

REMOTE CIVIL JURY TRIAL PILOT PROJECT FOURTH JUDICIAL CIRCUIT



**A REPORT TO CHIEF JUSTICE CHARLES T. CANADY
FLORIDA SUPREME COURT**

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.”

Seventh Amendment to the United States Constitution

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ENCLOSURES AND HYPERLINKS

“True peace is not merely the absence of tension, it is the presence of justice.”

Martin Luther King, Jr.

Enclosed with this report are completely unedited versions of each mock remote civil jury trial we conducted and our recordings (without the blurring of juror’s faces) of the two binding remote civil jury trials held before the October 2, 2020 project deadline. For public and media reading this report to view the Fourth Judicial Circuit’s binding remote civil jury trials, please open the following CVN links for each trial by placing your cursor over the link and press Control + Click to go directly to that trial video:

Griffin v. Albanese

<https://pages.cvn.com/duval-county-florida-remote-trial-program>

Mathis v. Argyros

<https://pages.cvn.com/mathis-vs-argyros-remote-trial-stream>

In addition, this report contains words or phrases that are linked to videos, photographs, documents, forms and legal citations. These report links are identified by blue font. To open such links, place your cursor over the word or phrase in blue font and press Control + Click, or right click on the item and choose “open hyperlink.”

ACKNOWLEDGEMENTS

“Gratitude is one of the least articulate of the emotions, especially when it is deep.”

Justice Felix Frankfurter

I am sincerely grateful to each member of our remote civil jury trial project workgroup for their contributions to this report: Fourth Judicial Circuit CTO Mike Smith and his Court IT staff, James Muse, Patrick Estalilla, Vince Paruolo, Larry Ashley and Pat Welsh; Jacksonville ABOTA President Corinne Hodak; Jacksonville ABOTA Member Angelo Patacca; and Brian Corrigan, Public Information Officer and Senior Manager – Public Records Department, Duval County Clerk of Courts.

I also especially acknowledge and thank not only the remote project workgroup, but the volunteers from the Jacksonville Chapter of the American Board of Trial Advocates (“ABOTA”) and the Chester Bedell Inn of Court (“AIC”) for their service during numerous remote mock jury selections and trials held between early June and early August. With little time to create the methods, practices and procedures to conduct a totally remote civil jury trial, we decided to build it through remote mock jury selections and trials using mock trial materials from an American Inns of Court/American Board of Trial Advocates “Trial Academy” held in January, 2020. Dozens of ABOTA and AIC members, their

employees and family members devoted countless hours, without reward or compensation, to half-day and full-day remote mock trials, serving as lawyers, parties, witnesses, and jurors. They provided valuable feedback and constructive criticism resulting in positive changes and refinements to our methods, practices and procedures.

In addition, I sincerely appreciate the efforts of Lou Freitas, COO of Courtroom Connect, and Morgan Cox, Video Production Manager of Courtroom Connect, and the entire Courtroom View Network (“CVN”) team for producing the webcast for both binding remote civil jury trials. CVN’s agreement to broadcast both of the Fourth Circuit’s binding remote civil jury trials allowed us to protect the jurors’ confidentiality while providing the [media and public access](#) to the remote courtroom.

I also wish to thank Chief Judge Mark Mahon and Civil Division Administrative Judge Waddell Wallace for placing their faith and trust in me to lead the Fourth Judicial Circuit’s Remote Civil Jury Trial Pilot Project. I also deeply appreciate the support and commitment of the Duval County Clerk of Courts, Ronnie Fussell, and of our Court Administrator, Joseph Stelma, and the patience, diligence and positive attitude of my Judicial Assistant Paula Fields who was instrumental in managing my schedule and transcribing this report among many other responsibilities.

Finally, I especially acknowledge and express my deep gratitude to Jacksonville ABOTA President Corinne Hodak for her dedication to this project, even agreeing to serve *pro bono* as a Special Magistrate for both of the binding remote civil jury trials. As a Remote Special Magistrate, Ms. Hodak worked behind the scenes during the remote civil jury trials, communicating with me and the Remote Bailiffs through group text messages concerning logistical and technology issues, or any other matters that I might not be able to see or detect while focusing on the remote proceedings.

No Judge, acting alone, could have built the methods, practices and procedures to successfully complete a binding remote civil jury trial. The successful conclusion of the Fourth Circuit's remote project is a testament to teamwork. I worked with an incredibly gifted, hard-working, dedicated, and selfless team, giving me the freedom and confidence to [delegate, collaborate, and innovate](#). I will be forever grateful for the honor and privilege I have had to work with this team during the summer of 2020 – a summer I will never forget.

Bruce Anderson
Circuit Court Judge
Fourth Judicial Circuit
October 2, 2020

PURPOSE

[AO SC 20-31 as amended](#) requires each circuit to “present the results of its remote civil jury trial pilot project and report its findings and recommendations to the Chief Justice through the State Courts Administrator no later than October 2, 2020.” Therefore, the primary purpose of this report is to comply with the above referenced Fla. Admin. Order. However, immediately after completing the first binding totally remote civil jury trial in *Griffin v. Albanese Enterprise, Inc. d/b/a Paradise* the members of our workgroup received many phone calls and emails from Judges, Court IT Staff/CTOs, Court Administrators, Judicial Assistants and law clerks across the United States seeking information on how to build a remote civil jury trial model for their respective courts. Our workgroup even had a Zoom meeting with Federal Judges, IT staff and court personnel from the west coast a few weeks ago to answer questions about our methods, practices and procedures as they planned to hold remote civil jury trials. The common inquiries and questions included:

- Tell us how you did it?
- Do you have a manual you can send us?
- Do you have instructions you can send us?
- Do you have procedures you can send us?

When we finished the first binding remote civil jury trial in early August, we had not written this report and our methods, practices and procedures were not reduced to a coherent, organized manual or bench guide. Therefore, the secondary purpose of this report is to inform, teach and guide all of those Judges, Court IT Staff/CTOs, Court Administrators, Judicial Assistants and law clerks seeking information to build their own remote civil jury trial model.

DISCLAIMER

The viewpoints and opinions reflected in this report do not represent any official policy or position of the Florida Supreme Court, the Office of the State Courts Administrator, the judicial conferences of Florida judges, the Florida Court Education Council, the Florida Court Education Council's Publications Committee, the Chief Judge of the Fourth Judicial Circuit, the Jacksonville Chapter of the American Board of Trial Advocates, the Chester Bedell Inn of Court, or any other professional bar associations serving the Fourth Judicial Circuit.

PREFACE

“The great enemy of the truth is very often not the lie--deliberate, contrived and dishonest, but the myth—persistent, persuasive, unrealistic.”

John F. Kennedy

As a former prosecutor and a Board-Certified Civil Trial Lawyer, I am fascinated by jury trials. What I learned in law school still holds true today – the purpose of a trial is to seek the truth. As a trial lawyer, I practiced in many different Federal and State courtrooms in different areas of the United States. Whether the courtroom was large or small, ornate or humble, new and shiny, or old and worn, I always regarded it as a sacred place. A sacred place filled with emotion and power as the participants seek the truth to resolve a factual dispute while following the rules of procedure and evidence.

I was disappointed when the COVID-19 pandemic suspended all jury trials around the state. In late May 2020, after AOSC 20-31, Chief Judge Mark Mahon asked me if I would be interested in participating in a remote civil jury trial pilot program to establish the framework and identify the logistics of trying a case remotely. In my excitement over the prospect of having a civil jury trial, I quickly accepted Chief Judge Mahon’s invitation and immediately discussed the pilot program with Judge Waddell Wallace, Administrative Judge for the Civil Division. We agreed to submit a proposal to The Workgroup on the Continuity of Court

Operations and Proceedings (“COVID-19 Workgroup”) to hold a fully remote civil jury trial from jury selection through verdict. I would be responsible for leading, guiding and steering a team of volunteer attorneys, our Court Technology Officer Mike Smith and the Court IT Staff he supervises (hereinafter referred to collectively as “CTOs”), and Deputy Clerks of Court to create the methods, practices and procedures to conduct a totally remote civil jury trial and preside over such a remote jury trial. Simultaneously, I would have to convince local trial attorneys to volunteer at least one case to be tried remotely to a binding verdict – literally trying to inspire the attorneys’ confidence in our remote civil jury trial methods, practices and procedures not yet built and without blueprints.

On June 3, 2020, the Fourth Judicial Circuit was chosen by the COVID-19 Workgroup created by Chief Justice Charles T. Canady as one of the five trial-court circuits across the state to conduct a test of remote technology as a safer alternative to traditional in-person civil jury trials. By this time my initial excitement over the prospect of building and presiding over a totally remote civil jury trial using the Zoom videoconferencing platform was tempered by visions of a remote courtroom experience that could resemble binge-watching the introduction of [Hollywood Squares](#) and [The Brady Bunch](#) and my fears that jury selection could be reduced to a [“Zoom Happy Hour”](#).

In the background, while our team worked on this project, our state and country's COVID-19 views were evolving and changing from unity over a "temporary" one-size-fits-all lockdown to "flatten the curve" of infection by slowing the transmission rate and reduce hospitalizations to complete disunity over the response. By June, Florida and other states were re-opening and loosening restrictions while some states' Governors imposed harsher lockdowns or continued lockdowns claiming to be "following the science;" their mission changed from "flattening the curve" to eradicating COVID-19. The COVID-19 debate raged on the entire summer between national, state and local political leaders fueled by the news media. COVID-19 policies were divided along political party lines, state-by-state and city-by-city. Everything about COVID-19, and the response to it, has become as hotly contested between citizens as sports rivalries and political beliefs. Such topics as the effectiveness of masks to prevent respiratory infections, the efficacy of hydroxychloroquine in patients with COVID-19, and determining an accurate death count and death rate from COVID-19 that would normally be relegated to medical or scientific symposiums and conferences are now intensely debated on social media and sometimes in parking lots, restaurants and grocery stores.

Why is this disunity, over the risk COVID-19 presents and how to respond to it, a relevant consideration for this remote jury trial project? We need a diverse jury pool. At present, the elderly or individuals who have comorbidities rendering them particularly at risk may be unlikely to attend an in-person jury trial. Diversity will also be lost in the future due to otherwise qualified jurors, even those who are not elderly or suffering from comorbidities, holding COVID-19 opinions about its lethality, transmission rate and risk that may differ from public health authorities, the Centers for Disease Control (“CDC”), mainstream news media, and even findings contained in future Administrative Orders of the Florida Supreme Court reopening our courts to in-person civil jury trials. It may be years before we ever truly return to pre-COVID juror participation in civil jury trials. Without a remote option, in-person jury pools could be artificially reduced to only those individuals who are younger and healthier, or alternatively, those who are not necessarily younger or healthier, but hold opinions that COVID-19 is not a risk, with or without masks, hand-sanitizer and social distancing.

During the early days of the project, our team had many concerns about the reliance on remote technology and the internet to successfully complete a fully remote civil jury trial, including, but not limited to, the following:

- Internet access and other necessary technology, both hardware and software is uneven and inconsistent at best.

- There are still some citizens who do not use the internet, do not have regular access to the internet, or do not have reliable access to the internet.
- Can we guarantee the same internet capability for each juror?
- How do we ensure that all jurors have a quiet, distraction-free place to view the remote proceedings.
- The in-person, formal courtroom setting creates a neutral background and/or controlled environment for a jury trial without juror distraction or temptation to mentally drift away or physically walk away from their responsibilities. How do we provide this setting for a remote civil jury trial?

My goal for the Fourth Judicial Circuit's remote civil jury trial pilot project was to create the look, feel and sound of an in-person courtroom remotely, demanding the same decorum and respect for the totally remote civil jury trial proceedings as inspired by in-person civil jury trials in that sacred place known as the courtroom.

Bruce Anderson
Circuit Court Judge
Fourth Judicial Circuit
October 2, 2020

EXECUTIVE SUMMARY

In response to the health crisis presented by the COVID-19 pandemic, all jury trials in the State of Florida were suspended as of March 16, 2020, by Administrative Order of the Florida Supreme Court. Three months later, the Fourth Judicial Circuit was one of five circuits selected to test the feasibility of remote technology as a safer alternative to traditional in-person civil jury trials. The Fourth Circuit created a workgroup that was tasked with conducting and testing fully remote jury trial procedures that balanced the health, safety and goals of all justice stakeholders, and yet replicated the environment, decorum, and respect of the traditional in-person jury trial that is familiar to the citizens of this state.

The Fourth Circuit conducted two fully remote and binding civil jury trials with the participating parties' consent. The first, *Griffin v. Albanese Enterprise, Inc. d/b/a Paradise*, was a damages-only trial to determine the plaintiff's personal injuries and damages arising from a tortious battery. The second trial, *Mathis v. Argyros*, resolved a fee dispute between an attorney and his client for representation in a criminal matter. Both trials were completed and resulted in binding verdicts. The two remote jury trials required the Fourth Circuit to build a remote platform to fulfill the fully-remote mandate while accommodating the varying technological capacities of the jurors and courthouse stakeholders. The

final remote trial process and procedures detailed in the report were the result of a significant and coordinated effort by volunteer stakeholders who mock tried trial practices and procedures during the summer of 2020 before the jurors were summoned for the first remote and binding civil trial.

Based upon the workgroup's experiences, the fully remote process provided several positive benefits. For example, the Clerk's office noted that the response rate (or yield) for jurors to the remote jury summonses was higher than the average response rate experienced for in-person jury summonses before the pandemic. And, in developing the jury selection process, the CTOs and Clerk's office created an electronic questionnaire process that was completed before jury selection process – a process that allowed the court and the trial attorneys to efficiently and effectively focus their voir dire questioning once the panel of potential jurors “entered” the remote courtroom. Post-trial surveys of trial participants revealed favorable experiences with the remote process. The trials were conducted fully remote with only the trial judge and CTOs being physically present in the Duval County courthouse, while all other participants to the trial appeared through the Zoom platform. The broadcasting of the trials through CVN similarly provided the public access to the trials in a convenient format, and without requiring members of the public to enter the physical courthouse. The result of the fully remote

process was that the public health concerns, associated with bringing large numbers of participants into the public courthouse, were avoided.

Notwithstanding the successful implementation of the Zoom platform to conduct the fully remote jury trials, the process was not without its challenges. The “final product” was the result of a labor-intensive effort that exceeded those efforts required for a traditional in-person trial. Replicating a fully remote process for additional jury trials requires a substantial commitment by the judicial stakeholders in any Circuit, and in the opinion of this reporter an *all-remote process would not be scalable* for wholesale implementation.

Nonetheless, when balancing the benefits of the remote process with the logistical impediments of scalability, it is the undersigned’s opinion that a *hybrid jury trial process* is a realistic and feasible option for conducting civil jury trials if the restrictions of the pandemic persist. Based upon the feedback of the participating stakeholders, and our experience conducting this pilot program, it is my opinion that a hybrid process consisting of a remote jury selection and an in-person jury trial would be a workable solution that balances the competing concerns of public health and the need to continue the civil justice system.

On behalf of the Fourth Judicial Circuit, we provide this Report to Chief Justice Charles T. Canady and the State Courts Administrator.

Bruce Anderson
Circuit Court Judge
Fourth Judicial Circuit
October 2, 2020

Chapter 1

The Process to Build a Binding Remote Civil Jury Trial

“The eternal struggle in the law between constancy and change is largely a struggle between history and reason, between past reason and present needs.”

Justice Felix Frankfurter

“You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.”

Buckminster Fuller

§ 1.1 Introduction to Project

The Fourth Judicial Circuit assembled a team led by Honorable Bruce Anderson to build, study, test and implement a system for the Remote Civil Jury Trial that met criteria identified in the COVID-19 Workgroup’s Requirements and Evaluation Criteria – Remote Civil Jury Pilots (**AOSC20-31 - June 2, 2020**). The lead team included the Court Technology Officers (CTOs) Mike Smith, James Muse, Patrick Estalilla, and Lawrence Ashley; Brian Corrigan of the Clerk’s Office; Corinne Hodak, attorney and 2020 President of ABOTA-Jacksonville, who was later appointed Special Magistrate for this Program; and Angelo Patacca, attorney and ABOTA member. The Honorable Mark Mahon, Chief Judge supported the project, and the Honorable Waddell Wallace, Administrative Judge for the Fourth Circuit Civil Division oversaw the project and provided valuable

input. Judge Anderson presided over the Remote Civil Jury Trials and aptly steered the team.

The workgroup decided to provide the following Process Information as the project progressed in a diary or log format. This format was chosen to provide the reader an understanding of the evolution of the project as it was evaluated and modified. It is the hope of the workgroup that this format provides the reader insight into which processes worked and those that were deemed unworkable.

§ 1.2 Organization of Project

The organization meeting on June 4, 2020 focused on identifying initial tasks. At that time, the deadline to complete the Program was July 31, 2020, including – a report to the Florida Supreme Court. Given this short window of opportunity, one of the first and crucial tasks was to identify a case appropriate for the Pilot. The goal was to be prepared to try the Pilot the week of June 20, 2020 during Judge Anderson’s set trial week. The Civil Division Judges were asked to identify potential cases that were ready for trial and appropriate for the Pilot, and to refer them to Judge Anderson for a Case Management Conference.

The team members were encouraged to review materials about Remote Civil Jury Trials, attend an upcoming ABA webinar of a Mock Remote Jury Trial (Health Law), and attend a webinar held by the National Conference of State

Courts on Remote Civil Jury Trials. Conferring with Judges and CTOs in jurisdictions that had held trials remotely was also considered.

The Clerk of Court was asked to work with the team to review the summons, and existing process for summoning jurors, and to adapt them for the remote trial. The Clerk's preference was to issue the summonses three to four weeks before the start of the Pilot trial.

The team discussed using Juror Questionnaires and the types of platforms available. Survey Monkey was an initial option considered for compiling data on jurors' responses to the Questionnaires.

The Court Technology Officers (CTOs) would be trained as Bailiffs for the Remote Civil Jury Trial.

The Remote Trial would be conducted on the Zoom platform already in place which was already being used for civil hearings, bench trials, and other proceedings during the pandemic. The team discussed the number of people/tiles shown on a computer screen at different points during the trial process. Twenty-five people/tiles can appear comfortably on a screen in reasonable size. More tiles can be fit on a screen, but their sizes are reduced. The concept of whether participants should use one screen, multiple screens, and how to manage juror tiles during juror qualifications was considered.

The team identified several documents that would need to be created including a Remote Pre-trial Stipulation, Remote Pre-trial Checklist, and Remote Pre-trial Order.

The team also recognized that an outline of the remote trial process, its forms, and other information would need to be compiled, both for reporting and for replicating the process in future trials.

Judge Anderson requested several mock trials with participants from ABOTA to test the remote trial system, push it to its limits, identify problems and find solutions prior to the Pilot Trial.

To that end, mock remote trials were scheduled with the ABOTA membership and other volunteers. The mock trials were conducted in phases, for instance, Jury Selection on one day, and then the mock trial with witnesses and jury deliberations on another day.

Media inquiries will be referred to Brian Corrigan in the Clerk's Office.

Team meetings were scheduled every Monday at 4:00 p.m. to continually evaluate, revise and implement changes to the remote trial process.

By the next meeting on June 8, 2020, the team identified additional documents to create or modify, including Attorney Consent/Stipulation to do a Remote Trial, Attorney Waiver of Objection to Remote Trial, Consent to Remote Trial for the Parties, Consent to be Recorded and a Pre-Trial Stipulation

incorporating the consent forms. Judge Anderson will outline the remote trial procedures and will create a list of defined terms. We will also revise the Pre-trial Conference Checklist, Pre-trial Conference Order, and create a Remote Jury Trial Order (separate from our existing Trial Set Order) to include technology requirements, internet speed, instructions, virtual backgrounds, and other issues unique to the remote trial.

§ 1.3 Mock Remote Jury Trials Begin

The first remote mock Jury Selection was held on June 9, 2020. Participants (ABOTA Members, staff, family and friends) appeared on computers, iPads, and iPhones. The team immediately found it was essential to announce that all mock jurors needed to stay on video and to mute except when speaking. During this first mock Jury Selection, we tried to replicate the steps of an in-person Jury Selection by bringing the jurors into a Remote Jury Assembly Room, performing juror qualifications there and, moving individual jurors who requested an excusal to a Remote Jury Assembly Conference Room to speak privately with the Judge, and then moving the jurors to the Remote Courtroom for voir dire. Comments from the participants assisted in identifying problems and solutions.

