# SUPREME COURT OF APPEALS OF WEST VIRGINIA

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## ADMINISTRATIVE ORDER

WHEREAS, Governor Jim Justice has issued a proclamation declaring a State of Preparedness in West Virginia related to precautions designed to prevent the spread of the novel coronavirus (COVID-19).

WHEREAS, on March 12, 2020, the Supreme Court of Appeals of West Virginia issued the COVID-19 Planning Document (Court Protocols), to govern operations by courts throughout the State of West Virginia in order to protect the health and well-being of court employees, litigants, witnesses, jurors, attorneys, and the general public.

In addition to the previously issued Court Protocols, the Supreme Court of Appeals of West Virginia hereby ORDERS that the following additional measures be implemented in all courts of West Virginia subject to the supervision of the Supreme Court of Appeals of West Virginia from Monday, March 16, 2020 through Friday, April 10, 2020, or such other date as ordered by the Court:

1. All civil and criminal trials, and jury orientations that are scheduled during this time shall be continued generally, except where a criminal defendant's speedy trial rights may preclude continuation of such trial.
2. With the exception of emergency matters, including domestic violence petitions, child abuse and neglect petitions, criminal arraignments or criminal hearings with statutory time requirements, mental hygiene petitions and any other matter deemed by the presiding judicial officer as requiring immediate resolution, all hearings currently scheduled to be held on any date beginning Monday, March 16, 2020 through Friday, April 10, 2020, shall either be: (1) postponed until a date subsequent to Friday, April 10, 2020, or (2) held by use of remote, telephonic, or other video technology. In the event such hearings cannot be held via remote, telephonic, or other video technology, the presiding judicial officer shall postpone any such matters to a date subsequent to April 10, 2020.

3. To the extent that it does not infringe upon the Constitutional or statutory rights of a party or litigant, any West Virginia state or local rule, criminal or civil, that limits or precludes a judicial officer or court clerk's ability to utilize remote, telephonic or video technology to limit in-person contact, is suspended.
4. In the event that a judicial office or clerk's office is closed or restricted to the public during the period of suspension, these offices shall remain accessible by telephone and email to the extent possible during regular business hours. If available, a drop box or other means of physical filing should be used for conventionally filed documents.
5. The attendance by litigants, jurors, witnesses, attorneys or court personnel at court proceedings shall be governed by the **COVID-19 Planning Document** issued by the Supreme Court of Appeals of West Virginia on March 12, 2020, attached hereto, and the **Coronavirus Notice to All Parties, Attorneys, Witnesses, Jurors, and the Public**, issued by the Supreme Court of Appeals of West Virginia on March 13, 2020 and attached hereto.
6. The courts of the State of West Virginia shall have the authority, in accordance with applicable laws and regulations governing court proceedings, to take steps in addition to the directives contained herein to manage each such court's docket and proceedings in a manner designed to protect the health and well-being of court employees, litigants, witnesses, jurors, attorneys and the general public.

It is finally ORDERED that this order shall be recorded in the records of the Office of the Clerk of Court.

ENTERED: March 16, 2020

TIM ARMSTEAD
Chief Justice

Attest:
Edythe Nash Gaiser, Clerk of Court

SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE

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# COVID-19 Planning Document

March 12, 2020

## PURPOSE

This document provides direction from the Supreme Court of Appeals of West Virginia ("the Court") to all court systems, court affiliates, and court personnel throughout West Virginia, and supplements general guidance issued by federal, state, and local health authorities. Article 3, Section 17 of the Constitution of West Virginia provides that "[t]he courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay." **The Courts and the judicial system shall remain open and function as normally as possible absent specific direction from the Supreme Court of Appeals of West Virginia.** However, prudent steps are required to promptly mitigate health and safety risks to our 1,450 employees, our families, and the people we serve. The Court will continue to monitor the ongoing situation and update these guidelines as required.

## INTRODUCTION

The spread of the coronavirus, or COVID-19, has presented a serious public health risk globally and in the United States. The Court is taking a proactive approach to address the issue. The Court is a participant in the Governor's COVID-19 Task Force that is planning and coordinating the State's efforts to respond to the disease. The Court will continue to actively engage with the Governor's team, including the State Health Office and the Department of Health and Human Services, to make informed decisions. This plan will be re-evaluated regularly, and is flexible enough to respond to changing circumstances if necessary.

