



STATE OF VERMONT
GENERAL ASSEMBLY
SENATE COMMITTEE ON JUDICIARY

January 27, 2021

Honorable Paul L. Reiber, Chief Justice
Vermont Supreme Court
111 State Street, Drawer 9
Montpelier, VT 05609-0801

Susanne Young, Secretary
Vermont Agency of Administration
109 State Street
Montpelier, VT 05609-0201

Dear Chief Justice Reiber and Secretary Young:

At the January 22, 2021 meeting of the Senate Committee on Judiciary, the Committee heard testimony from a number of witnesses regarding the significant backlog in scheduling jury trials for civil cases in Vermont's court system. Although the COVID-19 emergency of course required the court to suspend jury trials at least temporarily, testimony to the Committee from experienced attorneys indicates that the suspension of civil jury trials is now amounting to a denial of justice for Vermont citizens. As a result, the Committee strongly and respectfully recommends that the Supreme Court take whatever measures are necessary to restart civil jury trials as soon as possible, including reducing the number of jurors from 12 to 6 and considering trial locations other than courthouses. In addition, the Committee recommends that the Executive Branch provide the Judiciary with all appropriate funding, including distributions from the Coronavirus Relief Fund, to ensure that sufficient resources are available to restart civil jury trials without delay.

The Committee appreciates the work that the Judiciary has done to consider how to permit civil jury trials to once again be held safely. Due to the state of emergency caused by the pandemic, implementing protocols that would protect public health during jury trials has understandably been very difficult. It is obviously a nearly impossible task to adapt historic courthouses for proceedings involving scores of people crowded together in close quarters, as would be necessary for a typical jury trial.

However, the inability to hold a civil jury trial for nearly a year has now resulted in an emergency of a different sort. The civil jury trial system protects Vermonters by ensuring that citizens and businesses who are injured are able to seek redress in the courts. The knowledge that a jury trial is upcoming provides the parties with a strong incentive to negotiate in good faith and settle their disputes before the trial even begins. Now, without the possibility of a jury trial, there is no incentive to settle, and parties have simply decided that it makes more financial sense to pause negotiations until jury trials resume. Under these circumstances, Vermont citizens are denied the fair administration of justice, and attorneys are forced to tell clients that it may be years before their cases are even scheduled for trial.

The Committee believes that the harms being caused by the stoppage of civil jury trials have become too great, and that the time has arrived for civil jury trials to resume. The Committee recommends that the following measures be considered to permit the resumption to occur in a manner that maintains the safety of all participants.

First, the Committee recommends that the Court promulgate a rule permitting civil juries to be composed of 6 jurors rather than 12 for the duration of the emergency. The Committee is aware that Court precedent generally requires 12 jurors, but in the Committee's view the Judicial Branch's authority during this unprecedented pandemic would permit the Court to temporarily reduce the size of juries until the emergency has passed.

Second, as the Jury Restart Committee Report noted, one of the major impediments to holding jury trials is that most courthouses are older buildings that lack the size, spacing, and ventilation systems necessary to run a trial safely. As a result, the Committee recommends that the Court consider alternative locations other than courthouses where jury trials might be held.

There may be additional measures that could expedite the resumption of civil jury trials, such as using Zoom or other remote technologies for portions of the proceedings, such as the jury draw. The Committee encourages the Judiciary to consider any initiative that might speed the process.

Lastly, because some of these proposals will have costs, the Committee recommends that the Executive Branch provide the Judiciary with sufficient resources to fund them. This crisis has clearly been caused by the pandemic, so it appears that the Coronavirus Relief Fund would be available to help the courts reopen for jury trials. Whatever the source, the Committee asks the Executive Branch to provide the Judiciary with the funds it needs to resume civil jury trials for all Vermonters.

The Committee recognizes the challenge of restarting civil jury trials while the COVID-19 pandemic is ongoing. However, in the Committee's view, available safety precautions would permit the resumption of trials in a manner that would not compromise public health. Vermont citizens are being denied their constitutional rights every day that jury trials are on hold, and it is up to the three branches of Vermont government to respond to this emergency as much as any other. As a result, the Committee recommends that the Judiciary restart civil jury trials without delay, and that the Executive Branch provide the Judiciary with Coronavirus Relief Funds and any other resources necessary to restart the trials right away. The Committee and the Legislature stand ready to support these measures however possible.

Thank you for your long-standing work protecting the rights of Vermonters in the court system and for your consideration of the Senate Judiciary Committee's concerns. We would be happy to discuss this matter further at any time.

Sincerely,

Senator Dick Sears, Chair
Vermont Senate Committee on Judiciary