The team learned from this first mock Jury Selection:

- Time must be allotted at the beginning of each day for technology issues. Mock jurors had issues connecting and using Zoom features.
- We needed basic instructions and training for jurors on how to use the functions in Zoom including gallery view, pinning and muting and unmuting.
- Trying to replicate the steps of an in-person Jury Selection was time consuming and cumbersome which ultimately frustrated the mock jurors.
- Moving jurors from room to room took too much time. It left other jurors staring at a blank screen while waiting for sidebars or private conferences to end. This left the jurors feeling disconnected and forgotten.
- We identified additional Preliminary Jury Instructions concerning technology devices.
- Zoom worked well from a technological standpoint.
- The CTOs needed training on trial procedures and the role of a Bailiff.
- The Zoom tiles move to different locations each time a juror goes in or out of a room, which makes it difficult for the attorneys during

voir dire. We learned this was the logarithm built into Zoom. (Over the course of the project, CTO Mike Smith worked directly with Zoom to identify a way to lock the tiles into a given position on the screen.)

- During jury selection, we used the court’s [standard Juror Questionnaire](#) which during in-person trials, requires each juror to stand and read the questionnaire and respond to questions about demographic information, marital status, number of children, occupation, prior litigation, and past juror history. This process in the remote trial setting took a significant amount of time leaving other jurors to lose interest or become impatient. In addition, sending the jurors a Juror Questionnaire- in a PDF format was time consuming. We discussed alternative methods, including scrolling the questions on the screen for the jurors to answer.

§ 1.4 Mock Remote Jury 2

The second mock trial on June 12, 2020 began with Opening Statements and ended with jury deliberations and a verdict. Again, comments were solicited from the participants. The team learned:

- Jurors could not easily identify the Judge on the screen because of Zoom’s tile-moving issue. As a fix, jurors had to be instructed to “pin” the Judge before hearing the Preliminary Jury Instructions.

- Opening statements went well. The lawyer used the share screen function and shared different types of evidence, including [photographs, videotapes, x-rays](#), documents, and diagrams. We tested the highlighting and markup functions on the documents, and each worked well.
- Lawyers need sufficient internet bandwidth, a good connection, and appropriate devices to avoid freezing, lag time, and inadvertent disconnection. The CTOs will confirm that the lawyers meet the technology requirements.
- The movement of the tiles of court personnel and litigants on the screen presented a challenge for attorneys and the jurors. Later, electronic labels would be made to visually identify participant roles.
- The Judge must ask the jurors whether they can see the exhibits. Depending on devices used and juror's ability to use Zoom, sometimes the Jurors could not see the exhibits and the attorney or witness speaking.
- The witness testimony went well. Exhibits were used seamlessly during their testimony.
- Juror and Attorney "backgrounds" can be distracting. Virtual backgrounds will help maintain Courtroom decorum.

- Lawyers should have the document on their screen before they share screen. The lawyers will be instructed or ordered not to share personal items, photographs, and other information from their personal computers on the screen in the Remote Courtroom.

- The chat function can be used for Remote Bailiffs and Jurors to communicate with each other on technology and comfort matters.

- An instruction is needed to tell the lawyers and witnesses they cannot use the “chat” feature to make contact with the jurors and vice versa. If a juror receives a chat message from a lawyer or witness they must report it to the Bailiff or Court.

- At times the jurors could not see the attorneys when exhibits were on the screen due to the tile placement. Accordingly, we will show jurors how to pin the attorney and witness.

- The jurors should be instructed to keep their devices plugged in. Specifically, iPads and smart phones tended to run out of battery life after several hours in the remote courtroom.

- Jurors needed time to address technology issues which disrupted the mock trial. Tutorials will be created for the Jurors on the use

of the technology during the Remote Civil Jury Trial. There will be three tutorials, or PowerPoints, created for the jurors.

- The first PowerPoint will be shown before juror qualifications and will include how to mute and unmute, turn the video on and off, pin a witness or judge, and other basic Zoom instructions that may be needed. The chat function would also be explained with the provision that the only person they should chat with is the bailiff if they have a question.

- The second PowerPoint will be shown immediately prior to trial and will include how to submit a question to be asked to a witness.

- The third PowerPoint will be shown before deliberations and will include how to send a question to the court, how to access exhibits from U-serve or Dropbox, and how to fill out the verdict form.

- Jurors used different devices, iPhones, iPads, computers, and different types of computers. The screens on iPhones have limited viewing capacity of four tiles. Downloading the forms used to submit a question to a juror and the Verdict Form were difficult to use on phones and certain Apple branded computers for technology reasons. Even when used on other devices the forms were difficult to navigate. Different systems will be explored for these forms.

§ 1.5 Remote Summons, Documents and Juror Questionnaires

In the weeks following, weekly meetings continued, and the team continued to work on issues identified between meetings.

On June 16, 2020, Judge Anderson, Ms. Hodak, Mr. Patacca, and Mr. Corrigan met to discuss juror summons and the summons process. At this juncture, creating a questionnaire for the jurors to answer prior to reporting for jury service was still under consideration. At this meeting, the clerk walked through the process for summoning jurors to an in-person trial. After the juror receives the summons, the juror signs into the court's website and answers a short questionnaire to confirm qualifications. At that juncture, the clerk has the juror's email address. If a juror questionnaire is used this would be a logical time to send it to the juror.

The clerk also asked about the ADA and if any additional measures needed to be considered. If any ADA issues arise, the clerk will advise the court immediately.

§ 1.6 More Remote Mock Jury Trials

The next mock trial was conducted on June 16, 2020. We had 35 participants volunteer to assist in the project, including members of ABOTA, the Chester Bedell Inns of Court, their staff, family, and friends.

We made revisions to the system based on what we learned previously. We provided a video with instructions for the jurors about Zoom; allotted time for

technology issues; scrolled the juror questionnaire during jury selection; used virtual backgrounds for litigants; and tried a new system for submitting a question to the witness and a new platform for filling out the Verdict Form. The team learned from this mock trial:

- Providing instructions about Zoom to the jurors via video did not work. We will use a PowerPoint presentation supplemented by instructions from the Remote Bailiffs.
- The chat function was used to advise jurors how long the Court would be on a break or in a sidebar conference with attorneys. This system did not work well. A screen with a countdown clock will be created.
- There continued to be too much time spent moving jurors to different “rooms” and jurors experienced too much time waiting when the Court was addressing issues with the attorneys. While waiting, the jurors were looking at a blank white screen. Although they had messages in their “chat” function on Zoom, the jurors did not all look at their chat messages. A Zoom screen with a Countdown clock will be created.
- When the Clerk confirms the identity of the jurors, the jurors hold up a photo ID. Everyone on the screen can see it. Due to privacy

concerns and the public availability of the Zoom video, this photo ID process needs to be done individually in a private room with the Clerk.

- When the Judge asks jurors certain questions, he has to get a verbal response from each which takes up a lot of time. We tried the polling feature which did not work well. We need to find an icon like thumbs up, thumbs down or some other way of confirming responses during juror qualification.

- When the jurors are in the Remote Courtroom and the Judge and attorneys go to Remote Sidebar, the jurors can hear the Judge and attorneys in the background. This is because the Judge is actually in the courtroom with a CTO. Accordingly, when the Judge goes to Remote Sidebar, the jury will be moved to the Remote Jury Room.

- The polling feature works well for the venire to respond with yes or no answers but was time consuming.

- A buzzer system or some noise to signal when the jurors reach a verdict is needed.

- Scrolling the standard Juror Questionnaire on the screen for jurors to provide their information takes a lot of time. Other jurors get

distracted. The preference of all participants is for this questionnaire to be completed before Jury Selection.

- Jurors indicated they could hear Judge Anderson but could not see him because they were using speaker view. Because he was in the actual courtroom, Zoom did not pick him up as a speaker if the viewing jurors were in speaker view. We need to emphasize the pin feature.

- It would be helpful to have electronic labels for the Judge and the jurors in all capital letters on their tile.

- The jurors had difficulty determining who the Plaintiff or the Defendant was and where they were on the screen. Electronic labels will be made for the litigants and their attorneys.

- We will label the Remote Juror Bailiffs and also provide labels such as Juror Bailiff so the jurors know which bailiff to ask for IT help and which Bailiff will provide additional assistance.

- One juror recommended that we ask the jurors to download some type of software or spyware, similar to that used by some schools during remote exams, that monitors the jurors conduct and whether anyone is in the room with them. This would allow the Court to tell if they were distracted working on other documents, etc. This recommendation was not

accepted for a myriad of reasons including potential issues with downloading and taking the software off a computer, cost, and inconvenience. Close observations of Jurors and instructions to Jurors will continue, as it does in an in-person jury trial. Judge Anderson also created [Zoom Rules](#) for the Jurors.

- Opening statements and examinations of witnesses went well. Again, we will put a label on the screen for the witness.

- The jurors downloaded a Word document to fill out the Verdict Form. Then uploaded it and sent it to the Court when completed. This was very cumbersome. Mock Jurors with iPhones, and some with iPads had great difficulty. Another platform will be identified.

- Using the U-Serv for the jury to view the Evidence did not work well. Another option identified is Dropbox via a link in the chat function.

- Jury deliberations will not be recorded. The jurors will be given their Part 3 PowerPoint instructions, the Remote Bailiff will ensure they can access the evidence, fill out the Verdict Form and communicate with the Court when it is completed or if they have questions. Then the

recording function should be turned off, the Bailiff will leave the Remote Jury Room and the jurors will deliberate privately.

- One juror noted that the jurors could download the Evidence and/or screenshot the evidence. To mitigate this concern, an instruction will be given to the jurors that they are not permitted to take screenshots or download any of the evidence. The CTOs will try to prevent downloading of the evidence, but cannot prevent screenshots.

- A method to excuse the alternate jurors and an email to provide them work excuses and other information will be developed.

- It became evident in this Mock Trial that it is too much for the Remote Bailiffs to move people around, provide technical and instructions to the jurors, assist jurors with their comfort needs, and watch them to make sure they are not distracted or doing anything improper. Attorneys participating in the mock trials expressed concerns about juror misconduct, specifically jurors looking up information on other devices while in the remote courtroom or being distracted by other matters while in their homes. In other jurisdictions that have done remote trials, two judges assisted in running the system as well as watching the jurors to make sure they are not distracted or doing something improper. For our purposes, it was

determined that we did not need additional judicial labor, but a Special Magistrate was appointed to assist in this role. The magistrate will also assist with drafting Orders, Jury Instructions and assist the Court as directed.

- Not all jurors had notepads or knew they could take notes. The Jury Instruction will be modified to advise the jurors to bring a notepad and pen to the trial.

- One juror commented it would be helpful to scroll the final Jury Instructions on the screen when the Judge is reading them.

- A Zoom screen saver with a clock that tells the jurors how long a break is or how long the Court is going to be in sidebar will help them remain engaged.

- The jurors indicated it was hard to stay focused during monologues and they were also distracted by what witnesses had in the backgrounds. Virtual backgrounds will be made for the witnesses.

- The system to submit questions for witnesses was not user friendly. Participants who were not technology savvy needed extensive instruction to use the system. Other options will be considered.

- There were too many tiles on the screen at times. To minimize clutter, only the Judge, attorneys, plaintiff, defendant, witness- and the jurors

will remain on video during court proceedings. The Magistrate, Remote Bailiffs, Clerks other courtroom personnel, and anyone observing the trial will turn off their video but maintain their name on their tile.

§ 1.7 More Project Meetings; Modifications and Refinements

In the ensuing weeks, we continued our weekly meetings and refined the following documents:

- The three PowerPoints for the jurors. See also Chapter 5:
 1. [PowerPoint 1](#): Basic Juror Instructions on Zoom Functions.
 2. [PowerPoint 2](#): How to Submit a Question for a Witness.
 3. [PowerPoint 3](#): How to Access the Evidence, How to Fill Out the Verdict Form, How to Ask the Court a Question, and How to Notify the Court When a Verdict has Been Reached.

- The [Summons and Letter from Clerk of Court](#). See also Chapters 4 and 5:

1. [Email Number 1](#): To be sent to the jurors after they complete their qualification form. This email will contain basic information about Zoom, have a link to Zoom tutorials, have a link to two videos about Jury Selection, one from the Chief Justice and the other from the local Clerk of Court. The email

also contained a link to the Juror Questionnaire and instructions to fill it out. The Juror Questionnaire contains questions about access to technology devices, familiarity with certain technology applications, biographical information, and a hardship question. The Questionnaire will be provided to the Court and will also be provided to the attorneys several days in advance of jury selection to facilitate the jury selection process.

2. [Email Number 2A](#): Email to jurors advising them that they have been selected to serve on a jury.
3. [Email Number 2B](#): Will be sent to jurors thanking them for their service and advising them that they had not been selected to be on this jury. It also will include a link to the survey for the Pilot Program and a statement advising them of the importance of completing the survey.

During this process we tried different methods of jurors submitting questions to the Court or to a witness, and ways to fill out the Verdict Form. While these systems each worked, they were cumbersome. And, some of them required a fair amount of technical skill. During this time, we drafted and refined a [Juror Questionnaire](#) to send to the jurors before they reported for Jury Selection. Ultimately, CTO Mr. Smith recommended that the questionnaire be built using

SOFIA. The Jurors will use SOFIA to fill out the form, which is easier to use than other platforms sampled. Given that the potential jurors will have used SOFIA to answer the Juror Questionnaire we decided to use SOFIA for Jurors to submit a question for a witness, and also to fill in the verdict form. We tested this platform in subsequent mock trials, and it worked very well, was less cumbersome and, the volunteers reported that it was user friendly.

On July 10, 2020, Judge Anderson met with the CTOs for training on trial procedures, interacting with jurors, and the role of Bailiffs in the in-person trial.

§ 1.8 Another Remote Mock Jury Trial; Testing New Formats

Another Mock Trial on July 17, 2020 successfully tested the new systems. Mock jurors filled out the Juror Questionnaires two days before the mock trial. The Questionnaires were provided electronically to the attorneys in advance of voir dire. The attorneys found the questionnaires very helpful in selection the mock jury. The use of the Juror Questionnaires streamlined the Jury Selection process significantly, as was verified by the mock juror's comments.

- The volunteers liked the [countdown clock](#) on the Zoom screensaver during breaks and attorney sidebar conferences.
- Mock jurors were easily able to access the exhibits using Dropbox.

- Mock jurors were easily able to fill out the verdict form using SOFIA and felt that it did not take much technical knowledge in terms of downloading and uploading documents.
- A CTO participated remotely from the branch [library](#) without difficulty.
- Courtroom View Network (CVN) was contacted to broadcast the trial. The team considered several options to provide public access to the trial. See Chapter 9 for additional information. Lou Freitas of CVN joined our weekly meetings.

§ 1.9 First Binding Remote Civil Jury Trial Identified

By mid-July, several problems with the system had been identified and resolved. The system was more efficient and was ready for the Pilot trial. However, finding a trial had been challenging. In addition to the judges identifying potential cases, ABOTA also emailed its members. Some attorneys responded appeared before Judge Anderson for Case Management Conference. However, consent to proceed with a remote trial could not be obtained as either opposing counsel or their clients were unwilling to participate in the Remote Civil Jury Trial. In the ABOTA experience, some attorneys were willing to try the remote jury trial process, but the defendants' clients, particularly insurance

companies, “would not agree” to participate in the Remote Civil Jury Trial. Other jurisdictions may have had different experiences. Although the court initially identified July 20 as the trial date, when the deadline for completing the Pilot Program was extended to October 2, 2020, the trial date was moved. This allowed the team additional time to refine the system. Meanwhile in mid-July, the first Pilot Trial was identified.

The first Pilot Trial was a case on damages only. *Griffin v. Albanese Enterprise, Inc. d/b/a Paradise* (hereinafter “Pilot #1”). A default had been entered against the defendant. The case involved a young woman employed at an entertainment establishment as a dancer who was struck by two bouncers resulting in her injury.

§ 1.10 Pretrial Conference and Mock Trial

The Court held the Remote Pretrial Conference for Pilot #1 on July 30, 2020. In addition to usual matters addressed, the Clerk was present, and Exhibits were marked. The Exhibits would be put into the Dropbox to be sent to the Jury prior to deliberations. Jury Instructions and Verdict Form were finalized, and the Verdict Form was provided to the CTOs for entry into SOFIA. The Court offered the plaintiff’s attorney a practice session (using a mock trial problem unrelated to the actual case) to use the remote trial system.

The next day, the Court held a mock Jury Selection and abbreviated mock trial to familiarize the attorney with the system, much like an attorney trying a case out of town would visit the courthouse to familiarize himself with courthouse and courtroom. The system was explained and demonstrated, including the various Zoom breakout rooms appropriately named as “Remote Sidebar,” “Remote Jury Room,” and “Remote Plaintiff’s Attorney Conference Room.” He was provided an opportunity to review the PowerPoints and instructional information that would be shown to the jury. Judge Anderson created a Glossary of Terms for use in Remote Trials and a copy was provided to the attorney. Using a fact pattern we had previously employed, the attorney participated in a Mock Jury Selection, short opening statement, witness examination and short closing statement. The attorney had used Zoom before but did not have technology expertise. He found this practice session very helpful.

§ 1.11 Pilot Trial #1

[Summonses](#) were issued for the Remote Trial with a [letter](#) from the Chief Judge and the Clerk of Court explaining the Remote Civil Jury Pilot Program. The jurors signed into the Clerk’s website and responded to the qualification questions. Next, an email was sent to each juror with information about how to download Zoom, how to use basic Zoom functions, and when to appear. Links to two videotapes about jury service were embedded in the email as well as a link to the

[Juror Questionnaire](#). For more information about these summonses, emails and the Jury Selection process see Chapter 4, 5 and 11.

We issued 150 summonses in an abundance of caution. Jury yield according to OSCA and our Clerk was around 30% to 40% before the pandemic. Many factors could potentially negatively affect the jury yield in the pandemic, but as it turned out we had an excellent response – better than before the pandemic. Of the summons issued, 87 responded, about 58%. Fifty-Four Jurors (54) filled out the qualifications form. Thirty-Three (33) were excused or deferred before filling out the Juror Questionnaire. Of the remaining persons, 40 filled out the Juror Questionnaire. Fourteen (14) people did not submit or complete a Juror Questionnaire. Thirty-Seven (37) appeared for Jury Selection. Three were excused. A total of 6 were excused for hardship. A few jurors did not appear for jury duty that had not filled out the Juror Questionnaire and they were put back in the jury pool.

The jurors were divided into four panels for Jury Selection. Two panels appeared each day Wednesday, August 6 and Thursday, August 7. The jurors were given a time to sign in. Each juror was taken to a private room for the Clerk to verify their identity. Afterward, the CTOs assisted with any technology issues and gave the PowerPoint 1 Instruction. Then, jurors were placed directly into the Remote Courtroom for Qualification, Instructions and Information from Judge

Anderson, preliminary by Judge Anderson, then voir dire by the attorney. Hardships were done at the end of the first three panels. The fourth panel had three jurors with medical hardships, so those were addressed at the beginning of that panel. All jurors were questioned before the attorney exercised challenges and the 6 jurors and two alternates were selected. The maximum number of jurors on one panel was 13. The jurors were from the first two panels. However, our experiences with the last two panels provided an opportunity to try a different tactic with the fourth panel and helped us gain experience and data for this Pilot Program. After the jury was selected, an email was sent to the jurors and alternates advising them of when and how to report to the Remote Courtroom for the trial. The jurors not selected were sent an email thanking them for their jury services and encouraging them to fill out the survey.

The jurors were, for the most part, attentive during jury selection. One older man laid down during Jury Selection but was quickly back in his chair. Another juror candidly admitted he was [working on a school project](#) on another screen during Jury Selection. These were minor occurrences that were quickly and smoothly addressed without embarrassment.

On August 10, 2020, the case was tried through verdict. The trial went smoothly. The remote system worked exceptionally well. There was very little juror misconduct. The jurors were repeatedly reminded to turn off other devices

and to pay attention to the screen. Early in the trial, while instructions were being read, one juror appeared to be looking at another screen and typing. The Magistrate and CTO notified the Judge who repeated his prior instructions to give full attention to the trial and to discontinue the use of other devices. The juror seemed aware that it was directed to her and was attentive thereafter.