## FACTS ABOUT COVID-19

Responsible decision making requires an accurate evaluation of the facts presented. The Court's response to COVID-19 is largely based on the following known information about the virus that has been provided by federal and state health officials:

- COVID-19 is part of the coronavirus family of respiratory infections.
- Common symptoms include fever, cough, and shortness of breath. Symptoms usually occur within 2-14 days of exposure.
- Eighty-five percent of those infected will suffer mild to moderate symptoms that do not require medical intervention. Fifteen percent can suffer severe illness that requires medical intervention, including hospitalization.
- Elderly individuals and those with pre-existing medical conditions are far more likely to have serious illness.
- COVID-19 is likely spread through droplets expelled from coughing or sneezing. The best way to prevent infection is to reduce close contact with infected individuals, frequently wash hands with soap and water, and avoid touching the mouth, nose, and eyes. Surgical masks available to consumers will not prevent someone from being infected.

## HUMAN RESOURCE PLANNING

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

1. Employees that have a fever, or other symptoms, cannot come to work. Because the virus could still spread even after symptoms subside, employees should remain home for fourteen days after the onset of symptoms. The Court will grant an employee special paid leave sufficient to cover fourteen calendar days without utilizing accrued Annual Leave or Sick Leave. If necessary, employees may utilize accumulated leave should they exhaust the allotted fourteen days. Selecting Authorities are encouraged to address concerns with employees, and are empowered to direct an employee to leave work if an employee is not following this policy.
2. Employees directly exposed to a confirmed case of the disease should self-quarantine and not return to work for fourteen days. The Court will grant an employee special paid leave sufficient to cover fourteen calendar days without utilizing accrued Annual Leave or Sick

Leave during this quarantine period. If necessary, employees may utilize accumulated leave should they exhaust the allotted fourteen days.

3. Employees that may have been exposed via travel in an area with a known COVID-19 outbreak should closely monitor their health and take extra precautions to avoid the possible unknowing spread of the disease, such as avoiding close contact with others and frequent handwashing. However, these employees should continue working absent symptoms or confirmed diagnosis.
4. Employees with suspected symptoms are encouraged to seek testing as instructed by health authorities or by medical providers, but if a public health official or medical provider does not recommend testing, an employee is not required to obtain a test. Employees with confirmed cases of COVID-19 must complete a form provided by the Court and supporting documentation within a reasonable period following his or her return to work to qualify for the grant of special paid sick leave. However, if an employee does not receive a test or if the employee is self-quarantined, or caring for another, then the employee will be required to submit a written explanation for the special paid sick leave on a form provided by the Court.
5. For employees recovering from the disease or for employees self-quarantining, telework may be available to reduce the number of required sick-days and to continue essential Court operations. An employee should discuss this possibility or necessity with his or her Selecting Authority, who will ultimately decide whether remote work is feasible or required based on a person's job description, available technology, and regular duties.
6. Selecting Authorities are encouraged to be flexible with employees suffering adverse impacts to community efforts to stop the disease. For example, if a school system is closed for an extended period of time or if the employee is primarily responsible for the care of an elderly parent, the Selecting Authority is encouraged to work with the employee to mitigate the foreseeable impacts caused by the effort, including with remote work options, a modified work schedule, or temporary reassignment of duties.
7. The Court's Administrative Office, the Office of Counsel, and the Clerk's Office in Charleston will consider steps taken by the West Virginia Governor in determining whether to close offices, limit public access, or modify work schedules or operations.

8. Employees who are within the "at-risk" class of individuals should discuss modified work duties with his or her Selecting Authority to mitigate personal exposure to the disease. Examples of modified duties may mean limiting exposure to the public by reassigning duties, limiting work-related travel, and/or limiting required meeting attendance by allowing participation via telephone.
9. Out-of-state travel by employees for Court business is prohibited until further notice or unless expressly authorized on a case-by-case basis by the Administrative Director.
10. Employees with questions about COVID-19 should consult their health care provider, or call the State's 24/7 COVID-19 hotline: 1-800-887-4304. General information is also available from the West Virginia Department of Health & Human Resources at www.coronavirus.wv.gov.
11. Employees found to be taking advantage of the public health situation for their own personal gain or to fraudulently avoid regular employment duties may be subject to employee disciplinary action, up to and including dismissal. See Supreme Court of Appeals of West Virginia Employee Handbook, Section 5.3(J) (Abuse of Sick Leave); Section 5.11(B)(Reporting Suspected Abuse).

## COURT OPERATIONS PLANNING

In addition to care for its employees, the Court is also mindful of the health and safety of participants in the judicial system and its overall duty to mitigate the spread of the disease in the community. For these reasons, the Court implements the following plan for Court operations:

1. All courts within the judicial system shall remain open and function as normally as possible absent specific direction from the Supreme Court of Appeals of West Virginia. If an outbreak occurs in a specific community or region, the Court, in consultation with the Governor's Office, may direct a county, circuit, or geographic region to close temporarily. This would be considered an extraordinary circumstance. Judges and judicial personnel should refrain from any action that may inflame the public's fears or contradict federal or state guidance on the situation.
2. If a judge has concerns about his or her community, the judge is encouraged to discuss these concerns with the Administrative Office. Open communication to and from the Administrative Office will be essential to manage this situation.

