

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: AMENDMENT NO. 1 TO THE MAY 6, 2020 RESUMPTION OF OPERATIONS ORDER

WHEREAS, on May 6, 2020, the Chief Justice of the Supreme Court of Appeals of West Virginia entered an order regarding Resumption of Operations (“Resumption of Operations Order”);

WHEREAS, the Resumption of Operations Order incorporated and adopted the COVID-19 Resumption of Operations Protocols (“Protocols”) by reference; and

WHEREAS, the Court has approved Revised COVID-19 Resumption of Operations Protocols (“Revised Protocols”) to adapt to evolving information regarding the status of the COVID-19 pandemic in West Virginia.

THEREFORE, it is ORDERED that the Revised Protocols is adopted and incorporated by reference to this Amendment No. 1 to the May 26, 2020, Resumption of Operations Order. The Revised Protocols shall amend and replace the prior Protocols.

It is further ORDERED that all other portions of prior Administrative Orders not expressly modified by this Order remain in full force and effect.

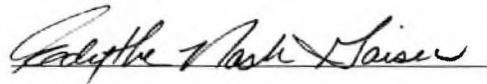
It is further ORDERED that this ORDER supersedes any local administrative order issued by a judicial official to the extent such order is inconsistent herewith.

The Administrative Director is hereby directed to distribute copies of this Administrative Order and the Revised Protocols by appropriate means to all judicial officers and all court employees.

ENTERED: October 6, 2020



Tim Armstead, Chief Justice



Edythe Nash Gaiser, Clerk of Court

SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE

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REVISED COVID-19 RESUMPTION OF OPERATIONS PROTOCOLS

October 6, 2020

Revision Note: Throughout this pandemic, the Court has constantly monitored the status of COVID-19 in West Virginia, and clarified this document where appropriate through both formal written guidance documents and through informal discussions in response to specific questions. This Revised COVID-19 Resumption of Operations Protocols reflects and incorporates these changes to ensure consistent application and interpretation of this document.

Since the Supreme Court of Appeals of West Virginia (“the Court”) released the March 12, 2020 COVID-19 Planning Document, the COVID-19 pandemic response has evolved to meet the task. The Court has taken all necessary steps to both address the pandemic and allow access to the courts through the issuance of protocols, multiple administrative orders, and several internal guidance documents. These actions were designed to protect the health of court system employees, litigants, witnesses, jurors, attorneys, and the public, and to also support and encourage federal, state, and local public health officials in mitigation efforts.

On April 14, 2020, the national Center for Disease Control (“CDC”) and the Federal Emergency Management Agency (“FEMA”) issued guidance entitled “Opening Up America Again.”¹ These guidelines recommend a three-phased approach for states with a “downward trajectory” of COVID-19 cases over a fourteen (14) day period, ample hospital capacity, and a robust testing program. On April 27, 2020, West Virginia Governor Jim Justice announced West Virginia’s reopening plan, which includes a multi-phased reopening protocol for public and private employers.

Consistent with guidance from the CDC and the state public health officials, the Court has elected not to extend the judicial emergency beyond May 15, 2020, but will instead direct that the

¹ Refer to CDC Guidelines, *Opening Up America Again*, available at <https://www.whitehouse.gov/openingamerica/#criteria>.

courts within our state follow the protocols and precautions set forth herein. Accordingly, the Court implements the following protocols and guidance, designed to mitigate the risks associated with the relaxation of the stay-at-home order and ensure a gradual return to normal court functionality. The Court recognizes that, even though the Governor has relaxed containment efforts, it will be many more months before society returns to some of its pre-pandemic practices.

STATEWIDE OR COUNTY BASED PROTOCOLS

The Court intends for a uniform, statewide response to the ongoing COVID-19 pandemic; however, it also recognizes that diverse geographic regions of the state have been, and will continue to be, impacted differently. When a localized outbreak occurs, it may be appropriate for the Chief Circuit Judge or Chief Family Court Judge to issue temporary judicial emergency orders in consultation with their local health departments and with the Administrative Office regarding county-specific issues.

Judicial officers are encouraged to confer with local health officials, may accept recommendations made by such health officers to respond to concerns that community spread is occurring, and may take any additional steps medically recommended for additional precautions.

Because each court office and facility is different, court personnel must follow these protocols closely, and do their best to apply and adapt them based on the unique circumstances of each county. These protocols are meant to establish minimum standards; however, each county is empowered to take additional steps if recommended by local health officials.

Therefore, the Administrative Office is available to offer assistance, but the Court strongly encourages close collaboration between judicial officers in each county and their respective County Commissions, County Administrators, other elected county officials, municipal leadership, and county health departments. The Chief Circuit Judge and Chief Family Court Judge in each county should proactively open a line of communication with the county health director to request that a county health officer keep the Chief Judges informed regarding possible community spread and to solicit any necessary recommendations to address that county's unique circumstances.

The School Alert System map issued by the West Virginia Department of Education and/or the County Alert System map issue by the West Virginia Department of Health and Human Resources are factors that may be considered by the Chief Circuit Judge and Chief Family Court Judge in determining appropriate steps in consultation with county officials and local health

officials. An increased color status represents a heightened risk of transmission in a county and may, but is not required to, warrant a local judicial emergency action.