Jurors were given breaks every hour. One alternate juror was almost fifteen (15) minutes late returning from lunch, which can happen at in-person trials as well. Overall, the jurors were attentive and focused on the case. They seemed to be as attentive as an in-person trial, perhaps more so. The jurors awarded the Plaintiff a bit more money than requested and divided it differently than suggested based on supporting evidence.

There were very few technical problems during the trial and no significant disruptions. A lightning storm disrupted the connection once, but everyone signed back into the remote courtroom within five minutes. The attorney had some connection issues the first day of trial which was resolved with the help of the CTOs/Remote Bailiffs within ten minutes. The jurors did not have any technical issues that interrupted or delayed the trial. None of the jurors used the computers set up at the library, although offered to some during Jury Selection.

The jurors used the system to submit questions for the witnesses without difficulty. Five questions were submitted. A sidebar was convened. The Judge sustained objection to some questions. The remainder were asked of the witness.

Prior to deliberations the Remote Bailiff confirmed that each juror could open the Dropbox and view the evidence, and that they could fill out the Verdict Form. The foreperson filled out the Verdict Form without difficulty and notified the Remote Bailiff when completed. The [Verdict](#) was reviewed by the Court and published by the Clerk.

§ 1.12 Observations

Overall, the remote system worked smoothly in Pilot #1. The team identified a few areas to refine for the second trial, Pilot #2.

- The Juror Questionnaire will be amended to add additional space to provide information about past litigation for jurors involved in more than one case. One juror had two prior experiences with litigation, but the questionnaire only had space for one.
- The Juror Questionnaire will be amended to separate the question about occupation and employment into subsection (a) occupation and subsection (b) employment. Many jurors did not respond to both parts of the question.

- At least thirty minutes should be allocated at the beginning of Jury Selection to verify the juror's identification, provide technical assistance and put their names on their tiles as needed. The first day three hours were allotted for each panel which was inadequate. The check-in and preliminary Jury Instructions took about half of that time. The second day we allotted four hours which was sufficient.

- The [videotape](#) of the FSC's former Chief Judge discussing the importance of Jury Service was played for each panel of potential jurors. This sets a reverent tone for the process. Not all jurors viewed the videos from the link in their email prior to reporting for jury duty.

- The role of the Magistrate was helpful in watching the jurors and avoiding issues with juror misconduct. As in an in-person courtroom, the Judge watched the jurors. However, when the court was reading instructions and tending to other matters, it is helpful to have another set of eyes on the jurors. It was helpful to have an attorney present who was familiar with Court processes. The Magistrate and CTOs were in constant communication during the trial, anticipating the next event, preparing, modifying, addressing issues, answering questions and assuring the technology system was running efficiently. There was a second line of

communication between the Judge, Magistrate and lead Remote Bailiff/CTO to address issues identified by the court and to bring potential Juror issues to the Judges attention. This background management of the system is essential to the technological success of a Remote Jury Trial System.

- Juror Surveys were completed for this Pilot Program. See Chapter 14.

§ 1.13 Media and Inquiries

Pilot #1 was the first Remote Civil Jury Trial to verdict in Florida and possibly in the Country, and it garnered media attention. Prior to the trial responding to inquiries, the Clerk issued a [Press Release](#). Courtroom View Network broadcast Pilot #1, and the link was on the Court's website. The first day of trial, a reporter from one of the local television stations appeared and requested access to the remote courtroom, which was granted with the provision that the images of jurors not be recorded consistent with a local Administrative Order. The reporter monitored the trial, as did reporters from the local newspaper and the Florida Bar Journal. After the verdict was rendered, a reporter for the local Daily Record requested an interview, as did a reporter from the Florida Bar Journal, one from Law 360, and CVN. We held a meeting, a press conference of sorts on August 11, 2020 with the reporters to provide them an opportunity to ask questions. Several [articles](#) were published.

The team received inquiries from the state court in Gwinnett, Georgia. Their district was exploring doing Remote Civil Jury Trials. Essentially, they wanted our outline of how to do the remote trial. At that juncture, the team was working on refining the system and had not completed an outline, therefore decided not to provide the requested information until after the Pilot Program ended. However, the team agreed to answer questions about specific subjects or the process. They did not have any specific questions. Other inquiries were handled in the same manner.

One inquiry was from the Western Federal District Court in the State of Washington. They too were considering Remote Civil Jury Trials. They had a team working on this issue and had several specific questions. The team met with them for an hour, shared the summons, emails to jurors, and PowerPoint presentations with them. They provided their Attorney Handbook and Guidelines for a Remote Bench Trial.

§ 1.14 Pilot Trial #2

As Pilot Trial #1 was in progress, a second pilot trial was identified. Judge Anderson held a Case Management Conference and the attorneys and parties consented to a Remote Civil Jury Trial. *Mathis v. Argyros*, (hereinafter “Pilot #2”, is a breach of contract case. The plaintiff is an attorney seeking fees for representation of a client in a criminal proceeding. The defendant disputes the

amount owed and the terms of the contract. The existence of the agreement is not in dispute, but the terms of the agreement are disputed, as is the additional amount owed.

§ 1.15 Pretrial Conference Pilot #2

On August 26, 2020, the Court held a Remote Pretrial Conference for Pilot Trial #2. As required by the Order, the attorneys provided the exhibits stipulated into evidence to the Court, clerk, counsel, and magistrate. The evidence was marked and provided to the Clerk and CTOs to be scanned and placed into the Dropbox.

The Plaintiff and Defense attorneys were given the opportunity to participate in a mock trial and/or skills session. One previously participated in a mock trial as a juror. Both requested a skill session to practice screen sharing and a demonstration of the remote courtroom. The attorneys expressed familiarity with using Zoom and did not appear concerned about technology issues during trial.

The attorneys were encouraged to speak with CTO, Mike Smith, prior to Friday's trial skills practice to ensure that they have adequate technology and appropriate connection capacity. The attorneys were also encouraged to have their IT personnel available the morning of each trial day in the event there were any technology issues. They were also encouraged to have their IT people on standby

during the day in the unlikely event they had any connectivity or other issues that could not be resolved with the assistance of the CTOs.

Virtual Backgrounds were provided for the Plaintiff Attorney, Plaintiff, Defense Attorney, Defendant, witness, and Court Reporter.

The Court went through the Pretrial Conference Checklist with the attorneys and a [Pretrial Conference Order](#) was entered.

The attorneys had not finalized the Jury Instructions and Verdict Form. A deadline was given so those items would be completed, and the Verdict Form would be provided to the CTO for entry into SOFIA timely.

Jury Selection will be on Tuesday, September 29, continuing to September 30, if needed. The trial will begin after the jury is selected. The parties agree the trial should last one day. September 30 and October 1 are reserved for the trial.

§ 1.16 Skills Practice Session

On August 28, 2020, Judge Anderson, Magistrate Hodak, CTO/Remote Bailiff Mr. Smith and Mr. Muse held a practice session for the two attorneys. The Remote Courtroom system was shown to the attorneys, including the Remote Sidebar, Remote Attorney Conference Rooms, and Remote Jury Room. The instructions for the Jurors were also provided. During the session, the attorneys practiced various technical skills such as:

- Connectivity and speed tests.

- Screensharing to show exhibits and evidence. We encouraged them to practice that skill another day and offered the time of the CTOs and Magistrate, if needed, to schedule another remote trial skills session for one or both of the attorneys and staff that would assist in the remote trial.

- The use of annotating and highlighting an exhibit.
- A demonstration of the Jury Selection system, the appearance of the tiles and moving to Remote Sidebar if needed.

- A demonstration of the Remote Sidebar.
- A demonstration of the Remote Attorney Conference Room.
- A test of two people on separate computers signing into the Remote Courtroom from each attorney's office also all devices to be used during the trial, bandwidth, connectivity and speed were tested.

During the practice session, the attorneys indicated that they had been using Zoom for hearings and felt comfortable with the platform. They did not want or express a need for additional training or mock trials.

§ 1.17 Juror Summons

At the end of the summer, schools reopened amid the pandemic and the effect on juror yield was uncertain. In an abundance of caution, 150 jurors were summoned, 110 for the first day's selection and 40 for the second. The goal was to

yield two panels of fifteen jurors each on the first day, and one panel of 15 jurors on the second. If a jury and alternates could be selected on the first day, then the jurors for the second day would be excused. Of those summoned, 85 potential jurors responded, a yield of 58%, again higher than before the pandemic for in-person jury selection. Thirty-eight (38) potential jurors were excused or their service deferred, and the remaining thirty-seven (37) jurors filled out the Juror Questionnaires.

The jurors were randomly assigned to three panels. An additional email was developed to advise the Jurors of their reporting time. Panel 1 of 14 jurors to report at 8:00 a.m. on September 29, Panel 2 of 13 jurors to report at 1:00 p.m. on September 29, and Panel 3 of 10 jurors to report at 8:00 a.m. on September 30, if needed. If the jury was chosen from the jurors reporting on September 29, the jurors scheduled for the following day will be excused.

§ 1.18 Refining the Remote Trial System

Weekly meetings continued and focused on the Juror Summons, responses, and modifying email communications. A revised email, [Email 1.5](#), was drafted to inform the jurors of their date and time to report by Zoom for Jury Selection. The CTOs confirmed that the computers were still available at the branch library locations for use by jurors that may need a computer or a quiet location. The day

before jury selection one juror requested to use a computer at a branch library and arrangements were made to accommodate her request.

The City cancelled its Dropbox account leaving the team to find a different method to use to provide the evidence and Jury Instructions to the juror for deliberations. One-drive in Microsoft teams was the alternative provided. This platform did provide a challenge for users whose devices already had a Microsoft Teams account. The CTOs/Remote Bailiffs skillfully navigated a work-around for this problem. Once the jury is selected and the jury is sworn in they will test each juror's device to confirm that the One-drive system will work, and if not will implement the work around. Testing the system will be done early to avoid confusion and issues when the jury is ready to deliberate.

The team began to consider implications of this system once the Program ends. CVN is considering providing platforms for remote trials in other jurisdictions. The team is exploring ways to educate judges, and attorneys about remote jury trial logistics. The Florida Bar asked for a list of rules of procedure that may need to be changed or modified for the Remote Trial Process. Judge Anderson, Corinne Hodak and Angelo Patacca are reviewing the rules and will respond to the inquiry. This information will be included in the Report to the FSC.

CVN will broadcast Pilot #2. CVN will provide a link to the Clerk for posting on the website.

Judge Anderson has created the format for the report. All team members were encouraged to contribute to the report at least a week before Pilot #2 begins, and to be prepared to supplement the contributions as soon as Pilot #2 ends to meet the deadline to report to the Florida Supreme Court.

The day before Jury Selection Judge Anderson, Magistrate Hodak and the Remote Bailiffs met to review the procedures and process for the remote trial. We will use the same methods of communicating during the trial process with two email chains – one with Judge Anderson, Magistrate Hodak and Lead Remote Bailiff, Mr. Smith; and the other with Magistrate Hodak and the Remote Bailiffs.

Later in the day, all participants in the trial appeared before the Court to test technology, confirm their remote backgrounds were in place and answer questions about the procedures. Then a hearing was held on substantive issues recently identified. After the hearing, the team met to discuss the progress of the report and hyperlinks.

§ 1.19 Pilot #2

Jury selection was on September 29, 2020 with two panels of Jurors, fourteen (14) in the morning and twelve (12) in the afternoon. One juror who filled out a Questionnaire did not appear but was excused because he was out of the country. Jurors appeared on various devices, HP desktop, Lenovo laptop, HP laptop, Dell laptop, A21 Samsung Galaxy, Mac book, android phone, iPhone 8,

Samsung V20 phone, and iPad. One juror appeared at the library using a computer dedicated for jurors who did not have technology or a quiet location. See Chapter 6. All were able to participate. No juror was excluded because of technology issues. The panel was diverse and ranged in age from 27 to 73. Cause challenges were exercised at the conclusion of each panel. Preemptory challenges were exercised after the second panel. Six jurors and two alternates were chosen.

The additional panel of ten (10) jurors summoned for September 30, was released.

There were very few technology challenges in Jury Selection. During the questioning by one of the attorneys, he asked the panel to [unmute](#) all their microphones at the same time. After several minutes, this practice stressed the Zoom system and caused difficulty hearing the speaker and some blurring of images. The jurors were asked to unmute only when speaking which corrected the issue. Later, one of the jurors who had to pick up their child moved to her car during a break and drove to a different location. The court noticed she was in her [car](#), verified she was not driving and was safely parked for the remainder of Jury Selection.

The jurors reported for service the morning of September 29. They were assisted with technology issues and their virtual backgrounds installed. Three jurors were unable to install the virtual backgrounds due to their devices or

versions of Zoom. The jurors were numbered Juror 1 through Juror 8 for the screen. The Remote Bailiff gave them [Part 2 Jury IT instructions](#). See Chapter 5. A link was sent to each juror in the chat function to test the [OneDrive](#) System and all were able to open it without difficulty. When completed, each juror's identification was verified, and they moved to the Remote Courtroom where the oath was administered.

The trial proceeded with preliminary Jury Instructions, Opening Statements, and the Plaintiff's case. The Plaintiff testified for over three hours. Three jurors submitted questions for the first witness (the plaintiff). The Judge addressed the questions with the attorneys during [Remote sidebar](#) and followed the procedures identified. See Chapter 12. The second witness was an expert who testified for about an hour and a half. Jurors submitted two questions for this witness. The expert witness needed to testify this day, and the jurors all agreed to stay late, first until 6:00 p.m., then to 6:30 p.m. to complete the testimony. This was a long day for the jurors who had arrived at 8:00 a.m.

The attorneys used the screen sharing feature when questioning the witnesses and the Judge confirmed that all jurors could see the exhibits shown. There were no problems seeing the exhibits. During the day there were multiple sidebar conferences for juror questions, argument on objections and scheduling. All attorneys, the court reporter and Judge easily transitioned in and out of the

remote sidebar conferences. The Countdown screen was used during sidebars, comfort breaks and recess.

The next remote trial day began at 8:00 a.m. One juror had a speaker malfunction, so the Remote Bailiff assisted him in getting sound through his phone. He was able to fully participate during the trial, submitted juror questions and participated in deliberations. The plaintiff put on one witness, then rested. The defendant testified then rested, followed by a brief rebuttal. There were two sidebar conferences to consider Juror questions. Jurors submitted 20 questions to the Court to be asked of the defendant, the majority were asked of the witness. The system for Jurors asking questions worked flawlessly. There were also sidebar conferences to consider motions and legal matters after the plaintiff and defendant rested and before Jury Instructions were given.

Jury Instructions scrolled on the screen, using share screen, while read by the Court. There was an objection and brief sidebar conference during Closing Statements. The two alternate jurors were dismissed. Remote Bailiffs gave [Part 3 Jury IT Instructions](#) to the jurors. The evidence, PowerPoint instructions, Jury Instructions and Verdict Form were provided to the Jury via a link to OneDrive in the Chat function. The Remote Bailiff and Special Magistrate verified that all jurors could access all items in the OneDrive folder, and open each one before they left the Remote Jury Room. The Jurors chose a foreperson, deliberated and

reached a verdict. The foreperson filled out the Verdict form using SOFIA. See Chapter 12. The jurors did not have any problems or issues with the system for reviewing evidence and filling out the verdict form.

The remote civil jury trial system worked very well. The jurors were attentive. There were no problems with distracted jurors. The trial was much like one that would occur in an in-person civil jury trial before the pandemic.

§ 1.20 Observations

This remote civil jury trial with opposing counsel presented much of the same challenges and delays seen at the courthouse during in-person jury trials. The remote civil jury trial procedures worked well. See Chapters 11 and 12. The jurors were attentive. Jurors were able to submit questions for witnesses without difficulty. The attorneys effectively used the screen share feature to show the jurors the evidence. Direct and Cross examination proceeded much like it would during an in-person trial. Sidebar conferences were held seamlessly. The system for providing evidence to the jurors worked as well with OneDrive as it did with Dropbox. Using SOFIA to fill out the Verdict Form and notify the Court when a verdict was reached worked perfectly.

Just as there may be issues in an in-person trial if someone has a flat tire or gets stuck in traffic, there are technical issues that can arise each morning. Time should be allotted each morning for technical issues. Depending on the experience

of the jurors, some may need help downloading and installing backgrounds or adjusting sound on their devices. All jurors were able to work through any technical issues with the assistance of the Remote Bailiffs or Special Magistrate. Jurors are open to the use of the technology.

The trial participants were spotlighted or fixed into a position on the screen. The Judge was top center with Plaintiff and Plaintiff's counsel to his left and Defendant and defense counsel to his right. When testifying, the witness was placed in the top right tile. The jurors filled out the second and third rows. Although this was a better view for the trial participants, it required the Remote Bailiffs to reposition the tiles after each sidebar, break, and any other time the participants moved in and out of the Remote Courtroom.

The virtual Courtroom backgrounds for the Judge, Attorneys, litigants and witness is essential to creating a courtroom environment. Virtual courtroom backgrounds are preferred for the jurors, but a plain background can be used to avoid distraction.

This trial tested the system and the system worked beautifully.

The team met its objective of creating a viable remote civil jury trial system and procedures that can provide an option to continue civil jury trials when in-person trials are not available.

Chapter 2

Technology Requirements

“I consider trial by jury as the only anchor ever yet imagined by many, by which a government can be held to the principles of the constitution.”

Thomas Jefferson

§ 2.1 Courtroom Equipment

To maintain the look and feel of an in-person jury trial, Judge Anderson decided to conduct all of the mock remote civil jury trials and the two binding verdict remote civil jury trials in the Duval County Courthouse, Courtroom 601. Judge Anderson sat on the bench as he would do for an in-person jury trial. To create the look and feel of an in-person jury trial for himself, Judge Anderson decided to have Courtroom 601 equipment set-up in a way that would make the remote jury trial participants feel as if they were actually in Courtroom 601 based upon their view of the Judge. To that end, a secondary webcam mounted to a webcam stand was positioned directly in front of Judge Anderson at eye-level that allowed the viewer to see his name plate, a portion of his bench and the wall and seal behind him and have the [impression](#) he was looking at them. Judge Anderson had two large screens located in front of the counsel tables, with the large screen on his left side being in Zoom “gallery view”, allowing the Judge to see the entire remote courtroom and the large screen on his right side being in Zoom “speaker

view.” These dual screens also allowed the Judge to view all of the participants at once in the event the maximum number of face tiles exceeded 25. To accomplish this large dual screen view for Judge Anderson, [two 75-inch display monitors](#) were positioned side-by-side on carts with a form factor PC for both monitors.

Judge Anderson had requested a desktop flat screen monitor to his left where in-person sidebar conferences usually occur that would be devoted to remote sidebar conferences only. To provide a remote sidebar conference screen, a Lenovo all-in-one desktop PC with a built-in webcam and microphone was placed on the left side of Judge Anderson’s bench. Whenever the Judge holds sidebar conferences he switches the Zoom video setting from that secondary webcam mounted to a webcam stand directly in front of him (dedicated to the remote courtroom) to the Lenovo all-in-one desktop PC built in webcam located on the left side of his bench. In addition, a single low profile microphone MXL Model AC-404-LED US Boundary Microphone was placed on Judge Anderson’s bench to the left of his name plate, allowing him to use a single microphone for audio whether he was in a remote sidebar conference or in the remote courtroom, thus avoiding audio feedback or other interference issues. This allowed Judge Anderson to have the feel of turning his body to his full left as if holding an in-person sidebar conference on the left side of his bench. The participants in the remote sidebar conference would also see a [close-up video of Judge Anderson](#) that would

provide a similar look and feel to “approaching” the Judge at an in-person sidebar conference.

Finally, a small office desktop printer [Canon Imageclass LBP325DN](#) was positioned on a low-profile cart with rollers and located on the floor below Judge Anderson’s Lenovo all-in-one computer, dedicated to remote sidebar conferences, on the left side of his bench. A [Sony 4K video camera, mounted to a tripod](#), was located in physical courtroom 601, to capture the interaction between the Judge and the Remote Bailiffs (CTOs) during the mock remote civil jury trials and the binding remote civil jury trials for internal training purposes. A Sony digital camera was also used by the CTOs to take random photographs in courtroom 601 during the mock remote civil jury trials and the binding remote civil jury trials for internal training purposes.

