

Judiciary COVID-19 Emergency Funding Needs
May 8, 2020

The COVID-19 pandemic, and the statewide Judicial Emergency it has created, has had, and will continue to have, a profound impact on Judiciary operations. Even as the Governor begins easing some restrictions on public interaction, it is clear that social distancing will remain a critical public health priority for the foreseeable future. The impact on Judiciary operations that will result will be significant.

In order to meet our core constitutional obligations, while promoting public health and protecting the health of our workforce, the Judiciary must quickly make a host of short, medium, and long term changes during this calendar year in order to meet our core constitutional obligations.

Safe Spaces for Judiciary Staff and Participants in Court Proceedings: The Judiciary is committed to ensuring to the greatest extent possible that our courthouses are safe spaces for all who enter, and that they do not contribute to broader public health dangers. This commitment will require significant changes to the physical spaces used to conduct court business, both for court staff and the public. To that end, we plan to:

- Create a new limited service position or engage a contractor to handle COVID-19 related facilities changes
- Redesign and reconfigure workspaces in Judiciary buildings, including the installation of transparent shields at public-facing counters, tall partitions and sufficient spacing between desks, and increased and sufficient spacing between all workspaces
- Maintain adequate stocks of PPE and COVID-19 related supplies such as masks, disinfectant wipes, and gloves
- Acquire screening equipment related to COVID-19, including thermal scanning equipment
- Train staff and screeners re: COVID-19 screening protocols

	One-Time Cost	FY20	FY21 (Jul-Dec)
Materials	\$750,000		
1 Lmtd Srv Position		\$15,000	\$45,000

Jury Trials and Social Distancing: One of the most urgent priorities facing the Judiciary is the resumption of jury trials. Because some individuals who have been charged with crimes (but are presumed innocent under our constitution) are incarcerated pending their trials, timely trials are a constitutional imperative. But, more than any other activity in the Judiciary, jury trials require courts to convene large numbers of people at several different points in the jury process. For that reason, a top Judiciary priority in both the short, medium, and long term will be to both reactivate and restructure our jury trial processes. To that end, we plan to:

- Reconsider, redesign, and reconfigure buildings to ensure that all phases of a jury trial can be held safely. The goal will be to have space that allows for social distancing, not only for those summoned for jury service, but also for those who are selected for a jury. This may require the engagement of architectural and/or specialty design consulting services, a project

management limited service position or service provider to oversee the work, and personnel to do the work.

- Research the viability and utility of technology that can support social distancing of jurors and other participants for various stages of jury operations and implement steps that meet constitutional and operational imperatives to reduce the number of times potential jurors need to be brought into courthouses and into physical contact with each other.

	One-Time Cost	FY20	FY21(Jul-Dec)
Consultant	\$30,000		
Leasing Space			\$25,000

Remote Technology for Other Court Proceedings: This crisis has taught us that we can deliver fair and impartial justice using remote technologies, especially video and livestreaming, without compromising public health. Video enables our judges to preside over cases with a minimum of in-person traffic in courthouses. These and related capabilities will also allow the Judiciary to sustain operations during an emergency by supporting robust and reliable telework capabilities. Expanded capability to leverage these technologies is essential to the Judiciary's resumption of its constitutional responsibilities across all case types and is expected to be an integral part of the Judiciary's strategy to address the backlog of cases that have grown since the Declaration of a Judicial Emergency. To that end, we plan to:

- Purchase and install Cisco MX300 Video Endpoints for all courtrooms, to facilitate video communications between facilities and remote WebEx participants
- Purchase WebEx licenses and set-ups for 100+ hosts (judges, superior court clerks, court operations managers)
- Create new limited service positions in courthouses to support all Superior Judges and Probate Judges in the conduct of simultaneous WebEx-based hearings. The people in these positions will provide technical support for judges and participants in cases to replace in-person hearings suspended due to Judicial Emergency. The costs associated with these staff members will include workspaces, technology, equipment, furniture, orientation and training.
- Create a virtual desktop environment in the cloud to increase the quantity, quality and efficiency of telework arrangements
- Purchase additional laptops and related equipment and licenses to support remote work
- Purchase and install USB conference phones for judges to enable video hearings

	One-Time Cost	FY20	FY21(Jul-Dec)
Cisco Endpoints	\$1,000,000		
12 Lmted Srv Positions	\$16,000	\$65,000	\$632,000
Additional hardware	\$200,000		
Computing Interface	\$750,000		
Computing Peripherals	\$100,000		

Remote Technologies and Services for Court Users: Court users rely on the Judiciary to provide a host of services, some of which are required by law and others of which are established by best practices. The Judiciary sees all of this work as a core feature of its commitment to provide access to

justice. This commitment is obviously strained during periods such as a pandemic response. The Judiciary intends to address this challenge by taking prompt action to modify its service delivery model through an expanded and re-envisioned Access and Resource Center which can provide services to members of the public remotely. This work will involve the following:

- Expanding the services offered by the Judiciary Access and Resource Center (ARC) to cover statewide calls to replace counter interaction now suspended in over twenty courthouses throughout the state. This includes:
 - Creating new limited service positions to increase capacity to handle calls
 - Designing and outfitting safe, physically-distanced work spaces in the Costello Courthouse (where ARC staff are housed) and possibly other locations over time
 - Installing electrical, telephone, and computer connections to support staff
 - Acquiring and installing furniture and other equipment to support staff
 - Providing training and orientation
- Enable Video Remote Interpretation
 - Acquiring and installing technology needed to support video remote language interpretation and interpretation for deaf and hard of hearing in both video and in-person proceedings
 - Providing training and orientation
- Enable online dispute resolution (ODR) capability
 - ODR is an emerging but proven method of adjudicating cases. ODR provides an option for resolving cases that does not require a person's physical presence in a courthouse. ODR has obvious benefits to the Judiciary and the public during periods when access to conventional proceedings – such as during a Judicial Emergency – is not an option.

	One-Time Cost	FY20	FY21(Jul-Dec)
4 Ltd Srv Positions	\$8,000	\$12,000	\$158,000
Enable Video Remote Interpretation	\$50,000		
ODR	\$15,000		\$140,000

Addressing the Backlog: The Judiciary has not held hearings in non-emergency matters since mid-March. As the court begins to hear more cases—either because we have implemented broader use of video technology or because social distancing measures allow for more in person proceedings—judges, managers, and court staff will be confronted with an enormous backlog of cases to address. Decisions made about how to triage cases for hearing will be made with public health considerations in mind. As such, the Judiciary intends to balance the urgent need to docket cases with the best data available from public health experts. This balancing will present ongoing challenges which are expected to last a number of months. To meet this challenge, we need:

- Funding to pay retired judges to return to hear cases that compose the case backlog due to the Judicial Emergency
- Training of retired judges on new Odyssey case management system and technology that supports video hearings

- New limited service staff positions to staff hearings heard by retired judges. Costs to include workspaces, technology, equipment, furniture, orientation and training.
- Additional courtroom space

	One-Time Cost	FY20	FY21(Jul-Dec)
Retired Judges		\$33,000	\$67,000
8 Ltd Srv Positions	\$16,000	\$30,000	\$316,000

Public Access to Court Proceedings: Pursuant to AO 49, the Court has substantially restricted public access to court proceedings, allowing only participants and media to attend. Developing alternate ways to protect and enable the public's right to observe court proceedings will help mitigate the serious constitutional concerns that might arise from an extended exclusion of the public. To this end, we plan to:

- Create new limited Service positions in the Access and Resource Center to support simultaneous livestreaming of all public video hearings held throughout the State. Costs to include workspaces, technology, equipment, furniture, orientation and training.
- Acquire licenses and equipment to facilitate livestreaming
- Train staff on livestreaming protocols

	One-Time Cost	FY20	FY21(Jul-Dec)
Teleconference Equipment	\$1,500,000		
Remote Meeting peripherals	\$50,000		
12 Ltd Srv Pos	\$16,000	\$65,000	\$632,000

Administrative Challenges: The need to ensure that all emergency funds are expended as proposed and accounted for as necessary will require dedicated time and attention. To that end, we plan to:

- Create a limited service position to handle approval and tracking of COVID-19 related expenses and ensure compliance with grant, statutory, and regulatory requirements. Costs to include workspaces, technology, equipment, furniture, orientation and training.

	One-Time Cost	FY20	FY21(Jul-Dec)
1 Ltd Srv Pos		\$15,000	\$45,000

Recognition of Staff Challenges and Service: Because the Judiciary has not fully halted in person hearings, and because remote hearings require a level of in-courthouse staffing, many staff have been asked to deal directly with the public under circumstances where they cannot be assured minimum physical distancing. In recognition of that fact, the Judiciary has agreed to:

- Premium pay for employees dealing directly with the public under circumstances where they cannot be assured of minimum physical distancing

	One-Time Cost	FY20	FY21(Jul-Dec)
Premium Pay		\$35,000	\$105,000

Treatment Docket Supports: Treatment dockets are among the highest-contact dockets in the court system. Frequent, in-person contact with parties and the development of a sense of community among participants are ordinarily core features of treatment dockets. The Judicial Emergency has profoundly impacted the function of these dockets and the ability of these dockets and the staff who work in them from having the regular contact that not only promotes accountability but aids in recovery. For that reason, we need:

- Funds for enhanced case management of participants during the pandemic. Some participants have disengaged from the program since the Judicial Emergency ended in-person proceedings. Additional case management would increase and improve supervision and support.
 - Contracts with three case managers to support participants in Chittenden adult and mental health dockets (1), Washington adult drug docket (1), and Rutland adult drug docket (1).
 - Estimated cost: \$40,000, based on three-month contracts at prevailing rates. The figure is rounded up.
- Breathalyzer units for treatment docket participants. Additional testing units are needed since testing centers are not fully functional and not all providers have the capability to conduct mobile testing.
 - Fifteen alcohol monitoring units for the DUI court.
 - Estimated cost: \$7,500
 - Transdermal patches and lab services to test the patches for participants in all four programs based on an estimated monthly census of 140 (a little high) and the use of one patch per week for each participant. Patches are estimated to cost \$50 each and the testing costs for each patch are estimated to be about the same.
 - Estimated cost: \$28,000 for patches and \$28,000 for testing of the patches. This is an estimated cost for one month of patch use and testing.

