SUPREME COURT OF MISSOURI

en banc

May 4, 2020
Effective May 16, 2020

OPERATIONAL DIRECTIVES

As state and local governments begin lifting or relaxing stay-at-home orders and restrictions on social distancing and group gatherings, the Supreme Court of Missouri provides these Operational Directives to the courts of this state to follow before resuming court activities that have previously been suspended by this Court's prior orders. The Court recognizes that conditions vary across the state; therefore, appropriate measures for resuming activities must vary as well. Appropriate precautions and safeguards in large, metropolitan areas may not be necessary or appropriate in less-populated communities. Moreover, differences in docket sizes, courtroom and courthouse layouts, and the number of judicial employees make it difficult to establish functional and effective statewide orders. Accordingly, the purpose of these Operational Directives is to facilitate local solutions appropriate to local conditions.

Nevertheless, Missouri courts must maintain a certain degree of uniformity in our response to the COVID-19 pandemic. Lawyers, litigants, victims, judicial employees, witnesses, jurors, and the public need to know what to expect when they engage with the Missouri judicial system regardless of where that engagement occurs. Accordingly, the purpose of these Operational Directives also is to establish some uniformity in approach among Missouri courts to the challenges created by the COVID-19 pandemic even though the solutions to these challenges may vary from time to time and place to place.

As courts plan and consider gradually resuming activities previously suspended as conditions permit, the presiding judge or chief judge of the applicable circuit or court are directed to adhere to the following Operational Directives. The citizens of the state and employees who enter Missouri courthouses and court facilities must feel confident for their own safety and understand that the health and welfare of every litigant, juror, witness, victim, judicial employee, attorney, and other individual involved in judicial proceedings across the state is paramount in the decisions that are made under these Operational Directives.

As set forth below, Missouri courts have been operating at what is referred to herein as "Operating Phase Zero" since this Court's March 16, 2020, order suspending most in-person court proceedings. All courts will continue to operate under those conditions until the presiding judge or chief judge of the applicable circuit or court determines – in light of the Gateway Criteria described below – that improvements in local conditions warrant moving to a higher Operating Phase or that deterioration in those conditions necessitates moving to a lower Operating Phase. Each Operating Phase reflects differing approaches to in-person proceedings, personnel and staffing, and courthouse operations. How those approaches will vary depends on local conditions, the needs and rights of the litigants and victims, the physical layouts of court facilities, and the abilities of the judicial and non-judicial personnel. No court can transition beyond the conditions set forth in Operating Phase Three until the Court's order dated May 4, 2020, is amended or rescinded.

These Operational Directives are designed to assist courts in ensuring public safety when making decisions at the local level. **Accordingly, presiding judges and chief judges should monitor local circumstances and conditions on a regular basis. Any movement to the next higher Operating Phase under these Directives can be made only after a court has been in the prior Operating Phase for a period of at least 14 calendar days. A court may revert back immediately to a prior Operating Phase when local conditions and circumstances require it. Courts must notify the public of any transition to a new Operating Phase in its COVID-19 Notice and send any order or notice to this Court to be included on the Missouri Courts' website. Prior to changing Operating Phases, the presiding judge or chief judge shall also submit to the Clerk of this Court a notice in the form attached as exhibit A.**

The Court is closely monitoring policy changes recommended by state and local government agencies and the Centers for Disease Control and Prevention (CDC) and will update these Operational Directives as necessary.

Directives

A. Gateway Criteria

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 suggest local conditions are improving sufficiently, a presiding judge or chief 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, a presiding judge or chief 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, a presiding judge or chief 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 disinfection 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**

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 the COVID-19 public health emergency;
   - Oral arguments regarding time-sensitive matters; and
   - Other exceptions approved by the Chief Justice of this 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 and the chief judges of each appellate court are 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 jurors or 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 reevaluate the Gateway Criteria for indications that a courthouse is ready to move to a different Operating Phase.

D. Operating Phase One

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. Reexamine 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. (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 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[1] 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. 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.

[1] 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 do 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 be 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 reevaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

E. Operating Phase Two

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. Reexamine 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. (Operational Directives on conducting jury proceedings will be forthcoming from this Court as pandemic and health conditions improve.)
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; or

    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 reevaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

F. Operating Phase Three

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. Reexamine 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 an 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.

EXHIBIT A

Notice to the Supreme Court of Missouri of Higher/Lower Operating Phase

I, _____, (presiding judge or chief judge) of _____ notify the Supreme Court of Missouri that the following will move to Operating Phase _____on the ___ day of _____, 2020.

Mark all that apply:

__ Entire Judicial Circuit/Appellate District; or

__ County/Counties of _____ within the Circuit; and/or

__ Municipal Division(s) of _____within the Circuit.

Dated: _____ _____

(Presiding Judge or Chief Judge)