



## **SUPREME COURT GUIDELINES FOR RESUMING ILLINOIS JUDICIAL BRANCH OPERATIONS DURING THE COVID-19 PANDEMIC**

### **Introduction**

In response to the Supreme Court’s March 17, 2020 order, Illinois Judicial Branch operations in courthouses and court facilities have been largely confined to emergency and essential matters. As directed by this order, courts across the state have adeptly responded to the COVID-19 pandemic and worked to balance public health and safety with access and openness.

As Illinois moves through the phases of this pandemic, our courts must plan for increased in-person access to the judicial system as restrictions are eased. The following guidance, referenced in the Supreme Court’s M.R. Order 30370 entered May 20, 2020, is intended to provide courts with important considerations as they chart a path forward. The content also will help to standardize, to the extent possible, the information and communication provided by courts to lawyers, litigants, the media, and the public. While most of the provisions are applicable to trial courts, reviewing courts may find the content useful, as well.

These guidelines recognize that each jurisdiction is uniquely positioned to address COVID-19 challenges based on local conditions. The considerations highlighted here are offered as best practices to aid in the administration of justice while maintaining practices to mitigate risk of COVID-19 resurgence and protecting court personnel and the public.

It is also important to recognize that these considerations are fluid and courts will continuously need to identify and evaluate important novel issues that require further research, analysis, planning, and implementation. As such, this document will be reviewed and updated as necessary to inform on additional matters as the courts learn from their experiences and as conditions evolve throughout the remainder of the pandemic.

Whatever the new “normal” brings, a silver lining for the judicial branch is the culture shift in the effective use of video conference technology and remote work capacity. For those jurisdictions without resources to take advantage of these efficiencies, the Administrative Office of the Illinois Courts is exploring various options for enhanced statewide support of video conferencing and other remote technology.

## **I. Supreme Court's May 20, 2020 Order**

As noted in the Supreme Court's May 20, 2020 order, chief circuit judges are authorized to develop plans for resumption of court operations in their circuits. Plans for each circuit, which may even differ from county to county, should be based on the factors specified in the order and with due consideration to the guidelines in this document.

The local plans should continue to promote the use of remote hearings where appropriate. To the extent that the March 17, 2020, order prohibits in-person proceedings on non-essential matters, that provision is relaxed in accordance with a chief judge's local plan. This directive acknowledges both the successful use of remote hearings during the stay-at-home order and the reality that jurisdictions will need to take the appropriate amount of time to gradually resume holding matters in the courthouse. In most jurisdictions, this will be a slow process and the pace will be dependent on local conditions which may change rapidly.

The May 20, 2020, order also modifies the April 7, 2020, order which provides that chief judges may continue trials until further order of the Court. Such continuances remain excluded from speedy trial computations and statutory time restrictions are tolled until further order of the Court. The May 20 modification states that this provision also applies when a trial is delayed when the court determines proper distancing and facilities limitations prevent the trial from proceeding safely. The judge in the case must find that such limitations necessitated the delay and shall make a record thereof. This May 20 modification acknowledges the significant challenges most courts will immediately face in resuming trials at the courthouse, and jury trials in particular, in a manner that assures the safety of all participants.

## **II. Plan to Triage and Prioritize Cases**

During the remainder of the Governor's stay-at-home order and prior to termination of local administrative orders restricting access to the courthouses, judges and court staff should continue to plan and prioritize cases. If possible and where appropriate, judges should hold informational meetings with local bar associations (via Zoom or other video conference service) or hold smaller meetings with attorneys and litigants about their cases.

The May 20, 2020, order includes factors which may be considered by the chief judge in determining whether matters may be safely heard. These include: deadlines which apply to a case or class of cases; the length of time any applicable deadline has been suspended by order of the Supreme Court or the Circuit Court; applicable information from public health authorities; limitations in court facilities or staffing; and anticipated prejudice to any class of cases as a result of continued delay.

