IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: AUTHORIZING LIMITATION OF COURT OPERATIONS DURING A PUBLIC HEALTH EMERGENCY AND TRANSITION TO RESUMPTION OF CERTAIN OPERATIONS	Administrative Order No. 2020 - 177 (Replacing Administrative Order No. 2020-143)

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide public health emergency on March 11, 2020 pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). Since March 18, 2020, several administrative orders have been issued in response to the COVID-19 public health threat that limited and modified court operations to ensure justice in Arizona is administered safely. The most recent such order, Administrative Order No. 2020-143 issued on August 26, 2020, directed Arizona's courts to continue to conduct business in a manner that reduced the risks associated with COVID-19 but to resume certain operations in an orderly way that prioritizes the safety of the public, judicial officers, and employees of the judiciary. This order updates and continues the effect of that order.

For the purposes of this order, the term "judicial leadership" refers, as applicable, to the chief judge of the court of appeals, the presiding superior court judge, the Presiding Justice of the Peace in Maricopa County, the Chief Administrative Justice of the Peace of the Pima County Consolidated Justice Court, the presiding judge of a municipal court that has multiple judges, or, for other limited jurisdiction courts that have only one judge, the judge of such court.

Arizona courts remain open to serve the public. Nevertheless, given the ongoing threat to public safety, certain limitations and changes in court practices and operations are still necessary. These changes will occur in phases consistent with this order and the Standards in Attachment A.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that all Arizona Courts and the office of the presiding disciplinary judge may continue transitioning to in-person proceedings to the extent this can be safely accomplished.

IT IS FURTHER ORDERED that presiding superior court judges continue to meet with local criminal justice system stakeholders to coordinate how best to handle the phasing-in of normal procedures in criminal proceedings, including resuming petit and grand jury proceedings.

IT IS FURTHER ORDERED that presiding superior court judges shall determine for the courts in their respective counties how in-person court proceedings and courthouse activities are to be phased-in and conducted, consistent with this order, in a manner that protects the health and safety of all participants. The chief judge of each court of appeals division shall determine how in-person court proceedings are to be phased-in and conducted.

IT IS FURTHER ORDERED that:

I. TO PROTECT COURTHOUSE SAFETY:

1. The presiding superior court judge of each county and the chief judge of each division of the court of appeals is authorized to adopt or suspend any local rule or order as needed to address the current public health emergency in cooperation with public health officials and to take any reasonable action that circumstances require to enable necessary operations of the Court of Appeals (COA) in each division and the superior, justice and municipal courts in each county.

2. Except where the number of judicial officers and court employees or other constraints will not allow, judicial leadership shall implement a staffing plan, which may include dividing judicial officers and employees into two or more teams or using other methods to prevent all or a substantial portion of judicial officers and court employees from becoming infected or requiring quarantine at the same time due to work-related contact. The presiding superior court judge may exempt judicial officers and court employees who perform critical court functions from this provision if there is no practical alternative.

3. Courts should modify operations to limit the number of transportation events to necessary in-court hearings for individuals in custody or receiving services pursuant to court order, including combining hearings subject to maximum gathering size required by this order, and to minimize mixing of populations to eliminate avoidable quarantines when such individuals are returned to custody following court hearings.

4. Rule 10.2, Rules of Criminal Procedure; Rule 42.1, Rules of Civil Procedure; Rule 2(B), Rules of Procedure for Juvenile Court; Rule 6, Rules of Family Law Procedure; Rule 133(d), Justice Court Rules of Civil Procedure; Rule 9(c), Rules of Procedure for Eviction Actions; and any local rule that provides litigants with a change of judge as a matter of right are suspended until-further order to reduce the risk of virus exposure inherent in out-of-county judges' travel, and to ensure adequate judicial resources for backlog reduction.

5. Judicial leadership shall adopt practices following the gathering size and social distancing standards in Attachment A, considering the size of the courtrooms and other spaces where people gather in and around the courthouse. Until Phase II, depending on the size of the facility, and with appropriate precautions, courts may authorize a maximum of 30 persons. A court should not schedule in-person multiple, simultaneous proceedings that are inconsistent with these standards. In extraordinary circumstances, the presiding superior court judge may authorize more than 30 persons to gather in one location to conduct court business based on social distancing recommendations and the space available at the location. Courts should coordinate with law enforcement to require staggered citation appearance times.

6. Judicial leadership must require all participants in court proceedings, including attorneys, parties, victims, witnesses, jurors, judicial officers, court employees, and other necessary persons to notify the court prior to appearing at the courthouse of any COVID-19 diagnosis, symptoms, or exposure notification by public health authorities and to make alternative arrangements to participate.

