

COVID-19 CONTINUITY OF COURT OPERATIONS DURING A PUBLIC HEALTH EMERGENCY WORKGROUP

State Courts Building ♦ 1501 West Washington Street ♦ Phoenix, AZ 85007

May 1, 2020

Chief Justice Robert M. Brutinel
Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007

Best Practice Recommendations of the COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup

Dear Chief Justice Brutinel,

Enclosed, and submitted to the Arizona Supreme Court, is the *COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations*. We are delighted to serve as co-chairs of this Workgroup, sometimes called the “Plan B Workgroup,” and our hope is that these *Recommendations* will be communicated to, and used as a reference, throughout Arizona and beyond.

Established by the Arizona Supreme Court just a few weeks ago, this Workgroup is comprised of judges, clerks of court, court administrators, a representative of the State Bar of Arizona, and other Judicial Branch leaders. The two-fold charge of the Plan B Workgroup is to: (1) identify and expand best practices supporting core court operations during the COVID-19 crisis and into the future; and (2) formulate recommendations on a transition from emergency operations to what will be “new normal” day-to-day operations until such time as COVID-19 is resolved, including phased resumption of jury trials and other on-site court operations.

The amazing volunteer Workgroup members, along with fabulous support of Court Staff, have worked hard in crafting these *Recommendations*. Along with describing the Workgroup process, the *Recommendations* contain ten guiding principles that the workgroup identified and best practices and suggestions in the following areas: (1) maintaining health conditions during resumption of court operations; (2) data driven allocation of resources; (3) local transition planning and management (including considerations for an Arizona Supreme Court transitional administrative order); (4) jury

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management; (5) best practices throughout the transition and beyond; and (6) communications strategies.

Although these *Recommendations* are a key part of the Workgroup's mission, it is anticipated that the effort of the Workgroup will continue, through weekly virtual meetings, capturing and circulating resources, and facilitating communications until such time as that effort is no longer needed. In the meantime, we would request permission to circulate these *Recommendations* broadly, both within Arizona and nationally, given the substantial, time-sensitive need for guidance in these uncertain times.

It is an honor to participate in the planning efforts of the Workgroup. Each Workgroup member, and the Court Staff involved in the work, are to be commended for their commitment to this important project. Their work truly benefits the administration of justice, the Arizona judiciary and all Arizonans in these uncertain times as we deal with the pandemic and prepare for a "new normal."

Should you have any questions or need additional information, please do not hesitate to contact us.

Very truly yours,

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COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations

May 1, 2020

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COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice
Recommendations



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COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations

May 1, 2020

I. INTRODUCTION

Creation and charge of the workgroup

In response to the declaration of a statewide emergency by the Governor of the State of Arizona and concern for the spread of COVID-19, changes to the ordinary practices of Arizona's courts are necessary. On March 16, March 18, April 6, and April 24, 2020, Arizona Supreme Court Chief Justice Robert M. Brutinel issued Administrative Orders 2020-47, 2020-48, 2020-60, and 2020-70, respectively, directing courts to conduct business in a manner that reduces the risks associated with this public health emergency.

Directives set forth in these administrative orders include limiting in-person contact as much as possible by using available technologies; following the Centers for Disease Control and Prevention's (CDC) social distancing recommendations; limiting the number of attendees required at in-person proceedings; liberally granting continuances; and authorizing flexibility for local rules and practices in each county.

To provide additional guidance and direction to Arizona's courts, the Arizona Supreme Court formed the COVID-19 Continuity of Court Operations During a Health Emergency Workgroup ("Plan B Workgroup"). The two-fold charge of the Plan B Workgroup is to:

"Arizona Courts remain open to serve the public. Nevertheless, given the current emergency, and in the interest of public safety, certain limitations and changes in court practices are necessary."

Administrative Order No. 2020-70 ("Authorizing Limitation of Court Operations During a Public Health Emergency")

- identify and expand best practices supporting core court operations during the COVID-19 crisis and into the future; and
- formulate recommendations on a transition from emergency operations to what will be “new normal” for day-to-day operations until such time as COVID-19 is resolved, including phased resumption of jury trials and other on-site court operations.

The Plan B Workgroup was also asked to provide recommendations (including suggestions for a transitional administrative order) at an Arizona Supreme Court strategic planning effort in late April 2020.

Overview of this report

This report begins with a summary of the workgroup membership and process. The report then lists ten guiding principles that the workgroup identified. Recommendations and best practices are then provided in the following areas: (1) maintaining health conditions during resumption of court operations; (2) data driven allocation of resources; (3) local transition planning and implementation (including considerations for an Arizona Supreme Court transitional administrative order); (4) jury management; (5) best practices throughout the transition and beyond; and (6) communications strategies. The report includes, at Appendix 1, a draft transitional administrative order reflecting, at a level consistent with prior statewide administrative orders, numerous transitional recommendations contained in this report. Appendix 2 provides selected additional resources.

The workgroup and the workgroup process

Members of the workgroup were selected, quite intentionally, to represent a wide variety of different perspectives - of both urban and rural courts at all levels. Members include two superior court judges, four limited jurisdiction court judges, three superior court/deputy court administrators, one superior court clerk of court, one superior court clerk of court representative, one limited jurisdiction court administrator, Assistant General Counsel of the State Bar of Arizona, the Judicial Education Officer for the Administrative Office of the Courts (AOC), and AOC staff. The workgroup met virtually, at least weekly, beginning April 8, 2020.

The environment leading to the creation of the workgroup was unprecedented. Courts are essential to protecting constitutional rights, providing a neutral forum for the criminally accused, issuing protective orders, and resolving many other types of legal

disputes. Given these essential functions, Arizona courts have remained open to serve the public through the statewide emergency, with limitations and changes in court practices given the concerns of the spread of COVID-19.

During this crisis, Arizona's courts have acted to protect the health and safety of participants, the public and court employees, while ensuring constitutional and statutory obligations. Out of necessity, the pandemic has required courts to move certain proceedings to virtual platforms. Courts have vacated most face-to-face hearings scheduled in March, April, and May 2020, and are largely hearing emergency matters. This has caused inevitable limitations in resolving many case types, leaving larger numbers of matters to be resolved moving forward.

The recommendations here seek to address court operations, recognizing that the state of the pandemic is a highly fluid situation and the timetable for the resumption of new normal court operations is conditioned on guidance from public health officials. The recommendations are intended to provide a platform for general guidance, understanding that local strategies will vary based on local needs, physical layout, and available resources of Arizona's local courts.

II. GUIDING PRINCIPLES

The recommendations here are intended to provide general guidance to judges and court managers to resume day-to-day operations in the new normal. Local courts are best situated to determine which recommendations are appropriate to implement in any specific court or court facility. With that premise, the workgroup identified the following ten guiding principles that helped focus its work and these recommendations.

The transition:

- 1) **Will** seek to manage contagion transmission, recognizing medical breakthroughs and collaborative advice are required to eliminate such transmission.
- 2) **Must** recognize that resolving cases where an individual is being held in custody pending resolution has priority over resolving cases where an individual is not being held in custody pending resolution.
- 3) **Must** follow constitutional and statutory mandates that place a priority on or deadlines for resolving certain types of cases, unless those mandates are waived or found to have been waived.
- 4) **Must** account for the differences between jury and non-jury trials, including the number of people that jury trials bring to the courthouse, the social distancing

challenges jury trials create, and the lead time to secure the attendance of potential jurors.

