

NOTICE TO THE BAR AND PUBLIC

COVID-19 – STATEWIDE POLICY REGARDING COVID-19 EXPOSURE RISKS IN JUDICIARY FACILITIES

The New Jersey courts are committed to following public health guidance and supporting the health and safety of attorneys, litigants, members of the public, judges, court staff, and all persons in Judiciary facilities. To that end, the Judiciary has established a statewide policy for handling COVID-19 exposure risks in courthouses and court facilities. This notice is being issued on behalf of the Chief Justice and the Administrative Director. The policy set forth herein applies to the Supreme Court, Appellate Division, Tax Court, and trial divisions of the Superior Court. For Municipal Courts, the municipality has responsibility for enforcing public health protocols regarding COVID-19 cases.

A. The Judiciary has implemented and will continue to enforce policies that minimize risks of potential exposure to COVID-19 in court facilities.

- According to public health authorities, risk of COVID-19 exposure increases with close contact.

The Centers for Disease Control and Prevention (CDC) guidelines on community-related exposures provide that individuals are at risk of COVID-19 exposure if they have **close contact** with someone who is confirmed positive for the virus. Close contact is defined as being closer than 6 feet for 15 minutes or longer. [That 15-minute threshold applies generally. A shorter time may present a risk if, for example, a person comes into direct physical contact with someone who is COVID-19 positive. Out of an abundance of caution, the Court has endorsed a shorter 10-minute threshold for defining close contact in Judiciary facilities.] A contact that is closer than 6 feet for 10 minutes or longer is considered a close contact whether or not either person was wearing a mask or other face covering.

- Contact that is not close does not increase risk of COVID-19 exposure.

According to the CDC and the New Jersey Department of Health (NJ DOH) brief on distant contacts – such as passing by someone in a hallway, sharing an elevator for a few minutes, or being briefly in a courtroom with social distancing – do not increase the risk of contracting COVID-19. Those types of interactions are like other daily life events, such as shopping at a grocery store or entering a restaurant to pick up carryout food. Provided appropriate health precautions are maintained, CDC and NJ DOH guidance indicates that those interactions do not pose an increased risk of contracting COVID-19.

- Judiciary policies are designed to prevent close contact between court users (including judges, court employees, attorneys, litigants, jurors, and others) while in court facilities.

Court users should rarely if ever have close contact with judges, court staff, and others. Consistent with the Supreme Court's June 9, 2020 Order, individuals in community settings and common areas must wear masks and maintain social

distancing, as is required for all occupants in shared areas of government buildings pursuant to Executive Order 163 (issued July 8, 2020). Minimizing close contact and following health and safety protocols – including not coming to court facilities if symptomatic, frequently washing hands, wearing masks, and maintaining social distance – should limit exposure risks in Judiciary facilities.

B. Public health departments are responsible for investigating COVID-19 cases and performing contact tracing to identify and inform individuals who are or may be at heightened risk of developing COVID-19. The Judiciary will cooperate in all contact tracing efforts by the CDC, NJ DOH, and/or local health departments.

Contact tracing is a process used to identify those individuals who have come into contact with persons who have tested positive for a contagious disease, including COVID-19. The State of New Jersey is using contact tracing to identify individuals who have had contact with individuals who test positive for COVID-19. When a person tests positive for COVID-19, the testing lab loads the test data onto the State's secure epidemiological surveillance system, the Communicable Disease Reporting and Surveillance System (CDRSS). The positive case is then shared with the individual's local health department, which will call the positive individual to determine the names of those who they were in close contact with for a specific number of days. Notification of those individuals (the close contacts of the COVID-19 case) is handled by the applicable health department.

The Judiciary will continue to cooperate with public health authorities regarding potential exposures in court facilities, including for purposes of contact tracing and to request additional cleaning of court facilities if recommended by health authorities. The Judiciary also will continue to enforce internal policies that require employees to inform Human Resources if they test positive for COVID-19 (or if they develop symptoms consistent with the virus) and to submit negative test results before reporting to work.

C. Where the Judiciary (rather than a health department) is aware of an actual or suspected case of COVID-19 in court facilities, the Judiciary will notify court users who are or may be at risk.