Courts should carefully consider data for each case type to determine capacity to manage the urgent matters and the extent of the backlog resultant from the pandemic, and plan accordingly. While this iterative process will vary greatly from jurisdiction to jurisdiction, some proceedings will be obvious priorities. As indicated in the May 20 order, chief circuit judges should understand that local conditions may change, and their plans should contain contingencies if restrictions on in-person court operations need to be resumed for the health and safety of personnel and court users.

### III. Health and Safety of Court Personnel, Litigants and the Public

Most individuals do not come to court by choice. As such, courts have a particularly compelling responsibility to make certain that courthouses are safe. Procedures that involve large numbers of individuals, such as summoning for jury duty, need to be implemented in a manner that not only assures safety but also makes individuals *feel* safe before and after they arrive at the courthouse. Public health authorities must inform these decisions, and local public health departments may have guidance specific to convening jurors and jury trials.

Courts will need to limit access to courtrooms and impose social distancing practices consistent with Centers for Disease Control (CDC) guidelines and local public health authorities. This will require an ongoing working relationship with local health departments to keep pace with COVID-19 case activity and the requirements for current conditions. Local health authorities will provide direction on the screening criteria that is appropriate for pandemic conditions in the court community.

All practical measures should be taken within the courthouse and courtrooms to ensure a clean environment and prevent the spread of the virus, including:

1. Within the courthouse, provide hand sanitizer at multiple locations within the courtroom, circuit clerk's offices, and public spaces.
2. Notify all entering the courthouse that wearing a mask/face covering is required (consistent with current public health requirements). If possible, have extra masks/face coverings on hand if someone arrives at the courthouse without one. Notices to come to court should advise recipients: (1) to bring a mask/face covering, (2) those without a mask/face covering will only be provided one IF they are available, and (3) if you have no mask/face covering and none are available at the courthouse, you may be refused entry.
3. Purchase plexiglass germ shields and install them in key locations, such as the circuit clerk's office, courtrooms, law library, etc. These can be secured with C-clamps for easy removal without causing permanent damage to counters, benches, desks, etc.
4. Establish routine protocols for disinfecting and cleaning any keyboards, desks, counters, written self-help materials, etc.
5. Enhance and increase regular courthouse cleaning schedules.

All possible measures should be taken within the courthouse and courtrooms to maintain social distancing consistent with current public health requirements:

1. Ask the local public health department to do an assessment of each courthouse and give recommendations about establishing traffic patterns for people entering the building and maintaining the required distance.
2. Evaluate where lawyers, bailiffs, parties, court reporters, and interpreters are situated within the courtroom and rearrange as necessary to maintain social distancing. If all necessary people cannot be in the courtroom at the same time while observing social distancing guidelines, consider having one or more parties join remotely from another location.
3. Use tape to mark required spacing for social distancing.
4. Subject to constitutional limitations, entry into the courthouse should be limited to lawyers and named parties. Self-represented litigants should be allowed to bring one friend or family member with them into the courthouse.

5. To ensure public access and health and safety, monitor the number of people entering and exiting the courthouse and provide entry to only a certain number of people at a time.
6. If represented by counsel, only require the litigant to appear when necessary.
7. Employ a system to facilitate social distancing and avoid crowding. Options include lawyers and litigants leaving a cellphone number and asked to wait in a place where social distancing can be observed. Another option is purchasing pager-type devices, similar to those used in restaurants, that can be distributed when litigants check-in.

