Supreme Court of Florida

No. AOSC20-32

IN RE: COVID-19 PUBLIC HEALTH AND SAFETY PRECAUTIONS FOR PHASE 2

ADMINISTRATIVE ORDER

The Coronavirus Disease 2019 (COVID-19) pandemic continues to have an effect upon the operations of the State Courts System and the lives of Floridians. The Florida state courts have taken measures to mitigate not only the effects of the public health emergency upon the judicial branch and its participants but also the spread of the novel Coronavirus. On April 21, 2020, the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19[1] was created to develop findings and recommendations on the continuation of all court operations and proceedings statewide in a manner that protects health and safety and that addresses each of the following anticipated phases of the pandemic:

1. See *In re: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19*, Fla. Admin. Order No. AOSC20-28 (April 21, 2020).

a) Phase 1 – in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare;

b) Phase 2 – limited in-person contact is authorized for certain purposes and/or requires use of protective measures;

c) Phase 3 – in-person contact is more broadly authorized and protective measures are relaxed; and

d) Phase 4 – COVID-19 no longer presents a significant risk to public health and safety.

Among its charges, the Workgroup was specifically directed to propose guidance – based on the advice of public health experts, medical professionals, or others with expertise in the management of a pandemic and the latest health advisories and safety guidelines – for protective measures that will allow the progressive and safe return of judges, personnel, parties, counsel, jurors, and the public (hereinafter collectively referred to as "justice stakeholders") to court facilities. Following extensive research and consultation with medical professionals, the Workgroup has completed this task and issued its report titled *Requirements, Benchmarks, and Guidelines Governing the Transition to Limited In-Person Contact (Phase 2)* (hereinafter "report").

In the report, the Workgroup recognized that: a) the COVID-19 situation remains dynamic and that the requirements, benchmarks, and guidance may have to be modified by a subsequent administrative order as more information regarding the pandemic and best practices becomes available; b) local community needs and resources and the specific public health conditions by county are important considerations that may have a direct bearing on the implementation of the requirements, benchmarks, and guidance; c) funding and the availability of certain equipment and supplies may impact the readiness of a court to move to Phase 2; d) justice stakeholders must feel confident that their safety and welfare are the primary considerations on which decisions are made; and e) the requirements, benchmarks, and guidance should be no broader than necessary to protect public health and safety while fulfilling the court system's responsibilities for the administration of justice.

Under the administrative authority conferred upon me by article V, section 2(b) of the Florida Constitution and by Florida Rules of Judicial Administration 2.205(a)(2)(B)(iv) and 2.205(a)(2)(B)(v), I accept and approve the findings and recommendations of the Workgroup's report, as modified, which is attached hereto and incorporated herein by reference.

To advance the recommendations in the report, IT IS ORDERED that:

1. Court reopening protocols and practices shall be guided by Centers for Disease Control and Prevention recommendations and align with guidance provided by the Florida Department of Health, county health departments, and local medical professionals.

2. In order to transition to Phase 2 and expand in-person activities in a manner consistent with AOSC20-23, Amendment 2,[2] each appellate court and each trial court must have met the five benchmark criteria provided in the report[3] and must have developed an operational plan addressing, at a minimum, implementation of the requirements identified in the report.[4] In developing its operational plan, the court shall consult with judges, court administrators, justice partners, county administrators, other building occupants, if any, and county health departments or local health experts. A copy of the operational plan, once finalized by the chief judge or chief justice, shall be filed with the Office of the State Courts Administrator.

This order shall remain in effect until amended or terminated by subsequent administrative order of the chief justice.

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2. *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts,* Fla. Admin. Order No. AOSC20-23, Amendment 2, (May 21, 2020).
3. See report at p. 3.
4. Id. at pp. 4-10.

DONE AND ORDERED at Tallahassee, Florida, on May 21, 2020.