§ 2.2 Blanket Technology Requirements

Although Judge Anderson had very specific equipment requests that evolved over the course of the workgroup’s meetings, processes and mock remote civil trials that could be fulfilled from the existing Fourth Circuit inventory, the following minimum “blanket” requirements would apply to all participants in a remote civil jury trial:

§2.2(a) Hardware

- **Web Camera:** Most laptops, tablets and other mobile devices are equipped with a built-in camera. However, for participants using a desktop computer, a webcam will likely be needed in order to fully participate in a remote civil jury trial, because all participants must be **seen** and **heard** during each stage of the remote jury trial. Without a webcam, the participant will be unable to transmit video.

- **Headset with Microphone or Built-in-Microphone:** Most laptops, tablets and other mobile devices as well as some desktop computers are equipped with a built-in microphone. However, such built-in microphones do not always produce quality audio sound. A headset with a microphone allows the participant to hear other participants more clearly during a remote civil jury trial. During the first binding remote civil jury trial proceedings, external USB microphones were utilized by Judge Anderson, the Remote Bailiffs, and the Attorney to provide high quality audio input.

- **Dual Monitors are HIGHLY Recommended:** A dual monitor display is not required, but is highly recommended, thus, allowing the participant to see all of the participants at one time if there are more than

25, and, if there are less than 25, allows the Zoom share screen feature to be on one of the screens to view evidence, demonstrative exhibits and PowerPoint presentations. In addition, larger dual monitors are preferable, such as 24-inch monitors or larger, allowing better recognition of subtle changes in facial expressions, body language and gestures.

§2.2(b) Important Considerations and Restrictions for Cell Phone Participants

Participants using cell phones to connect to a remote jury trial in Zoom will encounter the following restrictions and issues:

- A maximum of four (4) face tiles on one screen. However, by scrolling left or right, other participants can be seen, but, in any event, all of the participants beyond four (4) cannot be viewed simultaneously.
- Background cell phone applications and application notifications can interrupt Zoom videoconferences and possibly result in disconnections, delaying the remote civil jury trial.
- Virtual backgrounds for remote civil jury trial participants are available for iPhone users, but either severely limited or completely unavailable for android users.

§2.2(c) Software

In order to join the remote civil jury trial via the Zoom videoconferencing platform, participants will only be required to download Zoom itself; Zoom desktop client for a PC or Zoom Application for a cell phone or other mobile device. Although a participant can join the Zoom meeting through a browser, this significantly reduces the number of available Zoom features, including a virtual background.

- **Zoom Download for Windows:** Zoom client for Meetings.
- **Zoom Download for MAC:** Zoom from application store or Zoom client for Meetings. ***It's important to note, Zoom client for Meetings can only be downloaded on MAC after you have enabled the "download app store and identified developers" option under "system preferences".*
- **Zoom Download for iOS (iPhone):** Zoom Cloud Meetings in the App Store.
- **Zoom Download for Android Phones:** Zoom Cloud Meetings in Google Play Store.

§2.2(d) Minimum Hardware and Software Requirements for Zoom Virtual Backgrounds

- **Windows (as of 8/31/2020):**
- Zoom Desktop Client for PC version 5.2.0 (or higher)
- Windows Operating System 10 (64-bit)
- Intel i3 quad core or higher, Gen8 or higher
- AMD Ryzen 5/7/9 or comparable alternative
- **MAC (as of 8/31/2020):**
- Zoom Desktop Client for MAC, 4.6.0
- 4th Generation i7 quad core or higher processor
- 6th Generation i5 dual core or higher processor

§2.2(e) Internet Speed/Bandwidth Requirements

- **Connectivity:** For all remote civil jury trial participants, a stable, reliable, connection to the Zoom videoconferencing platform is the most critical and essential technology requirement. If the device or internet connection is insufficient to maintain connectivity, the participant will require an [alternate location](#).

- Before the actual remote civil jury trial, all participants, other than the remote jurors, should check connectivity with the Judge and Remote Bailiffs.

- **Minimum Connection Speed:** A minimum upload connection speed of 5mbs or higher is recommended. A MiFi can be used if the hardware internet being utilized does not meet that minimum speed or is otherwise unavailable. Participants can verify their respective device's connection speed with websites such as [a "Speed Test"](#).

Chapter 3

Consents and Orders Setting Remote Civil Jury Trial

“That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.”

George Mason

Pursuant to the requirements of [SCAO 20-31](#), “all parties must consent to participate in the pilot program.” The Fourth Circuit pilot program created the [*Consent Form and Waiver of Objections to Remote Jury Trial*](#) and the [*Consent to Record the Remote Civil Jury Trial*](#) proceedings (as a backup to remote court reporter and for the Florida Supreme Court) for the respective parties and their counsel to sign and e-file prior to the Court entering the Order Setting the Remote Civil Jury Trial. For each of the Fourth Circuit’s binding remote civil jury trials, the Court entered case specific [*Orders Setting Case for Remote Civil Jury Trial*](#).

Chapter 4

Remote Trial Jury Summons

“Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process.”

Flowers v. Mississippi, 139 S. Ct. 2228, 2238 (2019).

The Duval County Clerk of Courts summoned 150 jurors for each of the two binding remote civil jury trials. Chief Judge Mark Mahon and Ronnie Fussell, Clerk of Courts for Duval County, prepared a joint enclosure letter for the joint Remote Trial Jury Summons, providing the prospective remote juror with an overview of the remote jury trial project and explaining the historic nature of the remote trial process and thanking prospective jurors for their service. The Clerk’s office mailed the enclosure letter and remote summons to all of the prospective jurors—no different than an in-person jury trial.

The Remote Trial Jury Summons required only a few revisions to the standard jury summons. The remote summons instructed the prospective juror to complete the Part B – Juror Qualification Form either online or by completing the hard copy of the form and returning the same by U.S. Mail. The Juror Qualification Form requires the prospective juror to provide an email address. When the prospective remote jurors returned the completed Part B – Juror

Qualification Forms to the Clerk's Office, it was forwarded to the Remote Bailiffs (CTOs) who utilized the prospective jurors email addresses to initiate a series of form emails with links and attachments designed to prepare and train the remote jurors for the unique remote jury trial proceedings and follow-up with them after their jury service ended. This prospective juror preparation work was performed by the Remote Bailiffs (CTOs) together with Remote Deputy Clerk Brian Corrigan and is described in greater detail in [Chapter 5](#) of this Report.

For the first remote trial, the Duval Clerk's Office issued summons to 150 prospective jurors. These summonses were split over two days, with 75 being called for the first day of jury selection and 75 being called for the second day. Out of the 150 summons, 54 prospective jurors completed initial qualification and were available for jury selection representing 36% of the total. Of those 54 eligible for service, 37 prospective jurors (25% of the total pool) actually appeared for jury selection. An additional 33 people (22% of the total) responded to the summons and were either excused or postponed based on their responses. Combining these totals reveals a 58% total response rate to the summons.

For the second remote trial, the Clerk's Office again issued summons to 150 prospective jurors. However, in this case 110 prospective jurors were summonsed for the first day of jury selection, with 40 summonsed for the second. Out of the 150 summons, 47 prospective jurors (31%) completed initial qualification and

were available for jury selection. An additional 38 people (25%) responded and were either excused or postponed their jury service to a later date. The total response rate for the second trial was 56%, which kept in line with the response rate from the first trial.

Direct comparison of these response rates to those of in-person jury selections is problematic for two reasons. First, Duval County has not had an in-person jury selection since the COVID-19 pandemic, so any shift in the response rate due to COVID-19 is difficult to determine. Second, before the pandemic Duval's general policy was to summon a large number of prospective jurors (approximately 1,200 for a typical week) each Monday to cover all jury trials taking place during that week. Due to this, the significantly smaller number called for the two remote jury selections may have an effect on the comparison of response rates.

Having qualified the difficulty in direct comparison, for a typical in-person jury selection pre-COVID approximately 30% of prospective jurors would be either excused or request a postponement to a later service date, leaving approximately 70% available to be called for jury service. The exact number actually asked to report on the service date fluctuates based on the number of jurors needed for the various trials occurring that week. However, on average 60-

65% of the prospective jurors actually called to report on the selection date appear in person for jury selection.

The initial summons process was generally keeping in line with the Clerk's normal procedures, giving the Clerk a good initial framework. From there the following modifications were made to account for the remote jury selection process.

1. The Clerk's Office slightly altered the wording of its usual juror summons to reflect the remote nature of the proceedings.
2. Due to the small jury pool, the Clerk created and mailed the summons in house rather than using its usual outside vendor.
3. Prospective jurors were given a deadline to complete the Juror Qualification Form of two weeks before their scheduled jury selection date.
4. After receiving the completed Juror Qualification Forms, the Clerk's Office compiled the jurors' contact information and provided it to the Court IT Staff for further communication with the prospective jurors. This allowed the Court IT Staff to send a communication that included a juror biographical/hardship questionnaire, technical information regarding the Zoom

application, and two welcome videos from the Clerk's Office and the Florida Supreme Court.

Chapter 5

Remote Juror Preparation and Training

“In the jury box, no less than in the polling booth, every day the American way of life is given its rebirth. American jurymen are the custodians and guarantors of the democratic ideal.”

New York Justice Bernard Botein

The project’s mock remote jurors frequently experienced problems setting up Zoom videoconferencing on their devices for the early mock remote jury trials. Even if the mock remote jurors could successfully connect to the remote mock courtroom, they had difficulty with basic Zoom skills such as muting/unmuting, video adjustments, messaging, pinning video, and virtual backgrounds. As further refinements were made to the project during later remote trials requiring more advanced Zoom skills such as preparing written questions remotely for witnesses, remote juror inquiries of the Court during deliberations, reviewing exhibits remotely via Dropbox and completing the electronic verdict form remotely, the mock remote jurors were further frustrated with the remote process, resulting in frequent interruptions during the mock remote jury trial proceedings. Therefore, the flow of remote mock civil jury trials unexpectedly deteriorated into chaotic proceedings more analogous to an encounter at an Apple Store or Best Buy Store between a technologically-challenged customer and a store employee than the

seriousness of a jury trial in a courtroom. These episodes of technology problems suffered by mock remote jurors also created unintended and unplanned for collateral consequences—mock remote jurors without technology problems felt isolated, ignored and bored when remote bailiffs worked with mock remote jurors experiencing technology problems. Mock remote jurors with technology problems felt embarrassed, self-conscious, and frustrated as they realized the mock remote jury trial had been interrupted due to their technology problems.

In response to these problems, during the mock remote trial and meetings held between the various mock trials, the project’s workgroup reached a consensus that what we should develop a series of what we referred to as “form emails” to communicate with the prospective jurors in a step-by-step fashion to prepare them for each stage of the remote jury trial proceedings, including certain video and document attachments. With the input and collaboration of our mock remote jury trial participants and mock remote trial jurors, the project workgroup decided to develop simple Zoom tutorials to explain Zoom skills the remote jurors would need for each stage of the remote civil jury trial proceedings. The form emails were created in a collaborative process with drafts being circulated between the members of our workgroup for edits and additions. The CTOs developed the Zoom tutorials they would present to the remote jurors at various stages of the remote trial proceedings. The multi-part Zoom tutorials were tested by the Remote

Bailiffs during mock remote jury trials with mock jurors yielding valuable input and constructive criticism that resulted in further refinements of the tutorials and a decision to break up the Zoom tutorials into three small presentations. Mock remote jurors provided positive feedback during later mock remote trials and the mock proceedings became smoother with less technology interruptions as we approached the first binding remote civil jury trial.

The form emails are self-explanatory, therefore, the detailed content of each one will not be duplicated in this report. The project workgroup assigned numbers to each form email to reduce confusion as to the order and timing of sending form emails to the prospective jurors. The CTOs maintained a schedule for sending the form emails to the prospective remote jurors and remote trial jurors for each of the two binding remote civil jury trials. The following form emails were sent by the CTOs to the prospective remote jurors and remote trial jurors:

- [Form Email Number 1](#) was sent immediately after the Clerk’s Office received the [Part B – Juror Qualification Form](#) from the prospective juror. “Step One” of Form email 1 required the prospective juror to fill out the [Juror Questionnaire](#) and provided a link to do so using the State of Florida Interactive Access (“SOFIA”). It should be noted that SGS Technologies made various changes to SOFIA as requested by the CTOs on behalf of the Court to allow the [Juror Questionnaire](#) to be

completed online. In addition, the changes made by SGS Technologies allowed other critical remote civil jury trial forms to be completed online by the remote trial jurors using SOFIA, including the [Remote Juror Witness Question Form](#), [Remote Juror Inquiry Form](#), and [Verdict Form](#). In addition, Form Email 1 also contained two video links prospective remote jurors were expected to watch on their own before their remote appearance for jury duty: a message from the [Florida Supreme Court](#) about the importance of jury service and a welcome from the [Clerk of Courts](#). Finally, Form Email 1 provided the prospective remote jurors with Zoom information they would need to join the Remote Jury Selection.

- [Form Email 1.5](#) was sent immediately after the CTOs received the [Juror Questionnaire](#) from a prospective juror. This form email included attachments in “Step One”, [FAQ](#) and [Part 1 Jury IT Instructions](#) designed to guide prospective remote jurors through basic skills needed to install Zoom on their devices and rules and guidelines they will need to remember when they participate in the remote jury selection process. It should be noted that the [Juror Questionnaire](#) includes remote juror technology questions to assist the prospective remote jurors and the CTOs in identifying prospective jurors who either lack technology altogether, a quiet private space to participate, or will likely need significant technology

assistance prior to or during jury selection. Step One, paragraph 3, explains the Jacksonville Public Library accommodations made for jurors lacking technology (see [Chapter 6: Accommodating Jurors Lacking Technology](#)).

- [Form Email 2A](#) was sent to the 8 jurors selected to serve as the trial jury (6 jurors/2 alternate jurors). Form Email 2A has two parts: [Form Email 2A Part 1](#) and [Form Email 2A Part 2](#). Form Email 2A Part 1 was sent to jurors immediately after jury selection to simply advise each of them they were selected to serve, allowing them to make arrangements for their service. This form email also assigned each of them a distinct juror number (1-8, with 7 and 8 being alternates) and unique email address that incorporated their distinct juror number that they would use for their Zoom remote jury trial log-in. This unique assigned email address for Zoom log-in automatically assigned to each juror their virtual remote jury box background complete with Juror number, thus saving time when they log-in for trial. This form email also provided each remote trial juror a unique SOFIA personal log-in username and password based on their distinct juror numbers to access electronic forms needed during the remote jury trial. This email also advised them a follow-up email would be sent with additional instructions, which is [Form Email 2A Part 2](#). This form email provided the

8 remote trial jurors an attachment, the [Part 2 Jury IT Instructions](#), explaining the basic Zoom and SOFIA skills the Remote Jurors would need in order to prepare for the remote trial.

- [Form Email 2B](#) was sent to all of the prospective jurors not selected to serve as a trial juror. This form email included a link to the Florida Office of the State Courts Administrator (“OSCA”) survey for the Remote Civil Jury Trial Pilot Program.

- [Form Email 3](#) was sent to all 8 of the remote trial jurors after they reached a verdict and were discharged from their jury service. This form email included the same link in the OSCA project survey as [Form Email 2B](#).

- [Form Email 4](#) was sent to all of the remote jurors after they responded to the OSCA project survey. This form email included a link to the Fourth Judicial Circuit Project Survey.

The Zoom tutorials for the remote jurors were divided into three parts, corresponding with the three major stages of the remote jury trial. These Zoom tutorials are self-explanatory; therefore, the detailed content of each tutorial will not be duplicated in this report. In any event, each of the three major stages of the remote trial would demand the remote jurors develop new or additional Zoom and

SOFIA skills to successfully participate in the fully remote civil jury trial as follows:

- [Part 1 Jury IT Instructions](#) were sent to all of the prospective remote jurors as an attachment to [Form Email 1.5](#) to prepare them for the remote jury selection by explaining basic Zoom skills needed for the remote jury selection. Before the start of each remote jury selection session for each prospective jury panel, the Remote Jury Bailiffs presented the [Part I Jury IT Instructions](#) to the remote prospective jurors in the remote jury assembly room to confirm all of the remote prospective jurors were comfortable with the technology and confident they could participate in the remote jury selection process without limitations before being admitted to the remote courtroom to go on the record for remote jury selection.
- [Part 2 Jury IT Instructions](#) were sent to all 8 jurors selected to serve as the trial jury as an attachment to [Form Email 2A Part 2](#) to explain the basic Zoom and SOFIA skills the Remote Trial Jurors need for the remote trial, including how to set their assigned [virtual background Photo of Jury Box with their assigned Juror Number](#) for trial and how to use SOFIA to complete the [Juror Witness Question Form](#) whenever the Court invites the remote trial jurors to prepare written questions of the trial

witnesses. The Remote Jury Bailiffs also presented the [Part 2 Jury IT Instructions](#) to the remote trial jurors in the remote jury room to confirm all of the remote jurors were comfortable with the technology and the Zoom skills they would be required to use during the remote jury trial before being admitted to the remote courtroom to go on the record and begin the remote jury trial proceedings.

- [Part 3 Jury IT Instructions](#) were not sent to the remote trial jurors in advance. After 6 jurors were admitted to the remote jury room, after hearing the closing arguments and receiving the Court’s final Jury Instructions, the Remote Jury Bailiffs presented the [Part 3 Jury IT Instructions](#) to the remote trial jurors to give them instructions explaining basic Zoom and SOFIA skills needed during their deliberations, including how to use SOFIA to complete the Jury Inquiry Form and Jury Verdict Form and how to notify the Remote Bailiff using the Zoom “asking for help” feature to communicate to the Remote Bailiffs that they have a question, request or verdict.

During the Fourth Judicial Circuit’s first binding remote civil jury trial, *Griffin v. Albanese*, the Court, attorney, and Remote Jurors had few technology problems. When such technology problems occurred, the Court took a brief recess for the CTOs/Remote Bailiffs to address the issues off the record and the [slide](#)

featuring a countdown timer was placed on the screen with an estimated recess time period, thus, reducing frustration and embarrassment for participants experiencing technology problems and isolation for all participants and jurors waiting for the resolution of any technology problems.

Chapter 6

Accommodating Jurors Lacking Technology

“I have many things to say. My every right, constitutional, civil, political and judicial has been tramped upon. I have not only had no jury of my peers, but I have had no jury at all.”

Susan B. Anthony

Our workgroup had ongoing discussions during early meetings and mock remote jury trials about what to do for prospective jurors who lacked technology whether that be less than ideal devices (i.e. phone vs. tablet, laptop or desktop computer), older devices, insufficient or incompatible software, and/or lack of internet service, unreliable internet service or lack of bandwidth due to the number of devices using the internet in their home or place of employment.

Many questions were raised and discussed such as:

- How do we identify jurors who lack technology?
- When do we identify such jurors (i.e. day of jury selection)?
- What do we do when such jurors are identified?
- Can we excuse them immediately as a “hardship” or for “cause”? Can a party excuse a juror lacking technology with a peremptory challenge?

The Florida Supreme Court’s Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (“Statewide COVID-19 Workgroup”) provided the five circuits selected to participate in the pilot program clear requirements to maintain the integrity of the program including the instruction that “[t]he participating circuits must make sure that jurors aren’t excluded due to a lack of technology.”¹

A party may excuse a juror for just about any reason, and without any obligation to share that reason with the trial court.² In the nineteenth century, the United States Supreme Court described the peremptory challenge as an “arbitrary and capricious species of challenge” that can be based on the “sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another.”³ However, there are limits to what “unaccountable prejudices” can underlie a peremptory challenge. Peremptory challenges exercised in a discriminatory manner are prohibited by both the federal and state constitutions, and arguably this rule is based upon equal protection guarantees for civil litigants (and jurors). The Florida Supreme Court has created protections “to prevent invidious discrimination in jury selection” against certain “cognizable

¹ Statewide COVID-19 Workgroup [Meeting Minutes, June 4, 2020, page 6](#), second paragraph.

² See Padovano, Judge Phillip J., Florida Civil Practice §17.4 (2018 ed.).

³ [Lewis v. United States](#), 146 U.S. 370, 374-76 (1892).

classes” of people such as a juror belonging to a particular race, ethnicity, or gender.⁴ In addition, recognized classes under the federal or state Equal Protection Clause arguably include religion⁵ and sexual orientation.⁶ Could an argument be made that excluding otherwise qualified remote jurors from a civil jury trial due to a lack of technology violates the Equal Protection rights of the litigant(s) and juror(s)? Could an argument be made that jurors with inferior equipment (i.e. cell phone) would be treated differently by his or her fellow jurors with superior equipment (i.e. multi-monitor desktop computer) or otherwise have their contributions to jury discussions and deliberations discounted, or even ignored, due to a disparity in technology?

