

Supreme Court of Florida

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MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts
Trial Court Administrators

FROM: Chief Justice Charles T. Canady *Char. T. Canady*

DATE: June 16, 2020

SUBJECT: Guidance and Best Practice Materials

To assist judges in managing various challenges that may arise with proceedings during the pandemic, the Workgroup on Continuity of Court Operations and Proceedings During and After COVID-19 has developed guidance and best practices material on the following topics:

- Jury management considerations that identify operational challenges to managing juries in a pandemic and offer suggestions to ensure the safety of jurors and others when returning to the courthouse;
- The priority in which to resume civil and criminal jury trials when resumption becomes authorized pursuant to *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23, Amendment 4 (June 16, 2020); and
- Management of evidence in remote pretrial hearings in criminal cases and links to other resources generally addressing remote hearings.

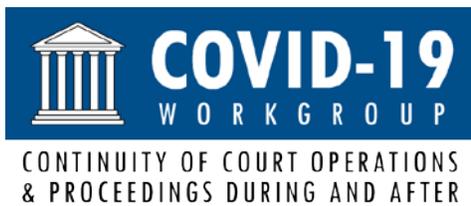
Chief Judges of the Circuit Courts
Trial Court Administrators
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Please distribute the attached materials to all judges and the appropriate court staff in your respective jurisdiction and encourage them to make appropriate use of these helpful documents.

CTC:aqj

Attachments

cc: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19



Jury Management Considerations

Recommendations from the Court Operations Subgroup

May 28, 2020¹

Introduction²

Due to the unique nature of jury proceedings, special attention must be provided to ensure the safety of jurors and others involved in this important civic responsibility. In-person jury proceedings, including even the most extraordinary or pressing ones, should not begin until a court can demonstrate the proceeding can be safely conducted in accordance with current health guidance and court safety requirements. *In re: COVID-19 Public Health and Safety Precautions for Phase 2*, Fla. Admin. Order No. AOSC20-32, Amendment 1 (June 16, 2020), provides important requirements and guidance for the development of operational plans designed to safeguard all those visiting a courthouse building, including jurors. In assessing readiness to begin jury trials, courts should also consider current local medical guidance and the capacity of other justice partners to resume jury trials. If a court meets all Phase 2 requirements, it is anticipated that limited in-person jury trials could resume in that phase. Courts are encouraged to reserve in-person proceedings for trials to allow for appropriate social distancing and juror circulation that minimizes contact with others. It is recommended that large-scale jury orientations or trials that require significant jury pools not occur until smaller trials have been conducted thereby allowing the court an opportunity to address any procedural, resource, or logistical concerns that may be identified.

The jury resumption suggestions offered below are considerations only and are not intended to limit a court's authority or ability to conduct court business. The subgroup recognizes that differences in courthouse size, layout, and other conditions may affect the manner in which a court resumes jury proceedings.

Jury Trial Planning

1. Resume only the most critical jury proceedings as courts begin limited in-person proceedings.
2. Identify alternate facilities, if necessary, to allow for jury assembly and jury trials with appropriate social distancing (e.g., other county government buildings, conference centers, schools, etc.).
3. Consider courtroom audio and the necessary equipment to enable jurors and digital/stenographic court reporters to hear in a courtroom while observing the necessary social distancing guidelines. Consider equipment necessary to stream the proceeding and the multiple video-sharing channels that may be needed. In all instances, ensure that ADA accommodations are considered.
4. Consider transportation issues if using a location other than the courthouse along with other logistical challenges (e.g., security, food delivery, parking, etc.) that may need to be addressed when using a remote venue.

¹ On June 16, 2020, this report was updated to reflect the latest citation information for the administrative orders referenced on pages 1 and 2.

² Many of the jury management considerations identified in this report were adapted from Arizona's *COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations*, May 1, 2020. <https://www.azcourts.gov/Portals/216/Pandemic/050120CV19COOPRecommendations.pdf?ver=2020-05-06-150156-047>