AOSC20-32 5/21/2020

Chief Justice Charles T. Canady

AOSC20-32 5/21/2020

ATTEST:

AOSC20-32 5/21/2020

John A. Tomasino, Clerk of Court

AOSC20-32 5/21/2020

COVID-19 WORKGROUP

CONTINUITY OF COURT OPERATIONS & PROCEEDINGS DURING AND AFTER

Court Operations Subgroup

Requirements, Benchmarks, and Guidelines Governing the Transition to Limited In-Person Contact (Phase 2)[1]

May 14, 2020

Background

The Court Operations Subgroup (COS) was tasked with developing findings and recommendations on the continuation of all court operations and proceedings statewide in a manner that protects health and safety and that addresses each of the following phases of the pandemic, as defined in Fla. Admin. Order No. AOSC20-28: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare; b) limited in-person contact is authorized for certain purposes and/or requires use of protective measures; c) in-person contact is more broadly authorized and protective measures are relaxed; and d) COVID-19 no longer presents a significant risk to public health and safety.

The recommendations below specifically address Charge 3 articulated in Fla. Admin. Order No. AOSC20-28, to:

> Propose guidance – based on the advice of public health experts, medical professionals, or others with expertise in the management of a pandemic and the latest health advisories and safety guidelines – for protective measures that will allow the progressive and safe return of judges, personnel, parties, counsel, jurors, and the public to court facilities[.]

The COS conducted an extensive literature review, discussed state and national court reopening practices and guidelines, and consulted with medical professionals.[2] The COS recognizes that the COVID-19 situation remains dynamic and that the benchmarks and guidance offered below may have to be modified as more information regarding the pandemic and best practices becomes available. Local community needs, resources, and the specific public health conditions by county are important considerations and may have a direct bearing

[1] On May 20, 2020, the Health and Safety Requirements section, on page five of the report, was modified to clarify symptoms and comport with the latest Centers for Disease Control and Prevention guidance.

[2] The COS met with two medical professionals to discuss their professional opinions related to precautions courts should take in order to open their doors to the public and conduct in-person proceedings: Erin Kobetz, PhD, MPH, Professor of Medicine and Public Health Sciences at the University of Miami Miller School of Medicine, and Cindy Prins, PhD, MPH, CIC, CPH, Clinical Associate Professor in the Department of Epidemiology at the University of Florida College of Public Health and Health Professions and College of Medicine. The Subgroup extends its thanks and appreciation for their invaluable input and expertise.

on implementation of the benchmarks and guidance offered below. Court reopening protocols and practices shall be guided by Centers for Disease Control and Prevention (CDC) recommendations and align with guidance provided by county health departments and local medical professionals.

The COS recognizes that funding and the availability of certain equipment and supplies may impact the readiness of a court to move to Phase 2. The COS recommends exploring local, state, federal, and grant funding opportunities to ensure the necessary supplies are available to protect the health and safety of all those entering the courthouse building.

The COS recommends the following requirements, benchmarks, and preliminary operational guidance for transitioning from Phase 1 (in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare) to Phase 2 (limited in-person contact is authorized for certain purposes and/or requires use of protective measures).

Introduction

Florida is a very diverse state, and health and operational conditions vary greatly even at the local level. Precautions and safeguards necessary in one area of the state may not be necessary, appropriate, or feasible in another. Further, variations in caseloads, dockets, facilities, resources, and available employees make it difficult to establish functional and effective statewide directives. The plans and measures for resuming in-person proceedings may vary out of necessity. However, it is important that lawyers, litigants, victims, witnesses, jurors, and the public know what to expect when they interact with the courts, regardless of where that court is located within the state.

As courts consider additional in-person proceedings and more judges and court staff return to the courthouse[3], it is imperative that judges, court staff, justice partners, and the public feel confident that their safety and welfare are the primary considerations on which decisions are made. The requirements and benchmarks provided will establish some uniformity in approach, while the operational guidelines provide needed flexibility for courts to adjust for local conditions.

