

**IN THE UTAH SUPREME COURT and UTAH JUDICIAL COUNCIL**

**Administrative Order for Court Operations During Pandemic**

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**ADMINISTRATIVE ORDER April 11, 2022**

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Beginning on March 13, 2020 the Chief Justice, on behalf of the Judicial Council and the Supreme Court, issued a series of Administrative Orders for Court Operations During the Pandemic (Administrative Order) to respond to the recommendations of the Centers for Disease Control (CDC), the Utah Department of Health, and local health experts for avoiding the spread of COVID-19 and its variants. The Judiciary continues to be in the unique position of having authority to compel individuals to attend court proceedings in person. Throughout the pandemic the judiciary has consistently focused on the safety of court personnel and patrons. The Judiciary will continue that focus while also recognizing the benefits associated with vaccination and the recent modifications to the CDC recommendations.

Each Administrative Order has superseded the previous Administrative Order. The last Administrative Order is dated September 17, 2021 and moved court operations to the Yellow Phase of operations under the Judiciary's Risk Phase Response Plan. On March 7, 2022 a Mask Mandate Order was issued to remove the requirement for wearing a mask in court facilities located in a county that was designated by the state Health Department as a low or moderate transmission index county.

This Administrative Order:

- Rescinds the Mask Mandate Order of March 7, 2022.
- Suspends the September 17, 2021 Administrative Order for courts located in a county designated by the CDC COVID Data Tracker as a low or medium community level county.
- Requires courts located in a county designated by the CDC COVID Tracker as a low or medium community level county to follow the operation standards outlined in this order.
- Keeps the Administrative Order dated September 17, 2021 and the Risk Phase Response Plan in effect for courts located in a county designated by the CDC COVID Data Tracker as a high community level county.

To the extent any provision of this Administrative Order conflicts with the Utah Code of Judicial Administration or with a rule of procedure or evidence, the provision in this Administrative Order will govern. The provisions of this Administrative Order are therefore subject to the same types of challenges that could be raised against a rule of administration, procedure, or evidence. Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been

adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.

For purposes of this Administrative Order:

The CDC COVID Data Tracker can be found at:

[https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=all\\_states&list\\_select\\_county=all\\_counties&data-type=CommunityLevels&null=CommunityLevels](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels)

The CDC Quarantine and Isolation Calculator can be found at:

<https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html#>

**IT IS HEREBY ORDERED:**

**Mask Mandate**

An individual must wear a mask that covers their nose and mouth while in a court facility under the following circumstances:

- If a court facility is located in a county that has been designated by the CDC COVID Data Tracker as a high community level county.
- If a judge, in a particular case, orders an individual to wear a mask for the health and safety of a participant in the court proceeding.
- If an individual, within the last 10 days, has tested positive for COVID-19 or been exposed to someone who tested positive for COVID-19.

When a mask mandate is in effect, the court must supply a mask to an individual who is not wearing a mask. An individual who refuses to wear a mask may not enter the court facility and may be removed from the court facility for failure to wear a mask over their nose and mouth. If an individual is denied entry or removed from the court facility because of a refusal to wear a mask, the individual must be provided with information about how to contact the court for further instructions.

Each District shall designate a person to be responsible for checking the CDC COVID Data Tracker each week to adjust the court location's use of masks based on the CDC Data Tracker. Each District shall post signs at the entrance for the court facility informing the public about when masks are required in a court facility.

When the mask mandate is in effect, the requirement to wear a mask does not apply to:

- A witness while the witness is testifying or to other individuals in a courtroom if the judge determines that the temporary removal of a mask is necessary for identification or other similar purposes and physical distancing can be maintained.

- An interpreter who is in the courtroom and if necessary for effective interpreting.
- Court personnel if they are at their desk, not dealing with the public, and physically distanced from others, or if they are actively eating or drinking, not dealing with the public, and physically distanced from others.

### **General Orders and Orders Applicable to All Courts**

1. Presiding judges, trial court executives, clerks of court, guardian ad litem managing attorneys, and chief probation officers should implement the changes to court operations as a result of this order in coordination with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. Each judicial district shall designate a person to weekly check the CDC COVID Data Tracker to determine the county community level and adjust the court's operations, signage, and mask mandate accordingly. The designated person shall also check the CDC Quarantine and Isolation Calculator and inform their bench of any changes to the quarantine or isolation standards.
2. Courts in the state that are located in a county that is designated by the CDC COVID Data Tracker as a low or medium community level county are authorized to resume in person proceedings, including jury trials in accordance with this order.
  - a. Courts shall give priority to in person proceedings that are not capable of being held remotely, such as jury trials with in-custody defendants.
  - b. When selecting a jury panel, courts shall:
    - Excuse a potential juror who expresses a sincere concern regarding personal safety and risk associated with COVID-19 and serving as a juror.
    - Administer the juror COVID-19 screening questions as approved by the Management Committee to determine whether a potential juror, in the last 10 days, has tested positive for COVID-19 or been exposed to someone who tested positive for COVID-19. If a potential juror answers yes, the judge may excuse the potential juror or may ask further questions and take action under the CDC Quarantine and Isolation Calculator.
  - c. The court shall administer the COVID-19 screening questions to all jury trial participants, each day of the trial. If a person reports symptoms, a positive COVID-19 test, or exposure to a person with a positive COVID-19 test, the Court shall take appropriate action under the CDC Quarantine and Isolation Calculator.
  - d. Courts may continue to conduct a hearing, bench trial, and oral argument by remote transmission.
  - e. Courts must conduct a hearing, bench trial or oral argument by remote transmission if
    - a) requested, b) if feasible, and c) if necessary to protect the health and safety of an

individual.

