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'I Want to See the Person's Face': Houston Judges Poll Attorneys About Face Masks, COVID-19 Reopening Precautions

As Texas courts prepare to reopen in-person proceedings as soon as June 1, the Harris County judiciary sent an online survey to measure local lawyers' feelings about face masks, plexiglass dividers, jury selection and more.

BY ANGELA MORRIS

An attorney, questioning a jury panel about potential biases related to a case, is studying faces in the crowd for expressions that would show their underlying reactions.

But each potential juror is wearing a face mask.

How does it impact jury selection?

The issue of jurors in face masks—plus, how to judge a witness' credibility when her face is covered—were a couple of the questions on an online survey that the Harris County judiciary emailed to local attorneys Tuesday, in an attempt to gauge the bar's opinion about returning to the courthouse for in-person hearings and trials.

"We're in a very strange situation. One that we've never experienced

in our lifetimes, probably," said Judge Robert Schaffer of the 152nd District Court, who serves as Harris County's local administrative judge.

The survey went out Tuesday morning, and it already had more than 1,400 responses by lunch time, Schaffer noted, adding that the idea of restarting jury trials is down the road, definitely not before July.

Houston commercial litigator Jeff Joyce said that he's talked to attorneys who are suspicious about the survey, thinking that judges are only soliciting lawyer input so they'll object less once the changes come down.

"It's nice to be asked," Joyce said. "I'm assuming judges want to know what the lawyers think, and I'm sure they would dial that in. The cynical were commenting, maybe this is just to make



152nd District Court Judge Robert Schaffer.

sure everyone felt like they had input."

But Schaffer said judges do want to hear from lawyers.

"We are trying to design the courtrooms to accommodate certain things. We take into account what the lawyers are thinking," he said.

Some of the survey questions painted a picture of what Texas courts might look like when they



Chris Hanslik.

reopen to in-person proceedings as early as June 1. Jury trials won't start up right away, and remote hearings will still be utilized, but in-person proceedings will be allowed as long as the courts follow a long list of safety precautions created by the Texas Office of Court Administration.

Cover-Ups?

Schaffer said lawyers and judges are talking about the issue of witnesses in face coverings.

"I want to see the person's face. I want to see if he looks like he's being sincere, or if she looks like she's making stuff up and not telling the truth," Schaffer said. "It's a huge issue, and one we have to deal with."

Aside from the queries about face masks, the survey asked for opinions on the idea of the courts installing plexiglass shields to separate the jurors inside of the jury box, surround the witness stand, and protect the judge's bench. There were questions about doing jury selection with smaller panels, or perhaps using videoconferencing for the voir dire, among other things.

Schaffer noted that in Harris County, the courts are already installing plexiglass to protect the clerks, court reporters and bailiffs, who sit in high-traffic areas of courtrooms.

"I joke our courtrooms are going to look like a hockey rink," he said. "We're not putting plexiglass up around the jury box,

because we haven't figured out how we are going to conduct the jury trials. This is an issue that's causing a lot of concern, because people sitting in the jury box are sitting shoulder-to-shoulder."

Bill Kroger, president of the Houston Bar Association, said that he would be OK with plexiglass if it made the jurors, witnesses and the court staff more comfortable and provided them protection.

“People can kind of hide behind a mask. It's hard to have a conversation with those who have a mask on,” Hanslik explained. “In a complex case, I would err on the side of let's wait and have a more traditional trial, than one with masks and plexiglass.”

"I did not think that would interfere with my ability to present a case, the fact there would be a plastic shield up," said Kroger, partner in Baker Botts in Houston, who added that dealing with an inconvenience such as a plexiglass shield is "less important than getting the jury system up and running."

But Chris Hanslik, chairman of BoyarMiller in Houston, said that while he can see the sense of protecting court staff with plexiglass, he wonders how a face mask or a plexiglass shield would impact how well the jurors would be able to hear a witness. Lawyers



do rely on verbal and nonverbal communication to pick a jury, and face masks would take one of those communication methods away, he added.

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