To the extent possible, courts shall continue to use technology of all types (such as teleconferencing, videoconferencing, or other means) to facilitate the remote conduct of proceedings as an alternative to in-person proceedings. Courts should continue to innovate, increase the use of technology, and take other measures to expand remote capacity while limiting person-to-person contact when not necessary.

[3] References in this document to a courthouse should be read to extend to any facility or building that houses courtrooms, hearing rooms, court staff or where court business is conducted, whether or not that building is formally called a courthouse.

Benchmarks for Transition from Phase 1 to Phase 2

The Supreme Court identified four phases of the pandemic: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare (Phase 1, current phase); b) limited in-person contact is authorized for certain purposes and/or requires use of protective measures (Phase 2); c) in-person contact is more broadly authorized and protective measures are relaxed (Phase 3); and d) COVID-19 no longer presents a significant risk to public health and safety (Phase 4). Using the benchmarks provided, courts may consider moving from Phase 1 to Phase 2, wholly or in-part, based on local conditions and resources. If local conditions deteriorate, or resources become strained, it may be necessary for a court to return to a Phase 1 or adjust facets of how it is operating in Phase 2 to meet the current public health situation or the needs of the court.

The following benchmark criteria[4] must be met prior to any court transitioning from Phase 1 to Phase 2 and expanding in-person activities:

1. No confirmed or suspected cases of COVID-19 in the court facility within a 14-day period; or if confirmed or suspected cases have occurred in the court facility, deep cleaning and disinfecting of exposed areas and applicable employee self-quarantine actions have been implemented.
2. Rescission of local and state restrictive movement and/or stay-at-home orders.
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, downward trajectory of positive tests as a percent of total tests, size of particularly vulnerable populations, and availability of medical facilities including emergency and intensive care capacity.
4. Adequate testing programs in place, increased availability of COVID-19 tests, and emerging antibody testing.
5. Consultation with other building occupants (for multi-tenant courthouses or buildings) and with justice system partners (including, but not limited to clerk of court, state attorney, public defender, law enforcement, local bar, and others necessary to resume certain case types, such as the Department of Children and Families).

It is important to ensure capacity exists for increasing or modifying operations and that all health and safety concerns are met.

[4] Consistent with the criteria utilized by the White House (Opening Up America Again plan), Governor DeSantis (Re-Open Florida), the CDC, the US Courts. Some language modeled after that used by the Supreme Court of Missouri.

Operational Plan for Phase Transition

Prior to expanding operations beyond Phase 1 as outlined in AOSC20-23, as amended, each court shall develop an operational plan. Broadly, the plan should describe the court's planning process and use of the benchmark criteria, detail those involved in the planning, and identify the steps to be taken in order to increase operations. Further, the court must ensure that its plan addresses all requirements discussed below and may wish to also address the guidelines specified below in that plan.

No court may transition beyond Phase 1 before the dates prescribed in AOSC20-23, as amended, until it has developed and completed its operational plan, and when local conditions meet the benchmark criteria outlined above.

Requirements and Guidelines

The following requirements provide the key elements that must be included in each court's operational plan. Guidelines are also provided for each court's consideration. Each court may develop a single plan that encompasses all facilities and operations or may develop a separate plan for each facility or operational or functional area.

In developing the operational plan, courts shall consult with judges, court administrators, justice partners, county administrators, other building occupants, if any, and county health departments or local health experts. The plan will need to be updated on a regular basis to keep pace with advancements in best practices and to adjust for lessons learned. Courts are encouraged to establish an ongoing relationship and communication with county health departments or local health experts. Those relationships will help inform recommendations regarding the local court's readiness to authorize limited in-person contact for certain purposes and institute any appropriate measures to further safeguard public health and safety.