3. Judges and judicial officials are encouraged to be flexible and proactive in managing their dockets if community spread occurs. Possible methods to mitigate the spread of the disease include:
    - Allowing for telephonic hearings, if possible;
    - Reviewing docket and postponing non-critical and/or time sensitive matters;
    - Encouraging the use of video conferencing systems for appearances by those incarcerated, if appropriate, or
    - Scheduling docket matters to reduce the need for a large number of individuals to wait in the courtroom or public areas for their case to be called.
4. Parties, attorneys, witnesses, and jurors should not come to court if they have a fever or other symptoms, or if they have been directly exposed to a confirmed case of the disease. Individuals are encouraged to contact the circuit clerk's office, magistrate clerk's office, or the judge's office for guidance if these situations occur. Judicial officers are encouraged to be as flexible as possible to accommodate these concerns during an active community outbreak.
5. The Court will prepare and prominently post a notice on its website to inform the public of its ongoing COVID-19 mitigation efforts. The Court will also provide a notice flier for judicial offices statewide. Finally, the Court will prepare a notice for the State Bar to distribute via a "Bar Blast" email to inform attorneys of this mitigation plan. Each of these notices will include reference to the State's 24/7 COVID-19 hotline (1-800-887-4304) and the State's general information website at www.coronavirus.wv.gov
6. If a party, attorney, witness, or juror is adversely impacted by community efforts to stop the disease, such as extended school closures, the court system should make efforts to reasonably accommodate the individual to support public health efforts. Judicial officers should favorably consider requests for extensions in time, continuances, or modified schedules if the circumstances warrant granting the request. The Court system must be mindful of the undue burden public health efforts may create, and must support those efforts by accommodating individual hardships, if possible.
7. Probation officers and probation employees should read, understand, and closely follow all guidance issued by federal, state, and local officials about COVID-19 and law enforcement functions. Specifically, officers should avoid close contact with a person suspected of the

disease and have trained EMS/EMT assistance to transport probationers to a healthcare facility if the disease is suspected.

8. Individuals that fraudulently use public health efforts to impact court proceedings for personal gain or to avoid a legal obligation may be subject to civil or criminal contempt proceedings and penalties and/or sanctions. Attorneys violating the West Virginia Rules of Professional Conduct may be subject to referral to the West Virginia Office of Disciplinary Counsel.

Court personnel can contact the Administrative Office by telephone at 304-558-0145 or by e-mail at CommentsConcerns@courtswv.gov for questions or additional information. Attorneys, parties, witnesses, or jurors should contact the local judicial office handling the matter for case specific information.

# CORONAVIRUS NOTICE

## TO ALL PARTIES, ATTORNEYS, WITNESSES, JURORS, AND THE PUBLIC

**To reduce the spread of the COVID-19/Coronavirus, the Supreme Court of Appeals of West Virginia implements the following guidance for all judicial offices:**

1. If you have COVID-19 or if you have been exposed to a known case of the disease, **DO NOT COME TO COURT**. Please contact judicial staff by telephone for guidance. For matters in circuit court, please contact the office of the presiding judge. For matters in magistrate court, please contact the Magistrate Clerk's Office. For matters in family court, please contact the office of the presiding judge. For all other questions, please contact the Circuit Clerk's Office. For matters before the Supreme Court of Appeals of West Virginia, please contact the Supreme Court Clerk's Office.
2. Court officials may order a person with suspected COVID-19 symptoms to leave the court facility.
3. Parties and attorneys infected by or exposed to COVID-19, or those substantially affected by public health containment efforts, are encouraged to timely seek extensions in-time, continuances, modified schedules, or accommodations if circumstances warrant.
4. Individuals that fraudulently use public health efforts to impact court proceedings for personal gain or to avoid a legal obligation may be subject to civil or criminal contempt proceedings and penalties and/or sanctions. Attorneys violating the West Virginia Rules of Professional Conduct may be subject to referral to the West Virginia Office of Disciplinary Counsel.
5. Individuals with questions about COVID-19 should consult their health care provider, or call the State's 24/7 COVID-19 hotline: 1-800-887-4304. General information is also available from the West Virginia Department of Health & Human Resources at www.coronavirus.wv.gov.

Prepared by the Administrative Office of the Supreme Court of Appeals of West Virginia.