- 5) **Must** recognize that the effort will involve courts allocating limited resources to needs that exceed capacity, requiring triage and continuous, empirical needs assessment before and during the transition to best effectuate that triage.
- 6) **Must** recognize that, given differences in needs and resources in individual courts, timetables for transitions in courts will not be uniform, necessitating a statewide directive that allows flexibility for specific timing of implementation in a specific court for the resumption of hearings that have been stayed or restricted.
- 7) **Should** recognize that rule-based mandates and standards adopted by the Arizona Supreme Court or local courts can be suspended during the transition or repealed.
- 8) **Should** encourage courts to continue to employ, and where appropriate expand, technology of all types to facilitate alternatives to face-to-face hearings in open court that drive significant traffic to courthouses, and other alternatives that have been effective and consistent with the rights of all involved, identified during emergency operations.
- 9) **Should** encourage courts to continue to identify innovative ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.
- 10) **Should** encourage, where in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts to minimize the number of transportation events for such individuals, including combining hearings where possible, to minimize mixing of populations and eliminate avoidable quarantines when such individuals are returned to custody following court hearings.

III. MAINTAINING HEALTH CONDITIONS DURING RESUMPTION OF COURT OPERATIONS

A. Social distancing consistent with CDC guidelines

As courts resume new normal operations, adherence to social distancing and gathering size guidelines must remain intact. Certain precautions must be put in place

and maintained to ensure the health and safety of the public and court staff. This includes regulating the number of visitors admitted into court buildings and public court spaces, including filing lobbies, customer service counters, courtrooms, offices, and jury assembly and deliberation areas. To this end, it is recommended that courts do the following:

- Continue to follow direction from public health officials, including particularly, the CDC and the Arizona Department of Health Services, as it relates to social distancing.
- Refrain from scheduling multiple, simultaneous hearings in a number that would jeopardize social distancing, for example, high volume arraignment, eviction, or child support enforcement calendars. In scheduling matters, courts should consider:
 - The size of the courtroom and courthouse facilities
 - Whether staggered start times can be scheduled
 - Alternative available waiting areas
 - Creating seating assignments that ensure social distancing
- Create “courtroom admittance” policies that include:
 - Limiting those physically permitted in the courtroom to the parties, attorneys, victims, jurors, witnesses, and other persons whose presence is essential to the case
 - Setting a maximum occupancy level for courtrooms and other meeting areas
 - Considering any necessary adjustments for security protocols
 - Provide public access to open court hearings using video streaming technology
- Consistently apply the court’s “courtroom admittance” policies.
- Maximize the use of remote appearances through technology, such as video and audio platforms, giving due consideration to compliance with constitutional and statutory rights, feasibility, and connection stability.
- Create admittance policies based on direction from public health officials regarding the maximum number of persons allowed in a courtroom, other rooms in a courthouse, and the courthouse itself at any one time.
- Consider using paging and texting technology. The Scottsdale City Court is exploring ways in which paging technology (analogous to that used in restaurants

to notify patrons that their table is ready) can be used to ensure social distancing through limiting the number of people entering the courthouse at any one time. Specifically, court visitors check in at the front of the courthouse, indicate their reason for being there, and are handed a pager that will signal when they should return and enter the courthouse. This allows visitors to appropriately social distance while they wait, without fear that they might miss being called for their court appearance.

- Consider using appointment systems to minimize the assembly of visitors seeking court-related services during peak days and times. With limited capacity to expand the size of facilities, increase staffing, or curtail the public's need for court-related services, appointment or reservation solutions will assist in maximizing the distribution of visitors. Appointment systems may be of particular use in spreading out individuals who are filing documents, seeking law library assistance, submitting evidence, accessing records, or obtaining marriage licenses.
- Consider how to best accommodate the needs of particularly vulnerable individuals (based on health or other issues, including age, underlying medical issues, compromised immune systems, etc.), including alternatives to in-person court appearances and the need to travel to the courthouse for such vulnerable individuals, and those who may live with or provide custodial or residential care for them.
- Adopt admittance policies including provisions for turning away people who are ill, appear to be ill, or exhibit symptoms including coughing, sneezing, shortness of breath, etc., looking to the use of technology or other means so that such individuals' rights are protected.
- Some courts have instituted, or are seeking to institute, a policy of taking the temperature of all court staff and visitors entering the court building. Along with complying with applicable law, such a policy should seek to account for related issues, such as false positives, asymptomatic carriers, turning away visitors with a fever and providing them with information to explain how they can complete their court business using alternative means and whether to seek the care of a health care professional, maintenance of thermometers, etc.
- Establish guidelines and requirements to enter the court buildings, which should be posted on the court's website and at the entrance of the building, in English and Spanish and should comply with the Americans with Disabilities Act.

B. Signage and specific path routing directions

Courts are encouraged to provide clear and concise signage throughout the courthouse that directs people to courtrooms, court departments, waiting areas, restrooms, etc., so that people can travel to their destination using the appropriate path.

- Signage should be highly visible and easy to understand.
- Signage should be posted on the walls and floors of the courthouse.
- Court departments, courtrooms, and waiting areas should be clearly labeled.
- Social distancing policies and expectations should be posted in a conspicuous location and should be easy to understand.
- Signage should include arrows and other directional graphic images to assist visitors in reaching their destination.
- Courts should post on their website internal maps of the public areas of the courthouse and traffic patterns used to ensure social distancing, along with easy to follow instructions for visitors that explain the steps that should be followed to conduct business efficiently.
- Courts should develop and post on their website a Q&A or FAQ document with specific instructions about where in the courthouse people need to go based on the business they are conducting.
- Court postings should be in English and Spanish and should comply with the Americans with Disabilities Act.

C. Paper filings and the use of depository boxes

Currently, all general jurisdiction courts accept e-filing for civil cases, with some accepting e-filing for other case types. Work is now underway to quickly expand e-filing to other case types.

- Courts should urge attorneys and litigants to submit documents via electronic transmission, by e-filing if available or, in the alternative, by e-mail attachment, whenever possible.
- For cases involving paper filings (documents that cannot be e-filed), courts are urged to use secure depository boxes located outside the courthouse. This will reduce the number of people that must come through security and into the courthouse.
- If a depository box is used, there should be markers on the ground to reflect safe social distances if a line should form.

- Courts using a depository box should have a policy on their website and at the depository box that details how the documents placed in the depository box will be processed. For example:
 - How often the depository box will be checked by court staff and documents removed
 - The cut-off time for filing a document in order for a document to be considered filed the “same day” or filed the next day
 - How to include a payment with the document deposited and what payment methods are acceptable
- Courts should check the depository box and remove documents at least twice a day, once at the open of business and once at the close of business.
- Courts should promptly process documents filed and contact the filer if there are problems with the filing, payment for the filing, etc.

D. Protection of staff

Among other measures taken to transition back to new normal day-to-day operations is ensuring that court staff is adequately protected. This includes ensuring that work areas are frequently deep cleaned and disinfected and any items that could contribute to the spread of the virus be removed from these areas.

a. Masks and gloves

Another measure for protecting court staff is to provide them with personal protective equipment (PPE). If a court provides PPE, such as gloves and face masks, it must ensure that proper training is provided on the correct way to utilize face masks and gloves to avoid cross-contamination.

b. Protective barriers and physical set-backs at customer service counters and other public facing areas

Protective barriers are a measure that can be used to protect staff when they are interacting with court visitors. For example, courts may opt to install protective windows or have physical setbacks at customer service counters and other public-facing areas that will allow interaction at a safe distance. Courts may seek funding for these items through the Supreme Court of Arizona’s Court Security Improvement grant application.

E. Siloed team staffing model

In this arrangement, court staff are divided into teams (A, B, and C), with teams supporting particular judges or departments. Teams are assigned to work on-site at the

courthouse on alternating days or weeks, while other teams perform their job functions through teleworking. This model significantly reduces the number of staff in the courthouse, opens up office space, enhances social distancing, and reduces the exposure of staff to possible transmission. It also helps ensure continued court operations. If a staff member in one team becomes infected or exposed, that team can isolate at home through a recovery period while other teams continue on-site staffing.