Remote Hearings and Remote Work

To the extent possible, consistent with Supreme Court administrative orders or similar guidance, all proceedings shall occur remotely (such as by teleconferencing, videoconferencing, or other means) unless litigants or other court participants are unable to successfully participate in a remote hearing for reasons beyond the court's control. Courts may need to conduct hybrid hearings (concurrently in-person and remotely) in certain instances. Further, all employees should be allowed to work remotely to the extent their work can be done remotely throughout Phases 1-3. Particular effort should be made to ensure that vulnerable employees, and those that are caregivers for someone that is vulnerable, are able to work remotely until at least Phase 4.

Health and Safety Screening

General Considerations

- Take precautions to ensure no one enters the courthouse when there is a likelihood that they may have COVID-19.[5]
- Direct judges and employees, at a minimum, to self-check for symptoms. If they present symptoms, they must remain home and should consult their doctor or other medical professional.
- Require all others entering the courthouse to undergo health screening with a required temperature check. Persons who have a fever of 100.4 degrees or greater, answer affirmatively to any of the symptoms in Question 1, or answer affirmatively to Question 2, 3, 4, or 5 shall not be allowed to enter the facility. Alternative arrangements should be made for this person, such as handling their business over the phone, rescheduling a hearing, or other means as appropriate. The screening shall include the following questions:
  - Question 1: Do you have any of the following symptoms (excluding those due to a known medical reason):
    - Cough
    - Shortness of breath or difficulty breathing
    - Chills
    - Muscle pain
    - Sore throat
    - New loss of taste or smell
  - Question 2: Are you currently awaiting the results of a test to determine if you have COVID-19?
  - Question 3: Are you under instructions to self-isolate or quarantine due to COVID-19?
  - Question 4: Have you had close contact with someone with a COVID-19 diagnosis or who is awaiting test results for COVID-19?
  - Question 5: Have you travelled to an area with a notably high concentration of COVID-19 cases?
- Establish a process to safeguard against release of sensitive health information in communicating to the court that a person was not allowed to enter the facility (e.g., a checkbox form solely indicating non-admittance based on refusal to comply with the guidelines or based on the screening/temperature check).
- Consider whether special attention needs to be given to how inmates or detainees from jail and juvenile facilities who may be transported to a courtroom will be

[5] The CDC lists the symptoms of COVID-19 to include cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, and new loss of taste or smell. Other less common symptoms include nausea, vomiting, or diarrhea.

screened, including consideration of a lower threshold temperature as an indicator of symptoms.

Social Distancing

Social distancing guidelines shall be established and strictly enforced during Phases 1 and 2. This includes all areas of the courthouse, including areas of private circulation. Current CDC social distancing guidance recommends staying at least six feet from other people.

- Ensure social distancing in public common areas, galleries and wells of the courtroom, hallways, elevators, restrooms, or other locations where the public might gather.
  - Some areas may need to be reconfigured or have chairs, benches or other furniture removed to ensure social distancing.
  - Special attention should be given to scheduling hearings on a staggered schedule as common areas such as hallways, restrooms, and elevators may become crowded in such a way that it is impossible to maintain appropriate social distancing.

Hygiene Protocols and Personal Protective Equipment (PPE)

- Establish and enforce hygiene protocols, such as hand washing and covering coughs and sneezes.
- Post readily visible signage[6] throughout the courthouse reminding individuals of hygiene protocols, including hand washing, as well as social distancing, directional guidance and any changes to processes due to the pandemic.
- Establish guidelines for the purchase and use of hand sanitizer and PPE.
  - Hand sanitizer should be widely available throughout the courthouse, including inside courtrooms.
  - Face masks are required for everyone entering the courthouse building, with no exceptions. Face masks shall be worn at all times throughout the courthouse building, including inside the courtroom.
    - Judges and court staff do not have to wear a mask in their private chambers or office as long as social distancing is possible. If they do not have a private office, and ample social distancing is not observed, a mask should be worn while at their desk.
    - If visitors do not have a face mask, one should be provided to them at no cost.
    - Face shields or other alternative face covering protocol should be a consideration for those participants involved in a court proceeding

[6] Any signage used should (at a minimum) be in English and Spanish and shall comply with the Americans with Disabilities Act.

where facial expressions or features must be observed or where audio is hampered and jeopardizes the creation of an accurate court record.