HUMAN RESOURCE PROTOCOLS

To help reduce the spread of COVID-19 among our workforce, the Court implements the following protocols:

1. A Selecting Authority² may authorize remote work for employees if circumstances warrant and if an employee can perform their duties with available technology. All “vulnerable individuals”³ in any county should consult with their Selecting Authority regarding continued remote work or modified job duties to reduce the risk of exposure. Examples of modified duties may mean limiting exposure to the public by reassigning duties, limiting in-state work-related travel, and/or reasonable voluntary isolation while in the workplace.
2. Video conference and/or teleconference are the preferred method of holding meetings. All one-on-one discussions should occur with sufficient social distancing. Employee interactions and discussions should follow CDC and state health official recommendations.
3. Employee common areas, such as break rooms, should be limited or rearranged to maintain appropriate social distance. Employees should take breaks at their work area or outside of the building if possible. If this is not possible, the Selecting Authority should determine the appropriate “maximum capacity” of a common area, and post this number on the doorway.
4. All employees that have to physically report to the workplace must maintain sufficient distance from coworkers. Employees should not share an office or confined workspace, nor should they share equipment. If shared equipment is required to perform an employee’s job duties (office telephone, computer workstation, copier, etc.), then the employee should wash their hands prior to using the equipment, and sanitize the equipment with appropriate and available disinfecting wipes prior to another employee’s use.

² “Selecting Authority” means one who is authorized by statute or by the Court to select employees in the state judicial system.

³ Per the CDC, “Vulnerable Individuals” are (1) elderly individuals, or (2) individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised, such as by chemotherapy for cancer and other conditions requiring such therapy.

5. Employees must wear masks or a face covering in common areas or while interacting with the public at counters, subject to the protocols discussed in the Court Operations section below.
6. Due to the risk of cross-contamination through inappropriate use, the Court does not recommend that most employees wear gloves in the workplace.⁴ Gloves cannot be sanitized and improper donning and doffing without proper training may increase the risk of possible infection. Instead, all employees are strongly encouraged to frequently wash their hands with soap and water for at least twenty (20) seconds, and should not touch their eyes, nose, or mouth. Gloves may be worn for a specific task, such as opening mail, disinfecting surfaces, or handling documents or money; however, the gloves should be carefully removed following the completion of the task and disposed of properly. Employees should promptly wash hands between tasks, even if gloves were used, or before returning to their workstation. Employees should cough or sneeze into their elbows and not their hands. Alcohol-based hand sanitizer may be used when soap and water is not available, or as a supplement to frequent handwashing.
7. Employees who have a fever, or other common COVID-19 symptoms, cannot come to work. Because the virus can spread after symptoms subside, employees should remain home for ten (10) calendar days after the onset of symptoms. Selecting Authorities are encouraged to address concerns with employees, and are empowered to direct an employee to leave work if an employee is not following this policy. Employees directly exposed to a suspected case of the disease should self-quarantine and not return to work for fourteen (14) days after the last possible exposure or until the timely receipt of a negative test.
8. While each employee is free to travel for personal reasons while abiding by travel directives from the state and CDC, the Court strongly discourages employees from traveling out-of-state until the pandemic is fully under control. The July 8, 2020 Memorandum from the Administrative Director regarding Masks and Return from Vacation Policy amends and supplements these Protocols and reflects the current Court policy on employee travel and return from vacation.
9. Employees with suspected COVID-19 symptoms should seek testing as instructed by health authorities or by medical providers.

⁴ Probation officers should continue to use examination gloves as directed.

10. For employees recovering from COVID-19, or for employees self-quarantining, telework may be required if possible. An employee should discuss this possibility or necessity with their Selecting Authority, who will ultimately decide whether remote work is feasible or required based upon a person's job description, available technology, current health condition, and regular duties.
11. An employee with COVID-19 may return to the workplace (a) when authorized by a physician or local health official, and (b) ten (10) days after the onset of symptoms and resolution of fever for at least 24 hours, without the use of fever-reducing medications, and with improvement of other symptoms. Employees with severe illness should consult with the treating health care professional or local health department regarding return-to-work. Employees with a positive test that never develop symptoms can return to work ten (10) days after the date of the test. The Selecting Authority should reasonably defer to medical advice regarding return-to-work procedures.
12. Selecting Authorities are encouraged to be flexible with employees suffering adverse impacts due to community efforts to stop the disease. For example, because the school system remains partially closed in some counties and subject to changes under the School Alert System issued by the West Virginia Department of Education, the Selecting Authority is encouraged to work with the employee to mitigate the foreseeable impacts, including with remote work options, a modified work schedule, or temporary reassignment of duties consistent with state personnel policies. Similar flexibility should be provided to an employee that is primarily responsible for the care of an at-risk relative or partner. The August 31, 2020 Memorandum from the Administrative Director regarding Leave, Remote Work, and COVID-19 amends and supplements these Protocols and reflects the current Court policy on this issue.
13. The Court's Administrative Office, the Office of Counsel, and the Clerk's Office in Charleston will consider steps taken by the Governor in determining whether to close offices, limit public access, or modify work schedules or operations.
14. Out-of-state travel by employees for Court business is prohibited until further notice or unless expressly authorized on a case-by-case basis by the Administrative Director.
15. Employees with questions about COVID-19 should consult their health care provider, or call the State's 24/7 COVID-19 hotline: 1-800-887-4304. General information is also

available from the West Virginia Department of Health & Human Resources at www.coronavirus.wv.gov.

