NOTICE TO THE BAR AND PUBLIC

COVID-19 – ADDITIONAL GUIDANCE ON THE REQUIREMENT TO WEAR FACE MASKS IN COURT FACILITIES

The Supreme Court by Order dated June 9, 2020 has required that all people who enter or occupy court facilities (including Judiciary areas of mixed-use facilities) must wear masks or other face coverings in community settings (e.g., entranceways, indoor parking garages) and common areas (e.g., courtrooms, elevators). It incorporates certain limited exceptions, including for medical need. The Court's June 9, 2020 Order also references judicial discretion to remove their face coverings or masks when on the bench and to direct others to do so as long as social distancing is maintained.

This notice provides additional guidance regarding the general requirement for judges and others to wear face masks when in non-private settings, including courtrooms used for in-person proceedings, and the limited exceptions to that requirement. The guidance clarifies the specific situations in which the referenced judicial discretion regarding masks may be exercised and the protective measures that must be in place in those situations. It also addresses related issues, including the use of masks by participants in remote proceedings and recent guidance by the Centers for Disease Control and Prevention (CDC) regarding face shields and masks with valves or exhalation vents.

A. Temporary Removal of Masks in Courtrooms

Within a courtroom, judges may direct that masks be lowered or removed in the following limited circumstances:

1. Judges may remove their own mask if they are in a courtroom without other occupants, including for purposes of conducting remote proceedings (meaning that any other participants are using video or phone technologies).

2. Judges may remove their own mask, or direct or permit another court participant to remove their mask, if social distancing is maintained (meaning that the person whose mask is lowered is separated from others by at least six feet); **and**

a. The mask is lowered momentarily (less than one minute), such as for purposes of party or witness identification or to take a drink of water; **or**

b. The person whose mask is lowered is separated from others by a physical barrier (e.g., plexiglass divider); **or**

c. The person whose mask is lowered or removed is separated from others by a wearable barrier (e.g., clear plastic face shield), **either**:

   i. As an accommodation for communicating with individuals who are deaf or hard of hearing; **or**

   ii. With advance approval of the Assignment Judge based on individual facts and circumstances.

   Note: The CDC currently does not consider face shields to be an acceptable substitute for face masks in most situations.

B. Use of Masks During Remote Proceedings

Individuals participating in remote proceedings by video or phone often will not be wearing a mask, and judges may direct a participant in a remote proceeding to lower or remove their face covering if doing so would not be inconsistent with health guidance. Even during remote proceedings, judges will permit court users to continue wearing a mask based on public health recommendations (e.g., because the individual participating remotely is doing so in a non-private setting).

C. Prohibition on the Use of Masks with Exhalation Valves

Consistent with updated CDC guidance, court users are not permitted to wear masks with one-way valves or vents that allow air to be exhaled through a hole in the material, which can result in expelled respiratory droplets that can reach others.

D. Judiciary Provision of Clear Plastic Masks to Jurors and Other Court Users

The Judiciary will provide disposable clear plastic face masks (as distinguished from plastic face shields) for use by jurors participating in the in-person phase of jury selection and in socially distanced in-person trials. Clear face masks also will be provided for use by criminal defendants, witnesses, and certain other participants in jury trials. Since the Judiciary's supply of disposable clear plastic masks is limited, attorneys and their clients should plan to use their own masks during in-person court proceedings to the extent feasible.

Standard disposable fabric or paper masks will be provided to court users who appear at the courthouse without a mask.

Questions about this notice may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 22, 2020