In some situations, the Judiciary may become aware of a suspected or confirmed COVID-19 case involving a judge, court employee, or other court user. In those cases, the Judiciary will take appropriate next steps, which may include additional cleaning and notification to court users.

- The Judiciary requires judges and employees to disclose if they test positive for COVID-19 or develop symptoms consistent with the virus without other explanation. If a judge or employee has or is suspected of having COVID-19, the Judiciary will provide notice to all close contacts. Notice will be provided as promptly as possible, meaning that the first notification could be by phone, email, or text message. Formal written notice will be provided as soon as possible.

In the event the Judiciary becomes aware of a potential COVID-19 exposure or a situation that requires notification even in the absence of close contact, all

appropriate steps will be taken, which may include requiring anyone symptomatic to leave the courthouse; suspending any affected court proceedings; appropriate cleaning of the affected area of the court facility; and immediately notifying all individuals currently or recently in the affected area.

- The Judiciary cannot require individuals other than judges and employees to disclose (to the Judiciary) a COVID-19 diagnosis or symptoms. If an attorney, litigant, juror, or other court user who has been in a Judiciary facility discloses that they have or may have COVID-19, the Judiciary will take appropriate next steps based on the situation, which may include arranging for additional cleaning of affected areas; suspending court proceedings; rescheduling in-person court events as virtual proceedings; and providing appropriate notice to judges, court employees, litigants, jurors, and others.
 - **Example #1:** An empaneled juror contacts the court to advise that they cannot report as scheduled because they have symptoms consistent with COVID-19 without other explanation. In this situation, there should be no actual risk to other trial participants based on compliance with health protocols, including wearing masks, maintaining social distancing, and practicing good hygiene by washing hands or using hand sanitizer. However, from a psychological safety perspective, it is reasonable to expect that other jurors would have difficulty feeling comfortable and focusing on the trial based on fear of potential exposure. In general, it would be appropriate for the judge to suspend trial proceedings for 14 days (the quarantine period for asymptomatic individuals with a potential COVID-19 exposure) and then resume with or without the one juror after that period. The court would promptly notify all trial participants using available phone, text, and email options (including, for jurors, through the Jury Management System) of the possible COVID-19 case, the minimal actual risk to them, and the extra steps that the Judiciary is taking to support their safety. The notice would not disclose the name of the symptomatic juror.
 - **Example #2:** An empaneled juror contacts the court to advise that they are not reporting because their spouse has been exposed to COVID-19, and although the spouse is asymptomatic, just to be safe the entire household is self-quarantining for 14 days. In this case, there is no actual risk to the trial participants and no reason that the trial cannot continue without the absent juror. The judge would give an instruction to the jury similar to any other case in which a juror becomes unavailable midtrial.
 - **Example #3:** An attorney contacts the court the day after appearing for an hourlong in-person hearing to advise that although they do not have symptoms, they just tested positive for COVID-19. The attorney reports that they wore a face mask and had no close contact with the judge, other counsel, their client, or other court users. In this situation, there is no increased risk to other court users. Regular cleaning of the courtroom and common areas of the courthouse already would have been conducted. The Judiciary would not provide notice (since there are no close contacts).

Conclusion and Questions

All court users are required to follow Judiciary policies and guidelines issued by the CDC and NJ DOH, including not visiting court facilities when sick, washing hands, wearing masks, and maintaining social distance. By doing so, the risk of exposure to COVID-19 in Judiciary facilities will remain very low. In the event of an actual or potential exposure – whether confirmed or unconfirmed – the Judiciary will take appropriate steps to safeguard the privacy of individuals with COVID-19 while providing notice to close contacts and arranging for cleaning.

Questions should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.



Chief Justice Stuart Rabner



Hon. Glenn A. Grant, J.A.D.

Dated: August 3, 2020

Jury Operations During COVID-19 – (1) Supporting State Grand Jury; (2) Expanding Virtual Grand Jury Operations; and (3) Resuming Jury Trials

The Supreme Court has authorized various temporary modifications to jury protocols during the ongoing COVID-19 pandemic. Successful implementation of those interim adjustments is critical to resuming and maintaining comprehensive court services during Phase 2 of the Judiciary's Post-Pandemic Plan and during the future transition to Phase 3.