	One-Time Cost	FY20	FY21
Enhanced case mngmt		\$20,000	\$100,000
Breathalyzer units		\$7,500	\$7,500
Transdermal patches and lab tests		\$112,000	\$336,000

Fiscal Year 2020 Supplemental BAA Budget Development Form - Judiciary

[illegible]

TO: Pandemic Long-Term Committee

FROM: John McGlynn, Tari Scott

RE: Return to Work Planning

DATE: May 6, 2020

It is expected that the Judiciary will need a year or more to fully recover from the backlog of cases caused by COVID-19. Trial Court Operations and Human Resources have been gathering information helpful in planning for a return to 100% staffing in the courts. This information is current as of May 6, 2020 and is highly likely to vary across jurisdictions and from week to week and month to month.

1. Staff Availability

- 93% of non-Judicial staff are available to return to work.
- 20 employees are not currently available:
 - 16 have child-care duties (11 hourly including 7 Docket Clerks; 5 managers including 2 COM's). Many with child-care duties are likely unavailable until July (when federal assistance ends).
 - 4 have medical issues that prevent them from working near others (2 are Case Managers). If transitioned to telework, they could return immediately.

2. Barriers to Return

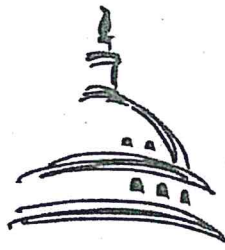
- Case Managers – The majority have private workspaces. However, when holding conferences, 7 of 11 have workspaces that do not support sufficient social distancing.
 - Solution: Relocate conferences to larger spaces such as courtrooms. Case Managers are already equipped with laptops but coordinating courtroom schedules with OCS and others will be a complicating factor.
- Docket Clerks – The majority of Docket Clerk have workstations that make social distancing difficult. Average distance between desks 6' or less and when there are walls between desks, they are typically just over waist high. Among the worst spaced are Chittenden (all divisions), Washington F/C, Windsor F/C, Essex, and Information Center, while Bennington (all divisions) and Caledonia have generous space.
 - Short-term Solution A: Make face coverings mandatory until barriers can be installed.

- Short-term Solution B: Where stand-alone desks exist, relocate them to outer walls.
- Permanent Solution C: Build Plexiglas barriers and secure add-ons to increase the wall height of modular furniture.

3. Compliance with Social Distancing

- Recently VOSHA promulgated regulations regarding use of common areas. In response, CAO sent a directive instructing employees to follow a 'one person at a time' rule for common areas such as elevators, rest rooms, lunchrooms, copier and filing areas. Even at our current partial staffing is has been difficult to maintain discipline and comply with these rules. It will likely become more difficult once we return to full staffing and as employees become complacent over time.
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- Solution A: Create incentives for employees to report violations.



Federal Jury Trials and COVID-19

April 20, 2020

This Insight provides information and analysis related to federal jury trials and how such trials have been impacted by Coronavirus disease 2019, or COVID-19. Given the rapidly changing situation surrounding COVID-19, the information provided in this Insight may be superseded by new information that differs from what is described in the text below. If there are any questions regarding whether such changes have occurred, congressional staff may contact the author of this Insight.

Background

The Jury Selection and Service Act of 1968 specifies the qualifications a person must meet in order to serve on a federal jury. Specifically, an individual must be a United States citizen; be at least 18 years of age; reside primarily for one year in the judicial district where he or she has been summoned to federal jury service; be adequately proficient in English to satisfactorily complete the juror qualification form; have no disqualifying mental or physical condition; not currently be subject to felony charges punishable by imprisonment for more than one year; and never have been convicted of a felony (unless his or her civil rights have been legally restored).

Each U.S. district court is responsible for summoning eligible individuals within its district for jury service. The type of jury addressed by this Insight is a trial jury, also known as a petit jury. Such federal juries consist of 6 to 12 people and decide, in a criminal case, whether the defendant committed the crime as charged or, in a civil case, whether the defendant injured the plaintiff.

Court Orders Postponing Jury Trials

During the COVID-19 national emergency, most U.S. district courts have postponed, or “continued,” civil and criminal jury trials. Such a continuance is announced by court order and signed by the chief judge of the district court. A court’s order typically includes the specific time period for which jury trials are continued and is often posted on the court’s website.

The order often provides an explanation as to why the court decided to postpone jury trials. Examples from recent court orders include the following:

- **District of Alaska (March 30, 2020):** The court found that criminal jury trials are currently impractical because “petit juries ... are drawn from disparate, often remote, communities throughout [Alaska], which may require some jurors to travel to Anchorage

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by airplane. Additionally, throughout the proceedings, jurors would be required to sit close to other jurors in the jury box and deliberation room.” The court also postponed civil jury trials.

- **Eastern District of Arkansas** (March 18, 2020): The court, in postponing criminal jury trials, noted that such trials “could put defendants, jurors, observers, and court personnel at risk; and there is no way to ensure that a jury’s important work would not be affected by health concerns.” The court also postponed civil jury trials.
- **District of Delaware** (March 18, 2020): The court described a number of factors in its order postponing civil and criminal jury trials—including the significant distances traveled by many potential jurors and witnesses; school closures that would make it difficult for parents to comply with summonses for jury service; and the uncertainty of the health status of summoned jurors because of current limitations on COVID-19 testing.

As described by the Administrative Office of U.S. Courts, most of the 94 federal district courts are able to communicate quickly and reliably with jurors regarding the postponement of trial proceedings. Courts “use the Integrated Voice Response system, an automated messaging system that can send email alerts, phone calls, and text messages informing jurors of ... changes in service.”

Status of Jury Trials for Select U.S. District Courts

As of April 19, 2020, the 25 states with the greatest number of known COVID-19 cases are (listed in descending order by number of known cases) New York, New Jersey, Massachusetts, Pennsylvania, California, Michigan, Illinois, Florida, Louisiana, Texas, Georgia, Connecticut, Maryland, Washington, Ohio, Indiana, Colorado, Virginia, Tennessee, North Carolina, Missouri, Arizona, Alabama, Rhode Island, and South Carolina.

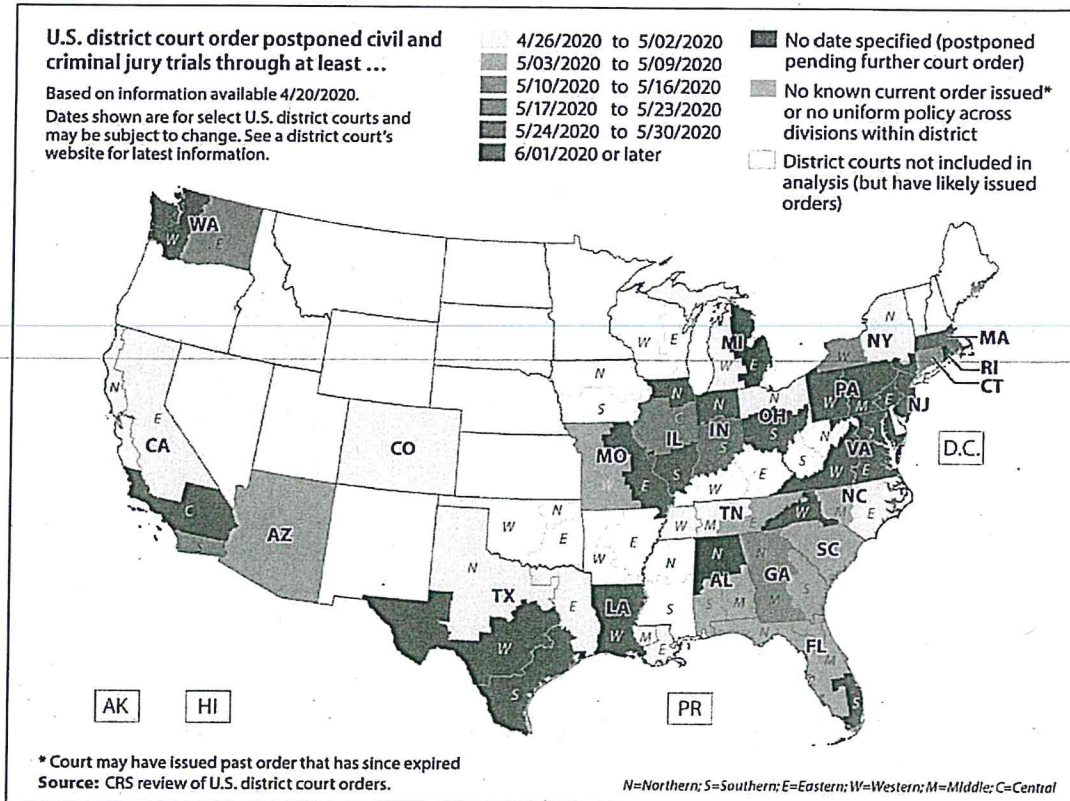
There are 56 U.S. district courts that serve these 25 states—each judicial district has its own U.S. district court, and some states, like California and Louisiana, have more than one judicial district (and, consequently, more than one district court). **Figure 1** shows, for these 56 district courts, whether jury trials have been postponed and, as of this writing, the earliest date by which jury trials will be conducted again by a district court. This figure is for illustrative purposes—congressional staff can contact the author of this Insight if they have questions about the status of jury trials for a particular district court.

