



Supreme Court of Appeals State of West Virginia

News

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Courts Prepared to Resume Holding Trials

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CHARLESTON, W.Va. – Jury trials may resume in West Virginia beginning Monday, June 29, provided courts follow Supreme Court COVID-19 protocols.

The Supreme Court provided guidance to judicial officers on Friday, June 26, following up on the Court’s May 6 Resumption of Operations Administrative Order. The guidance document outlines best practices that judges and circuit clerks may use to protect the health and safety of employees, litigants, witnesses, jurors, attorneys, and the public as trials resume.

“The Constitution of West Virginia provides that ‘the Courts of this state shall be open’ and that justice shall be administered ‘without delay.’ Defendants’ rights relating to a trial by their peers must be respected even during a sustained health emergency. However, participation in such a trial, whether as a party, attorney, witness or juror, should not endanger anyone’s health.” said Chief Justice Tim Armstead.

“All trial participants will be required to wear masks or face-coverings in courtrooms and related facilities. Social distancing will also be strictly enforced. Those with COVID-19 symptoms or those with suspected contact with COVID-19 will not be permitted to enter judicial buildings.

Because the Centers for Disease Control (CDC) and state health officials recommend vulnerable individuals continue to self-isolate, immediate family members in the same household or direct caregivers of those who are in high-risk categories may, in certain circumstances and upon request, be excused by the presiding judge from jury service. Also, health care workers currently assigned to treat COVID-19 patients or suspected patients may be excused if the presiding judge determines the request is warranted. Potential jurors who recently traveled out-of-state may have their service delayed by the presiding judge until they have satisfied the recommended 14 day quarantine period. All such exceptions to jury service must be approved on a case by case basis by the judge presiding over the trial.

“It is up to the clerk and responsible circuit judge to determine the standards for which disqualifications or excuses may be granted.” the guidance document provides.
“Ultimately, it is still the responsibility of the circuit clerk and responsible circuit judge to manage the jury pool appropriately.”

Judges are encouraged to use existing court space where possible, which may entail using large historic courtrooms or sharing large courtrooms. If no suitable spaces exists, alternative spaces in the community may be used, subject to certain approvals and orders by county officials. Such facilities may including schools, auditoriums, civic centers, colleges, or universities if they have appropriate audio and video technology to conduct a trial and can be properly secured.

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.

Judicial officers may also consider holding jury panel orientations in a large alternative location until a jury is chosen and then hold the trial in the regular courtroom.
“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 by the COVID-19 Protocols to show the jurors that we take their health seriously,” the guidance document provides.

Potential jurors should not simply fail to appear for jury service because of fear of COVID-19 exposure but should instead seek to be excused by the presiding judge in such circumstances. This requirement is not automatically waived or suspended during a pandemic. Under West Virginia law, a person summoned for jury service who fails to appear for jury service without being excused by the presiding judge can be found guilty of civil contempt and be subject to substantial fines.

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