(1) State Grand Jury (SGJ) (Maintenance)

As anticipated at the outset of the virtual grand jury pilot program, the Court authorized expansion to State Grand Jury (in addition to the initial county-level programs in Bergen and Mercer). The Judiciary is continuing to work closely with Attorney General staff in the Division of Criminal Justice (DCJ) to prepare the two existing State Grand Jury (SGJ) panels to convene virtually.

Technology has been distributed to the jurors on both panels as needed. Vicinage IT staff has completed Zoom onboarding so that all jurors (those using their own devices and those using Judiciary-provided technology) are ready to proceed in the virtual format.

(2) Virtual Grand Jury Selection (Expansion)

As soon as practicable, notices will issue for new grand jury empanelments in the fall so that all counties soon will have a new grand jury. Those upcoming empanelments (selections) will be conducted virtually using video technology.

An initial quantity of tablets will be distributed to the first counties along with a spreadsheet for tracking distribution and retrieval. Additional technology will be supplied to subsequent vicinages with the amount of the allocation informed by the technology needs of the jurors in the earlier selections.

(3) Jury Trials – Virtual Selection and In-Person Proceedings (Rollout)

The Court at the July 14, 2020 Administrative Conference also authorized a comprehensive plan for resuming jury trials, starting with initial implementation in three vicinages: Atlantic/Cape May; Bergen; and Cumberland/Gloucester/Salem. The July 24, 2020 Seventh Omnibus Order provides that jury selections will resume on or after September 21, 2020. Based on that guidance, the tentative timeframe for jury selections to be conducted begins as follows:

- September 21, 2020 – Bergen

- September 28, 2020 – Atlantic
- October 5, 2020 – Cumberland

Trial selection, including the sequencing of back-up trials, will be essential to ensuring the initial trials in each county proceed successfully and jurors are utilized effectively. Vicinages should first focus on the trial of detained defendants with relatively straightforward charges.

The initial implementation will provide some information on the numbers of jurors who require technology to participate in virtual selection.

Note: New COVID-19 Jury Protocols

Vicinage staff already are preparing for the resumption of jury trials, including as to virtual selections and in-person socially distanced trials. Mock trial events involving Judiciary staff are scheduled to identify issues and become familiar with certain aspects of the process, particularly with courtroom space. Additional next steps are planned to bring everyone up to speed on the above initiatives and their role in implementation.

Cleaning of Public Use Areas in Court Facilities

Maintaining a clean work environment helps to minimize risks of exposure to the COVID-19 virus in court facilities. Although public health authorities advise that the virus [primarily is transmitted person to person](#), there still is some possibility that the virus can survive for a time on surfaces. To mitigate against that risk, the Judiciary is continuing to work with the owners of court buildings to provide appropriate and consistent cleaning and disinfecting.

Intermittent Cleaning of Courtroom and Other Public Use Areas

Although court facilities are cleaned on a regular basis, certain areas – like counsel tables, witness stands, intake windows, interview spaces, and kiosks – may be used by multiple individuals between scheduled cleanings. Vicinages are responsible to provide cleaning and sanitizing materials, including approved wipes and non-aerosol sprays or mists (and gloves), for use as needed throughout the day. Those items should be visible and accessible to court users and replenished as necessary. Hand sanitizer and other items also should be available in courtrooms and shared areas for use by court employees and others, including attorneys, litigants, and all court users.

Court Operations During Phase 2 of the Supreme Court's Post-Pandemic Plan

The Supreme Court's Post-Pandemic Plan (issued June 10, 2020) outlines in general terms the transition from Phase 1 (fully remote operations) to Phase 2 (incremental return of limited numbers of judges and court staff to Judiciary facilities). This update provides further guidance on monitoring and responding to statewide and local COVID-19 trends.