16. Employees found to be taking advantage of the public health situation for their own personal gain or to fraudulently avoid regular employment duties may be subject to employee disciplinary action, up to and including dismissal.⁵

COURT OPERATIONS PROTOCOLS

1. All judicial offices and court spaces should be thoroughly disinfected prior to resuming operations.⁶ County Commissions remain responsible for cleaning courthouse facilities, including the initial cleaning, as well as sanitization of facilities as recommended by local and county health departments. Court personnel should also undertake a shared responsibility for routinely wiping and disinfecting surfaces in personal and courtroom work areas.
2. The Court continues to encourage the use of remote technology to conduct hearings and proceedings. Judicial officers may impose additional restrictions and take additional precautions designed to protect health and safety.
3. Judicial officers are prohibited from performing “call dockets” where multiple matters are scheduled for a set time, and attorneys and litigants are required to wait for the Court to call their case. Instead, judicial officers should schedule their docket to allow for limited traffic in the court areas at any given time. Judicial officers should mark safe distances between seating areas in the courtroom. One possible solution would be for attorneys and parties to wait in their cars, and the judicial assistant could call and notify them when their case is “next-up” on the docket. Judicial officers that share common waiting areas must coordinate schedules with fellow judicial officers to limit the total number of individuals within that common area. Judicial officers could alternate days, divide into morning and afternoon sessions, or designate specific waiting areas with sufficient safe distances. When necessary, judicial officers should limit public access using the least-restrictive means

⁵ See [Supreme Court of Appeals of West Virginia Employee Handbook](#), Section 5.3(J) (Abuse of Sick Leave); Section 5.11(B)(Reporting Suspected Abuse).

⁶ Refer to CDC Guidelines and Recommendations for disinfecting facilities and the EPA-approved list of disinfectants, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html> and <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.

possible, taking into consideration the public's right to access in light of the need to protect the health and safety of all individuals involved. Judicial officers should take steps, through designated seating areas in courtrooms or through webcast, to ensure that the public has access to the proceeding.

4. For in-person hearings or proceedings, parties and attorneys should be required to spread out in the courtroom to avoid having many people sit at a confined counsel table area. Witnesses should keep a sufficient distance from court personnel, and testimony should not be limited to the traditional witness stand. Members of the public, attorneys, parties, and witnesses must wear masks or face-coverings in a courtroom or judicial office, and may be required to use hand sanitizer upon entrance. Generally, movement within the courtroom should be limited to maintain safe distances. If directed by a judicial officer, masks or face-coverings can be removed while addressing the court or testifying, assuming sufficient social distancing is maintained.
5. The purpose of the mask or face-covering requirement is to reduce the risk of a person spreading the disease to protect Court and county employees, attorneys, parties, jurors, witnesses, and the public. Therefore, consistent with recommendations from the CDC and from the Governor, any type of face covering sufficient to catch droplets leaving the nose and mouth, including homemade fabric masks or bandanas, is appropriate. Medical masks or N95 masks are not required.
6. Courts should include instructions regarding these protocols, specifically the face-covering requirement, in all hearings notices or summonses. It is incumbent on counsel to ensure that their clients and witnesses are aware of this requirement and are appropriately prepared for Court.⁷
7. Large-scale jury orientations or trials requiring large jury pools should not occur until further order of the Court. Instead, jurors should be called to the courthouse in manageable numbers where adequate social distancing measures can continue. Jurors must be permitted to wear self-provided masks. Judges should be creative in arranging jurors in the courtroom to allow them to fully observe the proceeding and hear testimony to perform their duties;

⁷ See W. Va. Trial Court Rule 4.07, "Counsel shall at all court appearances present themselves attired in a manner befitting their profession and indicative of their respect for the court, and shall admonish their clients and witnesses concerning inappropriate courtroom attire."

however, juries should not be limited to a small jury box and should not be required to sit within six (6) feet of any other person. Judges should consult with their local health department about the availability and use of personal protective equipment. Judges should give special consideration to a juror seeking relief from jury duty if the juror establishes that they are a “vulnerable individual.” Judicial officers may also consider moving jury trials to alternative locations that provide adequate space to allow appropriate social distancing as long as the location can provide adequate provisions for examination of witnesses and presentation of evidence. The June 26, 2020 Memorandum from the Administrative Office regarding Guidance for Jury Management and COVID-19 amends and supplements these Protocols and reflects the current Court policy on this issue.