5. Review local administrative orders that govern jury selection or jury service for changes that may be necessary to comport with recent Florida Supreme Court directives and public health guidance in a pandemic.
6. Consult with the clerks, attorneys involved in the cases, local law enforcement, and justice partners to ensure they have the capacity to proceed with jury trials in accordance with current health and safety guidelines.
7. Plan to conduct jury trials in such a manner as to maintain social distancing and protect the health of jurors and others entering and exiting courthouse buildings.
8. Anticipate lower jury yields due to COVID-19 concerns and the time that will be necessary to summons jurors in advance of a trial date.
9. Determine scheduling processes for jury assembly and jury trials to minimize the number of jurors in a single location at a given time. This may include staggering start and end times as well as breaks to minimize the number of jurors sharing elevators, bathrooms, hallways, and other common areas.
10. Plan to cancel in-person proceedings after they have begun if further restrictions on in-person proceedings become necessary (such as due to an exposure within the courthouse or deteriorating health conditions within the local community).
11. Develop a plan for managing media requests and media access, while maintaining social distancing and limiting the number of people in a courtroom. Consider use of a media pool to limit the number of visitors in the courthouse. It is likely that the early in-person jury and other proceedings will attract media attention.
12. Consider the appropriate length of a jury trial. The court, after conferring with the parties, may impose reasonable time limits on the trial or portions thereof.
13. Consider use of remote options for all or part of civil jury proceedings following the evaluation of the remote civil jury trial pilot program, as authorized in Fla. Admin. Order No. AOSC20-31, Amendment 1 (June 8, 2020). See “Innovations” section, below.

Juror Communication

1. Keep the public informed about jury service and the precautionary measures taken to prevent the spread of COVID-19 in the courthouse. This information should be widely communicated to potential jurors, jurors, and court staff.
2. Include information about safety precautions 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
3. Advise jurors, in advance, of courthouse building screening protocols.
4. Provide 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).
5. Convey important messages as jury operations resume, such as: a) assure prospective jurors that courts take public health and safety seriously and have implemented policies to prevent the risk of infection; b) show what the courts are doing to ensure confidence in those efforts; and c) publicly acknowledge that jurors are critically important participants in the administration of justice. See “Specific Juror Messaging Suggestions” section, below.
6. Create public service announcements delivered by trusted individuals and other materials (signage, flyers, etc.) describing the court’s efforts to keep jurors safe.

Changes in Juror Response

1. Anticipate changes in prospective juror response rates (i.e., no show, undeliverable, disqualified, exempt, excused, postponed, etc.).
2. Ensure trials are not continued due to a lack of potential jurors secured or, alternatively, that more potential jurors than are needed do not appear.
3. Evaluate requests for excusals and deferrals based on statewide guidance.
4. Review local jury service policies, including viewing deferral as a preference to excusal from service.
5. Excuse jurors who may be at high-risk or have other appropriate reason to not report (lack of childcare, caring for a high-risk person, etc.) in advance of them reporting to the courthouse.
6. Recognize that failure to appear rates may be higher notwithstanding the best efforts of prospective jurors. Specific excusal and deferral guidance should be provided on circuit forms about the automatic excusal or deferral for potential jurors who meet specified criteria.

Juror Reporting

1. Minimize the number of jurors at each stage of jury service.
2. Stagger reporting times for smaller groups of potential jurors.
3. Direct jurors to report directly to a designated courtroom instead of a single jury assembly room.
4. Space jurors throughout the courthouse building for voir dire to facilitate social distancing.
5. Manage voir dire beginning with enhanced questionnaires to identify those in the potentially at-risk category. Give special consideration to a juror seeking relief from jury duty if the juror establishes that they are "at-risk."
6. Provide masks to jurors throughout their service, if they do not have their own readily available. Additional masks may need to be provided as they become soiled, lost, or otherwise need replacing.
7. Provide jurors with gloves, hand sanitizer, sanitizing spray, and wipes during their service, as needed.
8. Consider a separate entrance for jurors and plan for necessary juror movement throughout the building (e.g., designated/reserved elevator and restroom).
9. Encourage judges to collaborate with their local clerks to address excuses and deferrals. Consider assigning a duty judge to address issues affecting a person's ability to serve that are beyond the authority of the clerk to resolve.

Health and Safety in Jury Areas

1. Wipe down essential workspaces (countertops, tables, armchairs, doorknobs, kiosks, etc.) frequently during the day and overnight.
2. Avoid the direct exchange of papers, writing instruments, or other potentially contaminated items among persons in the courtroom. If direct exchange is unavoidable, staff or jurors (or both) should wear gloves. Individual copies of papers or photographs should be provided.
3. Provide training to staff and the public on the correct way to utilize personal protective equipment to avoid cross-contamination.
4. Restrict access to common areas and remove courtesy amenities previously offered that are not appropriate during a pandemic (coffee, microwaves, refrigerators, puzzles, games, books, magazines, etc.).
5. Escort jurors, in small numbers, to a reserved set of elevators and then to a waiting area outside of the courtroom.
6. Minimize touchpoints, such as doorknobs, throughout the courthouse and courtroom to the extent possible while maintaining adequate privacy and security.
7. Develop a procedure or protocol for handling a potential COVID-19 exposure in a courtroom. Ensure it anticipates the potential exposure of a juror and the deliberation area. It should also include contact tracing, reporting instructions, notification parameters, and disinfecting the space.