As shown by the figure, a plurality (20 of 56, or 36%) of the district courts included in **Figure 1** have postponed jury trials until June 1, 2020, or later. Of courts that have provided a date on which jury trials could be resumed, the Southern District of Florida has, at present, specified the latest date (July 6, 2020).

Of the 56 district courts included in the figure, there are three for which CRS is unable to locate a current court order addressing jury trials in the district (prior orders by at least two of these courts delayed jury trials through some date prior to April 20, 2020). At least one district court does not have a uniform policy for the divisions within its judicial district. Specifically, in the Middle District of Florida, the Orlando division has stated it will resume jury trials on a later date than the Fort Myers and Jacksonville divisions.

Three district courts included in the figure—the Eastern District of Michigan (with its main courthouse in Detroit), the Northern District of Alabama, and the District of Rhode Island—have postponed jury trials but have not identified a date on or after which such trials will resume.

Figure 1. Status of Federal Jury Trials in 25 States with Greatest Number of Known COVID-19 Cases



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FINAL DRAFT 2.27.20

CRIMINAL RE-OPENING PRIORITIES

I. Types of Cases

- A. Jury trial eligible- incarcerated
 - (1) HWOB – 7553a (“60 day cases”)
 - (2) HWOB – life imprisonment
 - (3) Bail
- B. Jury trial eligible - Non-incarcerated
 - (1) Violent (28 VSA 301(5)(B) – felony/misdemeanor
 - (2) Non-violent – felony/misdemeanor
- C. VOP

 - (1) Incarcerated
 - (2) Non-incarcerated
- D. Fugitive
- E. Inquest
- F. Civil Suspension

II. Types of Proceedings

- A. Arraignments
 - (1) Violent – felony/misdemeanor
 - (2) Non-violent – felony/misdemeanor
- B. VOP
- C. Motions to dismiss/suppress/other
 - (1) Evidentiary
 - (2) Non-evidentiary
- D. Bail /conditions review
- E. Trials
 - (1) Jury
 - (2) Court trial
- F. Changes of plea
- G. Sentencings
- H. Calendar call/status conference/settlement conferences/pre-trials
- I. Competency & Hospitalization Hearings
- J. Jury draw
- K. Civil suspension

III. Priorities¹

- A. **Use audio/video to address all priorities² and implementing integrated audio/visual conference technology**
- B. Emergency arraignments/bail review/COR review

¹ The priorities are developed to take into account the practical limitations which will likely arise from social distancing and other societal responses/concerns to COVID-19.

² This will require amending Administrative Orders and the Rules of Criminal Procedure.

- C. Jury Trials for 60-day cases
 - D. "Cited" arraignments³
 - E. Competency and hospitalization hearings
 - F. Sentencing hearings
 - G. Status matters for resolution through audio/video
 - H. Change of plea
 - (1) In Court (audio/visual where possible)
 - (2) Plea by waiver
 - I. Jury trials (violent crimes)
 - J. VOP merits
 - K. Court trials
 - L. Civil suspension
 - M. Motions to dismiss/suppress/other
 - N. Jury trials (non-violent crimes)
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IV. Pathways to priorities

- A. Maximize opportunities to reach final resolutions of cases to reduce pending matters, including plea by waivers where appropriate
- B. Develop procedures and identify locations for jury trials which account for social distancing and reticence of potential jurors to participate
- C. Develop procedures/policies for inter-county structure to maximize hearing/judicial resources/opportunities
- D. Establish firm deadlines
- E. Eliminate unnecessary/unproductive proceedings
- F. Stagger cases by capping number of cases on any particular date/time

³ This will require limiting the number of arraignments at any one time, and staggering arraignments over more than one day per week, or into a week other than that for which a defendant is initially cited. Judges should request the SA's to provide a list of all citations and the dates for appearance, promptly upon their receipt from law enforcement.

April 28, 2020

Recommendations from Juvenile Priorities Group

(Brian Grearson, Kate Hayes, Kevin Griffin, Kerry McDonald-Cady)

We recommend that the family (juvenile) division judges in all courts take the following steps to reduce the number of hearings that will be required for juvenile cases that have been rescheduled cancelled or delayed due to AO 49.

- In cases with active dispositional CCOs—issue entry orders stating that the orders will expire on their terms (at six months from issuance or any earlier date already set), without any further hearing unless any party requests one (with grounds), and orders vacating the CCO and returning custody to the custodian without limitation will be issued on expiration.
- In cases in which a permanency hearing with request for reasonable efforts finding had to be delayed/rescheduled consider the following options:
 - Issue an entry order (if warranted) stating that the court will find that DCF has made reasonable efforts to achieve the permanency goal of the plan unless any party files written objection within 14 days.
 - If the case is post-TPR, issue an order stating that the court will adopt the permanency plan and issue a permanency order so stating (and finding reasonable efforts) unless any party files written objection within 14 days.
- Review any pending truancy cases and issue entry orders that ask that the State file an update regarding whether the case should now be treated as moot or dismissed without prejudice to refile in the fall of 2020 if the issues continue at that time.
- If you are informed that parents may be willing to relinquish parental rights in any pending TPR cases, you may be able to obtain permission for an emergency hearing from BG to conduct such a relinquishment hearing by telephone or video conference.
- Attorneys can be notified that they may request, with supporting grounds, emergency telephone hearings for serious delinquency cases that need preliminary hearings or for YO cases that are contested with older youth (20+) especially with serious charges.
- Plan to set telephone status conferences in all cases that were scheduled for contested hearings during the AO 49 period, to confirm whether there has been any movement toward resolution and to encourage shortening of the time required for such hearings, in light of the scarcity of such time. (This group would recommend that telephone status conferences on all AO 49 rescheduled juvenile matters be permitted after 5/15).

Each family division should review all pending juvenile cases that were scheduled for hearing during the AO 49 period, and those that are tentatively scheduled for at least the period through July 2020 (if any), in order to assess which are the top priority. Consider issuing entry orders or setting status conferences to determine whether cases that were or are scheduled for lengthy contested hearings can reduce the time required by stipulations as to facts, admission of documents, and so on, in order to free time for the cases that need to be rescheduled.

Each county will have different priorities regarding rescheduling merits, disposition, permanency and TPR hearings, depending on the age of cases, and specific facts. No particularized recommendations can be made across the board as to which type of hearing should be reset first.

Again says- he hopes Court will be talking about status conferences beginning within a couple of weeks. He's hoping that paragraph 11 can be put back in effect.

DRAFT

DOMESTIC/FAMILY RE-OPENING PRIORITIES:

These priorities reflect not just the cases we deem to be the most important to resolve but provides a framework to most efficiently conclude cases.

I. Types of Cases

A. Parentage

- (1) Establish/Temporary, Final, and Post-Judgment
- (2) Enforcement/Contempt and Modify

B. Divorce

- (1) P.R.R.

(a) Temporary, Final, Enforcement/Contempt, and Modify

- (2) Support (spousal maintenance and child support)

(a) Temporary, Final, Enforcement/Contempt, and Modify

- (3) Property/debts

- (4) Uncontested Final Divorce Hearings

C. Post-Judgment

- (1) P.R.R. – Enforce/Contempt, Modify
- (2) Support – Enforce/Contempt, Modify
- (3) Property/Debts – Enforce/Contempt, Modify

II. Priorities

- A. Establishment/Temporary Parentage and P.R.R. - Both in Parentage and Divorce Cases and set for temporary/final child support.
- B. Temporary Divorce Hearings on Other Issues (temporary possession of the home and temporary spousal support, for example)
- C. Enforce P.R.R. Final Orders
- D. Enforce Final Support Orders
- E. Enforce Temporary P.R.R. Orders and/or contempt
- F. Enforce Temporary Support Orders and/or contempt
- G. Enforce Property/Debt Provisions
- H. Final Contested Divorce Hearings with children – schedule oldest ones first
- I. Final Contested Divorced Hearings without children – schedule oldest ones first
- J. Modify Final PRR Orders
- K. Modify Final Support Orders

III. Process

- A. Judges retain discretion to schedule emergencies of any kind in coordination with Clerks and COMS.
- B. We assume case managers are able to meet by phone or otherwise and resolve cases via VRFP 4(e);

- C. For all pending motions to modify PRR/PCC, if there is a mediation clause in the Final Order, issue order to schedule mediation and/ or block schedule or status, as judge determines.
 - D. Schedule uncontested divorce hearings (primarily seen with *pro se* litigants with children) in a block schedule to get them processed quickly.
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MEMO

To: Justices Eaton and Carroll, Judge Grearson

From: Judges Hoar, Teachout, Toor

Re: Ideas for Transition from Judicial Emergency

Date: April 30, 2020

Thank you for inviting the trial judges' input into how to move forward from the Judicial Emergency. We attempt here to give suggestions both for procedural matters to address the need for social distancing, and priorities within the Civil Division for returning in the direction of "normal."

Procedural Issues

We assume that six-foot distancing and masks will continue to be necessary for the foreseeable future. Aside from likely requiring that staffing remain staggered to keep staff adequately separated, the distancing requirement poses additional challenges with regard to how to hold hearings and trials. Some suggestions follow, which may be applicable in all court divisions.

