

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order

2021-PR-048

FILED

May 24, 2021

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

District and Appellate Courts Operations as of June 1, 2021

Kansas district and appellate courts are operating under Administrative Orders issued in response to the novel coronavirus (COVID-19) pandemic. This order is the latest in a series updating district and appellate court operating requirements and judicial branch policies related to COVID-19.

This order is entered to protect the health and safety of court users, staff, and judicial officers of Kansas district and appellate courts and to ensure Kansas courts remain open and able to carry out the core, constitutional functions of the Kansas judiciary.

This order is entered as approved COVID-19 vaccine availability increases while local COVID-19 infection levels fluctuate throughout Kansas. Even as approved COVID-19 vaccines become readily accessible in Kansas communities, courts should continue to utilize precautionary measures as necessary so as not to undermine public confidence in the courts and damage the integrity of trial by jury, a cornerstone of our justice system.

Section A: Minimum Standard Health Protocols

1. Subject only to constitutional limitations, all district and appellate courts in Kansas must develop and follow minimum standard health protocols to avoid exposing court users, staff, and judicial officers to COVID-19. Courts must establish COVID-19 screening and communication protocols including supplemental screening questions for juror questionnaires. Courts must also consider whether physical distancing and mask usage are necessary based on local conditions.
2. The following people are responsible for developing and communicating minimum standard health protocols:
 - The chief judge of a judicial district for each of the 31 judicial districts;
 - The chief judge of the Court of Appeals for Court of Appeals proceedings; and
 - The chief justice of the Supreme Court for the Kansas Judicial Center, Kansas Supreme Court, and Offices of the Kansas Lawyers Assistance Program and Disciplinary Administrator.

3. Minimum standard health protocols must comply with:
 - Orders of the Supreme Court and Chief Justice, including this order; and
 - any applicable order or guidance from local public health officials.

If provisions in this bulleted list conflict, the court must follow the most restrictive provisions. If more specific direction is provided in this order, this order controls.

4. In developing minimum standard health protocols, Kansas district and appellate courts should consult any applicable guidelines from:
 - The Centers for Disease Control and Prevention;
 - The Occupational Safety and Health Administration;
 - The Kansas Department of Health and Environment; and
 - The Supreme Court's Guidance for Developing Minimum Standard Health Protocols.

Section B: Remote Hearings

5. Courts should continue expanding the use of remote hearings as much as possible to reduce any backlog, and to dispose of new cases efficiently and safely. All remote hearings must comply with 2021-PR-021. Courts should consider all virtual courtroom standards and guidance posted on the Kansas judicial branch website and any updates that follow. When standards or guidelines and related updates are issued, it will be announced on the Kansas judicial branch website and communicated to chief judges.
6. Subject to constitutional limitations, upon request and good cause shown by a court participant other than a juror—including a party, an attorney, or a witness—a court must permit that participant to participate remotely in any proceeding. A request stating the participant, or a person in the participant's immediate household or care, has an increased risk for severe illness if they contract COVID-19 constitutes presumptive good cause. If remote participation is not possible, absent constitutional or statutory concerns, the court should consider postponing their required presence at the court facility.

Section C: Jury Trials

7. Many judicial districts have resumed jury trials and many more plan to in the upcoming days. Before resuming jury trials, the chief judge must consult with the head of the local public health department or his or her designee and develop a written plan for how to conduct jury proceedings given local risk and the facilities available. Chief judges should also consult the Supreme Court Guidance Regarding Conducting Jury Proceedings (formerly the "Supreme Court Mandates and Guidance Regarding Resuming Jury Proceedings").
8. Chief judges must submit plans and any plan amendments to the Office of Judicial Administration. The Office of Judicial Administration will no longer approve jury plans but will provide guidance upon request. Chief judges are responsible for communicating plans and plan amendments to court users, staff, and judicial officers.
9. Juror questionnaires must include a supplemental screening portion that relates to the venire member's health conditions, health conditions of persons in the venire member's immediate household or care, contact with COVID-19 positive individuals, and travel that may preclude jury service.
10. Judges should consider juror deferral and excusal requests based on COVID-19 vulnerabilities or other COVID-19 concerns on an individualized basis.
11. Any district court operating under a Supreme Court Administrative Order authorizing a temporary alternative location for court proceedings under K.S.A. 20-347 may continue holding proceedings consistent with this order in the approved temporary alternative sites under updated jury plans without further order of this court.

Section D: Media and Public Access

12. All courts must determine how to provide public and media access to court proceedings while complying with minimum standard health protocols.
13. Due to public health and safety concerns, some courts are using court-initiated livestreams to provide public and media access to court proceedings. While Supreme Court Rules 1001 and 1002 address use of electronic devices by those who are physically present in a courtroom or court facility, those rules do not address court-initiated livestreams. By this order, the following rules apply to court-initiated livestreamed judicial proceedings:

- When public access to a proceeding is via livestream, a hearing should convene publicly in open court with the livestream activated.
- If a party requests to limit public access to the hearing because of extremely sensitive or confidential information, such as trade secrets, the motion must be on the record prior to the admission of the extremely sensitive or confidential evidence. The movant must describe the evidence in question and clearly identify the overriding interest that will be prejudiced if the evidence is publicly presented. The court should obtain the agreement or objection to the request of all counsel and self-represented litigants on the record. If the court grants the motion or sua sponte closes a proceeding, findings justifying closing a proceeding should be made on the record.
- Courts must take steps to protect against audio pickup of attorney-client privileged communications.
- No electronic communication of a court proceeding, except any recording of the proceeding created by the court or its personnel for the purpose of creating a record, will affect the official court record of the proceeding for purposes of appeal or otherwise.

Section E: Court Personnel

14. All district and appellate courts must follow COVID-19 specific personnel policies in addition to the Kansas Court Personnel Rules. These policies are available from the Office of Judicial Administration.
15. Prior restrictions on actions performed by court services officers may resume as authorized by the chief judge under measures to prevent the spread of COVID-19.

Section F: Effective Date and Interaction With Other Administrative Orders

16. To allow chief judges time to develop minimum standard health protocols, this order is effective June 1, 2021.
17. This order supersedes and rescinds the following COVID-19 related administrative orders as obsolete:
 - 2020-PR-124, requiring masks in district and appellate courts; and
 - 2020-PR-123, district and appellate court operations as of December 1, 2020.

18. If a conflict exists between this order and previous orders, this order controls.
19. This order does not affect any provisions in prior orders issued by the Chief Justice related to 2020 House Substitute for Senate Bill 102, and its amendments.

Dated this 24th day of May 2021. This order is effective June 1, 2021.

FOR THE COURT

A handwritten signature in blue ink that reads "Marla Luckert". The signature is written in a cursive, flowing style.

MARLA LUCKERT
Chief Justice