F. Proceedings involving symptomatic in-custody individuals

Arizona courts recognize that resolving cases where an individual is being held in custody pending resolution has priority over resolving cases where an individual is not being held in custody. The threat of COVID-19 exposure and spread presents challenges related to how courts should conduct proceedings with in-custody individuals who are symptomatic. Recommendations for handling these situations include:

- Maintaining consistent and frequent communication with the local jails to stay informed as to whether any in-custody defendants have tested positive for COVID-19.
- Collaborating with local jails to develop solutions for communicating with in-custody defendants through virtual or telephonic means to minimize transport needs.

If a symptomatic individual must be transported to the courthouse, the court should designate a secured area, other than the courtroom, where the individual can be held with proper security, personal protective equipment, and cleaning precautions.

G. Communication with staff about law changes and sick leave

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (FFCRA) into law. The FFCRA is designed to provide relief in the form of paid and job-protected sick leave for those impacted by COVID-19. The current Family and Medical Leave Act (FMLA) has been expanded to include potential paid leave under the FFCRA.

- Court administrators, clerks, and other managers must keep staff informed of the changes in such laws and how the changes impact their employment as they relate to sick leave and job duties.
- Courts should ensure that employees are kept informed of available crisis support and employee assistance programs.

H. Frequent deep cleaning of court facilities and informing the public

Measures should continue to be taken to ensure that court facilities are adequately cleaned and disinfected to prevent the transmission of COVID-19. Courts should be transparent and keep the public informed about such measures as follows:

- Ensure that courthouse facilities are deep cleaned frequently and regularly, both throughout the day and after hours.
- Develop protocols and ensure that entryways to the courthouse are deep cleaned and disinfected frequently and regularly, including wiping down surfaces such as counters, security screening stations, metal detectors, conveyor belts and bins, doors, doorknobs and push bars, etc.
- Develop protocols for cleaning and disinfecting both public and staff work areas at the end of each day or after a staff member has occupied a work station, if staff are rotated in the work station throughout the day.
- Heighten cleaning in offices and common areas throughout the day by regularly wiping down surfaces such as counters, door knobs, railings, etc.
- Restrooms and the surfaces therein should be frequently cleaned and disinfected.
- Ensure that hand sanitizer is made available in communal areas.
- Make paper towels available at hand washing stations so that staff and visitors can use a paper towel to open the door. Wastebaskets should be placed close to the door and emptied regularly so that they do not become overfilled.
- Posting on court websites, in English and Spanish and in compliance with the Americans with Disabilities Act, the measures being taken to clean and disinfect court facilities. Posted information should include the frequency in which the facilities are being cleaned.

IV. DATA DRIVEN ALLOCATION OF RESOURCES

In response to the pandemic, courts have moved certain proceedings to virtual platforms. Local courts are encouraged to conduct on-going data-based assessments of case backlogs, both in terms of case hearings and processing activities, e.g., disposition reporting, issuance of notices, payment processing, etc.

A. Prioritization of case types for resolution during initial transition

Where limits on capacity require prioritization and triage, the following priorities for general case types should apply (recognizing constitutional and statutory preferences govern specific issues that may be raised in a specific case), starting with highest priority:

- 1) Criminal
- 2) Juvenile
- 3) Mental Health
- 4) Family (involving minor children)
- 5) Family (not involving minor children)
- 6) Probate
- 7) Civil
- 8) Tax and Administrative cases

In criminal cases specifically, courts should apply the following priorities (recognizing constitutional and statutory preferences govern specific issues that may be raised in a specific case), starting with highest priority:

- 1) Criminal cases, where the defendant is in custody
- 2) Criminal felony cases, where the defendant is not in custody
- 3) Criminal misdemeanor cases, where the defendant is not in custody

B. Reallocation of resources consistent with needs and capacity

Certain case types and issues presented must be prioritized. Given the limitations created by the pandemic, most courts will need to shift resources temporarily to address cases within the timeframes required by statute and constitutional guarantees.

a. Shifting criminal caseload to civil and family court judges

Courts should temporarily shift criminal case assignments to judges who would ordinarily handle family and civil cases so that criminal cases can be addressed by a greater number of judicial officers as expeditiously as possible. After criminal matters have been sufficiently addressed, judicial assignments can be redistributed or otherwise reallocated to the new normal.

b. Postponement of civil trials on an as needed basis

Courts should postpone civil trials to the extent that the resources necessary for conducting civil trials can address urgent and time-sensitive matters in criminal cases.

c. Deployment of pro tempore and retired judges, contingent upon the availability of courtrooms and staff support

Where limitations exist, courts should expand case disposition capacity by calling retired judges back to work and using judges pro tempore.¹ To support these adjunct judicial resources, courts should address the scheduling and reallocation of interpreters, court reporters, and other personnel. Properly allocating and scheduling such resources will be essential to avoid unnecessary delay in calling matters for scheduled hearings and to avoid the need to reschedule hearings. Recognizing that the pandemic may result in budget reductions, staffing strategies may include reassigning staff to different duties, overtime hours for court staff, deployment of temporary staff, extended hours (including weekends and evenings), and other measures.

V. LOCAL TRANSITION PLANNING AND IMPLEMENTATION (INCLUDING DRAFT RECOMMENDED SUPREME COURT TRANSITIONAL ADMINISTRATIVE ORDER)

As courts transition from emergency operations to resume what will be the “new normal” for day-to-day operations, there will be countless best practices and lessons learned. As developments have come so quickly in the recent past, emergency operations have changed weekly, daily, and at times, hourly. The future will include significant improvements, including medical breakthroughs, that will ease transitioning to this new normal. For now, these and other variables mean the transitional recommendations here are based on imperfect information. Although including countless actions and steps, the suggestions that follow are in two categories: (a) recommendations for an Arizona Supreme Court transitional administrative order and (b) local court transition planning and implementation.

A. Supreme Court transitional administrative order

The workgroup recommends that a statewide transitional administrative order be expressed in a single, comprehensive Arizona Supreme Court administrative order. This continues the practice in Arizona to date, and provides clarity and ease of reference, recognizing those directives may then be implemented by local courts in administrative orders and policies.

¹ The AOC has procured a limited number of laptop computers which are available for local courts to equip pro tempore and retired judicial officers to work and remotely conduct hearings.

Based on the ten guiding principles detailed in Section II, the workgroup recommends the issuance of an Arizona Supreme Court administrative order (AO), replacing AO 2020-70 in its entirety, that (1) includes the provisions in AO 2020-70 that remain valid, either until the transition efforts begin in earnest or otherwise, and (2) includes the following modifications or additions, which are largely self-explanatory:

- Unless waived or found to be waived, constitutional and statutory priorities for cases continue to apply.
- Courts should continue undertaking needs assessments and planning for how to best allocate resources and identify appropriate processes when hearings resume in stayed proceedings, including how to triage, how to account for cases needing to be resolved, identifying available resources and new operational standards, including for jury selection and service (both petit and grand juries), and therapeutic/specialty/problem solving court operations.
- Requests for time-sensitive matters, such as orders of protection, injunctions against harassment, ex parte temporary child custody orders, court-ordered inpatient medical treatment, evictions, temporary emergency orders, expedited election matters, temporary restraining orders, etc., should continue to be priority matters.
- Empaneling of new petit juries scheduled through (DATE TO BE DETERMINED) should be rescheduled.
- Employing appropriate management and social distancing measures, empaneling new petit juries may resume beginning (DATE TO BE DETERMINED).²
- For cases where a party has a jury trial right that has not been waived, where limits on capacity require prioritization and triage, the following priorities shall apply, starting with highest priority:
 - 1) Criminal cases, where the defendant is in custody
 - 2) Criminal felony cases, where the defendant is not in custody
 - 3) Criminal misdemeanor cases, where the defendant is not in custody

² It is recommended that the dates to reschedule empaneling juries and resume empaneling juries be two specific dates, perhaps a Friday followed by a Monday. The workgroup hoped specific dates could be pinpointed during this effort, but recognizing the situation is quite fluid and also not knowing precisely when a transitional AO may issue, no specific dates are recommended here. That determination is better left to an informed assessment at the time of the issuance of such an AO, including then-current circumstances and guidance by health experts.