(1) Clarification of On-Site Presence and In-Person Events

The Court's Post-Pandemic Plan summarizes the phases of the gradual return to court facilities and in-person services as follows:

- Phase 1: (March 18-June 21, 2020) Status Quo / Remote Operations – less than 5 % of judges and staff onsite; buildings closed to attorneys and the public
- Phase 2: (June 22, 2020) Gradual and Limited Return – starting with up to 10-15% of judges and staff onsite; certain matters that cannot proceed remotely may be conducted onsite
- Phase 3: New Operations – ongoing remote operations with gradually increasing onsite events, eventually including new jury trials; up to 50-75% of judges and staff onsite (with staggered schedules)
- Phase 4: Ongoing Model – once a vaccine is available and/or herd immunity is established; up to 75-80% of judges and staff onsite

As stated in the Plan, the intent during Phase 2 was to start with up to 10-15% of judges and staff on-site. That percentile range already has supported the resumption of certain matters than could not proceed remotely.

Two important points require clarification. First, in addition to matters that require consent to proceed remotely, judges may determine to schedule an in-person event based on the individual facts and circumstances of a case. Except for those case types mentioned in the Court's April 20, 2020 Order and the Plan, this should be the exception, not the rule. Plans to conduct on-site proceedings should be reviewed and approved in advance by the Presiding Judge and Assignment Judge.

Second, the percentages outlined above are a framework that should be understood based on the fluid nature of the evolving COVID-19 crisis. This means, for example, that during Phase 2 there may be a particular day when more than 10-15% of judges and staff could be on-site (e.g., staggered on-site law clerk orientation). It also means that as we transition to Phase 3 the "50-75%" guideline should be understood as a flexible ceiling, not a minimum. Court operations that can be performed remotely should be conducted remotely, subject to ongoing adjustment.

(2) Monitoring and Responding to Public Health Trends

Consistent with the June 10, 2020 Post-Pandemic Plan, the Judiciary is continuing to monitor specific COVID-19 trends, including hospitalizations, new cases, and deaths, both at the statewide and local level. Data on statewide trends is updated routinely by the New Jersey Department of Health. The New York Times and other media outlets also provide real-time graphs including county-level detail.

The Judiciary is continuing to review additional factors, including but not limited to the statewide transmission rate (which as of this memo is greater than 1.0, suggesting that the virus is not effectively contained, and spread is increasing), as well as reports of local flare-ups or new clusters of COVID-19 cases, including those arising from crowded gatherings convened in contravention of current Executive Orders. As previously noted, the Judiciary is participating in the Governor's Coronavirus Task Force, which facilitates ongoing discussion with NJ DOH and other stakeholders regarding public health trends and responses, including determinations to increase or reduce restrictions on indoor gatherings and other social interactions. Even when the terms of an Executive Order do not directly apply to Judiciary operations, those orders and advisories affect public perception and expectation about in-person services.

In addition to staying abreast of statewide pronouncements, the Judiciary recognizes the potential for emergency declarations by individual counties. While that situation to date has not occurred, restrictions on movement within a city or municipality could have a significant effect on vicinage-level court operations. Among potential scenarios, for example, attorneys and litigants should not be directed to appear for in-person court events if doing so would conflict with a regional stay-at-home order. Beyond the immediate effect on individual cases, a municipality-wide order could prevent county-wide in-person jury selection (because excluding all potential jurors from an area would be contrary to the constitutional guarantee of a fair-cross-section of the community).

As the COVID-19 crisis evolves, the Judiciary will continue to monitor: (i) statewide and local public health trends, including but not limited to those highlighted in the June 10, 2020 Plan; (ii) state-level orders and advisories that affect in-person gatherings; and (iii) any local declarations that restrict members of any community from accessing and participating in in-person court events.

(3) Protocols for Adjusting Operations

The fluid nature of the COVID-19 public health situation requires agility and adaptability. To the extent that public health trends and other factors support a gradual transition to Phase 3 (increased on-site presence and more in-person court events), the Post-Pandemic Plan will proceed as announced on June 10, 2020. However, if those trends and factors suggest that such greater on-site presence would present untenable risks to judges, court employees, and court users, then the Judiciary would instead hold steady in Phase 2 – or, conceivably, even revert to Phase 1 (fully remote operations).

Any statewide decision to move forward, or to move back, will be made by the Chief Justice and the Administrative Director in consultation with the Assignment Judges and Trial Court Administrators. Court operations also may need to be adjusted at the county or vicinage level, possibly even on short notice (e.g., based on a flare-up or new local restrictions).