- f. For purposes of this Administrative Order, “capacity limit” means occupancy limits based on the amount of net occupiable space – which excludes built-in furnishings – necessary to maintain physical distancing of six feet between individuals. The capacity limits can be roughly determined by dividing the square footage in a particular area by half and then dividing that number by 36. This rough capacity number may also need to be reduced due to the layout of the furniture when adhering to the guidance of maintaining physical distancing of six feet between individuals. The capacity limits must be posted outside those areas. Courts may not exceed capacity limits for a courtroom, unless a judge in an individual case finds good cause to modify the capacity limits.
  - i. Permissible modifications to capacity limits include, but are not limited to:
    - allowing occupants to sit closer than six feet apart, without adding additional occupants to the room;
    - allowing in-person interpreters, or in-person media pool coverage;
    - allowing a victim to attend in person.
  - ii. Permissible modifications to capacity limits do not include:
    - permitting large gatherings in the courtroom that exceed capacity limits and for which multiple cases and parties are scheduled together for in person appearances;
    - convening large gatherings that exceed capacity limits for purposes of selecting a jury.
- g. When an interpreter is needed, the court should first consider allowing remote interpretation in order to facilitate physical distancing. Remote equipment can include cell phones and headsets.
- h. Courts should encourage patrons and require personnel to frequently wash their hands to prevent the spread of COVID-19. Hand sanitizer with at least 60% alcohol content may be used when frequent hand-washing is not feasible. Courts must stock all restrooms with the materials necessary for hand-washing, and courts must provide hand sanitizer near high use touch points and areas where court personnel interact with court patrons. Courts must certify that hand sanitizer, soap, and towels are available and will continue to be available.
- i. Courts must clean high use touch points throughout the courthouse on a regular basis.
- j. Meetings may be conducted in person, but a meeting that is a large gathering must be approved by the Trial Court Executive (TCE) for the district, the court level administrator, or the state court administrator. Before approving a large gathering meeting, the person approving the large gathering should consider whether participants could physically distance, whether the room has good ventilation, the duration of the meeting, and whether individuals who are high risk under CDC guidelines can attend

remotely if desired.

- k. Court employees should check for COVID-19 symptoms each day and should not enter the courthouse if the employee has symptoms of COVID-19 that are not explained by other conditions. If an employee, within the last 10 days, tested positive for COVID-19 or was exposed to someone who tested positive for COVID-19, the employee shall report the test or exposure to their supervisor and must follow CDC guidelines for isolation, quarantine and masks.
  - l. Presiding judges may issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Administrative Order. Orders issued by presiding judges or individual judges before the effective date of this Administrative Order that are consistent with this Administrative Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Administrative Order.
3. All courthouses shall remain open during regular business hours. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails, and other communications during regular business hours. Individuals who do not have access to e-filing may file documents by email in any pending case.
  4. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.
  5. A juvenile probation department shall follow the Probation Operations Guidelines adopted by the Management Committee.

### **Supreme Court Order for Temporary Rule Modifications**

The Utah Supreme Court adopts the following temporary rule modifications.

#### **Orders Applicable to All Courts**

6. Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to

meaningfully interact with counsel of record in real time. “Trial participants” is defined to include the judge and testifying witnesses. The defendant’s waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.

7. The calculation of time for determining juror terms of availability under rule 4- 404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.
8. Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.

### **Orders Applicable to District Courts**

#### ***Criminal Cases***

9. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution’s consent in other cases. The parties’ consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

#### ***Civil Cases***

10. Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council

### **Orders Applicable to Juvenile Courts**

11. Any child welfare, delinquency, or protective order timeline may be extended by the

court.

12. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

**Orders Applicable to Justice Courts**

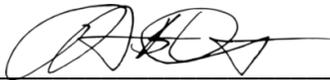
13. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.
14. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

**Order Subject to Amendment**

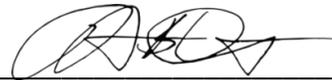
15. This Order may be amended at any time to respond to changed conditions.

DATED this 11<sup>th</sup> day of April, 2022 \_\_\_\_\_

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MATTHEW B. DURRANT  
Presiding Officer, Utah Judicial Council



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MATTHEW B. DURRANT  
Chief Justice, Utah Supreme Court