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STATE OF WEST VIRGINIA
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REVISED COVID-19 RESUMPTION OF OPERATIONS PROTOCOLS

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Revision Note: Throughout this pandemic, the Court has constantly monitored the status of COVID-19 in West Virginia, and clarified this document where appropriate through both formal written guidance documents and through informal discussions in response to specific questions. This Revised COVID-19 Resumption of Operations Protocols reflects and incorporates these changes to ensure consistent application and interpretation of this document.

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

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

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. 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.

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.

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.

The School Alert System map issued by the West Virginia Department of Education and/or the County Alert System map issue by the West Virginia Department of Health and Human Resources are factors that may be considered by the Chief Circuit Judge and Chief Family Court Judge in determining appropriate steps in consultation with county officials and local health

officials. An increased color status represents a heightened risk of transmission in a county and may, but is not required to, warrant a local judicial emergency action.

HUMAN RESOURCE PROTOCOLS

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

1. A Selecting Authority[2] may authorize remote work for employees if circumstances warrant and if an employee can perform their duties with available technology. 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.
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.

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[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.

5. Employees must 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.
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 who have a fever, or other common COVID-19 symptoms, cannot come to work. Because the virus can spread after symptoms subside, employees should remain home for ten (10) calendar days after the onset of symptoms. 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) days after the last possible exposure or until the timely receipt of a negative test.
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. The July 8, 2020 Memorandum from the Administrative Director regarding Masks and Return from Vacation Policy amends and supplements these Protocols and reflects the current Court policy on employee travel and return from vacation.
9. Employees with suspected COVID-19 symptoms should seek testing as instructed by health authorities or by medical providers.

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

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 COVID-19 may return to the workplace (a) when authorized by a physician or local health official, and (b) ten (10) days after the onset of symptoms and resolution of fever for at least 24 hours, without the use of fever-reducing medications, and with improvement of other symptoms. Employees with severe illness should consult with the treating health care professional or local health department regarding return-to-work. Employees with a positive test that never develop symptoms can return to work ten (10) days after the date of the test. 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 system remains partially closed in some counties and subject to changes under the School Alert System issued by the West Virginia Department of Education, 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 at-risk relative or partner. The August 31, 2020 Memorandum from the Administrative Director regarding Leave, Remote Work, and COVID-19 amends and supplements these Protocols and reflects the current Court policy on this issue.
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.[5]

COURT OPERATIONS PROTOCOLS

1. All judicial offices and court spaces should be thoroughly disinfected prior to resuming operations.[6] 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. Judicial officers 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

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[5] 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).

[6] 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.

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. Judicial officers should take steps, through designated seating areas in courtrooms or through webcast, to ensure that the public has access to the proceeding.

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.[7]
7. 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;

[7] 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."

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. 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. The June 26, 2020 Memorandum from the Administrative Office regarding Guidance for Jury Management and COVID-19 amends and supplements these Protocols and reflects the current Court policy on this issue.

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 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. All individuals approaching a service counter, window, or probation office must wear a mask, and Clerks and probation staff should limit staffing at these service areas to minimize contact with the public if appropriate. Judicial personnel interacting with the public must 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 depositories[8] 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

[8] These deposit boxes must be secure and must be checked daily.

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 personal are encouraged to discuss general cleaning and disinfecting practices in the rest of the courthouse with their County Commission or County Administrator.[9]
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 supports a County Commission's efforts to scan temperatures with no contact thermometers and/or ask common screening questions upon entry of a facility as recommended or directed by a local health department.
13. Court employees should prominently post the Notice Poster issued on May 15, 2020 on doors leading to judicial work areas.
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 assist if COVID-19 is suspected.

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[9] See CDC Guidelines and Recommendations for disinfecting facilities. https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html.

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.