8. Hearings involving incarcerated individuals should still utilize video conferencing to reduce the risk of a COVID-19 outbreak in a regional jail or corrections facility.
9. Family Court Judges in multi-county circuits may hold remote hearings in one county from a different county’s courtroom within their circuit. A Family Court Judge may compel parties, counsel, and witnesses to attend a hearing in any county within the circuit if one facility is more conducive to adequate social distancing standards. Additionally, Family Court Judges may utilize other facilities within the county if a proper record can be made utilizing existing resources.
10. Lobbies, service counter areas, and probation offices should limit public access. Judicial personnel should mark six (6) foot “safe space” lines on the floor to ensure that people maintain appropriate distance. All individuals approaching a service counter, window, or probation office must wear a mask, and Clerks and probation staff should limit staffing at these service areas to minimize contact with the public if appropriate. Judicial personnel interacting with the public must wear a mask or face covering, and should aggressively wash their hands after handling filings or payment. Plexiglass or other impermeable barriers, such as plastic sheeting, may be used where needed if other physical restrictions are inadequate due to space limitations. Clerks may still utilize secure drop-box type depositories⁸ to accept filings to limit contact, and also may encourage payment by money order or cashier check to limit cash processing. Clerks may continue to collect fees and

⁸ These deposit boxes must be secure and must be checked daily.

finer by credit card via telephone, if possible. Clerks may place commonly used forms on a table away from the service counter to limit personal contact.

11. Bailiffs or other court personnel should wipe down counsel table, counter areas, or other surfaces between each matter with disinfectant wipes or with a CDC-recommended disinfectant solution. Bailiffs or court personnel should also wipe down door handles or other “high touch” areas in judicial offices frequently. Judicial personnel are encouraged to discuss general cleaning and disinfecting practices in the rest of the courthouse with their County Commission or County Administrator.⁹
12. Parties, attorneys, witnesses, and jurors should not come to court if they have a fever or other COVID-19 symptoms, or if they have been directly exposed to a suspected case of COVID-19. Individuals are encouraged to contact the circuit clerk’s office, magistrate clerk’s office, or the judge’s office for guidance if these situations occur. Judicial officers are encouraged to be as flexible as possible to accommodate these concerns. The Court supports a County Commission’s efforts to scan temperatures with no contact thermometers and/or ask common screening questions upon entry of a facility as recommended or directed by a local health department.
13. Court employees should prominently post the [Notice Poster](#) issued on May 15, 2020 on doors leading to judicial work areas.
14. If a party, attorney, witness, or juror is adversely impacted by continued community efforts to stop the disease, such as extended school closures, the court system should make efforts to reasonably accommodate the individual to support public health efforts. Judicial officers should favorably consider requests for extensions of time, continuances, or modified schedules if the circumstances warrant granting the request. The Court system must be mindful of limitations public health efforts may create, and must support those efforts by accommodating individual hardships, if possible.
15. Probation officers and probation employees should read, understand, and closely follow all guidance issued by federal, state, and local officials about COVID-19 and law enforcement functions. Specifically, officers should avoid close contact with a person suspected of COVID-19 and have trained EMS/EMT assist if COVID-19 is suspected.

⁹ See CDC Guidelines and Recommendations for disinfecting facilities. <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>.

16. If a judge, judicial officer, or judicial official has specific concerns about their community, they are encouraged to discuss these concerns with the Administrative Director.
17. Even when the period of judicial emergency is over, judges should continue to be flexible and proactive in managing their dockets.
18. Individuals that fraudulently use public health efforts to affect court proceedings for personal gain or to avoid a legal obligation may be subject to civil or criminal contempt proceedings and penalties and/or sanctions. Attorneys violating the West Virginia Rules of Professional Conduct may be subject to referral to the West Virginia Office of Disciplinary Counsel.

Court personnel can contact the Administrative Office by telephone at 304-558-0145 or by e-mail at CommentsConcerns@courtswv.gov for questions or additional information. Attorneys, parties, witnesses, or jurors should contact the local judicial office handling the matter for case specific information.

**SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
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MEMORANDUM

TO: ALL COURT EMPLOYEES

FROM: JOSEPH M. ARMSTRONG, ADMINISTRATIVE DIRECTOR

DATE: AUGUST 31, 2020

SUBJECT: LEAVE, REMOTE WORK, AND COVID-19

Beginning with the Court's first [COVID-19 Protocols](#) issued on March 12, 2020, the Court has taken a proactive role in protecting employees from possible COVID-19 exposure and accommodating employees facing unprecedented hardships due to community mitigation efforts. As we enter the sixth month of the pandemic in West Virginia, and as we develop ways to safely "live with" the virus, the Court will continue to adapt its policies, protocols, and procedures accordingly.

Effective **September 8, 2020**, the Court will resume its regular leave and record keeping policies subject to the following supplemental policies and protocols:

1. If an employee is off work for any reason, the Court's pre-pandemic leave policies outlined in the [Supreme Court of Appeals Employee Handbook](#) apply, subject to Paragraphs (2) through (8) below.
2. If an employee works in a county subject to a local judicial emergency order pursuant to W. Va. Code § 2-2-2 AND if the employee is unable to perform his or her job duties due to the closure of their primary work location, then the employee does not have to take leave sufficient to cover the time away from work. Employees who can work remotely and employees that are required to maintain essential court operations must still perform duties as directed by their supervisor.
3. If an employee works in an office that is closed temporarily due to a possible COVID-19 exposure, AND if the employee is unable to perform his or her job duties due to the closure of their primary work location, then the employee does not have to take leave sufficient to cover the time away from work. Employees who can work remotely and employees that

are required to maintain essential court operations must still perform duties as directed by their supervisor. Only the Chief Circuit Judge or Chief Family Court Judge has the authority to close an office for this reason.

