

IN THE 33RD JURIDICAL CIRCUIT, STATE OF MISSOURI

In Re: Continued Cancellation of Jury Trials Resulting from Impact of COVID-19 and Operational Directives for Easing COVID-19 Restrictions on In-Person Proceedings

ADMINISTRATIVE ORDER 2020 – 07

WHEREAS, the Centers for Disease Control and Prevention have declared that the spread of COVID-19 has become a worldwide pandemic; and

WHEREAS, among other means, the COVID-19 virus spreads between people who are in close contact with one another through respiratory droplets produced when an infected person coughs or sneezes; and

WHEREAS, notwithstanding the ending of various Stay at Home Orders and the “re-opening” of courthouses to the general public, social distancing guidelines which recommend, suggest or require a minimum separation distance of 6 feet between people as a way to minimize the spread of the COVID-19 virus remain in effect, and limitations on the size of groups that may gather at any one time and in any one location likewise remain in effect; and

WHEREAS, notwithstanding the fact that the Court has remained open and operating as an essential business throughout the Stay at Home Orders and the fact that the Court is now beginning the transition back to pre-COVID-19 operations, it remains imperative that the Court take steps to protect the health and safety of all employees of the Court, all judicial officers, all attorneys, all litigants, all victims, all witnesses, all prospective jurors, any other individuals or entities who have cases and hearings pending in Court and all members of the general public, while also balancing the rights of all said individuals to have their matters heard; and

WHEREAS, in various Orders entered by the Missouri Supreme Court, state courts have been directed to consider strategies to prevent the spread of COVID-19 and respiratory germs; and

WHEREAS, the Missouri Supreme Court has authorized the Presiding Judge of each Circuit to determine the manner in which hearings are to be conducted, including the discretion to excuse individuals from personally appearing; and

WHEREAS, the Court has employed and continues to employ necessary and reasonable measures to protect the general public, litigants, lawyers, employees and all other individuals from the spread of COVID-19; and

WHEREAS, the Presiding Judge of the Court has the administrative authority over dockets of the Court and the administrative and discretionary authority regarding the manner in which any hearings are conducted in the Court.

IT IS THEREFORE ORDERED, effective immediately and continuing through Friday, July 3, 2020, unless modified or extended in a subsequent Administrative Order, as follows:

1. The Court suspends the impaneling of all jurors. All jury trials scheduled through July 5, 2020 are hereby continued and will be rescheduled to a later date by the judicial officer presiding over said case.
2. Effective May 16, 2020, the Court will begin a phase in process for reopening the Courts. Pursuant to Operational Directives from the Supreme Court and subject to the following Gateway Criteria, the Court will begin an operating phase schedule.

A. Gateway Criteria

The Court will consider each of the criteria below before resuming court activity or progressing to a new Operating Phase:

1. No confirmed COVID-19 cases in the court facility within a 14-day period.
2. Rescission or lack of stay-at-home orders or the relaxing of group gathering restrictions applicable to the community.
3. Improving COVID-19 health conditions over a 14-day period in the community, including conditions such as the number of confirmed COVID-19 cases and related deaths in relation to a community's population density, size of particularly vulnerable populations, and availability of medical facilities including emergency and intensive care capacity.
4. Consultation with local health officials or departments concerning changes to levels of court and courthouse activities.
5. Consultation with local judiciary partners such as children's division personnel, juvenile officers, members of the local bar, prosecutors and public defenders, law enforcement and probation and parole.

If these Criteria suggests local conditions are improving sufficiently, the Presiding Judge may consider moving to a higher Operating Phase and gradually resuming and adapting previously suspended court activities.

If these Gateway Criteria suggest local conditions are worsening or that there is a resurgence of COVID-19 cases in the community, the Presiding Judge should move to a lower Operating Phase including, when necessary and appropriate, returning to Operating Phase Zero.

B. Operating Phase Approach

1. Based upon the Criteria above, the Presiding Judge may order a change of Operating Phase for each locality either up or down.

2. Any order or decision moving and adapting courthouse operations from one Operating Phase to another must implement appropriate policies protecting litigants, witnesses, victims, judicial employees, attorneys, and other individuals involved in judicial proceedings through:
 - a. Social distancing and/or occupancy rate restrictions;
 - b. A COVID-19 Notice prohibiting access to the premises for individuals who have been exposed to or are exhibiting symptoms of COVID-19, listing necessary contact information for individuals not authorized to enter the premises, and advising those entering a court facility of the social distancing, occupancy rate and other precautionary restrictions taken to protect the health, safety and welfare of occupants;
 - c. The use of masks or face coverings by judicial employees or members of the public;
 - d. Heightened sanitation and disinfections of common and high-traffic areas, including consideration of acquiring additional hand sanitizers and wipes, hand sanitizing stations, and cleaning solutions for court facilities;
 - e. Coordination with supervisors to ensure employees feeling ill stay at home;
 - f. Procedures liberally permitting judicial employees to work from home when appropriate; and
 - g. Preparation for the potential resurgence of COVID-19 cases following the resumption of court activities.