⁴ [*Smith v. State*](#), 59 So. 3d 1107, 1113 (Fla. 2011).

⁵ See, e.g., [*Bush v. Holmes*](#), 886 So. 2d 340, 390 (Fla. 1st DCA 2004), *aff'd in part*, 919 So. 2d 392 (Fla. 2006) (Equal Protection Clause of the Fourteenth Amendment prohibits unlawful intent to discriminate against individuals for an invalid reason, such as their religion). *But see* [*Dorsey v. State*](#), 868 So. 2d 1192, 1202 n.8 (Fla. 2003) (“In response to the dissent’s suggestion that this holding applies to jurors of a ‘particular gender, occupation or profession or other economic, social, religious, political, or geographic group,’ dissenting op. at 1204 n. 11, we note that this court has not extended *Neil’s* protections beyond peremptory challenges based on race, gender, and ethnicity.”). *Also see* [*State v. Pacchiana*](#), 289 So. 3d 857 (Fla. 2020) (quashing Fourth DCA decision that a peremptory strike was constitutionally impermissible because it was based on the prospective jurors religion on the basis of an unpreserved argument).

⁶ [*Obergefell v. Hodges*](#), 135 S. Ct. 2584 (2015) (right of same-sex couples to marry is fundamental right protected by Equal Protection Clause of Fourteenth Amendment).

The Statewide COVID-19 Workgroup did not provide a definition for “lack of technology” – did it include a disparity between juror devices (i.e. phone vs. multi-monitor desktop computer) and unequal Internet Service Providers (i.e. speed, bandwidth)? In addition, the Fourth Judicial Circuit does not have electronic devices such as tablets, laptops, or desktop computers to loan jurors with limited technology (phone) or no technology at all. Furthermore, the Fourth Circuit does not have the financial ability to provide the jurors high speed internet service at their respective homes. With restricted public access to the Duval County Courthouse, we could not offer computer terminals for remote jurors to participate – that would be inconsistent with our proposal submitted to the Statewide COVID-19 Workgroup to hold a fully remote civil jury trial.

After several discussions concerning technology options with Judge Anderson, CTO Mike Smith met with a Deputy Director of the Jacksonville Public Library System to discuss the possibility of using private spaces in branch libraries in Duval County. All Jacksonville Public Library branches are equipped with High Speed Internet and private, self-enclosed, single person rooms with a desktop computer, appropriate lighting and furniture. From the beginning, the Jacksonville Public Library System was supportive of our remote civil jury trial project and wanted to be involved. With some minor modifications of existing hardware, our CTOs were able to prepare five (5) Jacksonville Public Library branches, thus

allowing juror(s) without technology to participate in the remote jury trial by traveling to a branch library conveniently located near their home(s). These five (5) branch libraries included a downtown branch and four (4) suburban branches in different areas of Duval County. CTOs temporarily placed all-in-one computers equipped with a built-in camera and microphone in each library branch hardwire connected to the City of Jacksonville’s (“COJ”) network, maintained by COJ’s IT Department with internet speed and connections optimal for video teleconferencing. During the final mock remote civil jury trial, one of our CTOs served as [a mock remote juror participating from a downtown library branch](#). He was able to participate in every stage of the mock remote civil jury trial without any technology problems. For the second remote civil jury trial a [prospective juror](#) utilized a suburban branch library to participate in the remote jury selection without difficulty. CTOs installed “Team Viewer” software on the all-in-one juror computers placed in the library branches, allowing remote access to correct tech problems during the remote jury trial.

Prospective jurors who responded to their remote summons for the first remote civil jury trial, *Griffin vs. Albanese* (“*Griffin*”), were emailed an online [questionnaire](#) to complete that included technology questions, allowing the CTOs to identify jurors who may lack technology and, thus, need to utilize the Jacksonville Public Library branch technology alternative. There were no jurors

expressing, or otherwise demonstrating by their responses to the questionnaire, a need for the Jacksonville Public Library branch technology alternative. However, the Court did have one exchange with a juror who complained about his older device, during which time the Court offered the library alternative. Despite the Court's encouragement, the juror decided to press on with his personal electronic device due to fears over being exposed to COVID-19 during a library visit even though all libraries were closed due to COVID-19 and were maintained by a small staff.

No jurors were excluded from jury service due to a lack of technology in the first or second remote civil jury trials. The *Griffin* jury (6 jurors and 2 alternates) was extremely diverse with an age range of 18 to 56 years of age and made up of five (5) females (two (2) African-American, two (2) white, and one (1) Asian-American and three (3) males (two (2) white and one (1) African-American). The *Mathis* jury panels were diverse as to race, ethnicity and age. The *Mathis* jury (6 jurors and 2 alternates) was diverse as to age, a range of 31-73 years of age, with four (4) females and (4) males. There was no indication that the *Griffin* or *Mathis* litigants were deprived of a jury of their peers due to technology or the unique demands of a remote jury trial.

Chapter 7

Remote Attorney Preparation and Training

“Trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature.”

James Madison

The Fourth Circuit project workgroup provided attorneys participating in the binding remote civil jury trials opportunities to practice their Zoom skills and gain familiarity with the remote procedures. The attorney participated in portions of an abbreviated mock remote civil jury trial using the same mock trial materials and exhibits the project workgroup has been using for the mock remote trials since the creation of the project. Volunteer attorneys who participated in mock remote jury trials were available to assist the binding remote trial attorneys with Zoom skills and remote trial procedures. The attorneys practiced their Zoom skills for their binding remote trial by connecting with the actual remote courtroom via Zoom, learning how to use the virtual backgrounds assigned to them and testing their technology, equipment and Internet service in the remote presence of the court and CTOs. This preparation process allowed the attorneys and their law firm’s IT department/professionals and other staff to work with the CTOs to have their questions answered, identify any problems or vulnerabilities with their technology

requiring repairs or replacement before the actual binding remote trial. The CTOs also worked with the witnesses and Court Reporter for the binding remote civil jury trials to ensure a stable and reliable network connection could be established between all of the participants, the Court and the remote courtroom. The CTOs conducted internet speed tests and bandwidth check for all the attorneys, witnesses and court reporter to verify that their respective internet service satisfied the minimum Zoom requirements to participate effectively in a remote civil jury trial. During this mock remote civil jury trial session and technology check with the attorneys, the Court and Remote Bailiffs practiced moving the attorneys between various remote locations they may be required to move to during the actual binding remote civil jury trial, including, but not limited to, the remote sidebar, remote attorney conference room and remote courtroom. The attorneys were required to complete the [Remote Pretrial Conference Checklist](#), a Pretrial Stipulation and a proposed [Pretrial Conference Order](#) and meet and confer to review all trial exhibits for the purpose of pre-marking the exhibits and agreeing, if possible, to pre-admit exhibits into evidence before opening statements.

Chapter 8

Remote Trial Witness Subpoenas

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

Martin Luther King, Jr.

Although there were no remote witnesses requiring subpoenas to testify in either of the binding remote jury trials, the Fourth Judicial Circuit remote pilot project workgroup did discuss and consider how remote witnesses should be subpoenaed to trial and where they should be placed while waiting to testify remotely. The consensus was that remote witness subpoenas should contain two different Zoom invites; separated by Plaintiff’s witnesses and Defendant’s witnesses.

The Plaintiff’s witnesses, whether subpoenaed or appearing voluntarily, should receive a Zoom invite to the Remote Plaintiff’s Attorney Conference Room. The Defendant’s witnesses, whether subpoenaed or appearing voluntarily, should receive a Zoom invite to the Remote Defendant’s Attorney Conference Room. This will reduce the risk of witnesses violating the Rule of Sequestration and allow attorneys to confer with their respective witnesses remotely and privately during the remote jury trial.

Chapter 9

Media and Public Access to Remote Civil Jury Trials

“Representative government and trial by jury are the heart and lungs of liberty. Without them we have no fortification against being ridden like horses, fleeced like sheep, worked like cattle and fed and clothed like swine and hounds.”

John Adams

In Florida, generally, all civil court proceedings are open to the press and to the public. Although the right to public access to judicial proceedings is often asserted in criminal cases, it also exists for the same policy considerations in civil cases. In 1884, Massachusetts Supreme Court Justice Oliver Wendell Holmes held that members of the public enjoy a right of access to civil trials, rooted in democratic principles, stating: “[i]t is desirable that the trial of [civil] causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility.”⁷ In other words, every citizen has a right to observe the way in which the justice system operates.

The right to attend a civil jury trial also includes the right to make a recording of the proceeding and to take photographs. [Rule 2.450, Fla. R. Jud.](#)

⁷ [Cowley v. Pulsifer](#), 137 Mass. 392 (1884).

Admin. allows print journalists to take still photographs and members of the electronic media to operate videotape cameras in the Florida Courts, subject to numerous technical and practical requirements. In addition, the Chief Judge of the Fourth Judicial Circuit has entered two Administrative Orders to ensure that the logistics of the media coverage will not interfere with the proceedings. Second Amended Administrative Order No. 92-02, among other things, controls the number of cameras, “pooling arrangements,” sound and light equipment, location of equipment and personnel, and protecting confidentiality and privileged communication. Administrative Order No. 2015-1, among other things, defines “media” for credentials and coverage of all public judicial proceedings.

The Florida Supreme Court has held that “both civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records.”⁸ The Florida Supreme Court in *Barron* reasoned that “openness is basic to our form of government” and “[p]ublic trials are essential to the judicial system’s credibility in a free society.”⁹ The *Barron* court cited to the following quote from an 1893 California Supreme Court opinion in support of its decision:

In this country it is a first principle that the people have the right to know what is done in their courts. The old

⁸ *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988).

⁹ *Id.* at 116.

theory of government which invested royalty with an assumed perfection, precluding the possibility of wrong, and denying the right to discuss public trust, and the greatest freedom in the discussion of the proceedings of public tribunals that is consistent with truth and decency, are regarded as essential to the public welfare. Therefore, when it is claimed that this right has in any manner been abridged, such claim must find its support, if any there be, in some limitation expressly imposed by the lawmaking power, or the right to exercise the authority claimed must be necessarily implied as essential to the execution of the powers expressly conferred.¹⁰

The United States Supreme Court in 1947 held:

A trial is a public event. What transpires in the courtroom is public property... there is no prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.¹¹

In 1980, Chief Justice Warren Burger stated:

Whether the public has a right to attend trials of civil cases is a question not raised by this case, but we note that historically both civil and criminal trials have been presumptively open.¹²

¹⁰ [Id.](#) at 116, 117.

¹¹ [Craig v. Harney](#), 331 U.S. 367, 374 (1947).

¹² [Richmond Newspapers, Inc. v. Virginia](#), 448 U.S. 555, 580 n.17 (1980).

In a concurring opinion in the same case, Justice Stewart expressed that “the first and fourteenth amendments clearly give the press and public a right of access to trials themselves, civil as well as criminal.”¹³

The Fourth Circuit’s [Second Amended Administrative Order No. 92-02](#) prohibits jurors from being recorded or photographed at any time. Therefore, we could not simply broadcast our remote civil jury trial on YouTube. Counterbalanced against the jurors’ confidentiality interests is the public’s right to attend a jury trial and media’s right to record a jury trial as discussed above. During the course of our remote mock trials and weekly workgroup meetings we discussed how to protect jurors’ confidentiality while providing access to the public and the media. Initially, we decided to create a Remote Gallery for the public and media to attend our first remote civil jury trial. The initial plan was to publish a Zoom invite for the public and media for the binding remote civil trial on the Clerk of Court’s website and a draft [“Acknowledgment” form](#) was created to be filled in electronically and electronically signed in order for the public and media to enter the Remote Gallery in the Remote Courtroom. This “Acknowledgement” form was intended to combine Zoom rules, standard in-person courtroom rules and possible sanctions for violations of the rules. In any event, as we approached the first binding remote civil jury trial, we realized that a

¹³ [Id.](#) at 599.

significant number of persons and media were interested in the first binding remote jury trial, making our initial plan unrealistic. We simply did not have enough CTOs to manage the logistics of the remote jurors and remote trial procedures while simultaneously managing the potential problems and issues of the remote gallery (i.e. admitting to the remote courtroom; avoiding interruptions and disruption by persons in the gallery; managing exits and re-entry; etc.).

Fortunately, Courtroom View Network (“CVN”) requested to broadcast our first binding fully remote civil jury trial and agreed to allow the public and media to view it for free, without paying for a subscription, and blur out the remote juror’s faces, thus protecting their privacy. Other than blurring out the juror’s faces, there was no other editing of the first binding remote civil jury trial. However, the CVN editing of the juror’s faces resulted in a broadcast delay of several hours. The CVN link to the first binding remote civil jury trial was posted on the Clerk of Court’s website. On the morning of the first day of the first binding remote civil jury trial, as the Remote Bailiffs, CVN, the Court, Counsel, Plaintiff, Clerks, Court Reporter, and Jurors are preparing, off the record, to test connectivity and devices before Court was in session, members of the media expressed dissatisfaction with watching the first binding remote civil jury trial via CVN on a delayed basis. Within minutes of “going on the record” with the first remote prospective jury panel, Judge Anderson decided to invite the members of

the media into the actual remote courtroom just prior to going on the record with preliminary matters before the first remote prospective jury panel entered the remote courtroom, conditioned on their agreement that they would turn off their audio and video while logged into the remote courtroom and not record the jurors, protecting their confidentiality. Throughout the remainder of the first binding remote jury trial and the second binding remote jury trial the Court required the media to remain in a Zoom waiting room until just before going on the record each court day. The media was not permitted to enter the remote jury room, the remote attorney conference room or the remote sidebar. The media was not permitted to be in the remote courtroom before court started as we engaged in technology checks and troubleshooting for the participants and CVN off the record. Fortunately, CVN agreed to also broadcast the Fourth Circuit's second binding remote civil jury trial, allowing the public to view it unedited, with only the juror's faces blurred out, on a delayed basis. Under the Fourth Judicial Circuit's current Administrative Orders this is the best balance we could reach between jurors' confidentiality concerns and the public and media's access to the remote courtroom.

Chapter 10

Zoom Recess Screens for Remote Civil Jury Trial

“The greatest service of citizenship is jury duty.”

Abraham Lincoln

During the course of the mock remote civil jury trials, some of our mock remote jurors reported feeling isolated and ignored when participating in the trial remotely, particularly during planned or unplanned (due to technology problems or remote sidebar conferences) breaks or recesses. Obviously, being a remote jury trial, the only connection our remote jurors have to a remote jury trial proceeding is the screen of whatever device they use to participate in the remote trial. Conversely, during an in-person jury trial recess, jurors remain in the jury room or they are allowed to leave the jury room to go to the snack bar, or during a lunch recess they may leave the confines of the courthouse and walk a short distance to a nearby restaurant.

In response to this issue, by mid-July our workgroup decided to create special screens for Zoom to be used at the beginning of each court day, during planned and unplanned recesses, and at the end of each court day. To that end, we created the following PowerPoint slides for the Zoom screen:

- A [slide](#) containing a photograph of the Duval County Courthouse and the case style to be displayed on the screen at the beginning of each court day.
- A [slide](#) containing a photograph of the Duval County Courthouse notifying the jurors that we are in a “short recess” and another [slide](#) containing the same photograph but notifying the jurors we are in a “remote sidebar conference,” both with an operating countdown timer to keep jurors connected to what is going on in the remote courtroom, compel them to return to their screens to check the timer—to feel like they are “still in the game.”
- Another recess [slide](#) containing the same photograph of the Duval County Courthouse and operating countdown time, notifying jurors we are in a “lunch recess.”
- An evening recess slide containing a photograph depicting exiting the Courthouse lobby in the evening notifying the public and media court is in recess until either [8:30 a.m.](#) or [9:00 a.m.](#) the following morning.

We tested the new Zoom recess screens with our final mock remote jury before the first binding remote civil jury trial and they felt more connected to the remote court proceedings with the countdown timer during recesses.

Chapter 11

Remote Jury Selection Procedures

“By obliging men to turn their attention to other affairs than their own, it rubs off that private selfishness which is the rust of society.”

de Tocqueville on jury service

The jury selection procedures used by the Court in both binding remote civil jury trials, *Griffin v. Albanese* and *Mathis v. Argyros* were essentially the same. The entire unedited video and audio recordings of both binding remote trials, including jury selection, are enclosed with this report and also available via the CVN links previously provided for viewing. The remote civil jury trial recordings for both cases are self-explanatory. Therefore, this report will not attempt to provide a detailed written description of the remote jury selections procedures which can be readily observed by watching the recordings of the remote trials.

However, this chapter will briefly outline jury selection procedures unique to the Fourth Judicial Circuit’s project in contrast to a traditional in-person jury trial as follows:

- 150 jurors were summoned for each binding remote civil jury trial;

- With a limit of 25 tiles per screen, to reduce confusion, the prospective jurors responding to the remote summons were randomly placed in prospective jury panels of no more than 15 jurors;
- For the project's first binding remote civil jury trial, *Griffin v. Albanese*, the jury selection consisted of four prospective jury panels on Thursday and Friday before trial, one panel in the morning and one in the afternoon on each day.
- For the project's second binding remote civil jury trial, *Mathis v. Argyros*, due to the limited availability of the attorneys before the October 2, 2020 project deadline, the jury selection consisted of three prospective jury panels, two (morning and afternoon) on Tuesday, September 29, 2020 and one (morning only, if necessary) on Wednesday, September 30, 2020, before trial.
- We learned during the first day of remote jury selection for the first binding remote civil jury trial that it is reasonable to factor in approximately 30 minutes for each remote jury panel to log-in via Zoom to the remote jury assembly room and complete all of the [preliminary technology matters](#) and the [FAQ and Part I Jury IT Instructions](#) off the

record with the Remote Jury Bailiffs before being admitted to the remote courtroom to participate in the remote jury selection.

- During this initial preliminary time period after the remote prospective jurors logged into the remote jury assembly room the Remote Jury Bailiffs worked together with the Remote Deputy Clerk to efficiently address several critical tasks before the jurors were admitted to the remote courtroom: check technology of each remote prospective juror, troubleshoot any problems and answer any technology questions; coordinate the movement of each of the remote prospective jurors from the remote jury qualification room (a Zoom breakout room) to the Remote Deputy Clerk's office (another Zoom breakout room) to have their identification verified by reviewing their respective photo identification via Zoom video, thus permitting the Remote Deputy Clerk to comply with [AOSC 20-16](#) for swearing-in each panel of remote prospective jurors after they are admitted to the remote courtroom for remote jury selection; and presenting the FAQ and Part I Jury IT Instructions.

- After each remote prospective jury panel entered the remote courtroom, the Court did slightly modify the traditional instructions given to in-person prospective jury panels for the remote process. However, the most

substantive modification was the Court providing the remote prospective jurors with instructions specific to the totally remote jury trial format, consisting of ten basic [“Zoom Rules”](#) to follow throughout the remote jury trial proceedings.

- Having confirmed compliance with AOSC 20-16, the Remote Deputy Clerk [administered the oath](#) to the remote prospective jurors.
- The attorneys were given strict time limits for their questioning of each prospective jury panel because they were provided each prospective juror’s completed questionnaire well in advance of jury selection, thus providing them ample opportunity to fully research the background of each prospective juror.
- Any hardship issues reported by remote prospective jurors in their questionnaire or in response to the Court’s initial questioning of the entire panel were addressed by the Court and counsel in the presence of the Remote Court Reporter at the [Remote Sidebar Conference](#) (another Zoom breakout room).
- At the conclusion of the attorney’s questions of each remote prospective jury panel the Court gave the jurors a modified standard recess instruction before they left the remote courtroom, advising the remote

prospective jurors that they would receive an email either advising that they were selected to serve on the remote trial jury with additional instructions (See Form Email 2A Part 1 and Form Email 2A Part 2) or advising that they were not selected to serve on the remote trial jury (See Form Email 2B) and reminding them to complete the survey.

Chapter 12

Remote Civil Jury Trial Procedures

“The right of trial by jury in civil cases is fundamental to our history and jurisprudence. The founders of our nation considered it an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign.”