4. If an employee is unable to work because the employee (a) is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), (b) is experiencing COVID-19 symptoms and seeking a medical diagnosis, (c) is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or (d) is directed to stay home and self-quarantine in consultation with the Administrative Director or his designee, then the employee may take two (2) weeks of special leave (equivalent to eighty (80) hours) afforded to them by the Families First Coronavirus Response Act (FFCRA)¹ and the Court's May 16, 2020 Resumption of Operations Protocols. This leave is in addition to regular accumulated sick and annual leave. Employees will not be required to exhaust all or some of their accrued annual or sick leave before utilizing this special leave, however they may choose to if they desire.
5. If an employee is unable to work because of the need to care for a child whose school or day care provider is closed for reasons related to COVID-19, then the employee is entitled to take the same two weeks of special leave (equivalent to eighty (80) hours) identified in Paragraph (4) above. After the exhaustion of the eighty (80) hours, the employee is entitled an additional ten (10) weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay under FFCRA. Employees will not be required to exhaust all or some of their accrued annual or sick leave before utilizing this special leave, however they may choose to if they desire.
6. The leave and out-of-state travel policy outlined in the July 8, 2020 [Masks and Return from Vacation Policy](#) remains in effect.
7. If the employee can work remotely based on already assigned court technology resources and job responsibilities, then the employee and supervisor may discuss modified work schedules or work arrangements to accommodate COVID-19 related hardships. Supervisors are encouraged to develop plans that are objective so that expectations are clearly communicated and capable of measured evaluation after a reasonable time-period. While modified schedules may look different for each individual situation, the Court encourages and supports reasonable accommodations that assist employees. However,

¹ The FFCRA's provisions expire December 31, 2020.

these accommodations are not without limit, and the Court system must continue to function efficiently and without unreasonable delay. Offering remote work is not indefinite, and the employee must know the supervisor can withdraw approval at any time, without notice. The availability of remote work is solely at the full discretion of the employee's supervisor and/or Selecting Authority.

8. Requests for leave are still subject to advanced approval by an employee's supervisor. See Sections 3.1 & 5.2(g) [Supreme Court of Appeals Employee Handbook](#). A supervisor may require an employee to be present during normal work hours, especially to avoid an unreasonable delay or disruption in judicial functions. If an employee's plans, weekend or otherwise, results in an anticipated COVID-19 self-quarantine when the supervisor needs work performed, then the supervisor may, at his or her discretion, deny the request for leave.

Questions regarding this memorandum, or other COVID-19 specific issues, can be addressed to CommentsConcerns@courtswv.gov. Several employees in the Administrative Office monitor this email account, and this is the most efficient way to reach someone if you need assistance.

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MEMORANDUM

TO: ALL COURT EMPLOYEES

FROM: JOSEPH M. ARMSTRONG, ADMINISTRATIVE DIRECTOR

DATE: JULY 8, 2020

SUBJECT: MASKS AND RETURN FROM VACATION POLICY

This Memorandum is in response to several questions our office has received regarding (1) the application of the Governor’s Executive Order No. 50-20 to Court employees and (2) clarification regarding the Court’s policy regarding return from vacation and self-quarantine. Please read it closely as both subjects are extremely important in our efforts to protect our employees and the judicial system from COVID-19.

I. USE OF MASKS IS REQUIRED AT ALL COURT FACILITIES

On May 6, 2020, the Chief Justice of the Supreme Court of Appeals of West Virginia entered an order regarding Resumption of Operations and adopting the COVID-19 Resumption of Operations Protocols (“Protocols”). The Protocols (1) required that “[m]embers of the public, attorneys, parties, and witnesses must wear masks or face-coverings in a courtroom or judicial office”, (2) permitted a judicial officer to direct an individual to remove a mask or face covering if addressing a court or testifying, assuming sufficient social distance is maintained; and (3) provided that Court employees should wear a mask or face-covering in common areas or when interacting with the public.

As a reminder, the purpose of the mask or face-covering requirement is to reduce the risk of a person spreading the disease to protect Court and county employees, attorneys, parties, jurors, witnesses, and the public. Consistent with recommendations from the CDC and from the Governor, any type of face covering sufficient to catch droplets leaving the nose and mouth, including homemade fabric masks or bandanas, is appropriate. Medical masks or N95 masks are not required.

On July 6, 2020, the Governor of West Virginia entered an Executive Order mandating that all individuals over the age of nine must wear a mask or face-covering indoors in public spaces where social distancing cannot be maintained.

In furtherance of the Court's prior Protocols, **all individuals, including court and county employees and judicial officers, must wear a mask or face-covering at all times while inside a court facility**, except for the following limited circumstances:

- Court and county employees may remove masks or face-coverings in private offices;
- Court and county employees may remove masks or face-coverings if alone in a room for an extended period of time;
- Masks or face-coverings may briefly be removed to consume food or beverages;
- A judicial officer may permit a mask or face-covering to be removed when speaking in a courtroom only if sufficient social distancing can be maintained and if removal is required to ensure an accurate record or evaluate the credibility of testimony;
- The individual has trouble breathing with a mask or face-covering;
- The individual is unable to don or remove a mask or face-covering without assistance; or
- The individual is a child age nine or under.

