

ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: RESUMPTION OF OPERATIONS

WHEREAS, on March 22, 2020, in response to the COVID-19 crisis, the Chief Justice of the Supreme Court of Appeals of West Virginia entered an order declaring a judicial emergency, pursuant to Article 8, Section 3 of the Constitution of West Virginia, which grants the Supreme Court of Appeals of West Virginia constitutional supervisory power over the circuit courts, family courts, and magistrate courts in West Virginia;

WHEREAS, Article 3, Section 17 of the Constitution of West Virginia requires that the courts of this state shall be open, and every person, for any injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay;

WHEREAS, the Supreme Court of Appeals of West Virginia desires to balance public health with the constitutional mandate that our courts continue to function for our citizens,

WHEREAS, W. Va. Code § 2-2-2 authorizes the Chief Justice of the Supreme Court of Appeals of West Virginia to declare an emergency in situations where conditions prevent the general transactions of court business;

WHEREAS, the Supreme Court of Appeals of West Virginia has utilized heightened mitigation efforts to protect the health and safety of the public during the COVID-19 crisis;

WHEREAS, in consultation with local and state public health officials, the Supreme Court of Appeals of West Virginia has evaluated the continued need for a judicial emergency in light of ongoing COVID-19 mitigation efforts, and determined that certain court business may resume upon expiration of the judicial emergency in accordance with the **COVID-19 RESUMPTION OF OPERATIONS PROTOCOLS** (“Protocols”) issued by the Supreme Court of Appeals of West Virginia on May 6, 2020, attached hereto and incorporated by reference, as further directed herein;

THEREFORE, it is ORDERED that the judicial emergency, the April 22, 2020 Second Amended Order, and the April 24, 2020 Temporary Order Regarding Civil Litigation and Rules of Civil Procedure in Circuit Court shall continue in force and effect through May 15, 2020.

It is further ORDERED that, upon the May 15, 2020 expirations of the judicial emergency, the April 22, 2020 Second Amended Order, and the April 24, 2020 Temporary Order Regarding Civil Litigation and Rules of Civil Procedure in Circuit Court, all courts, judicial officers and court personnel shall comply and adhere to the applicable guidance and directives set forth in the Protocols. Remote hearings and proceedings are still permitted and encouraged, if appropriate.

It is further ORDERED that, upon the expiration of the judicial emergency, and subject to the Protocols:

- In-person hearings or proceedings may commence on or after May 18, 2020;
- Grand jury proceedings may commence on or after June 15, 2020;
- Jury trials may commence on or after June 29, 2020.

It is further ORDERED that, pursuant to W. Va. Code § 2-2-2(a), all proceedings and court deadlines stayed due to the COVID-19 crisis, except the emergency proceedings authorized in the April 22, 2020 Second Amended Order, directed to take place or any act required to be done on any day falling within the period of judicial emergency, remain stayed until May 15, 2020. Upon the May 15, 2020 expiration of the judicial emergency:

- Statutes of limitations and statutes of repose that would otherwise expire during the period of judicial emergency between March 23, 2020, and May 15, 2020, shall expire on May 18, 2020;
- Deadlines created by, or in response to, the Court's April 24, 2020 Temporary Order Regarding Civil Litigation and Rules of Civil Procedure in Circuit Court are not modified by this Order;
- Deadlines set forth in court rules, statutes (excluding statutes of limitation and repose), ordinances, administrative rules, scheduling orders, or otherwise that expired between March 23, 2020, and April 17, 2020, are hereby extended to May 29, 2020, unless otherwise ordered by the presiding judicial officer;
- Deadlines set forth in court rules, statutes (excluding statutes of limitation and repose), ordinances, administrative rules, scheduling orders, or otherwise that expired between April 18, 2020 and May 15, 2020, are hereby extended to June 12, 2020, unless otherwise ordered by the presiding judicial officer;
- Deadlines, statutes of limitations, and statutes of repose that do not expire during the period of judicial emergency between March 23, 2020, and May 15, 2020, are not extended or tolled by this or prior orders;
- All non-emergency, in-person proceedings previously scheduled between March 23, 2020, and May 15, 2020, are continued until on or after May 18, 2020 as shall be directed by the presiding judicial officer.

Consistent with the directives and guidance set forth in the Protocols, all authorized proceedings should utilize available technology to limit person-to-person contact whenever possible, unless otherwise directed.

It is further ORDERED that, to the extent they do not impermissibly infringe upon the constitutional rights of a party or litigant, any West Virginia state or local rules, including but not limited to criminal rules, civil rules, or administrative rules, that limit or preclude a judicial officer or court clerk's ability to utilize remote, telephonic or video technology to limit in-person contact, are suspended. Such suspension shall survive the expiration of the judicial emergency, and will remain in effect until otherwise ordered.

It is further ORDERED that it is the responsibility of each Chief Circuit Judge and each Chief Family Court Judge to notify the employees of all offices under their supervision of the content of this Order.

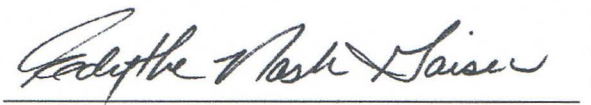
It is further ORDERED that this ORDER supersedes any local administrative order issued by a judicial official to the extent such order is inconsistent herewith.