U.S. Supreme Court Chief Justice William H. Rehnquist

The trial procedures used by the Court in both binding remote civil jury trials, *Griffin v. Albanese* and *Mathis v. Argyros* were essentially the same. The entire unedited video and audio recordings of both binding remote civil jury trials are enclosed with this report and also available via the CVN links previously provided for viewing on demand. The remote trial procedures should be easily recognizable to Judges, attorneys and court personnel, because they mirror in-person jury trial procedures with some modifications to accommodate the completely remote Zoom videoconferencing platform. Therefore, this report will not attempt to provide a detailed written description of the entire remote civil jury trial procedures which can be readily observed by watching the recordings of the remote jury trials.

However, this chapter will briefly outline remote jury trial procedures unique to the Fourth Circuit's project in contrast to a traditional in-person jury trial as follows:

- At the Remote Pretrial Conference, with the Remote Trial Clerks and Remote Bailiffs participating, the Court and attorneys pre-marked all exhibits to be pre-admitted into evidence without objection, thus allowing such trial exhibits to be saved in the remote Dropbox for the remote jury to access while deliberating the case at the end of the remote trial.
- Final Jury Instructions and a Verdict Form were completed before jury selection, thus, allowing the Jury Instructions to be saved in the remote Dropbox for the remote jury to access and review during deliberations and the CTOs to convert the verdict form into a SOFIA document that can be completed remotely by the remote jury.
- The CTOs created virtual backgrounds for all of the remote civil jury trial participants: each of the 8 remote trial jurors automatically received their virtual [jury box backgrounds](#) when they logged-in to the remote courtroom; [Plaintiff's Attorney](#); [Plaintiff](#); [Defendant's Attorney](#); [Defendant](#); [Plaintiff's Witness](#); [Defendant's Witness](#); [Clerk](#); [Court Reporter](#); [Remote Bailiff](#); [Special Magistrate](#). CTOs took digital

photographs inside a physical courtroom in the Duval County Courthouse in the Zoom recommended resolution of 1290 x 720 pixels to serve as dedicated virtual backgrounds for each of the participants with a color-coded label applied to each photograph. This allowed the jurors and participants to quickly identify each participant and created a remote setting that [visually mirrored an in-person courtroom](#) in the Duval County Courthouse.

- [Zoom recess screens](#) were created prior to trial and available for the Remote Courtroom Bailiff to access quickly for planned and unplanned recesses.

- The following Zoom remote breakout rooms were created and managed by the Remote Bailiffs/CTOs throughout the remote jury trial proceedings from jury selection through verdict for the relocation and movement of jurors and participants from the remote courtroom during remote trial proceedings:

- Remote Jury Assembly Room (Jury Selection only)
- Remote Clerk's Office (for Deputy Clerk to confirm each juror photo identification individually)
- Remote Jury Room (Jury Trial only)
- Remote Plaintiff and Defendant Attorney Conference Rooms

- Remote Sidebar (for Judge to confer with attorneys and jurors (when claiming hardship, in or out of the presence of a court reporter)).

Although, internally, the Remote Bailiffs had their own system for identifying which Zoom breakout room jurors and participants were being invited/moved to, the Court always referred to that breakout room, on the record, by whatever physical courthouse/courtroom name that would have been used during an in-person trial but adding “remote” to the location. This allowed the Fourth Judicial Circuit’s binding remote civil jury trial to look, sound and feel like an in-person civil jury trial.

- The Court created a [Glossary of Terms for Remote Courtroom and Remote Personnel](#) to ensure that all remote civil jury trial participants use the same language to describe basic trial tasks and locations in the courtroom and courthouse and avoid falling into using Zoom meeting terminology that would detract from the goal of making the remote civil jury trial look, feel and sound like an in-person jury trial.

- During both jury selection and the jury trial, to reduce Zoom screen clutter and chaos, the number of participants appearing on the screen was maintained at the lowest possible number; only the Judge, lawyers,

parties and jurors remained on the Zoom screen whenever remote court was in session. All other remote participants – Clerks, Court Reporters, Special Magistrate and Remote Bailiffs only appeared on the screen when called upon to do a task (i.e. administer the oath, or when introduced) or respond to the Court, then they would turn off their video and audio, disappearing from the screen.

- A few weeks after the first binding remote civil jury trial, a Zoom software update will now permit the “host” to permanently fix the participant’s tiles on the Zoom screen. Assuming a limit of 25 tiles (5 rows of 5), for the second binding remote civil jury trial, the Judge will be located in the top center of the Zoom screen with the attorneys and parties on either side of the Judge; Trial Jurors 1-5 will be located on second row; Trial Jurors 6-8 will be located on the third row. The above-listed participants will be fixed in the same screen location whenever court is in session. The remaining remote civil trial participants (witnesses, court reporter, clerks, remote bailiffs, special magistrate) will appear on the Zoom screen as needed. Therefore, such participants’ tiles appearing sporadically in rows 3, 4 and 5 of the Zoom screen will not be fixed on the screen.

- At the beginning of each court day for the remote jury selection and remote jury trial Judge Anderson and all of the participants, except for the attorneys, parties, and jurors would log-in to the remote courtroom via Zoom between 7:00 a.m. and 7:30 a.m. During this time period the Courtroom View Network (“CVN”) production team would also log-in to the Remote Courtroom 601. Judge Anderson and a single Remote Bailiff (CTO) were the only participants physically in Courtroom 601 at the Duval County Courthouse. All other participants logged-in remotely from other locations. During this early morning log-in process, the participants checked their technology, including video and sound checks under the supervision of the Remote Bailiffs (CTOs). During this early morning process, any technology issues were resolved. Typically, between 7:30 a.m. and 8:30 a.m. each court day, the attorneys, parties and court reporter would log-in to the Remote Courtroom and do the same technology check, including video and sound checks under the supervision of the Remote Bailiffs (CTOs), and any technology issues were resolved by 8:30 a.m. All of the participants, except the jurors, engaged in the same log-in/technology check process in an abbreviated way after the lunch recess.

- Approximately 30 minutes before the start of each Court day (8:00 a.m. for the remote jury selection and 8:30 a.m. for remote jury trial) the remote jurors logged-in to the remote jury assembly room (remote jury selection) or the remote jury room (remote jury trial) and Remote Jury Bailiffs immediately checked their technology and **prepared and trained** the remote jurors to participate in the remote proceedings. This preliminary remote jury process took approximately 30 minutes. To comply with **AOSC 20-16**, the Remote Trial Clerk also confirmed their identity individually during this time by inspecting their photo identification in the same remote Clerk’s Office used during jury selection.

- While the remote jurors were in the remote jury room before the commencement of the remote jury trial being prepared and trained by the Remote Jury Bailiffs, Judge Anderson met remotely with the attorneys and parties, on the record, in the presence of the Court Reporter, to handle any preliminary logistical, scheduling or legal matters not previously addressed during the Pretrial Conference, including pre-admitting into evidence all exhibits agreed to by the parties. The Remote Bailiffs set-up a “Remote Dropbox Exhibit File” during pretrial preparations to hold all of these exhibits pre-admitted into evidence, together with the final jury instructions

and verdict form. This remote Dropbox exhibit file was not accessible by the remote jurors until they began deliberations.

- Remote “call to order”.
- A Remote Bailiff struck a gavel and **announced** a remote **“call to order”** with special instructions modified for a remote proceeding.
- Having confirmed compliance with AOSC 20-16, the Remote Trial Clerk **administered the oath** to the remote trial jurors.
- After either confirming their photo identification in a remote sidebar conference in the presence of the attorneys and court reporter (to prevent disclosure of sensitive/personal information), or the parties stipulating as to the identity of a remote witness, Judge Anderson administered the oath to the remote witnesses in compliance with AOSC 20-16.
- After the remote attorneys finished questioning each remote witness, the remote jurors were given an opportunity to write a question for the witness using the Juror Witness Question Form. The jurors, having been previously trained to use SOFIA to complete the Juror Witness Question Form, proceeded to type their questions (the form allows the jurors to ask more than one question on a single form). Judge Anderson translated

the hand delivery of juror questions to the Court via the bailiff during in-person jury trials to the remote jury trial witness question process. After remote jurors finished typing their question for the witness on the form using SOFIA, they sent their completed form to the Remote Jury Bailiff only via the Zoom chat message feature. The Remote Jury Bailiff sent the [completed juror witness question form\(s\)](#) to Judge Anderson via the Zoom chat message feature. Judge Anderson printed the form(s) on the small office desktop printer located on the floor below the bench and saved the form(s) to his Lenovo all-in-one computer located on the left side of his bench. Judge Anderson conducted a [remote sidebar conference](#) with the attorneys and court reporter to review the completed juror witness question form(s) via the Zoom share screen feature. After the remote sidebar conference was completed Judge Anderson marked the hard copies of the form(s) as Court Exhibits for the record to be hand delivered to the Remote Trial Clerk after the Court session ended, and all of the remote participants in the remote sidebar conference returned to the remote courtroom via the invite received from the Remote Courtroom Bailiff. By this time, the [recess countdown timer](#) would signal the remote jurors that the brief recess was about to end, and they should return to their seats. After the remote jurors returned to their seats, Judge Anderson proceeded to ask the remote witness

the juror questions he decided to allow during the remote sidebar conference.

- During the initial standard instructions given to prospective jurors, Judge Anderson added “10 Zoom Rules” specific to the remote trial format. During the initial standard instructions given to the remote trial jury before opening statements, Judge Anderson added a summary of the same “10 Zoom Rules” as a reminder to the remote jurors. Judge Anderson continued to provide abbreviated reminders of these basic Zoom rules before proceeding with the remote jury trial coming out of recesses.

- Special Zoom PowerPoint recess screens were used at the beginning of each court day, at the end of each court day, and during planned and unplanned recesses and remote sidebar conferences featuring a countdown timer to keep jurors connected to the remote courtroom and compel them to return to their screens periodically to check the timer – to foster the feeling that they are “still in the game.”

- During such brief unplanned recesses Judge Anderson tailored his instructions for remote jurors.

- As the Court read the final jury instructions to the remote jury the Remote Courtroom Bailiff [displayed each page of the jury](#)

instructions to each remote trial juror and all of the participants as they were being read via the Zoom share screen feature.

- After the Court finished reading the final jury instructions and discharged the remote alternate jurors, the Remote Jury Bailiff invited the 6 remaining remote jurors to the remote jury room to present the [Part 3 Jury IT Instructions](#) to explain the basic Zoom and SOFIA skills needed during deliberations, including how to use SOFIA to complete the [Jury Inquiry Form](#) and Jury Verdict Form and how to notify the Remote Bailiff using the Zoom “asking for help” feature to communicate to the Remote Bailiffs that they have a question, request or verdict. The Court had instructed the remote jury that the first thing they would do is select a foreperson and that they would “test” the “asking for help” Zoom feature to notify the Remote Jury Bailiff that they have selected a foreperson and the Remote Jury Bailiff would return to the remote jury room to confirm the forepersons identity. The remote jury bailiffs also trained the jurors to access the Remote Exhibit Dropbox File that will be sent to the Remote Jury Room.

- While the Remote Jury Bailiffs presented the Part 3 Jury IT Instructions discussed above, the Court met remotely with the Remote Trial Clerks and attorneys, on the record, in the presence of the remote court

reporter, in the remote courtroom to [review the contents of the Remote Exhibit Dropbox File](#) (exhibits, jury instructions, and verdict form) to confirm that nothing was left out that should be delivered to the jury and alternatively, nothing was included in the Dropbox file that shouldn't be delivered to the remote jury room.

- After the Remote Jury selected a foreperson, confirmed by the Remote Jury Bailiff, the Remote Courtroom Bailiff and Remote Trial Clerk delivered the trial exhibits, jury instructions and verdict form to the remote jury room via the remote Dropbox exhibit file.

- After sending the remote Dropbox exhibit file to the remote jury room, the Remote Jury Bailiff returned to the Remote Jury Room a final time to confirm that all 6 of the remote trial jurors could open the remote Dropbox exhibit file and view its contents.

- After the remote jury reaches a verdict and the foreperson completes and electronically signs the verdict form using SOFIA, the remote jury used the Zoom “asking for help” feature to notify the remote jury bailiff they reached a verdict. The remote jury foreperson sends the electronic verdict form to the Remote Jury Bailiff via a private Zoom chat message. The remote trial juror remains in the remote jury room while all of the other

participants were summoned to return to the remote courtroom for the verdict. Meanwhile, the Remote Jury Bailiff forwarded the completed verdict form to the Judge via a private chat message. Before inviting the remote jurors into the remote courtroom, the Judge reviewed the completed verdict form for any errors or omissions, saved it to his all-in-one computer on the left side of his bench, printed a hard copy on the printer located below his computer, and then forwarded the completed electronic verdict form to the Remote Trial Clerk for publishing after the remote jury returned to the remote courtroom and for e-filing.

Chapter 13

Proposed Procedural and Administrative Rules Changes for Remote Civil Jury Trials

“The history of American Freedom is, in no small measure, the history of procedure.”

Justice Felix Frankfurter

During the course of mock remote civil jury trials, preparation for the first binding remote civil jury trial and during the actual first remote civil jury trial proceedings the Court and the workgroup realized that procedural and administrative rules changes may be required for remote proceedings beyond the effective period of the Florida Supreme Court’s Administrative Orders. To that end, our workgroup outlines the following proposed procedural and administrative rule changes for consideration by the various task forces, committees and the Florida Supreme Court:

<u>RULE</u>	<u>SET</u>	<u>PROPOSED CHANGE</u>
<u>1.020</u>	FRCP	Amend this Rule and/or <u>RJA 2.420</u> and <u>2.425</u> to allow the Court to file the Juror Questionnaires and any other private information about jurors under seal in Court Records. If Juror Questionnaires are submitted to the Clerk’s office, the privacy and confidentiality of the information therein should be kept confidential and not be a public record. In addition, amend to prohibit the juror’s image (face) from being shown if the remote civil jury trial is broadcast, unless the juror consents otherwise. We have a local Order in Duval County that prohibits broadcasting the juror’s image.

AO92-02. Note: Other jurisdictions such as the 11th Circuit broadcast their hybrid trial on YouTube showing juror images.

1.200(b) FRCP

Add provision for items to be considered for a REMOTE CIVIL JURY TRIAL:

- each Attorney and party have the technology required.
- each attorney and their client have installed an appropriate virtual background.
- each witness has the technology required.
- each witness has installed an appropriate virtual background.
- the court reporter has installed an appropriate virtual background.
- Exhibits stipulated into evidence by the parties will be provided to the Court at the Pretrial Conference.
- identify all objections to any exhibit not stipulated into evidence; pre-mark the exhibit for identification purposes. When possible, rule on the objection before trial.
- identify objections to depositions under Rule 1.330 (b).
- Provide Jury Instructions and Verdict Form.
- Identify any other matters that can be resolved before trial to minimize sidebar conferences.

Note: These matters must be completed by the PTC to ensure an efficient Remote Trial and to lessen the number of sidebar conferences during the remote trial.

Remote Pretrial Conference Checklist.

1.310 FRCP

Although not part of this trial project, this Rule should be amended to allow for electronic recording of depositions (right now it says videotape), taking depositions by videoconferencing, Zoom or other remote platforms, and dictate the information the Notice should include in those circumstances. The Forms should be updated as well. The rules should allow the court reporter to appear and record the deposition remotely (as well as swearing the witness in remotely and verifying identification remotely) **Form 1.912** and **1.913** should be amended as well.

- 1.410** **FRCP** Amend (b)(1) to add “via” the remote videoconferencing invitation information, manner, or method to join a remote trial. Although not part of this project, section (e)(1) should be amended to include such information for a remote deposition. Amend **Forms 1.910**-SUBPOENA for Trial and **1.911** Subpoena Duces Tecum for Trial.
- 1.430** **FRCP** Amend to add a subsection: In any case that is set for jury trial, either party may request a remote civil jury trial at least 90 days prior to the Pre-Trial Conference.
- 1.431** **FRCP** Amend (a)(2) add at end of paragraph: The Court may provide juror questionnaires to the parties prior to voir dire examination.
ADD: 1.431(i)(2)(C); Court Technology Officers, Remote Bailiffs, or other designated Court personnel may communicate about technology issues, including providing instructions on use of technology platforms, to Jurors in preparation for and during a Remote Civil Jury Trial.
Sample paragraph from Court Order: ...Routine *ex parte* communication between the Special Magistrate, bailiff or other courtroom personnel and the jurors, limited to juror comfort, technology issues, and safety, may occur off the record. Examples of permissible *ex parte* communication include discussion of routine matters such as recess and break schedules, technology issues, instructions on how to use the Zoom platform, how and when to assemble for remote jury duty, proper attire, and which items of jurors' personal property may be brought into the remote courtroom or remote jury room. Except for those types of permissible *ex parte* communications regarding juror comfort, technology issues, and safety, any other communication between bailiffs or other courtroom personnel and the jurors will be promptly reported to the Court and the Court will notify the parties of any matter that may be of interest to the parties. See Fourth Circuit ***Order Setting Forth the Scope of Ex Parte Communication with Remote Jurors.***

- 1.440** **FRCP** Amend (b) to add “...remote or in-person jury or not...”
- 1.451** **FRCP** (a) Amend to permit the witness to appear remotely.
(b) Amend to allow witness to testify remotely at trial without agreement of the parties or for good cause shown. Permit the witness to appear remotely unless good cause is shown as to why the witness must appear in person. And in a Remote Civil Jury trial all witnesses may appear remotely.
(c) Amend to allow videoconferencing, Zoom platform and other remote platforms as permitted by the Court.
(d) Amend to allow the oath be given remotely, and permit the person authorized to administer the oath to verify the witnesses identity remotely (for example show a driver’s license – only to the person administering the oath in a breakout room).
(e) Amend to allow the use of Zoom or other platform provided by the Court without cost to the parties. If the parties opt to use another platform, they must have court approval, and bear the cost
- 1.452** **FRCP** (a) Amend to add after: written “or digital”.
(b) Amend to add after: written “or digital”. Also add: In a Remote Civil Jury Trial the juror may submit the question digitally to the Court. The Court will print a hard copy of the question and place it in the Court Record.
(c) Amend to add provisions consistent with remote methods used to share the jury question(s) with counsel and provide them a remote opportunity to object. See Chapter 12.
- 1.470** **FRCP** (b) - The rule needs to be amended and/or language added to the Jury Instructions to address issues in remote jury trials, and to modify the language in various Jury Instructions to fit the remote setting. For example, during the Fourth Circuit Remote Civil Jury Trial, each remote juror was provided a set of jury instructions to refer to in the remote jury room via Dropbox.

- 1.490** **FRCP** Amend (b) to allow a Remote Special Magistrate to assist with the Remote Trial
- 1.520** **FRCP** Amend to require social distancing, masks, and other protective measure to meet CDC guidelines if a “view” is necessary.
- 1.545** **FRCP** Add disposition by remote jury trial and/or hybrid Jury trial, if OSCA or the Court needs those distinctions. Amend **Form 1.998**.
- 1.984** **FRCP Form** Amend the Questionnaire to include questions such as:
 -do you have a computer, iPad, smartphone or other device with a camera and a microphone that you can use to appear remotely?
 -do you have a quiet location free of distractions where you can appear remotely?
 -Have you ever used Skype, Zoom, WebEx, MS Teams, or any other platform to communicate remotely using audio and video?
 -Add COVID-19 Questions (for hybrid trials).
 -Add Hardship Questions.
 See written **Juror Questionnaire without COVID-19 Questions** for totally remote civil jury trial; and **Juror Questionnaire with COVID-19 Questions** for hybrid remote civil jury trial.
- 2.420** **RJA** Amend to add: 1) Juror Questionnaires are confidential and/or should be filed under seal 2) Jurors images should not be broadcast in a remote jury trial absent their consent.
- 2.425** **RJA** (a) Add written Juror Questionnaires to list of items/information?
- 2.430** **RJA** Is the recording of a remote Civil Jury trial a “Court Record”? If so amend to identify and designate as a Permanently Recorded Record or a Not Permanently Recorded Record; and identify a retention period.