- Consider other PPE, such as gloves and face shields, for use as appropriate. Health experts have noted that proper hand hygiene is generally preferable to gloves. An example where multiple types of PPE (mask, gloves, face shield or goggles, and apron or other covering) may be required is during the fingerprinting process.

Judge and Court Staff Training

- Provide training or other technical assistance to judges and court staff, if necessary, on changes required by the operational plan.

Other Building Occupants

- Collaborate with other building occupants to ensure agreement on health, safety, cleaning and disinfecting,[7] and related issues to avoid contamination by other occupants in a multi-tenant courthouse.

Vulnerable Populations[8]

- Provide accommodations to reduce the need for vulnerable individuals to appear in-person at the courthouse, when feasible.

Courthouse Facility and Security

Exterior

- Consider ingress and egress as well as queuing areas and the need to temporarily close some entry points or designate for entry or exit only.
- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aid.
- Provide directional signage, if necessary.

Interior

- Reconfigure queueing areas, if needed.
- Determine if any occupancy limits or constraints are necessary to allow for maximum social distancing within the building. Some courts may consider only admitting persons with scheduled proceedings or appointments with a person or

[7] CDC guidance on cleaning and disinfecting public spaces, workplaces, and other public locations is available here: https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html.

[8] Vulnerable individuals are those over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy.

office in the courthouse, even for non-court matters. If a person does not have an appointment, provide information on how to set one. Also, limit their entry to, for example, 10 minutes prior to the scheduled appointment or proceeding time.
- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aide.
- Review all space within the courthouse to determine any mitigation measures that can be taken and reconfiguration that may be necessary to allow for proper social distancing. Open office areas, in particular, may require reconfiguration or movement of employees to other areas.
- Close or reconfigure areas such as break rooms, waiting areas, cafeterias, and other spaces where people tend to congregate, as needed.
- Consider installing physical barriers, such as sneeze guards and partitions, in spaces where an employee might come into close contact with large numbers of people, such as an information desk. While such a barrier may protect from droplets caused by a sneeze, it is not a replacement for wearing a mask.
- Limit the number of persons allowed in a shared restroom.

Security

- Determine what security practices or policies may require modification.
- Reconfigure the security screening station, if needed.
- Develop policies, training, and/or other technical assistance for security personnel if they are charged with health screening visitors.
- Charge security personnel with enforcing social distancing, PPE, and other guidelines. Establish a policy regarding persons who refuse to follow those guidelines, such as not wearing a mask.

Cleaning and Disinfecting

- Establish and enforce detailed cleaning and disinfecting protocols for all areas.
- Make adequate supplies of cleaning and disinfecting products available throughout the facility.
- Clean and disinfect high traffic areas and frequently touched surfaces multiple times per day.
- Perform enhanced nightly cleaning and disinfecting of all areas.
- Make hand sanitizer and sanitizing or disinfecting wipes readily available throughout the facility for use by employees and visitors.
- Clean or disinfect shared equipment, such as copiers, before every use.

Courtroom/Hearing Room

- Establish a courtroom maximum occupancy based on the size and configuration of the room and social distancing protocols.

- Consider a courtroom admittance policy to limit persons from entering with family members or friends that are not essential to the proceeding. Limit those physically permitted in the courtroom to the parties, attorneys, victims, witnesses, court reporter, court interpreter and other persons whose presence is essential.
- Determine potential waiting area(s) to ensure social distancing while parties wait for their proceeding.
- Follow and enforce strict social distancing protocols.
- Make hand sanitizer and sanitizing or disinfecting wipes available for use.
- Clean or disinfect shared surfaces, such as counsel tables and podiums, after every proceeding or similar court event at which they are used.