The Clerk of Court is hereby directed to distribute copies of this Administrative Order by appropriate means to all circuit judges, family court judges, and magistrates.

ENTERED: May 6, 2020

A handwritten signature in black ink, appearing to read "Tim Armstead", written over a horizontal line.

Tim Armstead, Chief Justice

A handwritten signature in black ink, appearing to read "Edythe Nash Gaiser", written over a horizontal line.

Edythe Nash Gaiser, Clerk of Court

**SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE**

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COVID-19 RESUMPTION OF OPERATIONS PROTOCOLS

May 6, 2020

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 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.

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

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.

Consistent with the West Virginia Department of Health and Human Resources (“DHHR”) county classification system, the Court will distinguish those counties designated by DHHR as “Hot Spots” differently than those counties that are not under any special DHHR designation. Non-Hot Spot counties can fully implement these protocols and gradually trend towards normal operations. Counties designated by DHHR as Hot Spots are indicated as red on the attached map. All Counties not designated as a Hot Spot are referred to as Green Counties herein.

Regardless of classification per these protocols, 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.

Hot Spot Counties should strictly follow these updated protocols and should consider, in consultation with the Administrative Director and the local health department, whether a county-specific emergency order is warranted. Hot Spot counties should not summon jurors or grand jurors until circumstances within such county warrant transition to Green County status. In Green Counties, grand jury proceedings may begin June 15, 2020, and jury trials may begin June 29, 2020. Upon a Hot Spot County reaching Green County status, a grand jury proceedings or jury trial may commence on these dates, or seven (7) days after that county obtains Green County status, whichever is later.

The first attached map will be for designations as of the week of May 4, 2020. An updated map will be released by the close-of-business each Friday.

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.

HUMAN RESOURCE PROTOCOLS

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

1. Employees in a Green County should be encouraged to return to the workplace, subject to the rest of these protocols, and a Selecting Authority² may authorize remote work for employees if circumstances warrant and if an employee can perform their duties with available technology. Employees in a Hot Spot County should continue to work remotely if possible, and these offices should be staffed with minimal personnel. 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.

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.

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.
5. Employees in Green Counties should 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. Employees in Hot Spot Counties must wear masks or a face covering in common areas or while interacting with the public.
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 that have a fever, or other common COVID-19 symptoms, cannot come to work. Because the virus can spread after symptoms subside, employees should remain

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

home for fourteen (14) calendar days after the onset of symptoms.⁵ 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) calendar days.

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. 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.
9. Employees with suspected COVID-19 symptoms should seek testing as instructed by health authorities or by medical providers. If a public health official, medical provider, or medical protocols do not recommend testing, an employee is not required to obtain a test.
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 a positive COVID-19 test may be required to obtain a "negative" test before a physical return to work is authorized. The employee should discuss this requirement with their Selecting Authority and health care provider or the local health officer. 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

⁵ The issue of employee leave will be coordinated in conjunction with other state offices and officials, and additional information is forthcoming.

system remains closed for remainder of the 2019-2020 academic year, 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 elderly parent.

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.⁶

COURT OPERATIONS PROTOCOLS

1. All judicial offices and court spaces should be thoroughly disinfected prior to resuming operations.⁷ 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. In a Green County, judicial officers are still permitted and encouraged to hold

⁶ 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).

⁷ 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>.

hearings or proceedings via video or teleconference if appropriate. In a Hot Spot County, judicial officers must still hold hearings or proceedings via video or teleconference if appropriate. While a judicial officer may not hold a hearing or proceeding specifically prohibited by these protocols, the judicial officer 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 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.
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.⁸
7. In Green Counties, Grand jury proceedings may resume beginning June 15, 2020, and jury trials may resume on June 29, 2020. However, judicial personnel must take appropriate steps to protect the health of jurors and potential jurors. 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; 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. Jury trials and grand jury proceedings must continue to be postponed in Hot Spot Counties. If a jury is empaneled from multiple counties, each county from which the jury is constituted must be a Green County before the jury may be empaneled. 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.
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

⁸ 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.”

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. Clerks and probation staff can require all individuals approaching a service counter, window, or probation office to wear a mask, and should limit staffing at these service areas to minimize contact with the public if appropriate. Judicial personnel interacting with the public should 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 depositories⁹ 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 fines 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.¹⁰
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

⁹ These deposit boxes must be secure and must be checked daily.

¹⁰ See CDC Guidelines and Recommendations for disinfecting facilities. <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>.

supports a County Commission's efforts to scan temperatures with no contact thermometers upon entry of a facility as recommended or directed by a local health department.

13. The Court will prepare and prominently post a notice at the court facility and on its website to inform the public of its ongoing COVID-19 mitigation efforts. The Court will also provide a notice flier for judicial offices statewide. Each of these notices will include reference to the State's 24/7 COVID-19 hotline (1-800-887-4304) and the State's general information website at www.coronavirus.wv.gov
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 assistance to transport probationers to a healthcare facility if COVID-19 is suspected.
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.

West Virginia COVID-19 County Status:

Red = "High Alert" as designated by the WV DHHR

(updated May 18, 2020; 2:00 P.M.)

