

Civil Bench Trial Protocol

I. Background

Since the onset of the pandemic, the Court has undertaken to address the civil (non-family) inventory throughout all Phases of reopening in a limited manner. Equity matters, both emergency and non-emergency, continue to be addressed via advanced communication technologies. The same is true for zoning and land use matters. Discovery disputes are being heard. Preliminary objections and summary judgment motions¹ are being ruled upon. In addition, this Court instituted a voluntary settlement conference program, which has since been discontinued due to the fact that it was not used.

While the path to resumption of jury trials is developed², the Court believes it to be appropriate to take action to attempt to encourage resolution of pending cases and to make available the opportunity for resolution by way of trial without a jury. This protocol has been developed to meet that goal.

II. Assumptions

There are currently in excess of 730 matters that have been designated as trial ready and that number continues to grow. The Court's experience is that counsel generally are not proactive in seeking ways to bring closure to cases in the absence of judicial intervention. This is, by no means, a criticism of the attorneys involved in these cases. We are also aware that the pandemic had made communication and witness availability problematic. The Court is also aware of the right to trial by jury and the reluctance of counsel or litigants to have matters resolved by one person, albeit a Judge. This protocol has been developed to force the parties to come together to discuss alternative resolution strategies and settlement and to facilitate the final resolution of cases where jury trials are not required or have been waived.

Finally we are aware that certain types of cases are more amenable to this type of approach. Accordingly, cases of those types will be called first.

¹ This does not include eviction and foreclosure actions which were stayed by preemptive actions on the state level.

² The Court has formed a committee consisting of Judges, lawyers and administrators to develop the plan. The work is ongoing.

III. Identification of Cases

Court Administration would be charged with identifying an initial pool of 100 cases from the pretrial inventory consisting of cases where a jury demand has not been perfected³.

The Court will also accept other cases where a jury trial was initially demanded but all counsel now agree to a bench trial. Counsel in such cases should notify Court Administration.

IV. Notice of Pretrial Conference

Notices will be sent to counsel and unrepresented parties from those cases identified pursuant to Paragraph III above setting forth the following:

- a. date and time of conference
- b. name of presiding judge
- c. link, password and other information to facilitate connection to the conference via Zoom
- d. Order to appear
- e. Order to produce a pretrial memorandum with the required information, as set forth below
- f. Email address to which the pretrial memo shall be forwarded

V. Pretrial Memorandum

Parties in all cases shall file a pretrial memorandum which shall contain the information required by Pa.R.C.P. 212.2 (a)(7) and M.C.R.C.P 212.2(a)(7) and which shall also be delivered 7 days prior to the scheduled date of the conference to the email address indicated in the Order.

VI. Conference/Triage

Parties will appear at the conference via Zoom. Counsel and parties shall attend. In the case of corporate or other business entity, an authorized representative with settlement authority must attend.

Parties shall come prepared to discuss settlement of the case, the opportunity to try the case by bench trial, the possibility of arbitration, the length of trial, the availability of witnesses and taking of trial depositions.

In the event a settlement is reached or there is an agreement to arbitrate, an Order will be entered.

³ The Court has issued a separate protocol related to tax assessment appeals. Those cases will also have a pretrial conference and be scheduled for trial.

The President Judge shall designate one or more Judges for triage. Prior to the first scheduled conference, the President Judge shall designate two or more Judges before whom Bench Trials would be conducted.

VII. Trials

Trials will be conducted in the Courthouse subject to all the safety protocols currently in place. This includes the wearing of masks by all participants at all times and appropriate social distancing. Counsel will be encouraged to present witnesses via Zoom or by way of previously undertaken trial depositions.

Trials will not be continued following scheduling, except upon the finding of exigent circumstances. A request for continuance shall be directed to the Triage Judge.