#### **IV. Rethinking Court Appearances**

The restrictions associated with the pandemic, compounded by significant levels of backlogged cases, will challenge most courts for the foreseeable future. Particularly in larger jurisdictions, courts will need to continue to limit in-person matters until a plan can be implemented consistent with social distancing restrictions. The following are important options that courts should consider:

1. Hearing most cases and proceedings remotely, if possible, with limited exceptions, such as jury trials.
2. Requiring meaningful action at every court appearance, not just an opportunity for parties to exchange documents or schedule matters.
3. Holding matters such as status hearings, briefing schedules, uncontested matters, case management conferences, pre-trial conferences, motions, and bond calls remotely unless otherwise ordered.
4. Allowing all involved in a case to appear remotely, including the judge, circuit clerk, lawyers, parties, interpreters, and court reporters. Carefully consider who needs to come to court and for what reason.
5. Using interpreters remotely when possible. If interpreters must be used in-person, provide simultaneous interpreting equipment to allow interpreters to maintain the appropriate distance.
6. Providing clear instructions to parties about remote proceedings and determine how to ensure proceedings typically open to the public remain open.
7. Determining the number of staff required to be present within the courthouse and consider if their role can be done remotely.
8. Developing online parenting classes in English and Spanish.

Consider altering traditional work processes, for example:

1. Provide a process for how to electronically exchange what was traditionally provided in a paper/hard copy in advance of or during in-person court appearances, including sensitive documents such as social history, notice of probation violation, pre-sentence investigation, GAL report, etc. Consider the role secure and encrypted email can play in such exchanges.
2. Allow for e-signature on documents if consistent with Supreme Court Rules and orders.
3. Implement automatic briefing schedules.
4. Consider ruling on fully briefed matters without oral argument. If oral argument is necessary, hold it remotely where possible.

All possible measures should be taken to avoid large “cattle calls” or move them to a facility that allows for appropriate social distancing. Some suggested practices include:

1. Limiting the number of cases on each call and stagger the times (i.e. five cases at 9:00, 10:00, 11:00, 1:30, 2:30, 3:30, etc.).
2. Holding court outside of normal business hours upon the agreement of all participants.
3. Changing current schedules for more efficient assignment of cases, i.e. assigning certain types of cases to be heard on certain days/certain hours of the day or assigning certain types of matters to particular courtrooms.

All possible measures should be taken to ensure social distancing for juries. Some suggested practices include:

1. Limiting the number of jurors coming to the courthouse by better identifying the number likely needed for trials.
2. Identifying the largest courtrooms within your courthouse and holding jury trials there.
3. Considering allowing the jury to deliberate within the courtroom if jury deliberation rooms are not large enough.
4. Investigating the use of other, larger non-court facilities.

#### **V. Maintaining a High Level of Assistance and an Open Court**

All possible measures should be taken so that court patrons have access to service during the pandemic. Suggested practices include:

1. Exploring ways that courts can:
  - a. Improve training and information sharing for front-line staff, like building security and those staffing the circuit clerk's office front desk, to ensure they can provide effective information and referrals to resources at that first point of contact.
  - b. Make resources and information for self-represented litigants available in the lobby or in one location so that the court patrons do not traverse the courthouse before finding the information they need.
  - c. Consider developing and utilizing a chatbot to provide the public with court assistance.
2. Investigating new models of service delivery such as:
  - a. Remote operation of courthouse help desks, self-help centers, and law libraries where practicable.
  - b. Providing e-filing help remotely, enabling remote "friend of the court" assistance, and filing by mail for litigants who qualify for an e-filing exemption.
  - c. Providing a mechanism for case participants experiencing difficulties connecting to their remote hearings to contact designated court staff, such as a phone number or online chat.
  - d. Utilizing a centralized hotline model for disseminating legal information.
  - e. Expanding or creating a new legal aid advice hotline
  - f. Exploring use of remote mediation, arbitration, and facilitation, as consistent with court rules, to potentially resolve cases.

## **Next Steps**

The pandemic will no doubt continue to present novel issues and challenges to the administration of justice for the foreseeable future. Court leadership teams should be certain to regularly meet with other local court stakeholders (prosecutors, public defenders, local bar associations, etc.) to evaluate and receive feedback on pandemic response in the court system. Identifying responses that worked well, in addition to opportunities for improvement, will facilitate local response plan improvements and incorporation of “lessons learned” into existing EP-COOP and separate pandemic-specific response plans.