C. Operating Phase Zero (May 16, 2020 to May 30, 2020)

1. Consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions to local health conditions.
2. Suspend all in person court proceedings consistent with the Court's April 17, 2020, Order.

The suspension of in person proceedings is subject to the following exceptions:

- Proceedings necessary to protect the constitutional rights of criminal defendants, including the right to a speedy trial, and the rights afforded under Section 544.676.3;
- Proceedings pursuant to Chapters 210 and 211 pertaining to juvenile delinquency and abuse, neglect and termination of parental rights;
- Proceedings pursuant to Chapter 453 pertaining to adoption;
- Proceedings in which civil or criminal jury trials are already in progress as of March 16, 2020;
- Proceedings pursuant to Chapter 455 pertaining to orders of protection;

- Proceedings related to emergency child custody orders;
- Proceedings related to petitions for temporary restraining orders or other forms of temporary injunctive relief;
- Proceedings related to emergency mental health orders;
- Proceedings pursuant to Chapter 475 for emergency guardianship or conservatorship;
- Proceedings directly related to COVID-19 public health emergency;
- Oral arguments regarding time sensitive matters; and
- Other exceptions approved by the Chief Justice of The Supreme Court.

Courts may set in person hearings in the above listed proceedings but it does not mandate a judge set a hearing in any individual case. The presiding judge of each circuit court is authorized to determine the manner in which the listed in person exceptions are to be conducted. Such proceedings shall be limited to the attorneys, parties, witnesses, security officers, and other individuals necessary to the proceedings as determined by the judge presiding over the proceedings. The judge presiding over such proceedings has the discretion to excuse other individuals who cannot or should not appear as a result of risks associated with COVID-19.

3. All proceedings that do not require in person appearances of parties or counsel are not suspended and may continue in the manner and at the discretion of the judge in the matter as circumstances allow.
4. Encourage judges and court staff to continue utilizing all available technologies – including teleconferencing and video conferencing – whenever possible to limit in person courtroom appearances to the extent not prohibited by constitutional or statutory provisions.
5. Implement appropriate levels of screening where possible at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.
6. Suspend any non-essential travel by judicial employees for work related functions.

Continually re-evaluate the Gateway Criteria for indications that a courthouse is ready to move to a different Operating Phase.

D. Operating Phase One (June 1, 2020 to June 14, 2020)

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions consistent to local health conditions.
2. Re-examine and update local court orders and COVID-19 Notices as appropriate.

3. Consider resuming only the most critical in person proceedings and restrict grand and petit jury proceedings to only the most extraordinary, pressing and urgent cases.
4. Large venues and common areas such as break rooms should be closed. Keep occupancy rates in courtrooms, jury assembly rooms, and other areas in the court facility to **an occupancy rate of 10 or less** whenever possible and operate under strict social distancing protocols. Consider requiring the use of masks or face coverings. Require tape or other visible means be used to demark six-foot distances where practical. Allow vulnerable litigants¹, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or continue or postpone their required presence at the court facility.
5. Encourage judges and court staff to continue utilizing all available technologies – including teleconferencing and video conferencing – whenever possible to limit in person courtroom appearances to the extent not prohibited by constitutional or statutory provision.

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Vulnerable individuals are defined by the CDC as individuals 65 years or older or individuals with underlying medical conditions, particularly if not well controlled, including those who suffer from chronic lung disease, moderate to severe asthma, serious heart conditions, immune disorders, obesity, diabetes, or chronic kidney or liver disease.

6. Suspend any non-essential travel by judicial employees for work-related functions.
7. Implement appropriate levels of screening where possible at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.
8. Increase cleaning and disinfection of common areas and consider providing hand sanitizers and wipes.
9. Vulnerable judicial employees should work with supervisors to stay at home. Employees who live with or provide care for vulnerable individuals should to the same to the greatest extent possible to reduce chances that they could carry the virus to those vulnerable individuals.
10. Judicial employees should observe at least a six foot minimum physical distance from others in all offices, meetings, and court proceedings. Require tape or other visible means by used to demark six foot distances where practical. Additional precautions such as requiring masks or face coverings should be considered.
11. Allow judicial employees to work in shifts whenever possible and feasible to keep staffing levels to a bare minimum to support court activity.

12. Allow judicial employees to stay home where possible if the employee.

- a) Is subject to a quarantine or isolation order or is living with or caring for such an individual.
- b) Has been advised by a health care provider to self-quarantine or is living with or caring for an individual who has been advised to self-quarantine.
- c) Is considered high risk based on local or state health officials or departments criteria for contracting COVID-19, or is living with or caring for such an individual.
- d) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual; or
- e) Is caring for a child whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 precautions.