- 2.450** **RJA** Amend to allow recordings of Remote Judicial Proceedings in general, including civil jury trials, circumstances under which such recordings are permitted to occur and methods used for recording such proceedings.
- 2.451** **RJA** Amend (b) to permit Jurors in a remote civil jury trial to use an electronic device with audio and video to participate in the remote civil jury trial. And, to disallow them to use any other electronic devices, including split screens while in the Remote Courtroom.
(b)(2) to allow jurors to communicate electronically with each other about the case during Remote Jury Deliberations when all jurors are present.
(b)(5)- modify for totally remote or hybrid remote civil jury trials.
- 2.530** **RJA** Modify to allow use of technology equipment by the court, staff parties, witnesses, and jurors in a remote civil jury trial.
- 2.535** **RJA** Amend to include court reporters who remotely perform court reporting services in remote civil proceedings such as the court reporter reporting the Fourth Circuit remote civil jury trial, *Griffin v. Albanese*.

CODE:

FRCP Florida Rules of Civil Procedure
RJA Florida Rules of Judicial Administration

Chapter 14

Remote Civil Jury Trial Pilot Evaluations and Surveys

“The friends and adversaries of the plan of the convention... concur... in the value they set upon the trial by jury; the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government.”

Alexander Hamilton (1788)

§14.1 OSCA Juror Surveys

[The OSCA Juror Surveys](#) answered by the Venire were overwhelmingly positive. The majority agreed or strongly agreed that connecting with the proceedings and using the features of the video conferencing platform was simple. The vast majority, over 90%, agreed or strongly agreed they were able to easily participate in the remote juror selection process, were able to clearly hear and see the judge and attorneys, and could easily respond to questions from the judge and attorneys during the remote jury selection process.

Over eighty percent (80%) preferred remote jury selection over in-person jury selection and agreed that the remote jury selection process was efficient. Eighty-four percent (84%) agreed or strongly agreed that the remote jury selection process was effective. When asked if remote jury selection should be used in more

cases, seventy-six percent (76%) agreed it should and twelve percent (12%) were neutral, only two people (8%) strongly disagreed.

Similarly, the survey responses from the jurors that decided the case were overwhelmingly positive. All eight jurors agreed or strongly agreed that they were able to easily participate in the remote jury trial process. Seven of eight jurors strongly agreed or agreed that they were able to clearly hear and see the judge, attorney, and witnesses during the remote trial. Five jurors strongly agreed that they were easily able to ask questions during the deliberations process. The remaining responses were “not applicable”. The majority, six of eight jurors, strongly agreed or agreed that the remote jury trial process was efficient and the remaining two responses were neutral. Also, six of eight jurors agreed that the remote jury trial process was effective and again two were neutral.

Five of eight jurors strongly agreed that they preferred remote jury appearance over an in-person jury appearance with three being neutral. Six of nine jurors who responded strongly agreed or agreed that remote jury trials should be used for more cases. Two were again neutral, but one additional disagreed. There were nine responses, but only eight jurors, so it appears a member of the venire panel may have responded to this question.

Of the venire, sixty-four percent (64%) felt the remote jury selection process was fair to both parties with twenty percent (20%) being neutral. Of the jurors

deciding the case, three of eight jurors strongly agreed that the remote trial process was fair to both parties; one agreed; two were neutral; and one disagreed. Please note that in this case a default had been entered so there was just one party to this trial on damages only which likely skewed this response.

Three of eight jurors strongly agreed or agreed that they were able to clearly see the evidence and exhibits presented during the remote trial, one was neutral, and one disagreed.

The majority of the comments on the surveys were also positive. However, we identified four comments containing items to be discussed by the Team:

1. There was one potential juror who would have liked to get the Zoom app figured out and help from the tech guys before the day of the video conference. This person indicated they felt reluctant to call because this juror was embarrassed about not knowing about this form of communication.

2. There was one comment about adding additional space to the question on the questionnaire about previous litigation. This person also indicated that he still preferred attending jury duty in person.

3. Another juror who worked in the technology field indicated that it was a little more complicated than expected to get into the jury trial and that some of the other jurors had more trouble than him/her. This person cautioned that there may be issues if some of the jurors are not technically inclined or capable of

affording computer equipment needed to participate. This juror also noted that some jurors were using smart phones or iPads and there should be a solution to those future jurors who do not have a laptop.

4. One person suggested providing a background during the remote jury selection as one was provided for the trial but not for jury selection.

§14.2 Fourth Judicial Circuit Surveys

In addition to the OSCA surveys the Fourth Circuit Remote Project workgroup decided to gather additional information from the participants.

§14.2(a) Jurors

Overall, the juror responses were favorable to the [Fourth Judicial Circuit surveys](#). However, a small minority responded unfavorably to all categories. The surveys filled out for OSCA were slightly more favorable. One member of the Jury Panel regularly works with attorneys and voiced his opposition to Remote Jury Trials which we believe is reflected in The Fourth Judicial Circuit's survey responses. These jurors also filled out Juror Questionnaires for OSCA. The scale used for OSCA was a one (1) to five (5) scale with one (1) being strongly disagree and five (5) being strongly agree. The surveys sent by the Fourth Judicial Circuit had revised that scale of one (1) to five (5) with one (1) being strongly agree and five (5) was strongly disagree. Accordingly, there may have been some confusion in the responses of some of the Jurors.

Seventeen (17) jurors agreed or strongly agreed that they did not have any difficulty responding to the summons, and one was neutral. Only two jurors disagreed, and one strongly disagreed.

Eighteen (18) jurors agreed or strongly agreed that the online questionnaire was easy to fill out and two were neutral. However, two strongly disagreed and one disagreed.

Seventeen (17) jurors agreed or strongly agreed that the information about how to download Zoom helped them prepare for jury selection. One was neutral, two disagreed and two strongly disagreed.

Jurors were satisfied with the technical assistance from the Remote Bailiffs. Thirteen jurors agreed the Remote Bailiffs answered all of their technology questions. One was neutral and one strongly disagreed. Thirteen (13) jurors agreed or strongly agreed that the Remote Bailiffs helped them with all of their technology problems. The remaining two disagreed.

When asked about the Power Point presentations by the Remote Bailiffs, most jurors found them helpful. Specifically, fourteen (14) jurors agreed that the document presented at the beginning of jury selection describing Zoom features was helpful, one (1) was neutral, but two (2) strongly disagreed and one (1) disagreed. Seven (7) jurors agreed or strongly agreed that the Bailiff's presentation at the beginning of trial describing how to submit a question to a witness was

helpful but one (1) disagreed. Five (5) jurors agreed or strongly agreed it was easy to use the system to send a question for the witness and one disagreed. Five (5) jurors agreed or strongly agreed that the Remote Bailiff's presentation before jury deliberations started describing how to access the evidence and fill out the verdict form was helpful and one disagreed.

When asked about deliberations, four (4) jurors agreed or strongly agreed that it was easy to open and review the evidence during jury deliberation and one disagreed. Three (3) jurors strongly agreed that it was easy to fill out the verdict form and none disagreed. Five (5) jurors agreed or strongly agreed that it was easy to see and hear all of the other jurors during deliberations, and none disagreed.

The majority of jurors favored a remote trial. When asked to rate the statement "I feel more distracted sitting in a remote jury selection than an in-person selection": Fourteen (14) strongly disagreed or disagreed, three (3) were neutral, and only one (1) agreed.

When asked to rate the statement "I would prefer to serve on another remote civil jury trial rather than an in-person jury trial": ten (10) agreed or strongly agreed, six (6) were neutral and three (3) strongly disagreed.

Comments from the Jurors Included the following:

When asked if there was other information about Zoom or technology that should be provided to remote jurors the responses included:

- May have missed but recommend jurors have little background, make sure lighting is adequate.

- The Bailiffs were wonderful and patient.

- After trouble shooting it was pretty easy to use and collaborate.

The only issue is that it is hard for myself to stay in one place.

- In the instructions to prospective jurors, you could let them know that once they download Zoom they can test to make sure everything is working ok.

- I had the capacity, common knowledge, and means to participate but feel it may be difficult for many others.

- No but I am familiar with the application.

- For myself I would have like to have the application loaded and practiced with a technician before selection.

- Only recommendation would be to offer the background setting for jury selection as well.

- I think that the Remote Jurors should probably be required to use a desktop or a laptop rather than any other type of mobile device.

- Three affirmatively indicated they had no comments.

When the jurors were asked, “What can we do to improve the Remote Civil Jury Trial System”, the responses were as follows:

- I felt this was successful for the first remote civil jury trial. All issues that arose were dealt with promptly and allowed breaks.
- It worked fine but I was excused before the trial started due to hardship with school conflicts, four classes with finals at the same time. Would recommend this to anyone trying to serve and do jury duty. I’d recommend [response cut off].
- My juror selection went well without any glitches, so I do not have any suggestions.
- Ensure the lawyer is trained and fully capable of handling remote jury trials. The attorney in my case distracted the jury in my case due to the difficulties that he had.
- Provide background similar to the trial.
- Please set a timer for scheduled breaks for every 50 minutes to take a 10-minute break.
- If possible, once a jury is selected have them do a sample access of the forms required at deliberation.
- Three affirmatively said none or not applicable.

- Nothing. I thought the process was smooth and I also appreciated the understanding of the judge and others when the jury was having technological issues. It didn't seem to frustrate them and as a juror that was helpful.

§14.2(b) Court Personnel

The [survey responses submitted by the court personnel](#) including the Clerk, CVN, Attorney, Court Reporter, and Judge are below:

With the exception of the Attorney, most agreed that their role and duties were easily accomplished in the remote jury trial. Specifically, four (4) agreed that their role in the remote trial was as simple as when they supported a traditional trial and one disagreed. Three (3) agreed that their role in the remote trial was as effective as performing it in a traditional trial, one was neutral, and one strongly disagreed. Four (4) agreed that performing their duties in the remote trial was as easy to perform as a traditional trial and one (1) disagreed.

Most of the court personnel were understandably more comfortable with an in-person jury trial. One (1) agreed that he enjoyed the remote trial as much as a traditional trial, two (2) were neutral and two (2) disagreed. One (1) agreed that he preferred the remote trial process as much as a traditional trial, one (1) was neutral and three (3) disagreed. Three (3) agreed that they preferred the remote trial process LESS than a traditional trial and two (2) were neutral.

When given the statement “I prefer the remote trial process more than a traditional trial”, three (3) disagreed and two (2) were neutral. Yet, four (4) agreed that they were eager to participate in another remote trial and one (1) was neutral.

Three (3) disagreed that listening to the witness in the remote trial was as effective as a traditional trial, one was neutral, and one did not respond.

When asked for their overall impressions of the remote trial the comments were as follows:

- For the most part the trial ran smoothly. Per my trial clerks, the issue during the trial was the connectivity issues at times.
- I was impressed with all the hard work that went into the remote trial and I am excited to see where this may lead in the future.
- It was as effective as possible given the pandemic situation. However, I do not think a Zoom trial can replace the evaluation of witness demeanor and credibility one gets with live testimony.
- Overall, the remote trial went well. Only small technical issues repaired by the outstanding teamwork of the IT department. Evidence process for the clerks ‘end went well; however, in a larger trial with larger and more extensive evidence could be more challenging.

When asked about suggestions for improvements for the next remote trial the responses included:

- To move faster. It will come with time and practice doing the remote jury trials.
- Eliminate some of the peripheral people, i.e.: court staff, bailiffs from the Zoom screen, even the black boxes if you can. Ensure all participants have adequate connectivity to try to avoid the extent possible glitches and dropping people.
- Allow clerk and party legal staff to verify all exhibits prior to closings in a separate break-out room.
- Voir Dire time limits to parties to like in closings to streamline time constraints and redundancy in questions.

When asked for their concerns about remote trials, the responses were:

- Continued connectivity issues.
- I think it is very difficult for jurors to try and not multitask during the trial period. The temptation to attend to other business while in trial from one's home or office is too great. I do not think it is possible for jurors to avoid engaging in other tasks in this platform.

§14.3 Pilot Trial #2 Surveys

The surveys from Pilot Trial #2 *Mathis v. Argyros*, which ended October 1, 2020, were not available at the time of this report. Surveys from OSCA and the Fourth Judicial Circuit have been sent to the jurors and trial participants. However, due to time constraints it will not be feasible to collect such survey responses and summarize them for this report. If permitted, we will supplement this Report when the survey responses are available.

Chapter 15

Findings and Recommendations

“The future has many names. For the weak, it is impossible. For the fainthearted, it is unknown. For the thoughtful and valiant, it is ideal.”

Victor Hugo

AOSC 20-31 as amended requires each circuit to “report its findings and recommendations to the Chief Justice through the State Courts Administrator no later than October 2, 2020.” The Fourth Circuit completed its second and final binding fully remote civil jury trial in *Mathis v. Argyros* on October 1, 2020. Therefore, most of this report had to be written in advance of the second binding remote jury trial in order to meet the remote project deadline.

§ 15.1 Findings

Due to the self-imposed time constraints created by our decision to try a second binding remote civil jury trial during the final days of the project, each stakeholder in our remote project workgroup is reporting findings based upon his or her unique perspective.

§15.1(a) Corinne Hodak

As Special Magistrate for this Pilot Program and part of the team that developed this system, my findings are below.

Although we would prefer to return to pre-pandemic civil jury trials, the reality is that civil jury trials are not likely to resume with the same pre-pandemic frequency in the near future. After a nearly seven-month hiatus, jurors are now being summoned for a limited number of criminal trials in some circuits. There is a backlog of criminal cases, including those with speedy trial issues. Multiple simultaneous jury trials will present significant challenges because of the social distancing, cleaning requirements, PPE and other safety precautions needed. More Court and clerk personnel will be required to manage jurors, clean surfaces, and support in-person trials. Jurors, attorneys, and witnesses will have to be masked. Witnesses may be reluctant to appear for fear of being exposed to the virus. There will also be financial challenges. To say that it will not be the same, is an understatement. Understandably, resuming civil jury trials is not the top priority for courts faced with numerous pandemic challenges. However, justice delayed is justice denied.

Against this backdrop, the remote civil jury trial system developed in the Fourth Judicial Circuit provides an alternative vehicle to resolve disputes with a jury. The system mirrors the features of an in-person jury trial and can be tried with a reasonable amount of human resources. However, it does require more technology officers for technical assistance. Our Pilot trials included one Judge, one special magistrate, four technology officers who doubled as Remote Bailiffs,

and three clerks. Although there were five clerks in the Courtroom many days (some for training purposes) only one clerk is required during the trial. Once refined, a remote civil jury trial would require only two or possibly three technology officers. The special magistrate can assume limited technology duties such as assisting jurors with basic technology issues, giving basic instructions on the use of technology, and moving people into various breakout rooms. Issuing the summons, sending Juror Questionnaires and receiving the information will take additional manpower in the Clerk's office, or the court personal, or a joint effort of both. This would require a reallocation of resources.

Jurors seem comfortable with the remote civil jury trial system. As reflected in the surveys, and consistent with reports from other jurisdictions, most jurors like appearing remotely for jury duty. They believe they can judge the credibility of witnesses remotely. They believe they can evaluate the evidence, and award money fairly in a remote setting. During the Pilot trials, jurors adapted to the system with minimal assistance, overcame technical issues, and were very attentive. There was very little juror distraction, and certainly no more than in an in-person Courtroom. Remote jurors actively participated in the process, spoke candidly during Voir dire, submitted questions for the witnesses, reviewed evidence and deliberated thoughtfully as reflected in the verdicts of both Pilot

trials. No juror was excluded for technology reasons. Jurors were able to perform their civic duty without the risk of contracting COVID-19.

On the other hand, most attorneys do not appear to be comfortable with remote civil jury trials and thus far have been reluctant to agree to this alternative approach. Many attorneys who participated in the mock remote trials did not believe a jury could determine the credibility of witnesses, appreciate damages, or award money damages fairly in a remote setting. Attorneys are also concerned about juror misconduct, that jurors will use their electronic devices to research the subject of the trial or, they would be distracted in their home setting. Attorneys have also expressed concern that only “tech savvy” jurors could participate in the remote jury trial; therefore, it would not be a jury representative of their client’s peers.

Just as in an in-person trial, safeguards can be employed to avoid juror misconduct. Jurors are instructed at each break not to talk about the case with others and not to use their devices to research any issues related to the case. The Judge can emphasize the rules the jurors are to follow. A juror from an in-person trial could go home and use their device to do research about the case just as easily as a juror in a remote setting. In the remote setting, jurors can be watched closely by the Judge, Special Magistrate and other trained personnel who look for signs of distraction. Frequent comfort breaks avoid distractions in both types of trials.

Technology can be provided through partnerships with local libraries, schools, or businesses for those lacking devices. Schools have provided laptops to their students on a broader scale during the pandemic, courts could consider this option as well. Importantly, the use of virtual backgrounds is essential for keeping the formality of the courtroom setting in the remote Jury Trial. This appearance helps create the need and expectation of courtroom decorum.

After March of 2020 when the pandemic hit, our nation quickly pivoted to computers, iPads, iPhones, smartphones and other electronic devices to work, attend school, order groceries, get news, keep track of coronavirus statistics, communicate, and socialize. If we weren't before we are now a tech nation. Most people have a computer, iPad, or smart phone - and know how to use them. Most have used their electronic devices to zoom, skype or access other platforms. The Court System has been a leader in making changes to meet COVID-19 challenges, using technology for remote hearings, remote bench trials and other matters. To cling to old practices incompatible with present realities is understandable, but does it benefit the citizens who look to the Court to have their disputes resolved?

Corinne Hodak
Special Magistrate Remote Civil Jury Trial Program
Fourth Judicial Circuit
October 2, 2020

§15.1(b) Mike Smith

Court IT had their hands full with managing the multiple layers of IT required to support the Fourth Circuit Remote Civil Jury Trial Pilot Project. Duval County has a single state CTO and small staff of 3 individuals. We were fortunate to have 3 additional temporary part-time contract employees due to the strain the COVID-19 pandemic placed on the small staff to handle the additional work directly caused by the pandemic. These individuals were essential to the Courts and were at no time work-from-home employees. The involvement of Court IT staff with this pilot project took place concurrently with the high demand for IT help associated with the pandemic for first appearance, VTC to 4 locations of inmates, media access needs, court employees working from home, the first of a three phase previously planned multi-million dollar equipment refresh for the 51 courtrooms, imaging and deployment of 131 desktop PC's, getting regular staff set up for work-from-home, and all of the normal IT help-desk and special projects that happen sans a pandemic.

Zoom VTC was being used in a limited fashion before the pandemic and Remote Jury Trial Pilot. That use was limited to an occasional witness in a hearing or appearance when permitted by Order of the Court. The level of expertise by the users and the IT staff was limited. The IT staff had to learn how to use the various options of Zoom. Some of those options were being changed after we started the

pilot. That was a concern for the staff and users because some of those changes were security and it was changing how we originally thought we were going to leverage those options. Break out rooms and the Waiting Room each had functions that were easily used, but each also had deficiencies that caused testing and adapting our processes to use Zoom as a remote courtroom.

As previously mentioned, Judge Anderson wanted the decorum of the Remote Jury Trial maintained to the highest level possible. In order to accomplish that we used visual virtual courtroom high-def photographic backgrounds, assisted with training on muting and unmuting mics, how to use the camera for Zoom, constant verbal reminders that we were in an actual trial and training manuals on basic Zoom usage were provided to each user by Court IT staff. Not all users had the hardware capable of using those backgrounds. But the ones that did most definitely added to the seriousness of the courtroom.

Court IT staff became Remote Bailiffs. There was a high demand for interaction with attorneys and jurors. These stakeholders were from various locations and not in a controlled environment so there were many challenges.

For instance:

- Variety of connection issues.
- Variety of electronic prowess.

- Variety of old and different devices.

The issues that are possible and probable with this type of IT support coupled with the unknown nature of timing, would require seasoned, well-rounded IT support. Trials are at a pace that does not lend itself to research by a novice IT employee.

The current staffing can handle the actual technology for the pilot. The staff size is not capable of handling these trials as regular events. Many times, during the trial we were handling various other day-to-day tasks that were not related to the trial. Those IT calls distracted from the Bailiff duties that were added to the Court IT staff.

The Court IT staff must be trustworthy and reliable. Discussions about the case or elements of the case could cause the court issues. IT professionals are not usually subjected to the rules of court and how certain actions may cause issues for the court. Simple conversations with jurors for example had to be limited to only their tech issue.

Mike Smith
Court Technology Officer
Fourth Judicial Circuit
October 2, 2020

§15.1(c) Lou Freitas

One of the bigger challenges associated with the Remote Jury Trial Project is building upon its successes by scaling the solutions across Florida and Nationwide courts.