Provide for Staff to Telecommute

The need to maintain six-foot distancing for a long period of time suggests that we should—as businesses across the globe have been doing—begin to arrange for staff to be able to do their work from home as judges and managers can now. This would require providing laptops and VPNs but would allow staff to work fulltime even if they can only be in the courthouse part-time due to distancing needs. Given that we are allowing email filings now, there is no reason those cannot be accessed remotely while the staff at the courthouse access the mail filings. Documents can be printed on the courthouse printers from laptops being used at home, so the filings could be collected by the staff in the office that day for addition to the paper files. As the new CMS moves to more courts, remote work will get even easier.

Status Conferences

Status conferences should be held by phone or video. Video will require training for staff on how to manage the video equipment and software. Do we do this from the court recorders'/court officers' monitors? Do we need larger monitors in each courtroom? Who will manage the equipment? This should not be a task assigned to judges. Can the hearings be recorded remotely through Webex rather than needing a court recorder/court officer to do so live in the courtroom?

Evidentiary Hearings and Court Trials

Evidentiary hearings, including court trials, should be held by video where possible if the parties consent. If they involve too many parties and/or lawyers, distancing them safely may be impossible and the judge should be able to *require* that the hearing be by audio or video. Some categories of cases that involve many self-represented parties may not be as conducive to audio or video. We suggest that notices for stalking hearings give the parties the option of calling in (and provide the number), although this then requires service by the police of any orders issued.

Rent escrow hearings in counties with pro bono clinics require the tenants to come to court to meet the lawyers, so those need to remain as live hearings unless we come up with a system to connect the tenants with lawyers in advance. In addition, these involve a great deal of negotiating between the lawyers for the two sides, which could not be done by video (unless we provided separate video feeds somewhere outside of the courtroom, which seems unlikely).

Jury Trials

This is a huge challenge. The normal jury selection process with 75 or more people jammed into the courtroom will be impossible.¹ So will having 12 jurors deliberating. We suggest that for

¹ Even using both courtrooms for potential jurors (with a video feed to one) in Chittenden Civil, for example, we count safe spacing for only about 32 potential jurors.

all trial-ready cases, we ask whether parties will waive jury and have bench trials, so that at least those cases with such consent can proceed.

We recommend a six-month moratorium on all civil jury trials (with the recognition that it may well need to be extended). However, when we do go forward with jury trials, we propose that we ask whether parties will agree to a six-person jury as is standard in some other states, and for such six-person juries, agree to waive in-person jury selection and instead do it by questionnaire, with three peremptories per side done in a video conference with the judge after review of questionnaires. Perhaps the idea of some legislation temporarily allowing all juries to be limited to six members is also worth considering.

We have discussed the idea of jury selection by video-conference, but believe it unworkable due to the technical challenges (it would eliminate jurors without adequate software, hardware, internet connections, or technical skills, and would place a burden on staff to try to deal with such issues); the inability to assure that potential jurors are not distracted during orientation and selection by other matters going on around them at home or work; the inability for the judge to make the direct in-person connection with jurors that is so important to impress upon them the significance of jury service and of restricting their access to outside information; and the inability for the lawyers to see all the jurors at one time when they are asking them questions.

For the six-person juries, we would seat them not in the jury box but in the audience seating, with areas roped off for them and six-foot spacing marked on the benches. We could rearrange where lawyers stood and where counsel tables were, and have the witnesses testify from the jury box to accommodate the different orientation. For deliberations, since the jury rooms are too small, we would either use the second courtroom where one is available, or clear everyone out of the trial courtroom and have the jurors deliberate in there. (This would require figuring out how to assure privacy for the jurors from the courtroom security cameras, which we believe have an audio portion available to security folks).

Trial exhibits would need to be provided in duplicate so each juror had his or her own set, so they did not need to be passed around. The judge and the court officer marking the exhibits would obviously also get their own sets, as would each witness, so no one was handling documents others handled. (This would be true in court trials as well).

Transfers of Venue

For civil courts that do not have adequate space to do jury trials as above, consider transferring venue to courts that do. Do this on a case-by-case basis, in consultation with originating judge and lawyers, depending upon need to hold trial sooner rather than later, ability of witnesses to travel, need for site visits, etc. To the extent that multi-jurisdictional courts are too busy catching up on family and criminal cases, transfer venue of other civil matters to full-time civil courts.

Media Access

As now, the media should be permitted access to courtrooms to observe any public hearings. However, we should also allow them to participate by advance request in any video or audio hearings, with the understanding (as they already know when they are live in a courtroom) that they remain silent and do not interrupt the proceedings. Streaming may be appropriate for occasional high-profile hearings, but seems unworkable and unnecessary for all hearings. If streaming is done, adequate staffing and training for staff as to how to do it will be necessary.

Block-Scheduling

In any docket in which we have been block-scheduling, this will need to change to avoid having too many people at the courthouse at once. For example, on rent escrow days and stalking days some courts have several cases scheduled per half hour, and there can be a crowd of people in the courtroom or hallway waiting for these—parties, witnesses and lawyers. We will need to set each hearing at a different time to space these out, which in turn will mean scheduling larger

blocks of time for such categories of hearings (e.g. a whole day rather than a half day, two or three days rather than one day). We may need to mark off six-foot spacing in the hallways as well.

Pro Bono Clinics

In courts with pro bono clinics, such as rent escrow days, we will need to see whether the lawyers are still willing to volunteer at this time. If not, we will need to revisit how we are doing these cases. If they are, we may need to provide different spaces for the volunteer lawyers to have private meetings with the tenants, and negotiation with the landlords' attorneys, because the attorney meeting rooms are likely too small in most courts for six-foot distancing. This might mean giving them the use of the jury rooms, or the extra courtroom where one exists. This will have to be reviewed on a courthouse-by-courthouse basis.

Attorney Meeting Rooms

See above comments about pro bono clinics: this need for larger spaces will be true for all private discussions by counsel with clients or witnesses if they are at the courthouse for live hearings.

Catch-Up Scheduling

To catch up on the deferred cases, some categories of cases will require extra scheduling for a while to catch up. For example, all the newly-filed eviction actions that have been put on hold will need rent escrow hearings scheduled, and that may require several extra days a month to catch up to where we would normally be in scheduling new cases for hearing. Thus, the priority cases (as suggested below) may need to fill much of the civil docket for a while before we move on to many of the others.

In addition, because all counties have been on hold at once, we may face extra problems scheduling lawyers when we start to open the doors again. In every division there are some lawyers who will be hard to schedule because they do similar cases in multiple counties. This is

true of many juvenile attorneys, of course, and criminal conflict attorneys, but also of the Prisoner's Rights Office, DOC, and some of the lawyers who represent landlords, banks, and other collections plaintiffs. When we begin scheduling these matters again, there should be some coordination among counties about what days they schedule certain categories of hearings to try to avoid chaos.

Miscellaneous

Provide disposable masks at court for parties and jurors who appear without them.

Provide Purell (when available) on counsel tables; have staff wipe down tables between hearings; offer no water jugs except for witnesses. Let people bring in bottled water. Mark off six-foot spacing on courtroom benches, and be sure counsel tables are at least six feet apart.

Scheduling Priorities

It may not be as easy in the Civil Division as in other divisions to select cases by category as needing prioritization for hearings, as this can be a case-by-case question. For example, a case that has been ready for trial since last fall, got delayed due to the illness of a party, but involves an elderly party who is in dire need of the damage award they are seeking to pay their nursing home bills, may be a priority even though "all tort cases" would not be a priority category. Likewise, an inmate case involving claims that the petitioner is being denied necessary medical care in prison might be a priority, although other inmate cases—challenging DRs, for example—might not be. Other circumstances requiring prioritization might be, for example, a dispute between neighbors that is delaying a party's ability to sell their home, or a motion to stop wage garnishment in a collections case.

To some extent, then, we believe the judges and COMs should be given leeway to review their caseloads together—with the input of counsel where appropriate—to select any individual hearings or trials in any category that should be prioritized. *We suggest that judges and COMs be*

given authority to schedule status conferences as they determine are needed to determine which individual cases are priorities. Another option is to send the parties a written request for information as to the status of each case and what hearings are needed, as at least one judge has done recently. We suggest that the specifics of which approach is best in each county be left to the judges and COMs.

There are some categories of cases or types of motions that do need immediate attention across the board, however, because by rule or statute they are supposed to be handled promptly.

We would propose scheduling any hearings that have been delayed first, then new motions and trials, in waves depending upon priority. The categories are as follows.

First Priority:

Stalking hearings

Habeas hearings

Preliminary injunction hearings

Rent escrow hearings

Illegal subtenant hearings

Eviction trials (seeking possession, not just damages)--bench or jury

Motions to stay writs of possession

Writ of attachment hearings

Government enforcement cases seeking injunctive relief (pollution cleanup, for example)

Second Priority:

Inmate cases with pressing issues

Tort and other cases with pressing issues as determined on a case-by-case basis

Third Priority:

Oral argument on motions deferred by emergency

Bench trials (ones deferred by emergency first)

Jury trials where parties consent to bench trials (ones deferred by emergency first)

Foreclosures

Fourth Priority

Jury trials (These are in this category assuming a moratorium. Otherwise, we would categorize these in Priority 3).

Collections merits hearings

Collections post-judgment hearings

Small claims merits hearings (and consider setting up online mediation for these, and having hearings only if that fails)

Small claims post-judgment hearings

Exceptions

Whatever priorities the Court ends up with, we believe it is important to allow exceptions and to make that clear to the bar and the public. There should be a clear message in the administrative order about what is being delayed and why, and how to request an exception from the judge if there are special or emergency circumstances.