- 4) Civil and any other cases
- Where capacity limitations require prioritization and triage, the following priorities for general case types apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:
 - 1) Criminal
 - 2) Juvenile
 - 3) Mental Health
 - 4) Family (involving minor children)
 - 5) Family (not involving minor children)
 - 6) Probate
 - 7) Civil
 - 8) Tax and Administrative cases
 - Temporarily suspending or reducing, until the end of the year, rules of court that afford litigants peremptory strikes for potential jurors. For example, in criminal trials involving a 12-person jury, suspending peremptory challenges would reduce by approximately 46 percent the number of qualified jurors necessary to select a jury (depending on the number of alternates involved), meaning the number of potential jurors to be called to serve would correspondingly be reduced.
 - Temporarily suspending, until the end of the year, rules of court that afford litigants a peremptory notice of change of judge for a judge assigned to a case either in all courts or, alternatively, in courts where there are five or fewer authorized judgeships. This would reduce the need to have judges from other counties or courts travel to a different courthouse to preside over such matters and help ensure adequate judicial resources for backlog reduction.
 - Employing appropriate management and social distancing measures, and employing and, where appropriate expanding, use of technology of all types to facilitate alternatives to face-to-face hearings, for resumption of grand jury proceedings.
 - Courts should continue to employ and, where appropriate expand, the use of all types of technology identified during emergency operations to facilitate alternatives to face-to-face interactions that drive significant traffic to courthouses and other alternatives that have been effective and consistent with ensuring the preservation of the rights of all involved.

- Courts should continue to identify ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.
- Where in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts should be taken to minimize the number of transportation events for such individuals, including combining hearings where possible to minimize mixing populations and eliminating avoidable quarantines when such individuals are returned to custody following court hearings.
- Courts are encouraged to conduct juvenile hearings using technology, by consolidating hearings where possible and with limited public access, as appropriate, to ensure social distancing.
- Courts are encouraged to ensure that high volume court calendars account for social distancing, including distancing in the courthouse and in courtrooms, between courtrooms being used, and in calendaring and scheduling.
- Courts should continue to advance alternative dispute resolution options, including online dispute resolution platforms, to resolve issues and cases without the need to hold hearings in courtrooms.
- Probation officers should be authorized and encouraged to use social distancing and technology of all types to supervise those on adult and juvenile probation, including, where appropriate, for contacts with such individuals.
- Court Appointed Special Advocate and Foster Care Review Board programs should be authorized and encouraged to use technology to ensure social distancing.
- The AOC should be authorized and encouraged to use social distancing and technology of all types in continuing to implement the Certification and Licensing Programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.
- Extend the June 1, 2020 deadlines in AO 2020-70 to (DATE TO BE DETERMINED).
- Limited jurisdiction presiding judges, or for limited jurisdiction courts that have only one judge, the judge of such a court, should be authorized to take actions consistent with these directives, provided they comply with constitutional and statutory requirements.

- Other provisions are suggested in the proposed draft Supreme Court AO, attached as Appendix 1.

B. Transition planning and implementation

Transition planning and implementation will be a key aspect of implementing any Supreme Court transitional administrative order. Local court transition planning and implementation should involve a wide range of considerations, including those addressed in this report, with focus on unique needs, resources, limitations, and other factors of the specific court.

Such efforts will benefit from thoughtful and creative involvement by individuals involved in the local court. Participants should involve presiding and other judges, the clerk of court and others in that office, and court administrators, benefited by, as appropriate, meetings or communication with local justice partners and the local bar.

Transition planning and implementation efforts will differ from past initiatives in critically important ways. These efforts *must* be based on the thought that courts are not planning how to return to pre-COVID 19 normalcy. Instead, the efforts should focus on determining what the new normal will look like and then planning for how to prepare for and implement that new normal.

These local planning and implementation efforts will be a sea change for all involved. It is to look to a new normal that does not yet exist, in defining how that new normal will look. Efforts will include thinking about what could work that has never been tried, what was tried with and without success (limited or otherwise) during the pandemic and other new, newish, or newly-rediscovered alternatives from the pre-pandemic world that was the old normal. This sea change will involve re-evaluating many aspects of court operations, including how courtroom activities proceed. It will include a reconsideration of how to deal with time-worn issues but using new and creative solutions that may not be perfect, but that have become necessary in the new normal.

This, in turn, will necessitate change in the day-to-day activities of judges in the new normal—not simply returning at a set date to how things were done before. Change is not always easy, and the familiar is comfortable. But for all involved, including judges, local planning and implementation efforts need to acknowledge – at the beginning and throughout – the essential nature of the cultural change needed to see what the new normal will be, and to plan and transition to that new normal.

Transition planning and implementation efforts also should look at budgetary and financial issues. These efforts may require improvements or changes to facilities,

technology, and safety and health programs. Further, personnel expenses may rise if overtime is used or if medical leaves increase. Accordingly, transition planning and implementation measures should include:

- Reassessing current fiscal year and future budgets for opportunities to reallocate discretionary or non-essential funds to crisis response activities.
- Monitoring special revenue trends and forecast reductions through the next fiscal year.
- Reviewing crisis related expenditures and external funding.
- Seeking grant funding opportunities directly available to the court, through the local funding authority or the AOC.

VI. JURY MANAGEMENT

Courts around the country are responding to COVID-19 in numerous ways, working to balance public health and safety with access and openness. Jury commissioners and their staff are at the forefront of this response, navigating through jury management issues. This section serves as a resource for best practices to assist with reinstituting jury operations.

A. Reevaluating juror reporting practices

Traditionally, all summoned jurors have been scheduled to report to the jury assembly room in large numbers at the same time on a given day. In the new normal, jury commissioners should plan to replace that practice with having smaller groups appear at staggered reporting times. For example, on a day where 150 potential jurors are needed, this might involve having 50 individuals reporting at 8:30 A.M., 50 individuals reporting at 10:00 A.M., and 50 individuals reporting at noon.

Another alternative is to direct jurors to report directly to a designated courtroom instead of a single jury assembly room. When more than one panel is required to ultimately select a jury, an option is to have smaller panels for voir dire report to courtrooms.

Paging and texting technology should also be considered. The same technology that is used in restaurants to notify patrons that their table is ready can be used by courts to communicate with jurors regarding the location and time they should appear in a designated location.

B. Ensuring public health and safety in jury assembly areas

Jury assembly areas, whether traditional assembly rooms or courtrooms, should frequently be deep cleaned and disinfected, and items that could contribute to the spread of the virus should be removed from these areas. Recommended activities include:

- Wiping down essential workspaces (countertops, tables, armchairs, doorknobs, kiosks, etc.) frequently during the day and overnight.
- Avoiding the direct exchange of documents with jurors. If direct exchange is unavoidable, staff or jurors (or both) should wear gloves.
- If the court uses personal protective equipment, such as gloves and face masks, the court must ensure that proper training is provided to staff and the public on the correct way to utilize these items to avoid cross-contamination.
- Restricting access to common areas and removing courtesy amenities previously offered that are no longer appropriate (coffee, microwaves, refrigerators, puzzles, games, books, magazines, etc.).
- Providing jurors information ahead of time on what is and is not available, so they can come prepared (for example, whether water, vending machines, etc., will be available).