Other Business Process Considerations

- Consider a staggered schedule for court appearances and employee schedules to minimize the number of people in the building at any time and prevent crowding.
- Prioritize certain proceedings or events, if needed.
- Consider dividing employees into shifts so that there is no overlap in scheduling. If a member from one shift tests positive for COVID-19, it will be easier to identify potentially exposed colleagues.
- Take adequate steps to ensure the public is provided a reasonable means of access to the proceeding, for those proceedings in which the public's right to in-person access is appropriate.
- Live-stream or record the proceeding, if practicable, and make the recording available as soon as possible following the conclusion of the proceeding.
- Develop a process or protocol for handling paper, both from the public and from employees. Use of a drop box may be prudent for some public submissions. Creation and use of electronic documents is a preferable practice. When paper has been submitted, scanning of all paper and transmitting electronically is a preferable practice.
- Consider staffing strategies, such as redeployment of personnel, to meet staffing needs and social distancing requirements.

All aspects of the operational plan should be applied evenly throughout each courthouse. It is understood that differences in locations or facilities may necessitate modified practices at a different courthouse within the same county or circuit.

The operational plan should provide the court with the guidance and structure necessary to navigate moving from Phase 1 to Phase 2, once the benchmark criteria have been met. All pertinent aspects of the plan should be shared broadly to ensure employees and the public are aware of the precautions being taken and are on notice of what to expect when conducting business at the courthouse. In addition to providing such information in hearing notices or other case-related postings, courts are encouraged to utilize their court's public information officer to share the information. It is anticipated that similar guidance will be used

for transitioning to Phase 3 and Phase 4. Revised public health and safety guidance and lessons learned from transitioning from Phase 1 to Phase 2 will help inform future guidance material.

Once the plan has been finalized and approved by the chief judge, a copy shall be provided to the General Services Unit in Office of the State Courts Administrator for informational purposes.[9] As the plan is updated, revised copies shall be submitted.

Resource Items to Consider Having Available as Phase Transitions are Considered

The following is a non-exclusive list of items that courts may need as part of their operational plans. The COS recommends that local, state, federal, and grant funding opportunities be explored to address COVID-19-related equipment and supply needs. The list below is provided as a starting point for each court's consideration.

Hygiene, Cleaning, and Disinfecting

- Hand Sanitizer
- Dispensers for hand sanitizer (touchless preferred)
- Sanitizing or disinfecting wipes
- Dispensers for wipes (touchless preferred)
- Disposable masks
- Dispensers or storage containers for masks
- Gloves
- Face shields
- Goggles
- Thermometers (touchless)
- Appropriate cleaning supplies (soap, cleaning or disinfecting spray, etc.)
- Handwashing or hand sanitizing stations outside of the facility
- Tissues/paper towels (in addition for use to cover sneezes, can be used to open doors, etc.)
- Cleanable or disposable covers for commonly touched or used items, such as microphones

Facilities, Security, Queuing, Social Distancing

- Clip Boards
- Writing Utensils
- Barricades
- Stanchions
- Gaffer's or other type of tape to demark spacing
- Folding tables/chairs
- Radios or other communication devices
- Laptop/tablet for data collection
- Portable document scanners
- Large format monitors

[9] In current practice, courts are required to file their Continuity of Operations Plan and other emergency preparedness plans with the General Services Unit.

- Medical grade or waterproof keyboards, mice and similar computer accessories (to allow for proper cleaning and disinfecting of shared accessories)
- Fingerprinting pads
- Portable podiums (to limit sharing of existing podium during a proceeding)
- Acrylic partitions or other barrier in spaces like information desks
- Wrist bands or other means for indicating a person has been screened (for example, to allow for them to leave for lunch and return without having to undergo expanded screening again)

Signage

- Hygiene protocols (hand washing, hand sanitizer, etc.)
- Social distancing reminders
- Markings to notate distance
- Directional signage
- Instructions/reminders for new procedures
- Admittance/Health screening notice
- Requirement to wear mask