Legislative Suggestions

We suggest that the Court consider proposing two temporary legislative provisions. The first is permitting six-person jury trials in all cases until six-foot distancing is no longer necessary, as mentioned above. The second is staying or reducing interest on court judgments that is accruing during the emergency period and some period thereafter, since so many people have no ability to make payments right now. An alternative might be to allow courts to reduce interest on a case-by-case basis, but the people most in need of such a benefit are the least likely to be aware of their ability to file motions seeking such relief.

Conclusion

Thank you for the opportunity to be a part of these discussions. Please let us know if you have any questions or would like to meet to discuss our proposals.

memo

To: Brian Grearson, Chief Superior Judge
Theresa Scott, Chief of Trial Court Operations

From: Howard Kalfus, Presiding Hearing Officer, Vermont Judicial Bureau
Joanne Charbonneau, Clerk of the Court, Vermont Judicial Bureau
Joyce McKeeman, Assistant Judge

CC: Jennifer Morse, Court Operations Manager, Vermont Judicial Bureau
James Colvin, Assistant Judge

Date: April 30, 2020

Re: Resumption of Judicial Bureau Hearings Following the Expiration of A.O. 49

Background: Judges Kalfus and McKeeman and Clerk Charbonneau were tasked with developing a plan for the resumption of hearings within the Judicial Bureau following the expiration of Administrative Order 49 as amended. As of April 30, 2020, there are 5,810 cases awaiting a hearing. Most of these are hearings on the merits while others are motion hearings, typically Rule 60 motions for relief from judgment. Given the summary nature of Judicial Bureau proceedings, Rule 60 hearings look very similar to merits hearings and are, in fact, combined with merits hearings if and when the motion is granted. We don't expect the backlog to increase dramatically as the filing of tickets has been decreasing significantly since the beginning of the pandemic.

Process: We envision a three-step process where the first step targets law enforcement officers who typically enter into plea agreements with defendants at the hearings. We'll schedule these cases for telephone hearings. If either party disagrees with the phone hearing, it will not be held; an in-person hearing will be scheduled for a later date. Based upon our experience, we believe that this should dispose of one-half to two-thirds of the pending cases statewide. For the telephone hearings, we'll have a judge on the bench with a court officer (who also acts as the courtroom operator) also in the courtroom. Because the parties are calling in, the judges and court officers will not have to travel to far-off counties; cases in multiple counties can be heard in the same day by a single judge sitting in his/her home county or some other nearby county. Since we're eliminating or at least limiting travel time and distance, we can schedule at least as many cases per day as we have historically for these phone hearings without violating best social-distancing practices and without incurring much overtime and mileage costs.

The second step is to repeat step one for all remaining cases.

Finally, we'll schedule in-person hearings. Judicial Bureau hearings have, for the last several years, been block-scheduled with approximately 50 cases scheduled per day over four blocks (two one-hour blocks and two 30-minute blocks). Assuming that social distancing is still advised, we'll schedule cases individually at 10-minute intervals.

PROBATE REOPENING

Probate Judges Karl Anderson and Jeff Kilgore with consultation with Probate Judges have submitted the following list of priorities and a narrative describing the reopening of the Probate Division:

TYPES OF PROCEEDINGS:

- 1) emergency hearings of whatever nature,
- 2) minor guardianships,
- 3) adult guardianships,
- 4) estates.
- 5) birth orders,
- 6) adoptions

ADOPTIONS:

With respect to adoptions we would note that while those do take up staff time to process, the finalization of an adoption does not require a recorded hearing pursuant to V.R.P.P. 47(a). We have been uniformly doing adoption finalizations during the pandemic without hearings but through the mail. We would like to continue that process and go back to having hearings on adoptions when things return to normal. The same goes for uncontested name change proceedings and uncontested vital records requests those do not require a hearing and can be done through the mail so we want to be able to do keep doing those and save these three categories for last as far as restoring hearings.

EMERGENCY PROCEEDINGS:

With respect to the decisions to be made as to what might fall into the "emergency hearings" - the Probate Judges would hope that the COMs and Registers would be encouraged to work with their Judges to ensure that it is our determinations that will control what constitutes an emergency worthy of hearing time, rather than the name of the motion. We all know that an emergency is in the eye of the beholder. Responsibility for these determinations should properly fall on our shoulders, not court staff.

SCHEDULING:

On a practical note, it would seem that we should be careful when we do go back to rescheduling to do so in a way that leaves a 15 minute window on either side of the hearing to minimize participants' sitting together and crossing paths in the hall/courtroom between hearings. So for example if I have a 9:00 hearing that I think is going to take a half hour then the next hearing should get scheduled for 9:45. Obviously not perfect and time has a way of getting away from us but at least it is something aspirational.

REMOTE PROCEEDINGS:

Finally, are we going to be discussing the role of video-conferencing going forward at some point? This seems to be one of the biggest impacts of this new normal that should be carefully considered as we get back to business. Will videoconferencing be a part of the new normal and if so for what types of hearings and purposes? Blanket rules or discretion of each judge? What is the impact of videoconferencing on the concept of equal access to justice are we crowding out folks who don't have access to technology and creating yet another roadblock to their ability participate in the judicial system?

Thanks for all you work on this we appreciate the efforts of the judiciary department during these turbulent times.

Environmental Division
Vermont Superior Court

Summary of Plan to Re-Open following Expiration of AO 49

Since the outset of Administrative Order 49 (AO 49), the Environmental Division has continued to focus on motions and merits that are under advisement.¹ With our staff's help, the Division has kept our docket generally moving. We will continue this approach for the duration of AO 49 and thereafter.

Also at the outset of AO 49, we canceled all scheduled status conferences and trials. Prior to AO 49 the division conducted status conferences and many motion hearings telephonically. At the expiration of AO 49 we would like to reconvene status conference at a pace that is supported by our staffing availability. We expect to be able to make good progress quickly and eliminate potential delay in short order.

All of our trials are bench trials. Our Court Operations Manager (Jennifer Teske) advises that there are just a few matters that were canceled or are now ready for trial.

We recognize that returning to in-person hearings presents safety issues, and therefore, in-person trials may be further delayed. We plan to evaluate the use of telephonic or video technology for trials. We will do this in status conferences as matters proceed toward trial readiness. Our statute, 4 V.S.A. § 1001(e), requires trials to occur in the county where the property is located, however, parties can agree to another venue and we believe this provides authority to conduct trials telephonically or using video technology.² With respect to site visits, we would propose that parties submit an itinerary for the Judge to conduct an independent visit to the property in question.

¹ On March 16, 2020, the Vermont Supreme Court declared a judicial emergency and issued Administrative Order 49 (AO 49) in response to the COVID-19 pandemic, which was later amended on April 21, 2020. Order Declaring Judicial Emergency and Changes to Court Procedures (Mar. 16, 2020) *amended by* Order Promulgating amendments to Administrative Order No. 49 (Apr. 21, 2020).

² The statute explicitly allows for nonevidentiary hearings by telephone or video conferencing, and we believe this can extend to evidentiary proceedings upon agreement of the parties. See 4 V.S.A. § 1001(e).

RE: Magistrate priorities
Submitted by Christine Hoyt and Joe Lorman

We have interpreted the goal to look at cases and prioritize them in an effort to triage scheduling. However, as we discussed these issues further, it seemed that there was an overarching concern about fairness in terms of addressing cases which had been filed in chronological order.

As you know, we primarily deal with child support, the categories of which can be generally characterized as follows: establishments, modifications, and enforcements (including contempt). Some of us, but not all, hear establishment of parentage, temporary parental rights and responsibilities, and temporary spousal maintenance. There was a difference of opinion about whether those issues should be addressed by our group, or as part of the family/domestic group. We initially proposed that establishments should be heard first, as no child support was in place; then modifications; and finally, enforcements. We recognized that in the pre-COVID 19 world, enforcements would take top priority rather than being last on the list. However, as the discussions continued, the magistrates decided that the fairest thing to do was to consider cases in the order in which they were filed.

In summary, in the end, what the group agreed to propose is that all cases which in which hearings had been previously scheduled, but which hearings were cancelled due to AO 49, should be rescheduled first. Thereafter, the clerks should schedule the cases in order of time of filing, regardless of case type. The group felt that this made sense for the following reasons: 1) it is fair; 2) it will be less of a burden on the staff to figure out; and 3) it is difficult to know or decide which case types are more important than others since the cases are so fact specific. Cases which would have been scheduled with the case manager will continue to be scheduled with the case manager. Courts which schedule parentage and prr with the magistrates will continue to do so, and the others will not.

We didn't address the number of cases to be heard in a day, etc., as we anticipate that that is something being considered by the Vermont Supreme Court and CAO.

We understand that our caseload is less complicated than the criminal and juvenile dockets and does not involve the same potential for impacting litigants' constitutional rights. If, however, you are looking for something more detailed, please let us know.

VBA Recommendations

Summary of input provided regarding prioritization of case types to be heard first, per division, once the Court's emergency order is lifted.

1. Civil Division:

Stalking cases should have priority. With respect to other types of cases in the civil division, it might be simpler to have general criteria about which cases are heard first, versus a list of case types. For example, cases or hearings for matters preventing imminent harm to a person or property should have priority. If there's already a moratorium on types of cases, such as what's being contemplated in S. 333, we assume the moratorium will dictate the timing and prioritization of cases. Emergency landlord-tenant cases should be allowed in the court's discretion, in any event. Temporary emergency hearings on injunctive relief should also be held, in the judge's discretion. Because the numbers and types of cases in each county might vary from county to county, each county might have a bench bar where those numbers are made available. A discussion at the bench bar about the numbers and a general scheduling plan for the county might be helpful.