II. CLARIFICATION ON THE COURT'S POLICY REGARDING OUT-OF-STATE TRAVEL AND RETURN TO WORK

Paragraph 8 of the Human Resource section of the Protocols states:

While each employee is free to travel for personal reasons while abiding by travel directives from the state and CDC, the Court strongly discourages employees from traveling out-of-state until the pandemic is fully under control. A Selecting Authority may prohibit an employee from returning to the workplace following an out-of-state trip if the employee traveled by air or other mass transit, or if the employee traveled to an area with an active COVID-19 outbreak. Upon return, remote work may be required where appropriate. If remote work is not possible, the Selecting Authority may require the employee to utilize leave and self-quarantine for fourteen (14) calendar days before allowing the employee to physically return to the workplace.

We have received questions regarding out-of-state travel by employees. Please understand that the COVID-19 situation was, and remains, unpredictable. This has required the Court to constantly monitor the situation and adapt our protocols and procedures as the circumstances change.

We cannot risk the health of our employees and the public or the extended closure of a court facility because an employee returns from vacation and transmits the disease to court or county employees.

Therefore, I ask that employees strongly reconsider domestic or international travel to a “hot-spot” area at this time.¹

For domestic travel, if the destination(s) county is a “hot spot” or red at any time during an employee’s trip, then the policy in Paragraph 8 applies. For international travel, if a destination country is orange or red, then the policy in Paragraph 8 applies. If the trip includes multiple destinations, each overnight stay must be independently evaluated. The policy also applies to air or mass transit travel regardless of the destination. Employees must understand that this status could change mid-trip.

If an employee insists on travel to a “hot-spot”, he or she has three options prior to physically returning to work:

- (1) The employee can work remotely during the fourteen calendar days following return, if appropriate based on job functions and available technology. This option is completely within the discretion of the supervisor.
- (2) The employee can wait 3-4 days after return and seek a COVID-19 test at their own expense, if available. Upon receipt of a negative² test result, the employee must provide the results of the tests to the supervisor, and then return to work. The employee can take additional available sick or annual leave sufficient to cover the time between returning from the trip and receiving a negative test. Because testing availability differs around the state, this route is available as an option, but not required.
- (3) The employee can take additional available sick or annual leave sufficient to cover the fourteen-day calendar period.

We recognize that all of these options are disruptive to the employee’s supervisor and coworkers, and our hope is that employees recognize these effects when making travel arrangements for the foreseeable future.

Because the situation is fluid, the Court may elect to modify this policy at any time. Communication between an employee and supervisor is crucial to minimize the impact of any out-of-state travel.

¹ The Court will use data available from the Harvard Global Health Institute’s website (<https://globalepidemics.org/key-metrics-for-covid-suppression/>) to determine whether a county or location is a “hot-spot.”

² If an employee tests positive, additional leave options may be available under federal law and the Court’s prior COVID-19 policies.

III. QUESTIONS REGARDING THESE POLICIES

Questions regarding either of these policies, or other COVID-19 specific issues, can be addressed to CommentsConcerns@courtsv.gov. Several employees in the Administrative Office monitor this email account, and this is the most efficient way to reach someone if you need assistance.

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MEMORANDUM

**TO: CIRCUIT COURT JUDGES
 CIRCUIT CLERKS**

FROM: LISA A. TACKETT, DIRECTOR OF COURT SERVICES

DATE: JUNE 26, 2020

RE: GUIDANCE FOR JURY MANAGEMENT AND COVID-19

Pursuant to the Court’s May 6, 2020 Resumption of Operations Administrative Order, jury trials may begin on or after June 29, 2020. Prior to holding a trial, judicial officers are encouraged to consult with local health officials to identify and mitigate specific issues with the courtroom and balance the risks associated within the local community. A court may only hold a jury trial through strict compliance with the Court’s COVID-19 Resumption of Operations Protocols (“Protocols”).

The Administrative Office has discussed questions regarding jury trials with circuit judges and circuit clerks, and is providing this additional document to provide possible suggestions or ideas to address recurring questions. Ultimately, it is still the responsibility of the circuit clerk and responsible circuit judge to manage the jury pool appropriately. This guidance document is not intended to supplant that responsibility; instead, the goal is to provide resources and concepts that may be helpful to allow the court system to remain open while striving to protect the health and safety of court and county employees, litigants, witnesses, jurors, attorneys, and the public.

1. Use of Alternative Facilities for Jury Proceedings

Each courtroom in West Virginia is unique with multiple variables that impact the ability to safely hold jury trials, and it is impossible to provide guidance that applies equally in all situations. However, the Court recognizes that some courtrooms lack sufficient size or layout that allows for compliance with Protocols.

Due to logistical challenges, judges are encouraged to utilize existing court space as much as possible, including larger historic courtrooms or sharing larger courtrooms with other judges. However, if no suitable spaces exists, courts may consider alternative spaces in the community, such as schools,

auditoriums, civic centers, colleges, or universities. Courts should consider the following prior to making arrangements:

1. Does the space have sufficient audio and video technology to conduct a trial? If not, can temporary arrangements be made?
2. What additional security challenges are presented? Can access to the space be restricted and can standard precautions be maintained?
3. Does the County Commission consent to the plan? W. Va. Code § 51-3-7 provides that circuit court must be held “at the courthouse of such county, except where some other place is prescribed by law or lawfully appointed.” However, when a courthouse “is not in a condition to be occupied”, a county commission may enter an order designating the alternative location. The order should state that occupying the existing court space is not feasible for the purpose of a jury trial due to restrictions placed by the local health officer.