8. Consider limiting jury related functions to the first floor or lower floors, where possible, to limit complications caused by elevators.

Maintaining Physical Distancing in the Courtroom

1. Seat jurors in a cordoned-off section of the courtroom gallery in addition to the jury box, to comply with social distancing while ensuring equity in jurors' ability to access and absorb testimony and other evidence.
2. Consider clear partitions to provide a physical barrier for jurors.
3. Instead of a small jury deliberation room, utilize a larger courtroom, conference room, or training area for trial recesses and deliberations.
4. Limit in-person attendance in the courtroom to the clerk, attorneys, parties, witnesses, security officers, and other individuals necessary to the proceedings as determined by the presiding judge.
5. Provide extra cleaning and disinfecting to courtrooms or other spaces where jurors are meeting.
6. Prohibit jurors from touching evidence prior to deliberations; attorneys should publish evidence by walking it past the jurors or displaying it on a screen.
7. Provide potential jurors with a safe area to eat lunch that they order for delivery or bring from home.
8. To reduce jurors in attendance, place alternate jurors on standby by telephone.
9. Stagger reporting times, breaks, and other activities to minimize the number of jurors being screened through security and using shared restrooms and areas of circulation.

Innovations

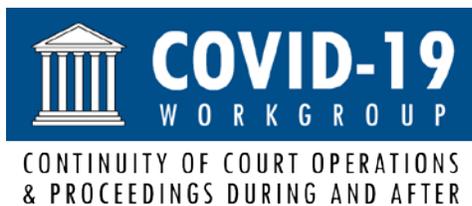
1. Explore paging and texting technology to communicate with jurors regarding the location and time they should appear in a designated location.
2. Use an app-based or online questionnaire for advance screening of health-related questions, part of voir dire, or both. Scan and email or upload to a file sharing location the juror questionnaires to the judge, judicial assistant, and attorneys of record.
3. Use videoconferencing to conduct some or all of voir dire in civil cases.
4. Stream court events online or to a public viewing area in the courthouse (such as unused courtrooms) to minimize the non-essential persons in a courtroom during a proceeding.
5. Use texting or another messaging medium for staff in various courtrooms to communicate about breaks or changes in schedules so juror and public circulation can be monitored.
6. Consider multiple small panels for a single case to reduce the number of individuals in a room at one time, still using struck method of jury selection (as opposed to strike and replace), and using technology for remote initial questioning.
7. Offer a uniform virtual juror background for remote jury trials to help standardize the virtual environment and reduce distractions for those participating in the trial.

Specific Juror Messaging Suggestions³

1. Statewide communication strategy will include:
 - A statewide video on steps taken to return to jury trials, with instructions on customizing for individual jurisdictions.
 - A statewide animated video on common requirements to return to more open courthouses focused on procedures.

³ A joint working group of members from the Office of the State Courts Administrator, the Florida Court Clerks and Comptrollers, and The Florida Bar are creating standard health/safety message templates that will be customizable to address local concerns. The group will also recommend preferred delivery mechanisms and channels for the standard messages. Please direct inquiries and requests to OSCAmedia@flcourts.org.

- A unified messaging program with graphics, messaging, and social media. Options to customize will be included.
2. Important message elements:
 - Convey the specific measures taken to assure the health and safety of everyone who comes to the courthouse, with a particular focus on those who are compelled to do so.
 - Provide complete information on the required procedures and practices in place and how best to navigate them.
 3. Communication considerations:
 - Precision and brevity are hallmarks of effective communications.
 - Uncluttered design, plain language, and straightforward typography should be used.
 - Repetition helps get a message across.
 - Collaboration with partners and stakeholders amplifies messages.
 - Make messages useful to local audiences with specific utilitarian information.
 4. Examples/Information:
 - Court Communication Plan for the Judicial Branch of Florida: <https://www.flcourts.org/content/download/216628/1965714/2016-Judicial-Branch-Court-Communication-Plan.pdf>
 - Palm Beach County: <https://pbc.sharefile.com/share/view/s189e1ee2eb847e19>
 - Arizona: <https://youtu.be/9IC9mnTDNdE>



Jury Trials

Recommendations for the Priority in Which to Resume Civil and Criminal Jury Trials

June 16, 2020

Introduction

This report provides the Workgroup's recommendations for the priority in which civil and criminal jury trials should resume when resumption becomes authorized pursuant to *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23, Amendment 4 (June 16, 2020).