Civil Division Case Types: Appeal, Claims against Government, Collections, Contract Declaratory Relief, Employment, Foreclosure, Govt Enforcement, Landlord/Tenant, Miscellaneous, Prisoner Cases, Real Property, Sexual Assault/Stalking, Small Claims, Tort

2. Criminal Division:

AO 49 sets out a number of criminal case types and types of hearings within the case types that have been heard during the emergency period. It's presumed that the same types of cases and hearings within case types will have priority once the courts gradually reopen: Rule 5 hearings and arraignments of defendants in custody; arraignments in domestic assault cases; motions for review of bail for defendants in custody; requests for search warrants if electronic processing isn't possible; criminal competence when an initial evaluation supports a finding of incompetence; habeas corpus petitions; and, change of plea hearings in the discretion of the judge.

It's our understanding that the State's Attorneys' Office will provide separate input with their recommendations. Following are recommendations of the Defender General's Office:

The Defender General/ODG had a conference call with all managing attorneys this morning to discuss issues regarding reopening of the criminal court system in Vermont. The overarching concern had little to do with the type of cases that the Court might want to take up but had more with the status of the Defendant pretrial.

- The number one expressed concern was for individuals held pretrial on bail, and those held without bail. We have to give them the ability to litigate their cases, or we have to be able to get them out in the meantime.
- Jury trials will be very problematic and might be handled differently in each county depending upon the setup of each court and available community resources. Concerns were expressed about jurors holding defendants responsible for the fact that the jury had to be there under the COVID circumstances.
 - Attorneys should be allowed to submit their own questionnaires to the Court for jurors to answer, which would limit the need for extended voir dire.
 - One suggestion is to temporarily do what Massachusetts does and allow a trial by Court for all misdemeanors (or even non-life in prison felonies) that would be appealable to a jury if the Court found against the Defendant. It would lead to resolution of cases by both sides depending upon the outcome. It would also compel more resolutions in advance of the actual court trial. It would decrease the likelihood that a jury would have to be brought in later.
 - Another suggestion is to use large venues like the Barre Auditorium or School Auditoriums to social distance during jury selection, and perhaps even trials.
- Need to be able to handle non-evidentiary hearings remotely: Calendar/docket calls. Scheduling hearings. Discovery hearings.
- Need to be able to handle some changes of plea by waiver, and some by remotely by video where there is no dispute between the state and the defense.

JUVENILE:

- Concern that there are only hearings happening to take kids into custody, but nearly no hearings to discharge kids from state custody.
- Routine juvenile cases should easily be held remotely.
- No constitutional need for confrontation in CHINS cases.
- Merits hearings should be a #1 priority.
- Uncontested discharge of CCO hearings should be held remotely.
- Overarching theme: There is a need for more hearings that focus on discharging kids from state custody rather than only focusing on hearings that take kids into custody as is now seemingly the case. Those hearings can be held remotely if need be.

MISCELLANEOUS:

- The Court/State should provide masks for everyone who needs to work in person.
- Judges need to be accommodating to the individual health needs of the attorneys, clients and witnesses.

Note as well that the ODG is part of the Executive Branch and is subject to Executive Orders from the Governor. The ODG is also subject to agreements made by the Executive Branch regarding personnel matters in involving exempt employees who follow the classified system and various bargaining units of the VSEA. The ODG may also have some limitations based on our collective bargaining agreement with some of our non-attorney employees.

Criminal Division Case Types: Arson, Assault, Domestic Violence, Drug, Fish/Game, Fraud, Homicide, Motor Vehicle- DWI/DUI, Motor Vehicle- NON DWI/DUI, Municipal Ordinance, Protection, Public Order, Robbery, Sex offense, Theft, Weapons

3. Family Division:

Domestic Cases: Motions to suspend, modify or enforce parent child contact when the court determines that an emergency exists should continue to have priority. In general, parentage or divorce cases involving children should have priority, especially given heightened emotions due to the quarantines and economic insecurity. High conflict domestic cases involving children should have specific priority, especially if there is a safety issue. This includes hearings where the court has identified a potential risk of harm to children if PCC/PRR hasn't been solidified. Temporary orders in cases with kids and temporary orders of spousal and child support should be given priority because there is too much opportunity for financial abuse, otherwise. Cases without kids where the final hearing was underway when the courts closed, and serious financial issues threaten irreparable harm to at least one of the parties should have priority. The next level of cases should be new cases with children, then new cases without children. Cases involving child support and case managers should go forward as they normally did as soon as possible. There needs to be an easier, streamlined and effective way to manage calls/video appearances to the court. Maybe the courts should offer a conference call service and include the call-in number to the court so everyone participating can call in on that single, dedicated number.

Smart planning would be to start setting either telephone statuses and/or case manager conferences in all existing cases so the court can assess what actually needs to be set for evidentiary hearings and what can settle. With respect to actual scheduling, an order of priority is hearings that have already started involving children, and then those that have already started that don't involve children. An uncontested dissolution block set by phone with assistant judges in side rooms set up with recorders might be an efficient way to move cases and to free up regular courtrooms.

Relief from Abuse Docket: RFA cases should continue to be heard as priority cases.

Juvenile Docket: Juvenile temporary care hearings and motions to modify, suspend or enforce parent-child contact where the court determines that an emergency exists should continue to be a priority. Other juvenile cases that should get immediate attention include TPR's that have had multi-day contested hearings that were cancelled in the shutdown; "reasonable efforts findings" in custody cases, especially those that are overdue; cases where CCO's are expiring and there is no agreement in place; custody cases where kids have been separated from their parents and have had only video contact – some of these need to consider CCO's and there's no agreement; serious or dangerous delinquency cases; and, YO cases not yet decided where kids are getting close to the age limitations so they don't miss their chance at YO. Delinquency cases that don't involve serious or dangerous charges can wait unless there's non-compliance with COR's. (See also Defender General comments above.)

Mental Health Docket: Hospitalization hearings when the initial evaluation in a criminal competency hearing supports a finding of incompetence, and mental health hearings considering involuntary hospitalization and/or involuntary medication should continue to have priority.

Domestic Case Types: Civil Union Dissolution, Divorce, Domestic Relation-Other, Parentage

RFA Case Types: Civil Protection Order, Domestic Relations-Other, Extreme Risk Protection Order

4. Probate Division:

Probate hearings involving emergency guardianships or "Do Not Resuscitate" petitions should continue to have priority. Next, probate guardianships for adults and children should be heard first. Adoptions should also be a priority.

Probate Case Types: Administrative, Adoption, Adult, Adoption, Child, Change of Name, Emancipation, Guardianship-Adult, Guardianship-juvenile, Guardianship- Unknown, Intestate, Testate, Trust

5. Environmental Division:

NRB/ANR enforcement proceedings and Municipal enforcement proceedings should proceed first. There are constitutional issues in providing speedy hearings for these types of cases and environmental concerns to protect as well. After that, the Court and the parties will sort out priority via status conferences. Video trials would not be feasible in the Environmental Division. Maps and plans which are often critical to a land use case are very difficult to show and review in a video appearance. Also, it is critical for the Judge to assess the credibility of witnesses, which is impaired in video appearances. We think the parties can work out a safe way to conduct these bench trials. If a video trial is proposed, parties should have the right to voice their objections to proceeding via video.

Environmental Division Case Types: Act 250/ANR de novo Appeal, ANR/NRB Enforcement, Municipal de novo Appeal, Municipal Enforcement, On the Record Appeal, Other

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MONTPELIER
SPRINGFIELD

May 1, 2020

The Honorable Harold E. Eaton
Justice of the Supreme Court of Vermont

VIA EMAIL TO: Harold.Eaton@Vermont.Gov

RE: Reopening Vermont Courts During and After the COVID-19 Pandemic

Dear Justice Eaton:

I am writing on behalf of clients of Vermont Legal Aid, and as the Vermont Poverty Law Fellow 2018-2020. Vermont Legal Aid is grateful for this opportunity to provide input on the phased reopening of the courts as the Executive Order 01-20 state of emergency is relaxed and eventually lifted.

Vermont Legal Aid's client community of low-income people, elderly people, and people with disabilities comprises the majority of civil litigants in the state. Eviction, foreclosure, and collection proceedings make up about 70% of the Superior Court docket, and credit card collection proceedings make up about 70% of the Small Claims docket. The vast majority of defendants in these matters are unrepresented. This means that most of Vermont's civil litigants, people who are unrepresented and are being sued for lack of money, are especially vulnerable to the severe health and economic impacts of the COVID-19 pandemic. With the economic downturn, our client community is expected to grow.

We appreciate all that the Court is doing through Administrative Order 49 and related measures to protect these vulnerable populations. We also recognize that low income and elderly people and people with disabilities have always faced barriers to accessing justice, and that those barriers have only been exacerbated by COVID-19. Below, we raise concerns about how our client community will be impacted by the phased reopening of court dockets, and propose ideas to increase access to justice during and after the pandemic.

Prioritization of Dockets

We suggest that the Court prioritize litigation by the private bar in which both parties are typically represented. The majority of the Vermont Bar works on only 24% of the civil legal docket. This includes 5% of contract cases, 7% of tort cases, and 12% of other case types including declaratory relief, government disputes, employment disputes, and disputes over real property. These cases typically involve represented litigants who have access to technology. They also involve the majority of Vermont's legal profession with significant economic impact for the profession and the state.

