

CLIENT ALERT

COVID and the Courts: Reopening Plans

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In looking to re-open, courts across the country are confronting both the public health and safety needs of their locales, as well as the role remote operations may continue to play. Courts—both federal and state—are reopening and implementing a patchwork of procedures on a court-by-court basis.

The Federal Judiciary

To facilitate the re-opening process for federal courts, the Administrative Office of the U.S. Courts distributed the Federal Judiciary Covid-19 Recovery Guidelines. The guidelines emphasize local decision-making as “each state and municipality is in a different posture in the fight against COVID-19.” See [Guidelines](#).

The Recovery Guidelines outline four phases of reopening. In the first phase, which many courts are now in, courthouses are closed to the public, employees work remotely, and most judicial proceedings are postponed. Phase two allows for certain individuals to return to the work place and instructs courts to prepare operational proceedings for a significant increase in filings and proceedings, such as grand juries. Unrestricted staffing of worksites resumes in phase three, but courts are encouraged to continue to provide reasonable accommodations for vulnerable individuals and consider use of enhanced screening at facilities; deep cleaning of courthouses is similarly encouraged. Phase four is back to business as usual.

Predictably, federal courts’ responses to the ongoing novel coronavirus pandemic vary across the country. Some courts are slowly starting to re-open. The United States District Court for the Eastern District of Virginia, for example, re-opened its Newport News courthouse to the public and to all employees on May 26, 2020. See [General Order 2020-14](#). And on May 26, 2020, the court announced that effective June 11, 2020, in-person proceedings will no longer be strictly limited to “critical or emergency proceedings.” See [General Order 2020-16](#). Certain restrictions will persist, however. The District of Montana similarly announced on May 14, 2020 that “all five courthouse locations shall move to Phase 2” as of May 18, 2020. See [Administrative Order 20-21](#).

The District of New Jersey, by contrast, only moved to Phase 1 and allowed some staff to return as of June 8, 2020. Even under Phase 1, all proceedings remain limited and remote. See [D.N.J. Recovery Guidelines](#). The District of Hawaii courthouse similarly remains closed until June 15, 2020, when it re-opens for non-jury civil and criminal matters. Strict social distancing and public health guidelines will remain in place and judges may choose whether to conduct hearings remotely. No jury trials will commence before August 3, 2020. See [June 1 General Order](#).

State Courts

State court responses are similarly varied, sometimes even changing by county or circuit. California superior courts, for example, are all individually grappling with how to address the coronavirus-required changes to operations. The Los Angeles Superior Court Leadership, in a “COVID-19 Q&A Presentation,” estimated that although non-preference civil jury trials may resume in

September or October, they may very well get pushed to 2021. Preference civil trials (CCP § 36) are estimated to resume in late August. By July 22, the LACourtConnect system will be available for virtual appearances in all civil matters. Similarly, in [San Francisco Superior Court](#), all hearings are to be conducted via CourtCall or by videoconference with no in-person appearances permitted. By contrast, [Monterey County Superior Court](#) resumed jury trials in criminal cases on June 1 and will resume jury trials in civil matters on June 15. [Napa County Superior Court](#) will similarly resume jury trials on June 15.

California is not the only state where re-opening varies by county or circuit. As of June 1, 2020, the Illinois Supreme Court afforded judicial circuits discretion to hear matters in person or remotely pursuant to schedules crafted by the chief judges of each circuit. Chief Judges, in deciding whether matters may be safely heard, are to consider public health guidelines, limitations in court facilities and staffing, and prejudice to the case, among other factors. See [M.R. 30370](#).

Many courts are experimenting with technological and operational change. The Florida Supreme Court even convened a “Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19” to develop findings and recommendations on the continuation of all court operations and proceedings. On June 3, 2020, the Florida Supreme Court [announced](#) that, pursuant to a COVID-19 Workgroup recommendation, five trial-court circuits will conduct a test of remote technology as a safer alternative to in-person civil jury trials. The first round of pilot programs, selected for geographic diversity, different levels of local infection concentrations, and technology capacity, are confined to civil cases to avoid the complex constitutional issues criminal trials implicate. Traditional jury trials remain suspended through at least July 2, 2020.

Courts’ approaches to re-opening sometimes even diverge from the approach of the state’s governor. On May 11, 2020 the Chief Justice of the Georgia Supreme Court announced an extension until June 12, 2020 of the Statewide Judicial Emergency. See [Second Extension Order](#). All criminal and civil jury trials are suspended and courts are barred from summoning and impaneling new trial and grand juries. The Court’s extension comes as the Governor eases restrictions. The state allowed its shelter in place order to expire on April 30, 2020 and certain businesses were allowed to open on April 24, 2020, with restaurants opening on April 27, 2020.

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Although courts are approaching re-opening differently, most proceedings remain virtual and all courts continue to adhere to CDC guidelines regarding social distancing and facemask use. Parties with business before a court should be sure to check that court’s specific orders.

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