Priority for the Resumption of Civil and Criminal Jury Trials

The Workgroup makes the following recommendations for the priority in which civil and criminal jury trials should be resumed. The Workgroup recognizes, however, that priorities may change from case to case and over the life of a case, based on real-time events, needs, the status of the parties or witnesses, available resources, or other matters. Chief Judges must have significant discretion, which may be delegated to a presiding judge, to make a priority decision based on the aforementioned factors. With that caveat, circuits may wish to consider the following priority when determining the cases in which to first conduct jury trials:

1. Speedy trials (if speedy trial is no longer suspended)
2. Circuit criminal trials for capital or life felonies and for in-custody defendants charged with a first-degree felony
3. Circuit and county criminal trials with an in-custody defendant
4. Circuit jury trials for juveniles being tried as an adult
5. Circuit and county criminal trials with an out-of-custody defendant
6. Circuit civil jury trials
7. County civil jury trials¹

¹ This recommendation is an excerpt from the report titled *Joint Report – Recommendations from the Civil and Criminal Subgroups for the Resumption of Jury Proceedings*, dated May 27, 2020, which was approved by the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 on May 28, 2020.



BEST PRACTICES

Management of Evidence in Remote Pretrial Hearings in Criminal Cases¹

June 10, 2020

Introduction

This guide sets forth best practices with respect to the management of evidence during remote pretrial hearings in criminal cases and provides links to other resources generally addressing remote hearings.

Best Practices for Remote Evidentiary Hearings

Local administrative orders (AOs) should establish procedures for the filing and management of exhibits and the taking of testimony in remote hearings. Issues that a Florida judicial circuit may wish to address include specifying:

1. Procedures that distinguish between requirements for:
 - a. Pro se defendants and those represented by counsel; and
 - b. Physical exhibits, exhibits capable of being provided electronically, and testimony.
2. In cases where reciprocal discovery applies, requirements for the parties to exchange exhibits and confer remotely before the hearing for the purpose of stipulating, as much as practicable, to the authenticity and admissibility of the exhibits. With respect to physical evidence, parties could be directed to exchange pictures of the evidence, when adequate. If, however, the physical evidence itself is necessary, it could be deposited with the clerk of court at least 48 hours before the hearing.
3. Provisions indicating that the presiding judge has the discretion to establish requirements for the parties to file any objection(s) to the exhibit(s) by a specified deadline and procedures for setting pre-evidentiary hearings at which such objections would be heard and ruled upon.

¹ The Criminal Subgroup notes that these best practices constitute recommendations for the conduct of remote pretrial hearings in criminal cases for the phases in which in-person contact is limited due to Coronavirus Disease 2019 (COVID-19). The subgroup is not suggesting that criminal proceedings should continue to be conducted remotely when COVID-19 no longer presents a significant risk to the public's health and safety, i.e., Phase 4.

4. Requirements for the parties to:
 - a. Exchange, before the hearing, contact information for each witness, unless such information is made confidential under rule of court or law.
 - b. Ensure their witnesses who will lay the predicate for evidence have a copy of the evidence.
 - c. Ensure their witnesses have the necessary technology to participate in the remote hearing and, if not, specify requirements for the provision of an affidavit from the party explaining and attesting to the inability for the witness to access such resources.
 - d. Ensure their witnesses are aware of the witness testimony protocol discussed below.
 - e. Meet specified deadlines for the provision of the witness lists to the court along with the identification of any witness for whom an interpreter or an accommodation under the Americans with Disabilities Act will be required or for whom sequestration is requested.
5. Requirements for the marking and indexing of exhibits, filing methods, e.g., via the clerk or ePortal, email to the presiding judge, or upload to a cloud storage service, and filing deadlines.
 - a. Depending on the filing methods authorized, the local AO may wish to also address, based on consultation with the Court Technology Officer, requirements that will ensure the security of the circuit's network, e.g., that will avoid the transmission of malware via evidence submitted by email.
 - b. With respect to physical evidence, the local AO could direct the parties to contact the presiding judge on a case-by-case basis and to indicate whether there is agreement among the parties as to how the physical evidence will be filed. Options for submission might include filing a picture of the physical evidence or submitting the evidence in a sealed, clear plastic bag.
 - c. Consider advising the parties that documents or other items that the presiding judge must review during the hearing, but which are not being submitted as evidence, e.g., a driver's license to verify identity, do not have to be provided to the judge in advance and may be presented to the judge during the hearing using the camera.
6. Any applicable limits on the time that will be allotted for the hearing.
7. Provisions indicating that:
 - a. Unless suspended or amended by the Florida Supreme Court, rules of court procedure apply in the proceedings as do constitutional and statutory rights and requirements for defendants and victims unless such rights are waived.