Resuming these cases first will involve the fewest logistical challenges. It will also allow the majority of Vermont's bar to resume work. Finally, it will afford the enormous number of litigants who will otherwise face eviction, foreclosure, and debt collection the necessary time to access federal CARES Act relief, as well as rental assistance, as that relief is made available by the state.

As the Court prepares to re-docket cases in which one or both parties are typically unrepresented, we would like to raise several accessibility and docket-specific concerns on behalf of our client community, outlined below.

Accessibility

In its April 21, 2020 amendment to Administrative Order 49, the Court signaled a shift to a remote platform moving forward. As this happens, we hope that the Court will continue to ensure that proceedings remain accessible to all Vermonters, including low income people, elderly people, people with disabilities, and people with Limited English Proficiency. We wish to raise several concerns we have about court accessibility for our client community.

- **Limited access to technology.** We are concerned about our client community's limited access to computing, printing, copying, internet, and phones. Many low income Vermonters are not able to participate in legal proceedings remotely while physical distancing, even if they are represented. Furthermore, libraries, community action offices, and other human services offices that provide printing, copying, and scanning services remain closed to the public. To ensure equal access, litigants will need access to "kiosks" in the courthouses which will allow them to join hearings by video or telephone if they do not have access to such technology at home.
- **Limited access to income.** Similarly, the shift to mandatory electronic filing in several counties requires transaction fees that are prohibitive to our client community, and the process for demonstrating inability to pay is onerous and inaccessible to many low income and vulnerable litigants. To ensure equal access, the process for waiving transaction fees for pro se litigants should be simplified.
- **The need for safe physical distancing.** As above, litigants will require access to "kiosks" that are private and comport with physical distancing. As the state of emergency is lifted and in-court litigation resumes, crowded waiting spaces and limited private meeting spaces will remain a problem. We recommend that the courts make available additional court rooms, meeting rooms, and waiting rooms once we resume in-person litigation. We also recommend that the courts refrain from block scheduling collection cases. Because we have programs in some counties where pro-se litigants can get lawyers to help them, we would like block scheduling of rent escrow hearings to continue, but to spread the hearings out in terms of time and physical space.
- **Access for litigants with disabilities and Limited English Proficiency.** We are also concerned about ensuring access to interpreters as the courts resume telephonic and video hearings. How will the courts ensure timely remote access to language interpreters for

litigants that need them, including American Sign Language, and for litigants that need them but do not have access to the necessary technology to attend remote proceedings?

- **Increased risk of default and non-appearance at scheduled hearings.** Many from our client community already express fears of participating in legal proceedings for reasons related (but not limited) to class, race, and mental, intellectual, and physical disability. The list of questions the CDC is recommending public institutions ask individuals before allowing them to enter facilities is very intimidating and likely to increase these fears. We are concerned that our client community's increased physical and mental health concerns during the pandemic will exacerbate their fears of participating in legal proceedings, putting them at an even greater risk of missing hearings or defaulting. Furthermore, our clients are more likely to be exposed to and suffer serious consequences from COVID-19, which would make them unable to enter courthouses or other facilities where they can be assisted to access legal proceedings. Pro se litigants may also miss answer deadlines believing the deadlines to be relaxed due to standing court orders staying eviction and foreclosure proceedings. To mitigate the risks of missed hearings and of default, especially in proceedings with dire consequences such as evictions and collections, courts should expand opportunities to reschedule missed deadlines and hearings.
- **Procedural inconsistencies between counties.** Our client community and their community advocates alike have expressed confusion over the different ways courts have modified county procedures and issued standing orders. This confusion has generated a lot of misinformation and has put our client community at a greater risk of default. We recommend greater uniformity among courts to reduce confusion and increase Vermont Legal Aid's ability to conduct community legal education and outreach to Vermont's most vulnerable communities.

Docket-Specific Concerns

In addition to the above overarching concerns, we have concerns specific to the RFA, collections, evictions, and guardianship dockets that we wish to raise on behalf of our client community.

- **Relief From Abuse (RFA) Hearings.** For as long as we are required to socially distance, remote access is safer for everyone. RFAs are traditionally block scheduled, which is incompatible with COVID protocol. We support a transition to a fully remote RFA hearing process, contoured by the above accessibility considerations. We hope that non-evidentiary RFA hearings can occur via telephone, and that evidentiary RFA hearings can occur via video conference. We hope that attorneys will appear remotely from their homes or offices, and facilitate appearances by their clients.
- **Debt collections.** Collections make up 20% of superior court cases, and 70% of small claims cases, and with the economic downturn those numbers could rise dramatically. At present, Vermont Legal Aid represents about 1% of debtor defendants, meaning the vast majority of debtors are unrepresented—a large proportion of whom are elderly and vulnerable people who already face the many barriers to accessing justice laid out above.

We do not recommend that courts continue to block schedule collections hearings in rotating counties. Most debtor defendants are unrepresented and many will require access to the above-referenced “kiosks” to be able to participate in their remote hearings. Block schedules would make it impossible for courts to maintain safe physical distancing between litigants while also ensuring equal access to court. Block schedules rotating among counties also gives creditors the advantage of being able to bring large numbers of actions without having to face conflicting hearings in other counties, with no similar advantage to elderly and vulnerable debtors.

- **Evictions.** In the near future, we hope the legislature and Governor will pass into law S. 333, a bill establishing an eviction and foreclosure moratorium. The bill anticipates a certain prioritization of eviction cases as the state of emergency declared by Executive Order 01-20 is lifted.¹

The overwhelming majority of evictions in Vermont are for nonpayment of rent, and with the economic downturn, we expect these cases to increase dramatically. When the time comes to schedule rent escrow hearings, we ask that courts continue to block schedule those hearings in all counties. Continuing block scheduling would allow legal services and pro bono attorneys to continue offering limited representation in a clinic setting to otherwise unrepresented tenants at the most critical juncture of their eviction cases.

Mindful of our limited capacity, the expected surge in tenants needing representation on rent escrow day, and the likelihood that cases will resume while we are still physical distancing, we request the following for rent escrow days:

- If there is only one attorney available to offer tenants representation, we ask that courts schedule hearings no more frequently than every half hour. If there are multiple attorneys, we ask that courts schedule hearings no more frequently than two cases every half hour.
 - Some courts do not have attorney rooms that are large enough for attorneys and clients to privately meet while safely physical distancing, which we anticipate may continue to be the norm after courts resume in-person proceedings. Similarly, many do not have rooms that are large enough for four people to negotiate a settlement while safely physical distancing. Perhaps some courthouses can find larger rooms for meetings, as well as more than one courtroom hearing rent escrow motions, during this period.
- **Guardianships.** With regards to resuming Title 18 Family Court guardianships (18 VSA §9301 et seq) and Title 14 Probate Court guardianships (14 VSA §3060 et seq), we have

¹ The moratorium allows for the filing, but not service, of cases, which are stayed upon filing. The moratorium stays all writs that have been issued, which will need to be served or reserved when the emergency is lifted. Evictions for cause may proceed when the emergency is lifted, and non-payment and no cause evictions are stayed an additional 30 days after the emergency is lifted. For nonpayment cases, rent escrow may be calculated using special rules for 75 days after the emergency is lifted (including the 30-day grace period, plus an additional 45 days).

identified three areas of concern. First, we hope the Court will address how guardianship evaluations will be conducted going forward. Will in-person evaluations be required, and will time frames for completing evaluations be extended? Second, as above, we are concerned about ensuring access to American Sign Language and other interpreters for people with disabilities. How will courts ensure interpreter availability consistent with the timely completion of guardianship court processes?

Finally, we are concerned about Guardians Ad Litem (GALs). Consistent with V.R.F.P. 6.1, our Disability Law Project regularly seeks appointment of a GAL where we conclude that our client is unable to understand the nature of the proceedings or is unable to communicate effectively to give direction. Will courts continue to appoint GALs where needed, and how will GALs carry out their responsibilities? Consistent with the other dockets of concern to our client community, we support a transition to remote hearing process, contoured by the above accessibility considerations.

We thank you again for this opportunity to provide input, and reiterate our utmost appreciation for all that the Court is doing to ensure equal access to justice during this unprecedented pandemic. Thank you for your consideration.

Sincerely yours,

/s/ Jill Rudge, Vermont Poverty Law Fellow

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STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS

May 6, 2020

The Honorable Harold E. Eaton, Jr.
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0701

Dear Justice Eaton,

Representatives of the Department of State's Attorneys met to discuss how Criminal and Family Court can best return to work while following the guidelines of the Center for Disease Control "CDC" and the Governor's Orders in helping to prevent the spread of COVID-19. While we do not have all the answers, we have a few suggestions and hope to be part of any continuing conversations around getting to a 'new normal.'

First, we believe the courts should conduct as much business as possible virtually. While we are all adjusting to using virtual meeting technology and that process has not been without flaws, these alternatives to in-person hearings are functional and increase safety. We believe virtual meetings can be used for all status conferences, calendar calls, arraignments without bail and other hearings where parties are proceeding by affidavit or with argument only.

In saying this, we want to make sure that victims and members of the public have access to these proceedings by streaming video or telephone in addition to the parties. For these types of hearings, if a defendant or party cannot appear remotely, we suggest staggering the hearing times to limit the potential number of people in the hallways and courtroom. Of course, we assume the Court will ensure that everyone is wearing a mask properly, including court staff and court officers, and that door handles, desks and bathrooms are cleaned throughout the day on regular intervals or as needed by the circumstances.

Where signatures are required in a court proceeding, we ask that the court have sufficient supply of pens so that everyone may use a pen that has been disinfected. We would also request that cleaning take place at litigants' desks each and every time when attorneys and/or litigants change. We ask that the Court adopt a procedure whereby any person can initiate a disinfecting protocol and to make these protocols known to the litigants.