C. Maintaining physical distancing in the courtroom

Courts will have to determine the best strategies for reinstating jury operations to ensure conformance with social distancing requirements. Courts should:

- Consider alternative jury selection processes, including multiple small panels for a single case, using struck method of jury selection (as opposed to strike and replace), and using technology for remote initial questioning.
- Seat jurors in a cordoned-off section of the courtroom gallery instead of the jury box.
- Utilize a larger courthouse conference room or training area for trial recesses and deliberations instead of the jury deliberation room.
- Minimize the number of jurors at each stage of jury service.
- Have staggered reporting times.
- Have jury panels report directly to the courtroom.
- Assemble smaller panels (10-15 potential jurors) to report to the courtroom for voir dire.
- Explore administering written questionnaires remotely.
- Explore remote voir dire using video technology.

- Consider remote options for prescreening jurors for hardship and for cause conflicts.

D. Considering and addressing changes in juror response

Once the decision is made to resume trials, jury commissioners should anticipate changes in prospective juror response rates. The nature and magnitude of that change is unknown, particularly in the “not available” category (i.e., no show, undeliverable, disqualified, exempt, excused, postponed, etc.). Many factors, including local circumstances, will have a significant influence, as reflected in the National Center for State Courts’ “Jury Managers’ Toolbox” located at: <http://www.ncsc-jurystudies.org/Jury-Managers-Toolbox.aspx>. Jury commissioners should account for these changes to make sure that trials are not continued due to a lack of potential jurors secured or, alternatively, that more potential jurors appear than are needed.

Given the need for clear messaging to the public, it is recommended that the criteria for evaluating requests for excusals from, and deferrals for, jury service be generally consistent on a statewide basis during the resumption of jury trials. Consideration should be given to the creation of a workgroup to formulate such recommended criteria.

To evaluate requests for deferrals, particularly from prospective jurors identified as high risk, jury commissioners are encouraged to continue to gather demographic data, including census bureau data, and to communicate with public health officials to identify appropriate deferral criteria. In addition, local courts will need to evaluate their jury service policies, including viewing deferral as a preference to excusal from service.

Deferral policies should be re-evaluated. Following recommendations by the National Center for State Courts, consideration should be given for Arizona deferral policies to include:

- First deferral as a matter of right
- Extension of the first deferral period (for example, if currently 6 months, consider extending up to 12 months)
- Clarification of “good cause” for second deferral:
 - Persons currently testing positive for COVID-19 or in quarantine
 - Persons at high-risk of infection
 - Persons living with others at high risk of infection

- Health care professionals, first responders, and hospital cafeteria and custodial staff³

In deferral policies, courts should also include in the definition of “good cause” childcare responsibilities related to health directives that close schools or childcare providers. Courts must also ensure that deferral policies comport with state and federal laws.

Failure to appear (FTA) rates for jury service could change in the new normal. Points of discussion for FTA policies should consider:

- Adopting relaxed FTA policies.
- Continuing to follow up with non-responders and failure to appear jurors with a second notice/summons, using this as an opportunity to highlight the importance of juror response, and offer deferrals if a person falls into a particular category.
- Considering an “amnesty” program for a period of months after jury trials resume. For those who have not shown up in the past, courts should clearly explain that the court can either issue an order to show cause or a warrant, or if the person calls, they will simply be put in a new pool for the future.

E. Remote grand juries

Courts should explore ways to conduct grand jury proceedings remotely. Technology platforms should be configured to safeguard required secrecy of grand jury proceedings and deliberations with appropriate security measures to ensure confidentiality and privacy.

F. Alternatives to one day/one trial policies

Potential jurors are summoned weeks, if not months, before they need to report. Jury commissioners should consider whether jurors who have already been summoned can be kept on hold for a period of time and be called when the court resumes jury trials. If this is not possible, jury commissioners need to start summoning more jurors and communicate in advance with others involved in the process. If already-summoned jurors can be brought back to serve, procedural aspects of the process need to be addressed, including possible issuance of a new summons and how to contact the jurors (including electronically).

³ <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx> (Last visited April 19, 2020).

G. Communication regarding safeguards used to ensure the health of potential jurors, jurors, and court staff

Courts must keep the public informed about jury service and the precautionary measures taken to prevent the spread of COVID-19. This information should be widely communicated to jurors, potential jurors, and court staff. Information about these precautions should be included on jury summonses and other communication outlets, including:

- Public service announcements, media advisories, and press releases
- Court websites and social media platforms
- Juror call-in messages
- Courthouse signage
- Other technologies, including text messaging and email

Examples:

Superior Court in Maricopa County

<https://superiorcourt.maricopa.gov/jury/juror-announcement-page/>

Superior Court in Pima County

https://www.sc.pima.gov/Portals/0/Library/SuperiorCourt_Jury_Notice.pdf?no-cache

Phoenix City Court

<https://www.phoenix.gov/court/jury-duty>

Scottsdale City Court

<https://www.scottsdaleaz.gov/court/jury-duty>

Public messaging to jurors is a critical part of planning for reinstituting jury trials. The National Center for State Courts recommends that courts convey two messages as they ramp up operations: (1) that courts take public health and safety seriously and have implemented policies to prevent the risk of infection and (2) show what the courts are doing to ensure confidence in those efforts.⁴

Courts need to continue to let everyone know that “Jurors are our heroes!” Courts also need to publicly acknowledge that jurors are critically important participants in the

⁴ <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx> (Last visited April 19, 2020).

administration of justice. Communicating this message appeals to the civic mindedness, altruism, and importance of jury service.⁵

H. Continuously monitor innovations underway

The Superior Court in Maricopa County is currently exploring the implementation of a hybrid virtual jury selection process that combines in-person selection with some remotely connected jurors, a completely virtual trial, a virtual settlement conference program, a new electronic recording system to create the verbatim record that allows full functionality to have remote evidentiary hearings and trials, and a potential virtual mock trial partnering with law students to run through remote jury selection. A clearinghouse for these and other efforts around the country can be found at:

<https://judicialstudies.duke.edu/covid-19-response-resources-for-judges/>.

VII. BEST PRACTICES THROUGHOUT THE TRANSITION AND BEYOND

In response to the pandemic, Arizona courts have quickly implemented an array of court technology solutions providing 24/7 remote access to court services. In addition to pandemic safety considerations, the expanded use of online court technologies results in improved public access and efficiencies in internal court operations. Some of the re-engineered processes and supporting technologies appear to be scalable for wide-spread use, bringing about economies of scale.

Given these benefits, it is recommended that many of the re-engineered business processes remain in place and be expanded beyond the duration of the pandemic. Governing court rules and policies should be amended as necessary to support the continuing deployment of court technologies.

The AOC is working to create training videos, guides, and other materials to assist judges, court managers, and court staff navigate new technologies during these times. Courts are encouraged to continue to explore alternative educational resources to expand their knowledge of these platforms and other available technologies that may be useful.

A. Digital Courts

⁵ *Id.*

a. Expansion of electronic filing in general and limited jurisdiction courts

Currently, all general jurisdiction courts accept e-filed documents for civil cases, with some accepting e-filed documents for other case types. Work is underway to quickly expand e-filing services to include the following additional case types in general jurisdiction courts: criminal, family, probate, guardianship, and juvenile delinquency. Future e-filing initiatives include case initiation documents and e-filing in limited jurisdiction courts, e.g., small claims, civil, misdemeanor, and evictions.

- Courts should be flexible with implementing e-filing so that parties can file documents without coming into the courthouse.
- After e-filing has been implemented, courts should revisit their business processes to determine whether more efficient measures can be put in place.

b. Enhanced use of e-bench

E-bench, currently operational in Arizona Judicial Automated Case System (AJACS) supported general jurisdiction courts, supports a digital workflow process for judges and judicial support staff. E-bench functionality has been expanded to support the e-filing of court orders created by judicial officers. Integration provides for automated data entry of related information into the court's case management system.