Judicial officers may also consider whether certain portions of the jury selection process could be held at the alternative location before moving back to the courtroom for the actual trial itself. For many courtrooms, it may be impossible to put a prospective panel of twenty-five jurors (25) in the room safely. However, those jurors could spread out in a gymnasium and maintain sufficient social separation until the panel is reduced during voir dire. Then, once a jury is selected, the proceeding could start the next day at the courthouse. A jury could also deliberate in the courtroom itself assuming confidentiality requirements are met.

2. Pre-Screening for COVID-19 related excuses

While many in the community may express fears or anxieties related to COVID-19, those generalized emotions are not sufficient to avoid jury duty. However, by including supplemental questionnaires with the summons, the court may be able to identify specific COVID-19 related grounds for undue hardship or public necessity excuses.¹ The goal is to address the significant number of anticipated COVID-19 related requests for excuses before the prospective pool is even required to report to the courthouse. A sample supplemental questionnaire is attached to this memorandum.

¹ W. Va. Code § 52-1-11(b) provides that “[a] person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.” Based on the unprecedented COVID-19 health crisis, circuit judges should be accommodating where there is a showing that the risk of COVID-19 to vulnerable individuals creates an undue hardship that would allow for excuse from jury duty.

In considering undue hardship excuses, courts can consider the Center for Disease Control (CDC) issued guidance for individuals that may have a higher risk for severe illness from COVID-19. Generally, the following individuals may be deemed “vulnerable” to the virus:

- People 65 years and older;
- People who live in a nursing home or long-term care facility;
- People with underlying medical conditions, such as:
 - Chronic lung disease or moderate to severe asthma
 - Serious heart conditions
 - Compromised immune systems from cancer treatment, smoking, bone marrow or organ transplants, immune deficiencies, poorly controlled HIV or AIDS, and/or prolonged use of corticosteroids and other immune weakening medications
 - Severe obesity (BMI of 40 or higher)
 - Diabetes
 - Chronic kidney disease undergoing dialysis
 - Liver disease

The CDC and state health officials recommend that vulnerable individuals continue to self-isolate even as the rest of the population resumes some pre-pandemic activities. The court system also should attempt to protect immediate family members who are also “vulnerable” within the same household or under the direct care of the potential juror.

Health care workers currently assigned to treat COVID-19 patients or suspected patients may be entitled to a “public necessity” excuse under West Virginia law if the request is sufficiently justified.

Additionally, travel related COVID-19 transmission is a significant concern in West Virginia. Courts routinely grant excuses for certain dates to potential jurors because of vacation plans, however courts should consider extending the dates to prevent a juror from serving until they have returned from vacation and satisfied the recommended self-quarantine for the fourteen-day incubation period.

It is up to the clerk and responsible circuit judge to determine the standards for which disqualifications or excuses may be granted and whether requests are, for example, automatic or subject to individual review. A judge may require a doctor’s note or supplemental information, and the sufficiency of the documentation in support could be weighed as a factor in deciding whether to grant or deny an excuse.

3. Pre-trial written voir dire to identify and address hardship excuses and “for cause” strikes

Parties and the court could work together in the pre-trial phase to develop written questions to submit to potential jurors selected for a specific matter to reduce the need for potential jurors to appear in

person if they would subsequently be subject to common “for cause” strikes, such as personal or family relationship with attorneys, parties, or witnesses, independent knowledge of the case, or a financial interest in the outcome. The questionnaire could also ask questions to address typical hardship situations. The goal of this submission would be to reduce the number of jurors that need to report for a specific trial and allow for counsel to still engage in in-person voir dire for peremptory strikes.

4. Alternating Report Times and Locations

Especially in cases requiring a larger potential jury pool, a court could bring in potential jurors in multiple smaller randomized pools at different times or to different locations to avoid the need for a large number of jurors reporting in a single room at the same time. Groups could be staged and brought to the courtroom in smaller numbers as needed until the panel is full. The court could address “for-cause” strikes and the need for excuses in these smaller groups. While this may require asking the same questions repeatedly and may take more time, jurors could be processed in more manageable groups to allow for sufficient social distancing. Once a sufficient number of potential jurors are selected, the court could proceed with traditional voir dire to select the actual panel.

5. Education for prospective jurors regarding COVID Protocols

A potential juror may have significant fears and anxieties about serving on a jury during the COVID-19 pandemic. Some of these fears may be addressed by educating the juror regarding the significant steps the court system is taking to protect juror safety. A sample Frequently Asked Questions sheet is attached to this document. Because perception is a powerful force, courts need to make sure that jurors are not only safe – but that they also feel safe. Court personnel, including judges, should set the tone of safety during trial by abiding with the COVID-19 Protocols to show the jurors that we take their health seriously. This includes, but is not limited to, the constant use of masks or face-coverings by everyone in the courtroom.