A court cannot proceed to Operating Phase Two until it has completed at least 14 days in Operating Phase One. Before proceeding to Operating Phase Two, a court must re-evaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

E. Operating Phase Two (June 15, 2020 to June 29, 2020)

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions to local health conditions.
2. Re-examine and update local court orders and COVID-19 Notices as appropriate.
3. Increased in person court proceedings, including the most extraordinary, pressing, and urgent grand and petit jury proceedings, can begin where they can safely be conducted in compliance with social distancing protocols and occupancy rate limitations applicable to the local community. In all felony pleas, Petitions to Enter Pleas of Guilty shall be e-filed at least 24 hours before the plea is taken up in Court. If a Sentencing Assessment Report is to be waived, that document will also need to be filed 24 hours prior to the plea of guilty. Because the Court is operating on limited capacity and to prevent further delays in Court proceedings, all plea arrangements should be negotiated before appearing in the Courtroom. Pro Se Defendants (those not represented by an attorney) will need to contact the Prosecuting Attorney's Office at least 24 hours in advance of any Court appearance. Written plea petitions can be obtained from the Courtroom and will need to be completed and filed with the Circuit Clerk's Office prior to the entry of a guilty plea in a felony case.

4. Keep occupancy rates in large venues and common areas such as courtrooms, jury assembly rooms, jury deliberating rooms, break rooms and other areas in court facilities to **an occupancy rate of 25 or less** whenever possible and operate under social distancing protocols. Consider requiring the use of masks or face coverings. Require tape or other visible means be used to demark six foot distances where practical. Continue to allow vulnerable litigants, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or postpone their required presence at the court facility.
5. Continue to encourage judges and court staff to utilize all available technologies – including teleconferencing and video conferencing – whenever possible to limit in person courtroom appearances to the extent practicable and not prohibited by constitutional or statutory provisions.
6. Continue to suspend any non-essential travel by judicial employees for work related functions.
7. Continue to implement appropriate levels of screening at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.
8. Continue increased cleaning and disinfection of common areas and consider providing hand sanitizers and wipes.
9. Continue to allow vulnerable judicial employees to work with supervisors to establish reasonable accommodations for those vulnerabilities.
10. Judicial employees, when in the court facility, should continue to maximize physical distance from others. Six foot distancing should continue to be observed in all offices, meetings, and court proceedings. Require tape or other visible means be used to demark six foot distances where practical. Additional precautions such as requiring masks or face coverings should be considered.
11. Continue to allow judicial employees to work in shifts whenever possible and feasible to keep staffing levels to a bare minimum to support increased court activity.
12. Allow judicial employees to stay home if the employee:
 - a) Is subject to a quarantine or isolation order or is living with or caring for such an individual;
 - b) Has been advised by a health care provider to self-quarantine or is living with or caring for an individual who has been advised to self-quarantine;

- c) Is considered high risk based on local or state health official or department criteria for contracting COVID-19, or is living with or caring for such an individual.
- d) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual.

A court cannot proceed to Operating Phase Three until it has completed at least 14 days in Operating Phase Two. Before proceeding to Operating Phase Three, a court must re-evaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

F. Operating Phase Three (June 29, 2020 to July 13, 2020)

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CEC guidance to adapt court operating decisions to local health conditions.
2. Re-examine and update local court orders and COVID-19 Notices as appropriate.
3. Resume in person court proceedings, including grand and petit jury proceedings, that can be conducted in compliance with social distancing protocols and occupancy rate limitations applicable to the local community. (Operational Directives on conducting jury proceedings will be forthcoming from this Court as pandemic and health conditions improve.)
4. Large venues and common areas such as courtrooms, jury assembly rooms, jury deliberating rooms, break rooms, and other areas in the court facility can operate under social distancing protocols. Consider requiring the use of masks or face coverings. Consider continuing to allow vulnerable litigants, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or continue or postpone their required presence at the court facility.
5. Continue to encourage judges and court staff to utilize all available technologies – including teleconferencing and video conferencing – whenever possible to limit in person courtroom appearances to the extent not prohibited by constitutional or statutory provisions.
6. Consider terminating enhanced screening procedures at court facility entrances.
7. Continue cleaning and disinfection of common areas and consider providing hand sanitizers and wipes.
8. Allow vulnerable judicial employees to return to work but encourage supervisors to make reasonable accommodations to address those vulnerabilities.

9. Judicial employees should continue to adhere to social distancing guidelines in court facilities. Additional precautions such as requiring masks or face coverings should be considered.
10. Consider resuming normal staffing schedules for judicial employees.
11. Consider discontinuing the suspension of non-essential travel by judicial employees for work related functions.
12. Allow judicial employees to stay home if the employee:
 - a) Is subject to a quarantine or isolation order or is living with or caring for such an individual.
 - b) Has been advised by a health care provider to self-quarantine or is living with or caring for individual who has been advised to self-quarantine.
 - c) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual.

This Order will remain in effect until rescinded or amended by order of this Court as circumstances warrant.

This Order is intended to be interpreted broadly for protection of the public from the risks associated with COVID-19.

Day-to-Day



DAVID A. DOLAN
PRESIDING CIRCUIT JUDGE
33RD JUDICIAL CIRCUIT