B. Remote appearances where possible

Remote court appearances are now being conducted for a wide array of hearing types via telephonic and video-conferencing technologies, e.g., orders of protection, criminal arraignments, emergency family court matters, etc.

- Courts should explore the continued use and expansion of technology to conduct court proceedings that previously would have been held in person.
- The AOC has secured a statewide Zoom® license for video conferencing services that courts should use to conduct remote proceedings where possible.
- Courts should explore the live streaming functionality of these platforms. Zoom® allows for video live streaming, which can be used for public viewing of court proceedings, as well as remote video interpreter services. Most of the conferencing systems have electronic recording capacity, which can be employed to make the verbatim record of court proceedings, and some systems also support online interpreter services.

C. Online dispute resolution (ODR)

A one-year ODR pilot program for online resolution of criminal misdemeanor and family law cases recently concluded in the superior court in Pinal and Yuma Counties and in the Scottsdale City Court. The ODR process was not mandated in the pilot program, resulting in a relatively low number of litigants opting to use the ODR system. With that caveat, in cases in which the litigants chose to use the ODR system, the courts achieved relatively high rates of case resolution. The ODR system proved successful in serving litigants at long distances from the courthouse, providing access 24/7.

Planning is underway to expand Scottsdale City Court's criminal misdemeanor ODR project to other courts. This model program allows litigants to resolve cases without visiting the courthouse, further averting limitations in case processing that would otherwise occur during the pandemic. Courts should explore ways to expand the use of ODR, so in-person contact can be avoided to the greatest extent possible. Additionally, courts should explore ways to expand the use of ODR for resolution of misdemeanor, family, and consumer law cases, including small claims and civil disputes.

D. Allowing remote payment of financial obligations to the court

The Supreme Court recently implemented the Offsite Cash Payment service supported by the Pay Near Me network, allowing litigants to make cash payments for restitution, fines, and other court-ordered financial obligations at 7-Eleven®, Family Dollar®, and other retail locations across the state. Planning is underway to provide expanded availability of online citation payments, online enrollment into local courts' Fines, Fees, and Restitution Enforcement (FARE) programs and Compliance Assistance Programs (CAP), and online entry into time payment contracts. Courts should ensure that litigants are made aware of these payment options by posting information at the courthouse, on the court's website, and through social media.

E. Electronic recording of court proceedings

Production and preservation of a record of proceedings in a court of record are fundamental functions of the judicial branch. The Task Force to Supplement Keeping of the Record by Electronic Means examined the use of electronic recording to create the verbatim record and issued a report and recommendations in August 2019. The report and recommendations can be viewed here:

<https://www.azcourts.gov/Portals/74/SKREM/082919/Final%20SKREM%20Report.pdf?ver=2019-09-09-132821-173>

Administrative Order 2020-70 provides for electronic recording of court proceedings, except in grand jury proceedings, to create the verbatim record. This measure should temporarily continue.

- Except for grand jury proceedings, to expand capacity, courts can use electronic recording to create and maintain a complete and accurate record in proceedings where creating a verbatim record is necessary, notwithstanding a party's request that the proceedings be recorded by a court reporter.

F. Expanded use of text messaging communications

Text messaging services are available through a statewide services contract procured by the AOC. Some courts send text reminders to litigants regarding court hearing dates, financial payment options, failure to pay, and failure to appear.

- Courts should use and expand the use of text messaging to advise litigants of alternative hearing arrangements (e.g., video hearings, telephonic hearings, rescheduled hearings, etc.), remote e-court services, and alternative court locations.
- Text messaging reminders and communications should be implemented by all courts as a best practice, which has shown a reduction in failure to appear and failure to pay rates.

G. Use rules of reason and alternative means to confirm identity and related issues

As courts move forward with conducting more proceedings in a virtual environment, they should exercise rules of reason when considering the restrictions that should be imposed in these virtual environments as follows:

- Remove unintended barriers or additional challenges when creating policies and procedures for the virtual environment. For example, if checking a defendant's driver license was not a step taken at the in-person arraignment process, the court should not necessarily concern itself with checking the defendant's driver license through a video platform.
- Attempt to use resources and documents already in the case file, if there is a need to verify a party's identity. For example, if a court collects a copy of a plaintiff's driver license when they file a petition for an order of protection and the court later needs to verify the plaintiff's identity to grant a dismissal request, the court

can use the driver license copy already in the file to compare to the person appearing by video.

- Ensure that statutes that require biometric data be collected are adhered to when creating policies for video appearances and verifying identity.

H. Using tele-health technology

The American Medical Association recognizes that “[t]he use of telemedicine and remote care services are critical to the safe management of the COVID-19 pandemic, while also ensuring uninterrupted care for 100 million Americans with chronic conditions.”⁶ Using tele-health for mental health evaluations and restoration to competency education is a recommended practice, provided the following practices are ensured:

- Language aligns with national best practices and standards for competency and mental health evaluations
- Access to standards of care and administration of justice⁷
- Timely access to medical records for attorneys and evaluators

As a rural community, Graham County contracts with a psychologist who conducts the restoration sessions remotely. As a result of the COVID-19 pandemic, other courts have implemented similar practices so that mental health evaluations and restoration to competency sessions can be conducted remotely.

To implement these practices, the workgroup recommends that Arizona’s courts:

- Adopt the Committee on Mental Health and the Justice System’s approved guidelines and templates/forms for mental health evaluators.
<https://www.azcourts.gov/Portals/74/MHJS/Resources/PJSMarch2020MHEvalGuidelinesandForms.pdf?ver=2020-04-27-090424-643>
- Adopt the Committee on Mental Health and the Justice System’s recommended best practices for restoration to competency.
<https://www.azcourts.gov/Portals/74/MHJS/Resources/CompetencyRTCBPs2420.pdf?ver=2020-04-27-090342-170>
- Communicate the revised guidelines, templates, forms, and best practices to current practitioners and mental health evaluators.

⁶ <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice> (Last visited April 17, 2020).

⁷ Includes time requirements, geographic differences, and the standards/requirements for the person who may be accompanying the defendant in the room during the evaluation.

- Create and implement training for practitioners.
- Implement protocols and orders for limited jurisdiction court judges to transfer a case to the superior court for further proceedings pursuant to Arizona Revised Statute § 13-4517 where the defendant has been found incompetent and not restorable, as allowed by Rule 11.5, Arizona Rules of Criminal Procedure.

The AOC is exploring the use of tele-services for other types of evaluations, treatment, screenings, group work, and education services specific to mental health, family counseling, DUI/SUD, sex offender counseling, and crisis intervention.

VIII. COMMUNICATION STRATEGIES

Ongoing communications are vital when making decisions related to the reduction or delay of court services. The need to share information and collaborate is essential during these trying times. The Chief Justice of the Arizona Supreme Court regularly confers with presiding superior court judges, clerks of court, and court administrators. Court leaders should engage with both their state and local partners and the public to provide consistent information on the availability of court services. Communication plans should include the following, accounting for appropriate social distancing:

- Periodic interaction of general and limited jurisdiction judges and court managers
- Meetings or communications with local justice partners
- Meetings or communications with the state and local bar associations
- Ongoing updates to all court staff
- Use of the Supreme Court's Public Information Officer (PIO) and local PIO or designees to share public information
- Posting updates on court services on social media outlets

Part of courts' communication responsibilities include making sure that the judicial branch serves our Limited English Proficiency (LEP) customers by complying with the requirements of Title VI of the United States Civil Rights Act of 1964, which includes the translation of court announcements, signage, and forms, and should comply with Americans with Disabilities Act. The AOC is translating into Spanish and posting on the Arizona Judicial Branch website information relating to the COVID-19 pandemic. Completed translations and translations in progress are highlighted in Appendix 2.

