return on May 11 to complete the trial. All 14 agreed to return.

As the new date approached, however, it was clear that the court would not be open. Instead, the court held a videoconference with the jurors and counsel and explained that the trial would likely resume on June 29. The judge once again asked the jurors if they would be able and willing to return on that date. Again, all 14 jurors agreed to return.

The Hiatus Ends

The day before the trial resumed, counsel for the parties went to the courthouse to argue jury instruction and verdict form issues. The jurors attended a videoconference to check in and answer whether they were ready to appear in person the following day to resume the trial. Twelve of the 14 jurors attended the call. The court again asked the jurors if returning to complete the trial would cause any of them hardships—related to the pandemic or not. Following the inquiry, two were excused for legitimate hardships. The remaining 10 jurors agreed to show up the next day in person—and we hoped the two who missed the call would also show up.

Fortunately, the next day, all 12 jurors were there. The judge explained that there were no more alternates so it was important that everyone continue to appear, otherwise a mistrial would be declared. The court reassured the jurors that appropriate safety and social distancing measures were in place in the courthouse and the courtroom. Each juror understood the unique journey this trial had taken and the importance of their presence to be able to reach a verdict.

The courtroom was set up for social distancing with six jurors in the jury box and six spread out in half of the gallery with everyone more than six feet apart. Everyone in the courtroom wore some type of face covering the entire time. By stipulation of the parties, all of the lawyers and witnesses wore face shields so the jurors could see facial expressions during testimony and closing arguments. In addition, we brought face shields for all the jurors and gave jurors the option to use them during the proceedings so we could see their facial expressions too. Most of the jurors used the face shields. This was particularly helpful during closing arguments as it allowed us to see and gauge the jurors' facial expressions in reaction to the arguments.

One of the concerns about returning to trial after a three-and-a-half month hiatus was making sure the jurors remembered what we presented to them back in March. The only evidence left to present was from the defense medical experts. So it was important to thoroughly cover the liability evidence that was presented in March during our closing argument. In addition, we had our medical expert testify as a rebuttal witness by phone following the defense medical expert testimony.

Deliberations

Because the jury deliberation room was not large enough to accommodate social distancing, the jury used the entire courtroom for deliberations. The jury deliberated for a half day but did not reach a verdict—meaning deliberations would need to resume after the July Fourth holiday weekend.

Under normal circumstances, having a jury that has begun deliberations and with no remaining alternates go into a three-day weekend is a concern. All of the work could be for nothing and end in a mistrial if any juror failed to appear after the weekend. But this jury had come back after a three-and-a-half month hiatus, so how bad could a three-day weekend be?

Nonetheless, to ensure the case would get to a verdict, the parties created a backup plan. We agreed that if we lost a juror over the weekend, we would put the remaining jurors' names in a hat, pick the first nine names, and that would be our new jury with seven out of nine required for a verdict. We also agreed that the remaining jurors who were not selected to be on the nine-person jury would then be alternates. We advised the court of this stipulation and put it on the record before everyone left for the holiday weekend.

The Verdict

Fortunately, we did not need to resort to Plan B, and on the following Monday all 12 jurors returned and reached a verdict later that day for our client. In talking with the jurors after the verdict about their experience, most indicated that the delay made them appreciate the significance of their role even more. They each realized how much had gone into preparing the case for trial and the unique circumstances of getting it to resume after such a long delay. Like the parties, the jurors were focused on completing their job to administer justice.

Achieving this result under these difficult circumstances required teamwork. It also required civility and cooperation with opposing counsel. It was a hard-fought, clean battle from the beginning to the end—an ending that took much longer than expected but was worth waiting for.

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