- b. Nothing in the local AO limits the presiding judge’s discretion to:
 - i. Establish other procedures consistent with the AO, provided that such procedures do not violate the rights of the defendant or the victim;²
 - ii. Admit or deny evidence in the case or determine other relief appropriate under the circumstances; and
 - iii. Reset the hearing if: (a) technological issues prevent the meaningful review of evidence despite the parties having complied in good faith with the procedures; (b) it becomes apparent that different electronic means might be more appropriate; or (c) it becomes apparent that an in-person hearing is both necessary and authorized pursuant to Florida Supreme Court AO.
8. Provisions notifying parties that an individual judge may have established additional procedures for remote hearings and indicating where such procedures may be found, e.g., the judge’s web page.
9. Provisions notifying parties of the suspension of certain rules, court orders, and opinions by Florida Supreme Court AO, relating to remote hearings and remote administration of oaths.
10. Procedures that ensure the public’s right of access to court hearings while maintaining any confidentiality that may apply to information in exhibits or witness testimony.³
11. Sanctions applicable to a party’s failure to comply with the requirements of the local AO. Consider including these sanctions in the presiding judge’s standing order or order setting the hearing.

For examples of recent local AOs on this topic, see [Eleventh Judicial Circuit Administrative Memoranda](#).

Best Practices for Witnesses

With respect to witnesses, additional evidentiary issues for which the presiding judge of a remote pretrial hearing may wish to prepare include:

1. Advising witnesses at the beginning of the hearing or before their testimony of the following protocol for their testimony: they must be alone in a quiet room during their

² In all cases, the presiding judge should ensure that any procedure independently established by the judge is equitable and does not result in an advantage to one party over the other.

³ For a discussion of the strong presumption of openness for all court proceedings and of confidentiality requirements applicable in the judicial branch, see the [Government-In-The-Sunshine-Manual](#), 2020 Edition, by the Office of the Attorney General, at pages 12-13 and 63-68, respectively. Although the public has a right of access, it does not have the right to participate in the proceeding.

testimony, may not use a virtual background, and are ordered, subject to contempt of court, to turn off all electronic devices except for the device enabling participation in the hearing and to refrain from exchanging any electronic messages while testifying.

2. Advising witnesses of: (a) the gravity of a criminal proceeding, whether conducted in person or remotely; (b) the potential consequences of being found in contempt of court; and (c) the statutory maximum for perjury.
3. Establishing procedures to ensure that a criminal defendant may confer privately with his or her counsel during the hearing.
4. If sequestration is necessary, the presiding judge should determine whether there are means to ensure that the witness is unable to become informed of other witness testimony.
5. Confirming that the witness is alone by requiring that he or she use the camera to scan the room before and after testimony and noting this for the record.

Other Resources Generally Addressing Remote Hearings

The following links are for informational purposes only:⁴

1. Florida:
 - a. [Video of a Remote Mock Trial](#), Seventeenth Judicial Circuit, posted May 1, 2020.
 - b. [Benchguide Checklist for Procedural Safeguards During Hearings for Judges](#), Eleventh Judicial Circuit, May 4, 2020: checklist addressing items that a judge should consider before and during a remote hearing conducted via Zoom.
 - c. [Zoom Script for Judge](#), Eleventh Judicial Circuit, May 4, 2020: script for judges that establishes ground rules for a Zoom hearing.
2. National Center for State Courts
 - a. [Checklist for judges in virtual proceedings](#), April 22, 2020: short checklist indicating issues to be considered by judges when conducting remote hearings.
3. [Michigan's Virtual Court Resources](#): contains a variety of remote hearing resources, including:
 - a. [Trial Courts Virtual Courtroom Standards and Guidelines](#), April 17, 2020: guidance for the Michigan judiciary on the best practices for conducting remote hearings.
 - b. [Remote Proceedings Checklist](#), April 20, 2020: step-by-step guidance for the use of Zoom to set up and conduct a remote hearing.
 - c. [Frequently Asked Questions Regarding Expansion of Remote Proceedings](#), April 30, 2020: helpful, extensive list of questions regarding the expanded use of remote hearings.

⁴ See Footnote 1.

4. [Texas Electronic Hearings with Zoom](#), Texas Judicial Branch: contains a variety of helpful resources for conducting remote hearings using Zoom.