Secondly, we suggest limiting the need for juries, by:

- 1) agreeing to bench trials for all misdemeanors, including domestic assault cases and DUIs. However, we reject the idea that a defendant could appeal a bench decision to a jury trial afterwards. Instead, the bench trial would be conclusive, barring normal appeals.
- 2) eliminating jury trials for Fish & Wildlife tickets and traffic ticket appeals. These matters would be addressed by bench trials.
- 3) prioritizing jury trials for incarcerated individuals.

Obviously, jury trials present unique challenges. Many of the individuals who are summoned and report for jury duty appear to be in the high-risk category and we do not want to do anything to jeopardize the health of potential jurors. Likewise, we hope that the court will be mindful that many witnesses and defendants may fall into high risk categories, and we hope that the Court will be flexible when it can be about the appearance of these people in jury trials.

We believe questionnaires should be used to potentially limit the amount of jurors who report; we also believe virtual *voire dire* should be considered by agreement of the parties and that staggering the panel so that 6 feet of distance can be maintained, is important. Jurors will need to spread out beyond the jury box and we suggest allowing them to sit in the gallery with 6 feet between them, while live streaming trials so that members of the community are not excluded.

We also suggest allowing jurors to deliberate in the courtrooms, instead of a small jury room; although we appreciate the Court's security obligations and the reality that such a proposal could tie up a courtroom for some time. With that in mind, we request that the courts seriously consider whether or not criminal, juvenile, civil, and probate courts can operate simultaneously on one day in one courthouse which had been the prior practice in some counties.

During this COVID-19 pandemic we believe a high priority should be given to suppression hearings and motions to dismiss on felony cases. These can be dispositive hearings or, when not dispositive, trigger a plea agreement. Such hearings are typically conducted without a multitude of witnesses. As a result, social distancing is more practical during these hearings than during a jury trial or even some bench trials. We believe that scheduling these pivotal hearings first will help to ease the backlog.

We also suggest starting full day arraignment days after June 1 to deal with the backlog of citations that have been building up during this shelter in place period. Again, we suggest allowing these arraignments to happen virtually when possible and through staggered times, when not involving requests for the imposition of bail or a hold without bail determination. We suggest holding changes of plea when parties have reached an agreement and allowing for plea by waivers – even when probation is contemplated on misdemeanors.

As we attempt to get back to court, please understand that many of our offices will be rotating skeleton crews so as to maintain distancing in our offices and limiting exposure to one

The Honorable Harold E. Eaton, Jr.
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another. We believe it is crucial that the Court remain flexible and allow Deputy State's Attorneys to appear in court remotely as much as possible. We also believe the Court should be encouraging parties to agree to remote testimony by witnesses as much as possible.

Lastly, email filings have been very efficient and easy over the last few weeks, especially in counties that have not switched to Odyssey. We certainly hope the court will keep the conversation open regarding the difficulties our affected offices have had with Odyssey; we acknowledge that the novelty of the system and the downsizing of court staff have an impact, but filing has been neither easy nor efficient in those counties. We thank the Court for allowing that to happen and encourage its continuation.

Sincerely,

Rosemary M. Kennedy
State's Attorney
Rutland County

Tracy Shriver
State's Attorney
Windham County

Alex Burke
Deputy State's Attorney
Bennington County

Dana DiSano
Deputy State's Attorney
Chittenden County

Rose Houde
Office Administrator
Caledonia County

David Sicard
Victim Advocate
Grand Isle County

Siri Rooney
Victim Advocate
Lamoille County

Scheduling Guidelines

The committee received recommendations as to the reopening of the courts to nonemergency hearings. As noted in the report, these came from each division of the Superior Court, the Judicial Bureau and Magistrates, the Vermont Bar Association, Legal Aid, State's Attorneys and court management and staff. Those submissions are attached. The Committee considered all recommendations and endeavored to adopt below those that highlighted practices that may not have been used prior to the pandemic but are essential to carrying out the policy recommendations in the report. Individual case-management strategies, while important, were not included and should be left to local decision-making. The following is a summary of those highest priority case types and division-specific recommendations not already included in the narrative to which this appendix is attached. Case types already allowed to proceed under AO 49 continue to remain priorities and are not listed here.¹

I. Criminal Division

1. Priority Case Types

- Resumption of jury trials for defendants who are held without bail, incarcerated, or out in the community
- Arraignments
- Competency and hospitalization hearings
- Sentencing hearings
- Status conferences to resolve cases and related COP's
- VOP merits hearings
- Dispositive motions in cases, i.e. suppression, motions to dismiss, that may diminish the likelihood of the need for a trial

2. Recommendations

- Remote technology should be used whenever possible
- Parties should be asked if they agree to a jury of less than 12 when jury trials resume
- Modification of V.R.Cr.P. 24(a)(3) to expedite the jury selection process to allow the judge in his/her discretion to conduct the initial examination of prospective jurors with follow-up by attorneys/self-represented litigants
- Use of plea-by-waivers when appropriate
- Eliminate unnecessary, unproductive proceedings
- Judges should ask parties to consider bench trials rather than jury trials

II. Family/Domestic Division

1. Priority Case Types

- Establishing parentage and issuance of temporary orders of PRR and PCC in both parentage and divorce cases
- Temporary divorce issues other than those involving children
- Enforcement of final PRR, PCC
- Enforcement and contempt motions related to temporary PRR/PCC.
- Final divorce hearings that have begun but have not concluded

¹ For instance, any case which presents as an emergency should receive high priority no matter the case type.

2. Recommendations

- Judges must retain discretion in determining which cases present emergencies
- Case managers should make use of courtrooms for conferences that cannot be done remotely, so as to maintain social distancing
- Avoid block scheduling
- Assistant Judges should be used to the extent possible in uncontested divorce proceedings, but avoid block scheduling of large numbers of cases
- Telephone or video conferences should be held in those cases that have been identified as needing a contested hearing to verify current status of the case
- Hearings should be held remotely whenever possible
- Make use of mediation clauses in all orders
- COPE and Pro Se Education courses should be held remotely or in smaller groups so as to allow for social distancing and to observe assembly restrictions

III. Magistrate

1. Priority Case Types

- In this very specialized docket, the Magistrates have made a reasonable recommendation, which the Committee adopts, that hearings be scheduled in cases in the order in which the case or motion was filed.

2. Recommendations

- Hearings should be held remotely whenever possible

IV. Family/Juvenile Division

1. Priority Case Types²

- Termination of parental rights
- Contested merits hearings
- Contested disposition hearings
- Hearings for placement of children outside of the state or discharging them from custody
- Permanency hearings

2. Recommendations

- Consider the appointment of Probate Judges to preside over all permanency hearings where there is a reasonable possibility of agreement (contested cases to be set before the division judge) and in post termination-pre-adoption permanency hearings.
- Notify parties that court orders will expire on their own terms, or DCF recommendations regarding permanency will be adopted, unless a party objects by a date certain
- Require updates from parties as to case status
- Hearings should be held remotely when possible

² Most all case types in the juvenile docket require prompt resolution. However, setting these priorities will likely be a decision made at the local level, depending up the backlog numbers in each county and the needs of the children in each in each case.

V. Probate Division

1. Priority Case Types

- Minor guardianships
- Adult guardianships
- Estates
- Birth orders
- Adoptions
- DNR petitions

2. Recommendations

- Judges retain discretion, in determining which cases present emergencies
- Hearings should be held remotely whenever possible
- Stagger hearing times to avoid congestion
- Continue resolving cases that do not require an on-the-record hearings without holding hearings

VI. Civil Division

1. Priority Case Types

- Stalking
- Habeas
- Preliminary injunction
- Rent escrow
- Evictions (including illegal subtenants)
- Motions to stay writs of possession
- Writs of attachment
- Government enforcement cases seeking injunctive relief

2. Recommendations

- Hearings should be held remotely whenever possible
- Provide kiosks in the courthouses to allow those without remote capabilities to participate in remote hearings (or suggest the Access and Resource Center)
- Stagger block scheduling of cases (e.g. pay rent into court) to avoid congestion
- Judges should ask parties if there is agreement for a jury of less than twelve when jury trials resume
- Parties should be asked to consider bench trials rather than jury trials
- Judges should request live streaming of hearings of interest to the public so as to reduce congestion in the courtroom
- Assembly restrictions must be observed
- Make use of safe spaces during pro bono clinic days for meetings between lawyers and litigants so that social distancing can occur

VII. Judicial Bureau

1. Priority Case Types

- The recommendation in the narrative is that the Judicial Bureau resume all hearings types as of June 1, 2020 or sooner with the approval of the Court Administrator

2. Recommendations

- Only one status conference in each traffic ticket case may be held, and only for tickets that were issued prior to June 1, 2020
- Block schedules with large numbers of participants should be avoided and assembly restrictions observed
- Interested Assistant Judges should be trained in this docket, consistent with the authority given to them
- Remote hearings should be conducted when feasible

VIII. Environmental Division

1. Priority Case Types

- The recommendation in the narrative is that the Environmental Division resume all hearings types as of June 1, 2020 or sooner with the approval of the Court Administrator.
- Although it does not appear at this time that prioritization of case types is necessary in this division, hearings involving the Agency of Natural Resources and Natural Resources Board should be considered for priority scheduling

2. Recommendations

- Hearings should be held remotely whenever possible
- Judges should discuss with parties the possibility of agreement to waive venue requirements for hearings so that use may be made of courtrooms where social distancing is easier to achieve