In addition, the Video Remote Interpreting (VRI) room at the AOC is still available for courts to use. The AOC building is open, and interpreters can enter safely with the

knowledge that the building's facilities staff have increased cleaning and disinfecting protocols for all commonly touched surfaces.⁸

To use the VRI room, courts can contact AOC language access staff (dsvoboda@courts.az.gov; kgray@courts.az.gov; cwashburn@courts.az.gov) to inquire as to its availability.

Courts looking for other ways to provide interpreters and protect their health and wellbeing during the pandemic can choose from the following:

- WebEx with computer audio and video enabled. This does not support simultaneous interpreting, but it does allow the interpreter to view the LEP person(s) and other participants.
- Zoom® is an internet-based videoconferencing tool that allows multiple people to meet online. Zoom® includes an interpreting feature that supports simultaneous interpreting. With this tool, an interpreter can connect from anywhere with an internet connection to a court hearing where Zoom® is being used.
- Interpreters can call into the courtroom with existing teleconference equipment from home or their office or by using their cell phone. This option requires hearings to proceed in the consecutive mode.
- Courts with on-site interpreters who wish to avoid the close contact with others that live in-person interpreting entails could use a work or cell phone to call the LEP person(s) and use their cell phones as ad hoc interpreting equipment.

The AOC is compiling information on best practices and resource materials on the pandemic response, both from local courts and national court improvement organizations. The workgroup recommends that the AOC create a secure portal, providing Arizona judges and staff ready access to this kind of information.

⁸ For those with Cisco VRI equipment installed in their courtrooms, the system allows for full simultaneous interpreting, as well as private attorney-client consultations when necessary. For courts without the Cisco VRI equipment, the AOC VRI room may still be able to connect to a court's videoconferencing equipment such as Polycom. In these instances, a test connection will need to be scheduled first to ensure connectivity, and the hearing will have to be held using consecutive interpreting rather than simultaneous.

APPENDIX 1—Draft Recommended Supreme Court Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
AUTHORIZING LIMITATION OF	)	Administrative Order
COURT OPERATIONS DURING A	)	No. 2020 – <u>XX</u>
PUBLIC HEALTH EMERGENCY	)	(Replacing Administrative
AND TRANSITION TO RESUMPTION	)	Order No. 2020-70)
OF CERTAIN OPERATIONS	)	
	)	

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide emergency pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). On April 24, 2020, Administrative Order No. 2020-70 directed Arizona’s courts to conduct business in a manner that reduces the risk associated with this public health emergency. This order supersedes, revises, clarifies, and adds to that direction and provides direction on transition to resumption of certain operations.

Arizona courts remain open to serve the public. Nevertheless, given the current emergency, and in the interest of public safety, certain limitations and changes in court practices are necessary.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that all in-person proceedings in all Arizona appellate, superior, justice and municipal courts and before the presiding disciplinary judge be avoided to the greatest extent possible consistent with core constitutional rights until further order of this court.

IT IS FURTHER ORDERED that, unless waived or found to be waived, constitutional and statutory priorities for cases continue to apply.

IT IS FURTHER ORDERED that requests for time-sensitive matters, such as orders of protection, injunctions against harassment, ex parte temporary child custody orders, court-ordered inpatient medical treatment, evictions, temporary emergency orders, expedited election matters, temporary restraining orders, etc., should continue to be priority matters.

IT IS FURTHER ORDERED that empaneling of new petit juries scheduled through (DATE TO BE DETERMINED) be rescheduled.

IT IS FURTHER ORDERED that, employing appropriate management and social distancing measures, empaneling new petit juries may resume beginning (DATE TO BE DETERMINED).

IT IS FURTHER ORDERED that, for cases where a party has a jury trial right that has not been waived, where limits on capacity require prioritization and triage, the following priorities shall apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:

- 1) Criminal cases, where the defendant is in custody
- 2) Criminal felony cases, where the defendant is not in custody
- 3) Criminal misdemeanor cases, where the defendant is not in custody
- 4) Civil and any other cases.

IT IS FURTHER ORDERED that, where capacity limitations require prioritization and triage, the following priorities for general case types apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:

- 1) Criminal
- 2) Juvenile
- 3) Mental Health
- 4) Family (involving minor children)
- 5) Family (not involving minor children)
- 6) Probate
- 7) Civil
- 8) Tax and Administrative cases

IT IS FURTHER ORDERED [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for potential jurors] **or alternatively** [temporarily reducing, through December 31, 2020, the number of peremptory strikes for potential jurors to XX per side.]

IT IS FURTHER ORDERED [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for a judge assigned to a case] **or alternatively** [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for a judge assigned to a case in courts where there are five or fewer authorized judges.]

IT IS FURTHER ORDERED, to reduce the likelihood of an entire courthouse staff becoming infected from work-related contact, that wherever possible, court staff assigned to each courthouse should be divided into at least two teams with only one team physically at the courthouse at a time and the other working remotely.

IT IS FURTHER ORDERED that, where face-to-face in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts should be taken to

minimize the number of transportation events for such individuals, including combining hearings where possible to minimize mixing populations and eliminating avoidable quarantines when such individuals are returned to custody following court hearings.

IT IS FURTHER ORDERED that all courts are encouraged to:

- conduct juvenile hearings using technology, by consolidating hearings where possible and with limited public access, as appropriate, to ensure social distancing;
- take measures to ensure that high volume court calendars account for social distancing, including distancing in the courthouse and in courtrooms, between courtrooms being used, and in calendaring and scheduling; and
- continue to advance alternative dispute resolution options, including online dispute resolution platforms, to resolve issues and cases without the need to hold hearings in courtrooms.

IT IS FURTHER ORDERED that all courts should continue to:

- undertake needs assessments and planning for how to best allocate resources and identify appropriate processes when hearings resume in stayed proceedings, including how to triage, how to account for cases needing to be resolved, identifying available resources and new operational standards, including for jury selection and service (both petit and grand juries), and therapeutic/specialty/problem solving court operations;
- employ appropriate management and social distancing measures, and employ and, where appropriate expand, use of technology of all types to facilitate alternatives to face-to-face hearings, for grand jury proceedings;
- employ and, where appropriate expand, use of all types of technology identified during emergency operations to facilitate alternatives to face-to-face interactions that drive significant traffic to courthouses and other alternatives that have been effective and consistent with ensuring the preservation of the rights of all involved; and
- continue to identify ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.

IT IS FURTHER ORDERED that the presiding judge of each court shall determine how any in-person court proceedings and courthouse activities are to be conducted in each of the courts' courtrooms, consistent with state administrative orders, under conditions that protect the health and safety of all participants including:

- limiting in-person contact as much as possible by using available technologies, including alternative means of filing, teleconferencing, video conferencing, and use of email and text messages and issuing orders to reasonably ensure the health and safety of all participants;
- following CDC social distancing and gathering size recommendations, considering the

size of the court facility. Courts shall not schedule in person multiple, simultaneous hearings in a number that prevents appropriate social distancing or gathering size, considering the size of the courtroom, and in no event shall a court schedule more than 10 persons at one time. The intent of this order is to discourage the use of large group scheduling of court hearings. However, in extraordinary circumstances, and with appropriate precautions, the presiding judge may authorize groups larger than 10 but in no event larger than 25 provided social distancing measures are taken;

- requiring all scheduled participants to notify the court of any COVID-19 symptoms or suspected exposure and to refrain from coming to the courthouse;
- limiting any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons, where necessary to maintain the recommended social distancing within a court facility, and authorizing trial judges to make reasonable orders to ensure the health and safety of hearing participants consistent with the parties' right to due process of law; and
- liberally granting continuances and additional accommodations to parties, witnesses, attorneys, jurors and others with business before the courts who are at a high risk of illness from COVID-19.

IT IS FURTHER ORDERED that presiding superior court judges of each county continue to meet with local criminal justice system stakeholders to coordinate how best to handle criminal proceedings, including grand jury proceedings.