While the Duval County team did an outstanding job executing from start to finish on the two pilot trials; they do not have the resources to manage their local workload and train other courts in parallel.

Lou Freitas COO
Courtroom Connect – Courtroom View Network
October 2, 2020

§15.1(d) Brian Corrigan

The Clerk's Office was thankful for the opportunity to participate in the Remote Civil Jury Trial Pilot Program and was appreciative of the Court's leadership. In the Clerk's opinion, the remote processes that were developed during the Duval pilot project should serve as a model for other jurisdictions who wish to pursue remote jury trials in the future. The actual mechanics of the remote jury selection and remote jury trial were easily adapted from the Clerk's role in normal jury proceedings and Clerk personnel were universally comfortable in their roles in the remote process. The Clerk attributes this to the number of mock trials

undertaken in advance of the first remote civil jury trial and would recommend any jurisdiction considering remote jury trials to conduct mock proceedings first.

Brian Corrigan
Public Information Officer
Senior Manager – Public Records Department
Duval County Clerk of Courts
October 2, 2020

§15.1(e) Judge Bruce Anderson

We successfully developed the methods, practices and procedures to conduct a fully remote civil jury trial; jury selection through verdict. The specter of COVID-19 and the jurors' respective pandemic risk perceptions were conspicuously absent from both of our remote civil jury trials as a consideration for avoiding jury service for hardship or cause. The prospective jurors, overall, responded positively to their remote jury duty experience. From my perspective, the remote jurors serving in both remote civil jury trials had a positive attitude and a "can-do" spirit – a refreshing change from the typical "Monday morning, rainy day, I don't want to be here" jury duty blues expressed by jurors summoned to in-person proceedings. Perhaps being in their own homes or offices encouraged prospective jurors to relax and be more candid and open during jury selection.

For the most part, it was my perception that our prospective jurors and trial jurors remained alert, focused and undistracted throughout the remote jury selection and trial with only a few notable lapses:

1. During the first binding remote jury trial, a college student in the midst of preparing for final exams and completing a research paper admitted during a remote sidebar conference hardship inquiry that he had used a split screen, despite my instructions, during the initial portion of jury selection. Ultimately he was excused for hardship due to his pressing academic deadlines.
2. During the same remote jury trial, another [prospective juror](#) decided to plug in the cell phone he was using to participate in the remote jury selection. He chose an outlet near his nightstand and bed, and proceeded to recline in his bed until I corrected him. He was extremely relaxed, but never fell asleep.
3. During my opening instructions before the commencement of the first binding remote civil jury trial, a remote juror appeared to be looking to her side and typing. The Plaintiff's attorney brought those concerns to my attention at a remote sidebar conference. As a result I addressed the entire jury with an abbreviated version of the [10 Zoom Rules](#) frequently and there did not appear to be any

further episodes of juror distraction or multi-tasking during the remote trial.

There were a few jurors who carried their electronic devices to another room during jury selection to seek a better wireless signal, but no remote jurors physically walked away from their responsibilities. However, in spite of our success in creating a virtual neutral courtroom background for the two binding remote civil trials, my initial concerns about how to prevent jurors from multi-tasking on their device screens or mentally drifting away during the remote jury trial remained, but I did not have these concerns for remote jury selection.

The remote courtroom felt like an in-person courtroom; the virtual backgrounds for the remote participants and my presence in an actual in-person courtroom created a neutral background and a formal remote courtroom setting on the screens; and the use of slightly modified in-person courtroom vocabulary and terminology, instead of Zoom terminology, during the remote proceedings made the remote trial sound like an in-person trial. The remote jury trials were labor intensive with our CTO and three IT staff serving as Remote Bailiffs (leaving only three IT staff to handle the myriad of other technology issues in the Duval County Courthouse), and a volunteer special magistrate to facilitate the behind the scenes, off-the-record communications to move participants to the correct Zoom rooms and monitor the participants' technology.

The attorneys presented evidence, including exhibits, demonstratives, and testimony without limitation during the binding remote jury trials and the mock remote jury trials. Attorneys used videos, photos, radiology images, diagrams, medical records, charts, and reports during mock remote jury trials without problems.

During both binding remote civil jury trials, I felt the same adrenaline rush experienced many times as a prosecutor, civil trial lawyer and trial judge. There were times that the remote courtroom was filled with emotion and power, and in both binding remote trial cases the methods, practices and procedures we employed made the remote courtroom a sacred place for the participants to seek the truth while following the rules of procedure and evidence.

Bruce Anderson
Circuit Court Judge
Fourth Judicial Circuit
October 2, 2020

§ 15.2 Recommendations

Although our Fourth Circuit workgroup collaborated together to successfully complete this remote project, the stakeholders represented by its members are each making the following independent recommendations based upon his or her unique perspective and concerns rather than consensus recommendations:

§15.2(a) American Board of Trial Advocates – Jacksonville Chapter

ABOTA is an organization comprised of an equal number of Plaintiff and Defense Attorneys that have joined together to preserve the Seventh Amendment right to jury trial, promote civics education and defend the judiciary against unfair criticism. The Jacksonville Chapter of ABOTA was honored to participate in forming this remote civil jury trial system and supporting their local judiciary. As the 2020 President of ABOTA- Jacksonville, it is my obligation to report that our membership strongly favors the return of in-person jury trials and opposes mandatory remote civil jury trials.

Corinne Hodak
ABOTA Jacksonville President 2020

§15.2(b) Corinne Hodak

As Special Magistrate for this Pilot Program and part of the team that developed this system, my recommendations are below.

In sum, there now exists a system and procedures to do remote civil jury trials. This should be an option for litigants to resolve their disputes in some cases. Implementing this system will require education and reallocation of resources. Impediments to the system include the attitude of attorneys and perhaps Judges, the fear of change and lack of resources and funding. With no other viable option than to wait an indefinite time for the possibility of an in-person trial, the remote civil

jury trial system provides an option for some cases. Further study is needed to evaluate the system in longer and more complex trials.

For the reasons and considerations above, it is recommended:

- Adoption of remote civil jury trials as a voluntarily option for non-complex civil cases.
- Allowing Jury Qualifications and Hardships to be determined remotely to limit the number of jurors coming to the courthouse.
- Adopting certain remote civil jury trial procedures in an in-person trial including:
 - Allowing witnesses to appear remotely in the courtroom using Zoom or other platforms
 - Sending Juror questionnaires to jurors to complete before voir dire and providing the questionnaires to the attorneys before voir dire. This practice will facilitate jury selection and reduce the amount of time jurors stay at the courthouse.
- Increase the number of Technology officers in the circuits to support the increased use of technology throughout the Courthouse.

- Extend the Pilot Program to evaluate the remote civil jury trial system in longer and complex cases.

Corinne Hodak
Special Magistrate Remote Civil Jury Trial Program
Fourth Judicial Circuit
October 2, 2020

§15.2(c) Mike Smith

Although IT skills of the attorneys, court reporters, clerk of courts and other participants were better than expected, a long-term permanent scenario must include all stakeholders having training prior to the day of the jury selection. Court IT was surprised at the IT abilities of most of the jurors. The Florida Bar CLE program should incorporate a minimum one (1) hour requirement for video teleconferencing, marking up exhibits in video teleconferencing and general use such as muting\unmuting and changing virtual backgrounds.

The State of Florida court system should evaluate the best VTC for trials and strongly recommend that all courts use a single solution. That would ensure an attorney from another jurisdiction is familiar with the same application. It would also assist the CTO's and Judiciary for mastering a single platform.

The burden of support cannot reside on the Court IT staff without fundamental changes to Court IT staffing. Some of the IT tasks may be assigned to the COC, judicial staff and others with minimal training, such as all email and

phone communications to jurors and storing exhibits online. Those tasks are non-technical once created and put in place.

Vendor relationships are important to the overall success. There were a few vendors that were a huge help to us for the two trials. [SGS Technologies](#) programmed SOFIA. The original design of SOFIA was a do-it-yourself document builder capable of creating multiple documents called packets. Once we decided that Microsoft Word and Adobe PDF documents were not going to work with jurors who may not have the applications needed to edit those formats, we decided to adapt SOFIA to help with the Questionnaire and Hardship form, the Witness Question form, the Jury Inquiry form and the Verdict form. In order to do that we needed to change the way SOFIA worked. We also needed those forms and interviews created from scratch. SGS Technologies volunteered to make some adjustments in a very short time.

[Courtroom View Network](#) contacted me shortly after the Fourth Circuit was chosen as one of the five circuits for the pilot. After a few discussions about a lack of budget for the pilot they agreed to handle the free public stream at no cost to the court. This was a tremendous help and solution to a huge issue for Court IT. The Fourth Circuit has an AO that prohibits the media from showing juror faces during a trial. Using a VTC, whose most basic design is to show all participants faces, was going to present a problem. CVN said they would blur the juror faces if

we agreed to a time delay of a few hours. That was a huge time saver for the Court IT staff.

[CCS Southeast](#) is the audio/video vendor for the Fourth Circuit. During the mock trials and 2 remote jury trial there were several A/V issues and Zoom issues that seemed to happen at the worst times. CCS came to the courthouse each time they were asked. The repairs were of course in the early hours of the morning or late in the afternoon.

In conclusion, Fourth Circuit IT staff looked at this pilot as an opportunity. Not to promote themselves or IT in general but to push through huge obstacles and preserve the citizens' right to a civil trial by jury. This pilot project was a challenge for everyone involved. It was not a single staff member that made the two trials a success but a team of dedicated and passionate individuals. There were staff members that did not directly participate in the trials but helped by lending their ability to cover the normal work of Larry Ashley, Patrick Estalilla, James Muse and myself. That allowed us to focus on the trials. Vince Paruolo, Pat Welsh and Bryce Johnson carried the load of the normal day-to-day IT duties. As mentioned above, I will only have three of my staff of seven for a limited time. When the temporary funding for those three individuals runs out our staff will be back to four including myself.

As the Court Technology Officer of the Fourth Judicial Circuit I am proud of what we produced in these two trials and equally proud of the dedicated staff I have been blessed with. Working with Judge Anderson and Mrs. Hodak was a pleasure and an experience my staff and I will forever benefit from.

Mike Smith
Court Technology Officer
Fourth Judicial Circuit
October 2, 2020

§15.2(d) Lou Freitas

Successfully scaling this program to other courts will require a partnership with a trusted resource to develop and execute a new training program. At a minimum, the right partner will possess the unique combination of expert level experiences listed below:

- Extensive experience with courtroom video operations and streaming.
- Expert level experience with remote video bridging solutions and providers such as Zoom/Cisco.

This partner would work directly with the Duval County staff to document processes, formulate a curriculum, develop a training schedule and deliver the training to other courts.

This training program will require regular updates to documentation as remote technology evolves in the coming months and years.

Lou Freitas COO
Courtroom Connect – Courtroom View Network
October 2, 2020

§15.2(e) Brian Corrigan

The Clerk's Office believes this remote civil jury trial process is easily replicated, however, it is concerned about the scalability of expanding the number of remote trials as it relates to the Clerk for a number of reasons:

- Many of the processes that are automated for the Clerk during the course of an in-person jury selection and trial had to be done manually including:
 - The printing and mailing of the summons (as it was different than the version used by the Clerk's outside vendor for in-person trials)
 - Compiling juror contact information as the Jury Qualification Forms were received to pass to the Court IT Staff, so further communication with the prospective jurors could take place

- The creation of jury selection panels since, unlike during in-person jury selection, the remote jury selection pool was broken up into panels rather than appearing all at once
- Due to the current manual nature of many of these processes, the Clerk's Jury Services team would be stretched thin trying to support multiple remote trials at once. Taken one step further, the Clerk believes it would be problematic to attempt to support in-person jury trials and remote trials simultaneously given current staffing levels, which would be difficult to supplement in the current budget environment.
- Senior personnel of the Clerk's Office had to devote a significant amount of time over the period of approximately four months to the remote jury project. While this time would most likely be lessened as more trials were conducted and more junior personnel could be trained to carry out some of the duties involved, it would not be sustainable for senior Clerk leadership to be as heavily involved in multiple remote trials at once.

- While some of these processes could certainly be automated given enough demand, the uncertain budget climate in the COVID-19 era may have an effect on the level of investment available to pursue these options.

Brian Corrigan
Public Information Officer
Senior Manager – Public Records Department
Duval County Clerk of Courts
October 2, 2020

§15.2(f) Judge Bruce Anderson

Where do we go from here now that our workgroup has established methods, practices and procedures to conduct a fully remote civil jury trial? We are certainly capable of trying more fully remote civil jury trials in the future, but the question that should guide our collective deliberations concerning the future of remote civil jury trials is its scalability if expanded to address the ever-growing backlog of civil cases awaiting a jury trial.

Scalability is driven by budget, human resources and facilities. The Duval County Courthouse is a massive, state-of-the-art building, well-equipped to handle the technology and social distancing challenges presented by COVID-19. However, separate from the Clerk of Court's scalability concerns, I have concerns about whether we currently have enough court personnel to staff the one or two

remote courtrooms necessary to select 1-4 remote juries per week while criminal divisions are selecting jurors in person. With state budgets stretched thin with reduced tax and fee revenues, for the immediate future, it may not be financially feasible to hire additional IT staff to serve as remote bailiffs, send form emails to prospective remote jurors, process remote juror questionnaires, field the remote prospective jurors' technology questions and concerns, and present Zoom tutorials to prospective jurors during the course of a fully remote civil jury trial.

In addition to scalability, my concerns from the beginning of the remote project over jurors having unequal technology and internet capability remained – even though we had provided the public library alternative to avoid excluding jurors who lack technology.

All things considered, I have balanced the competing trilateral interests of the Seventh Amendment right to a civil jury trial, public health, and the relative strengths and weaknesses of the fully remote civil jury trial model we developed during this pilot program to make the following recommendations:

- Trial judges should be authorized to order hybrid jury trials without the consent of the parties; fully remote jury selection with the trial jurors selected remotely directed to serve during in-person jury trials. This would reduce the risk of spreading COVID-19 with the entire jury selection process completed remotely.

- Unequal juror technology and internet capability concerns present a substantially reduced risk of prejudice to the jurors or parties during fully remote jury selections when no witnesses are testifying and no exhibits are being published.

- Juror distractions, split screens and the temptation to mentally drift away present an insignificant risk of prejudice to the parties during fully remote jury selection; especially if it is limited to 15 prospective jurors per panel, the attorneys have the luxury of completed juror questionnaires days before jury selection, thus, providing them an opportunity to research the jurors' backgrounds and perform their "due diligence", and there is a strict time limit of one-half day for each jury panel. It is only natural for jurors to mentally drift away, even during in-person jury selections when the attorneys conduct full-day examinations, or even two day examinations.

- When presented with the COVID-19 pandemic reality of choosing between selecting a jury in-person, but being unable to see their faces or facial expressions as they wear masks, making speech muffled and hard to understand and plexiglass shields while seated 6-10 feet apart in a courtroom or remotely, while seeing their faces and facial expressions in a

relaxed home or office environment, most trial attorneys would choose the latter.

- To ease the burden on the Clerk of Courts, fully remote civil jury selections should take place on different days (i.e. Thursdays and Friday) than in-person criminal jury selections which could be staggered for reduced jury pools and social distancing (i.e. Monday, Tuesdays and/or Wednesdays). In addition, we need to work with the Clerk of Courts to identify their unique responsibilities for a fully remote jury selection that could be automated or otherwise outsourced or shifted to other court personnel.

- Limited IT Staff resources would not be as challenged by hybrid jury trials with only a fully remote jury selection. However, to make it scalable and expand our remote jury selection model to pick 1-4 juries per week, we need to identify and train additional existing courtroom personnel to perform the relatively limited and simple tasks required to successfully complete a fully remote jury selection.

- During this remote project, I identified dozens of relatively simple civil cases that could be tried remotely and scheduled case management conferences with the attorneys to discuss the remote project

and answer their questions. Despite my personal efforts, I was only able to obtain the necessary consent to try two cases remotely to a binding verdict. Therefore, even if trial judges are given the authority to order hybrid jury trials, without the parties' consent, trial attorneys need opportunities to develop their remote trial skills, at least to the extent necessary to select a remote jury. With practice and familiarity, the attorneys' objections and resistance to change during the pandemic as it concerns jury selection will be reduced.

Ironically, the recommendations I am making at the end of the Fourth Judicial Circuit's Remote Civil Jury Trial Project present new challenges if trial judges are given the authority to order hybrid remote civil jury trials. Meeting the challenges created by my recommendations will require simultaneous tripartite training of judges, court personnel and attorneys. Such a tripartite training program would confront obstacles similar to the remote pilot program itself – time, budget, human resources, and resistance to change. During the days immediately following our first binding fully remote civil jury trial, I began to give much thought and consideration to the future of this project and how to make our remote jury model scalable. I plan to initiate a Remote Jury Selection Training and Education Pilot Program. My following recommendations for developing such remote training and education mirror the process our workgroup relied upon to

successfully develop our fully remote civil jury trial model – mock remote jury selection proceedings with volunteers to build a formal training and education program:

- Building a simple fact pattern for the mock remote jury selection such as the ABOTA/AIC materials we used for our project’s mock remote jury trials, and use that same fact pattern for every mock remote jury selection.
- Schedule weekly half-day mock remote jury selection sessions on Friday mornings.
- Recruit volunteer attorneys who practice in the Fourth Circuit from ABOTA and AIC to participate in these mock remote jury selections as attorneys and jurors. Periodically the “attorneys” and “jurors” switch places between their respective roles as “attorneys” and “jurors” at time intervals allowing each participant to experience remote jury selection as an attorney. The Zoom skills required to participate would be relatively simple: logging-in; virtual backgrounds for attorneys; and moving from remote courtroom to remote sidebar conference to hear logistics issues, objections and individual juror hardships.

- Identify and recruit civilian bailiffs who could participate in these mock remote jury selection sessions at the same time as the volunteer attorneys, under the supervision of the CTO and IT Staff, to determine if civilian bailiffs can be trained to perform the basic remote bailiff skills needed for remote jury selection such as the preliminary Zoom technology matters and basic troubleshooting issues. Obviously, if the only remote proceedings are jury selection, then the civilian bailiffs would not be required to learn the more complex IT knowledge and Zoom skills needed to guide jurors through a fully remote trial and deliberations. For every civilian bailiff who can be trained to successfully serve as a remote IT bailiff, an IT staff member can be released to handle other important tasks at the Duval County Courthouse.

- To the degree court reporters would be interested in practicing their skills in a mock remote jury selection setting, they would be encouraged and allowed to do so without restrictions.

- Deputy Clerk involvement in the remote jury selection process is limited to confirming prospective juror identification and administering the oaths. With minimal time investment (less than 30 minutes) on Friday

mornings, different Deputy Clerks could be trained to perform these tasks during these mock remote jury selections.

- Judges will be recruited in the Fourth Judicial Circuit to participate in mock remote jury selections simultaneously with the attorneys, CTO/IT Staff, civilian bailiffs and deputy clerks to learn the very basic Zoom skills needed to complete a remote jury selection.

- After several mock remote jury selections are completed and all interested ABOTA and AIC members have had an opportunity to participate, we will open this training via mock remote jury selections to other interested attorneys in the Fourth Circuit with volunteer ABOTA and AIC attorneys serving as “faculty” to work with these attorneys.

During the course of completing numerous mock remote jury selections in the Fourth Circuit we will develop formal plans and materials to duplicate and provide training and education to interested groups of judges, clerks, CTOs/IT staff, civilian bailiffs, attorneys and court reporters in the state and country.

In conclusion, communities around the state are developing innovative ways to protect individuals while balancing economic and public health concerns. Office buildings, grocery stores, retail stores, restaurants, gyms, hospitals and other medical providers, dentist offices, churches, amusement parks, sports venues,

movie theatres, and airlines are finding ways to safely adapt to this “new normal” imposed on us by COVID-19. Hybrid remote civil jury trials represent an innovative way to protect individuals while balancing public health concerns with the essential constitutional right to trial by jury in civil cases. The constitutional right to a civil jury trial is no less important than the commerce, medical, dental, worship, recreational, entertainment and travel activities currently being enjoyed in this state safely adapted for this new normal.

Bruce Anderson
Circuit Court Judge
Fourth Judicial Circuit
October 2, 2020