



Still Zooming into 2021

One of our staff snapped the following photo a few weeks ago as she walked down one of the hallways of our Dallas office:



On any given day, this is the scene in our Dallas and Austin offices. Needless to say, we have all adapted to zooming into Courts across Texas, virtual and telephonic mediations, and computer-aided depositions. It is a different practice of law but we're grateful that judges, attorneys, court-reporters, mediators and, most importantly, our carriers and clients have made the adjustment to our current requirements as smoothly as possible and our civil cases continue to progress. We have even heard from many of you that you are hoping that some of these adjustments will become permanent once "normal life" returns. We have also enjoyed the ability to schedule hearings and depositions across Texas without having to account for travel and we know many of you have appreciated being able to attend mediations on your files virtually. While we do not have anything official, we anticipate that at least some remote attendance procedures will become permanently accepted by Texas courts.

So, now that we've established that we're all still zooming for the day-to-day law practice...where are we on full resumption of jury trials? The Texas Supreme Court is now on its 30th Emergency Order Regarding the COVID-19 State of Disaster. The most recent Order pertaining to civil litigation is the Court's 29th Emergency Order. In this Order, in-person proceedings are largely prohibited for all but a select few, specific types of hearings until February 1st. While the Order does allow for jury trials, it continues the extremely stringent requirements as to sanitation, social distancing, technology, and administrative oversight for any court seeking to hold such a trial. Some of our larger venues have been carefully holding jury trials using large courtroom galleries for the jury box and arenas and convention centers for voir dire. Paul Bennett and Jonathan Hernon in our Dallas office recently obtained a good result in just such a trial in Houston- an experience they described in our most recent newsletter.

Unfortunately, very few courts, particularly in the more remote areas, have been able or willing to meet the requirements to hold jury trials. Even when courts have attempted in-person jury trials, there have been complications. We are aware of a federal jury trial in the Eastern District of Texas, held in November, which resulted in a mistrial when several parties to the proceeding, including jurors and attorneys, tested positive for Covid-19 during the trial. This event has been widely publicized in legal publications and has caused some judges to reconsider attempting jury trials at the present time.

As you may have seen, there is a push to take jury trials virtual as well. One of our district courts in Dallas County recently held a remote jury trial of a small car accident case. This trial was broadcast on You Tube which allowed many of us to observe the proceedings. While we are pleased to report that the trial resulted in a defense verdict, the process itself was unwieldy and prolonged as the case was one which would have been tried in a matter of a few hours under normal circumstances yet required two full days in a virtual format. There were numerous technology glitches including a lost internet connection to the Defendant in the middle of her testimony and multiple interruptions from jurors complaining of sound quality and connection problems. In short, this is a process which appears unlikely to be effective on a widespread basis and which presents some serious due process concerns given the apparent distractions of the jurors and potential technological failings.

In summary, there has just not been a proven safe and effective way for jury trials to resume on a widespread basis in Texas. We are still anticipating a continued delay in most courts for jury trials until at least March or April of 2021, depending a great deal on the effectiveness and acceptance of the forthcoming vaccine.

The other matter which we wish to note in this alert is the effect of the Supreme Court's latest order on statutes of limitations. Unlike prior emergency orders which specifically addressed statutes of limitations, the present order does not include a specific extension period. However, this Order does permit all courts in Texas to modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than February 1, 2021. We expect that this provision will be used by plaintiffs to argue that a trial court has discretion to extend the limitations period if the statute runs anytime between September 15th (the last specific extension date) and February 1.

As of this alert, we are mere weeks away from the end of 2020. What a year of challenges for us all! We are proud to say that our offices, our clients, and our court system have adjusted and largely overcome the challenges this year presented and we are looking forward to a new year- even if we start it on Zoom! Best wishes for your continued health and safety. As always, please do not hesitate to contact us with questions or concerns- we're happy to assist!

[ABOUT THE AUTHOR:](#)

[Kristi Kautz](#) has been called an "excellent advocate for her client" by opposing counsel and she considers this to be one of the best compliments any attorney can receive. She is an experienced litigator who thrives on representing clients in cases ranging from simple to complex, from single-party to multi-party, and from pre-suit to post-judgment litigation. She has achieved excellent results in numerous fields including transportation, construction defect, product liability, premises liability, insurance coverage, and personal injury. Her practice extends to jurisdictions across Texas and you'll find her equally at home advocating for her client in the courtroom and at the bargaining table.

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Fletcher, Farley, Shipman & Salinas LLP is a dedicated business defense firm with offices in Dallas and Austin. The firm's attorneys leverage their extensive experience and skills as trial and appellate attorneys to achieve resolution both inside and outside of the courthouse in matters including the defense of tort litigation, business and commercial litigation, construction, insurance, employment and dispute resolution. The firm's unique Rapid Response Team™ provides a legal forensic service that can be deployed nationwide around the clock, within moments, to assist clients in responding to catastrophic losses.

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