COVID-19 SUPPLEMENTAL JUROR QUESTIONNAIRE

1. The Center for Disease Control currently classifies any individual over the age of 65 as being vulnerable to the coronavirus. If you are over 65, do you wish to be excused from jury duty because of COVID-19? Yes No Current Age_____

2. The Center for Disease Control currently classifies those with certain underlying medical conditions as being vulnerable to COVID-19. These medical conditions include (1) chronic lung disease or moderate to severe asthma; (2) serious heart conditions; (3) a compromised systems from cancer treatment, smoking, bone marrow or organ transplants, immune deficiencies, poorly controlled HIV or AIDS, and/or prolonged use of corticosteroids and other immune weakening medications; (4) severe obesity (BMI of 40 or higher); (5) diabetes; (6) chronic kidney disease undergoing dialysis; or (6) liver disease.

a. If you have one of these medical conditions, do you wish to be excused from jury duty?

Yes No

b. If you reside in the same household as a “vulnerable individual” as described above, or if you are the primary caregiver for a “vulnerable individual”, you may request an excuse from jury duty. Do you wish to be excused from jury duty because you live with, or care for, a “vulnerable individual”? Yes No

c. If you answered yes to either question above, please describe the medical condition that you believe classifies you, someone you live with, or someone that you care for as a vulnerable individual.

[additional explanation or information, including a note from a physican, may be attached as a separate sheet]

3. Health care workers currently assigned to treat COVID-19 patients or suspected patients may be entitled to a “public necessity” exception under West Virginia law. If you meet this criteria, do you wish to be excused from jury duty because of your job duties?

Yes No

If you answered yes, please describe your current position and nature of the assignment:

4. If you have any travel plans (including weekends) during the pendency of your possible jury duty, please describe those below, including the destination and method of travel. This information may be used to ensure the fourteen-day incubation period for the virus has expired prior to you coming to the courthouse.

Leave Date	Return Date	Destination	Method of Travel

5. Do you have any other grounds for an excuse based on the COVID-19 pandemic that you believe constitutes an undue hardship, extreme inconvenience, or public necessity?

COVID-19 Frequently Asked Questions

Q. *Why are the courts still having jury trials during the COVID-19 pandemic?*

The Constitution of West Virginia provides that “the Courts of this state shall be open” and that justice shall be administered “without delay.” Criminal defendants also have specific constitutional and statutory rights regarding the right to a trial of their peers and a speedy trial. Courts must take steps to respect these crucial rights, even during a sustained health emergency. Because no one knows when COVID-19 concerns will be abated, the court system will proceed with trials by taking reasonable steps to protect the health and safety of everyone involved. Postponing trials indefinitely would cause an irrecoverable backlog of cases, and may affect the rights of some West Virginians.

Q. *Why should I serve on a jury during COVID-19?*

Jury service is a right, privilege, and duty, and jurors play a crucial role in the justice system. Jurors are just as important as judges and lawyers. Put simply, the justice system could not function without jurors to decide cases involving fellow citizens. While COVID-19 creates significant challenges for the continued operation of the courts, that important civic duty remains.

Q. *What steps are the courts taking to help keep me safe during my service?*

The Supreme Court of Appeals of West Virginia, your County Commission, your public health officials, and your judges and local elected officials have all taken specific steps to protect the health and safety of all participants in the court system. Access to courthouses is very different than it was only a few months ago.

First, all members of the public, attorneys, parties, and witnesses are required to wear a mask or face-covering when entering courtrooms and related facilities. Social distancing is also strictly enforced. Those with COVID-19 symptoms or those with suspected contact with COVID-19 are not permitted inside the building. [**insert description of local health efforts by court or county personnel**]

If you have concerns during your service, you may raise those concerns at any time with the bailiff or court security officers assigned to your trial.

Q. *What do I need to do to protect others during my service?*

You will be required to wear a facemask or covering during your service. The purpose of the mask or face-covering requirement is to reduce the risk that you will spread the disease to court and county employees, attorneys, parties, fellow jurors, witnesses, and the public. By all following this mandate, we can significantly reduce the risk of transmission at the court facility. Therefore, consistent with recommendations from the CDC and from the Governor, any type of face covering sufficient to catch droplets leaving the nose and mouth, including homemade fabric masks or bandanas, is appropriate. Medical masks or N95 masks are not required.

You should also exercise proper hand hygiene, including coughing or sneezing into elbows, frequent hand washing, use of hand sanitizer, and avoiding touching the eyes, nose, and mouth.

You should avoid close contact with any individual outside of your own household. Sit and wait only in designated seating areas.

If you have a fever or other common COVID-19 symptoms, or if you have been in contact with a suspected case of the disease, you should contact the office of the presiding judicial officer for further instructions before coming to Court.

Q. *What happens if I just do not send in a response or show up to Court?*

Under West Virginia Code §52-1-24, a person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear and show cause for failure to comply with the summons. If the person fails to show good cause for noncompliance with the summons, the person is guilty of civil contempt and, shall be fined not more than \$1,000.

This requirement is not automatically waived or suspended during a pandemic. If you have concerns, it is best to raise those issues with the circuit clerk's office well in advance of any deadlines to allow sufficient time to address your questions. Simply disregarding the summons or failing to appear due to apprehensions about COVID-19 and jury service is not an appropriate way to address fears or anxieties that you may have.

[include contact information for clerk's office or office of responsible circuit judge]