IT IS FURTHER ORDERED that, until further order, the presiding superior court judge of each county is authorized to adopt or suspend any local rules and orders needed to address the current public health emergency in cooperation with public health officials and to take any reasonable action that the circumstances require to enable necessary operations of the superior, justice, and municipal courts in each county.

IT IS FURTHER ORDERED that any court rule that impedes a judge's or court clerk's ability to use available technologies to eliminate or limit in-person contact in the conduct of court business is suspended through December 31, 2020, except such suspension is subject to constitutional requirements. Judges may hold ex parte hearings on orders of protection electronically.

IT IS FURTHER ORDERED that if it becomes necessary to close court offices to the public during the period of suspension, these offices shall remain accessible to the public by telephone and email during their regular business hours to the greatest extent possible, including using drop boxes for documents that cannot be e-filed.

IT IS FURTHER ORDERED that for the period March 18, 2020 through (DATE TO BE DETERMINED) if a judge is unable to rule on a pending matter due to illness or is otherwise unable to work, the judge is deemed to be physically disabled and therefore that period is excluded from the calculation of the 60 days from the date of submission in which a matter must be determined under ARS §§ 11-424.02 and 12-128.01.

IT IS FURTHER ORDERED that the period March 18, 2020 through (DATE TO BE DETERMINED):

- Is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including Rule 8, Rules of Criminal Procedure; Rules 17, 79, and 100, Rules of Procedure for the Juvenile Court; Rules 2 and 3, Rules of Procedure in Eviction Actions; and Rule 38.1(d)(2), Rules of Civil Procedure. A judge, pursuant to Rule 8, may extend this exclusion of time in criminal cases, for good cause.
- Is not excluded from calculation of time for:
The following proceedings for persons held in-custody: initial appearances, arraignments, preliminary hearings, in-custody probation violations, and conditions of release;
Domestic violence protective proceedings;
Child protection temporary custody proceedings;
Civil commitment hearings and reviews;
Emergency protection of elderly or vulnerable persons proceedings;
Habeas corpus proceedings;
COVID-19 public health emergency proceedings;
Juvenile detention hearings;
Election cases; and
Any other proceeding that is necessary to determine whether to grant emergency relief.

IT IS FURTHER ORDERED that the clerks of the court shall continue to issue marriage licenses and may do so remotely if the available technology allows licenses to be properly issued. A judge may perform a marriage ceremony at the courthouse with no more than 10 persons present with proper social distancing.

IT IS FURTHER ORDERED that the time for conducting preliminary hearings for in-custody defendants under Rule 5.1(a) and (d) and probation revocation arraignments under Rule 27.8 (a)(1), Rules of Criminal Procedure is extended to twenty (20) days from an initial appearance that occurs through (DATE TO BE DETERMINED).

IT IS FURTHER ORDERED that electronic, digital or other means regularly used in court proceedings may be used to create a verbatim record, except in grand jury proceedings, notwithstanding a party's request that the proceedings be recorded by a certified court reporter.

IT IS FURTHER ORDERED that, until (DATE TO BE DETERMINED), notwithstanding Rule 6 (b)(2), Rules of Civil Procedure, in an individual case the court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c), and (d), and 60(c) as those rules allow, or alternatively, may extend the time to act under those rules for 30 days upon a showing of good cause.

IT IS FURTHER ORDERED that probation officers are authorized and encouraged to use social distancing and technology of all types to supervise those on adult and juvenile probation, including, where appropriate, for contacts with such individuals.

IT IS FURTHER ORDERED that the Court Appointed Special Advocate and Foster Care Review Board programs are authorized and encouraged to use technology of all types to ensure social distancing.

IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and encouraged to use social distancing and technology of all types in continuing to implement the Certification and Licensing Programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.

IT IS FURTHER ORDERED that limited jurisdiction presiding judges, or for limited jurisdiction courts that have only one judge, the judge of such a court, should be authorized to take actions consistent with these directives, provided they comply with constitutional and statutory requirements.

IT IS FURTHER ORDERED that the presiding superior court judge and the limited jurisdiction presiding judge, or for limited jurisdiction courts that have only one judge, the judge of such a court, shall notify court customers, the public, and the Administrative Director of all administrative orders issued under the authorization provided by this order using the most effective means available. All courts shall provide information regarding court access and operations in both English and Spanish.

Dated this XXX day of MONTH, 2020.

ROBERT BRUTINEL
Chief Justice

APPENDIX 2—Selected Resources

Articles

Nine Best Practices to Protect Your Next Virtual-Teleconferencing Meeting, courtesy of Jones, Skelton & Hochuli, PLC.

https://www.jshfirm.com/nine-best-practices-to-protect-your-next-virtual-teleconferencing-meeting/?inf_contact_key=e4299354174dc185eed83068599dfa31680f8914173f9191b1c0223e68310bb1

Some countries use temperature checks for coronavirus. Others don't bother. Here's why.

https://www.washingtonpost.com/world/coronavirus-temperature-screening/2020/03/14/24185be0-6563-11ea-912d-d98032ec8e25_story.html (Last visited April 27, 2020)

Broadcasts:

- Lights, Camera, Motion!, April 7, 2020 <https://vimeo.com/405221328>
- Lights, Camera, Motion!: Act II, April 15, 2020 <https://vimeo.com/408411009>
- Lights, Camera, Motion!: Act III, April 20, 2020 <https://vimeo.com/411552388>
- Access to Justice Considerations for State and Local Courts as They Respond to COVID-19 <https://vimeo.com/403847184>
- NCSC Tiny Chat 1: Introduction & Thinking About Court Users in the Response to COVID-19 <https://vimeo.com/404707855>
- NCSC Tiny Chat 2: Clear Communications <https://vimeo.com/407555606>
- NCSC Tiny Chat 3 Federal Pass-Through Funding <https://vimeo.com/410000945>

Tools and Guides

- NCSC Coronavirus and the Courts: <https://www.ncsc.org/pandemic>
- Jury Planning: <http://www.ncsc-jurystudies.org/Jury-Managers-Toolbox.aspx>
- Cybersecurity During a Pandemic:
<https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus%20Resources/Pandemic-Cybersecurity-Threats-Cyber-Hygiene.ashx>

- Implementing Technology in a Crisis:
<https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus%20Resources/Tech-In-Crisis.ashx>
- Cushman and Wakefield *Recovery Readiness: A How-to Guide for Reopening Your Workplace*, <https://www.cushmanwakefield.com/en/insights/covid-19/recovery-readiness-a-how-to-guide-for-reopening-your-workplace>

Translations

Local courts may link to, copy, borrow, or modify any of these materials to adapt them to their current procedures.

Completed translations include:

- Administrative Office of the Courts' COVID-19 information and update webpage
- Notice on AZPoint instructing users to contact their court for information on hearings held via telephone or videoconference
- Guidelines for parenting plans during the pandemic
- Common signage language for courts
- Alternate payment plan information on FARE collection notices for those whose income has been negatively affected by the pandemic
- Information on delayed eviction actions for residential leases, including the tenant's notice to landlord form
- Answers to general questions about court operations developed in collaboration with AZCourtHelp.org, including information on potential changes to courts' hours of operations; restrictions on in-person appearances; options for telephonic or video appearances; relaxed requirements for the filing of documents; delays to eviction actions; etc.

Translations in progress include:

- COVID court visitor screening flyer
- Administrative Orders and Directives with information pertaining to the public, including AO 2020-60 and 2020-70 regarding the limitation of court operations due to the pandemic; AO 2020-59 regarding the modification of court rules during the pandemic; and Administrative Directive 2020-03 regarding time requirements for the CASA and Legal Document Preparer programs
- Notice on Supreme Court Clerk's Office operations

- Notices on the current operations during the pandemic for both Divisions One and Two of the Arizona Court of Appeals