7. Until Phase III, judicial leadership should limit any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, judicial officers, court employees, and other necessary persons, where necessary to maintain the recommended social distancing within the courthouse, including each courtroom. On request, judicial leadership should authorize admission of a media observer or a representative of a media pool to in-person proceedings to the extent possible considering social distancing requirements and courtroom space limitations. The judicial officer in each proceeding is authorized to make reasonable orders to ensure the health and safety of hearing participants consistent with the parties' right to due process of law.

8. Judicial officers shall liberally grant continuances and make accommodations, if necessary and possible, for attorneys, parties, victims, witnesses, jurors, and others with business before the courts who are at a high risk of illness from COVID-19 or who report any COVID-19 diagnosis, symptoms, or exposure notification by public health authorities.

9. The Administrative Office of the Courts shall provide judicial leadership with a health screening protocol for judicial officers and court employees used to detect COVID-19-related symptoms consistent with recommendations by public health officials to prevent the spread of the virus. Judicial leadership shall implement this protocol and require judicial officers and court employees to wear their own or court-provided masks, face coverings, or face shields

when having any in-person contact with judicial officers, court employees, or the public, or as allowed by section I(11) of this order.

10. The Administrative Office of the Courts shall provide judicial leadership with a health screening protocol for the public used to detect COVID-19-related symptoms consistent with recommendations by public health officials to prevent the spread of the virus. Judicial leadership shall implement this protocol. Where courthouse entrance security screening is available, the COVID-19 screening protocol may require body temperature screening for the public. Judicial leadership shall require court participants and visitors to wear a mask or other face covering in the courthouse. Courts may provide the required face covering for use by persons who do not have their own. Courts shall exclude persons from the courthouse who refuse to cooperate with or who do not pass established screening protocols or refuse to wear a mask or other face covering. Judicial leadership shall post these requirements at entrances and on their public website.

11. During in-courtroom proceedings, the judicial officer may authorize removal of masks or face coverings for purposes of witness testimony, defendant identification, making an appropriate record, or other reasons as deemed necessary by the judicial officer; provided that appropriate social distancing or other protective measures are followed.

12. Judicial leadership should establish and implement social distancing and sanitation measures established by the United States Department of Labor and the CDC.

II. TO USE TECHNOLOGY TO MINIMIZE IN-PERSON PROCEEDINGS:

1. Proceedings in all Arizona appellate, superior, justice, juvenile, and municipal courts and before the presiding disciplinary judge may be held by teleconferencing or video conferencing, consistent with core constitutional rights.

2. During Phases I and II, judicial leadership should limit in-person contact in the conduct of court business as much as possible by using available technologies, including alternative means of filing, teleconferencing, video conferencing, and use of email and text messages to reasonably ensure the health and safety of all participants.

3. Judicial officers may hold ex parte and contested hearings on orders of protection electronically.

4. Judicial leadership may authorize the use of available online dispute resolution (ODR) platforms to resolve cases.

5. Judicial leadership may authorize the use of electronic, digital, or other means regularly used in court proceedings to create a verbatim record, except in grand jury proceedings.

6. When court proceedings are not held in-person or the public is limited from attending in-person proceedings, the presiding superior court judge shall provide public access by video or audio to civil and criminal court proceedings typically open to the public to maximize the public's ability to observe court proceedings to the extent logistically possible. The presiding superior court judge or single judge of a limited jurisdiction court should make video or audio proceedings, excluding small claims cases, available to the public to the greatest extent possible. The presiding superior court judge should also list the public availability of video and audio proceedings on the AZCourt site.

7. The 100-mile distance requirement for a limited jurisdiction court to accept a telephonic plea under Rule 17.1(f) of the Rules of Criminal Procedure is suspended through December 31, 2020.

8. Clerks may attend court proceedings by teleconferencing or video conferencing to comply with A.R.S. § 12-283(A)(1).

9. Arizona Revised Statutes, Title 36, Chapter 5 matters are confidential and not open to persons other than the parties, witnesses, their respective counsel, and additional persons the court permits to attend. When these proceedings are not conducted in-person, judicial leadership must use technology in a manner that protects the patient's rights to privacy and confidentiality.

10. The judicial officer in each proceeding conducted using video-conferencing may limit and permit recording as appropriate to apply the policies provided in Rule 122, Rules of the Supreme Court, to those proceedings.

11. When conducting virtual hearings, courts may establish procedures to collect the defendant's fingerprint, or to otherwise establish the defendants identity as an alternative means of complying with the procedures required by A.R.S. § 13-607 and Rule 26.10 of the Rules of Criminal Procedure.

III. TO CALCULATE TIME CONSIDERING THE EMERGENCY:

1. The period of March 18, 2020 through November 1, 2020 is excluded from calculation of time under rule provisions and statutory procedures that require

court proceedings to be held within a specific period of time, including Rule 8, Rules of Criminal Procedure; Rules 17, 25, 79 and 100, Rules of Procedure for the Juvenile Court; Rules 2, 3, 11(c) and 15, Rules of Procedure for Eviction Actions; and Rule 38.1(d)(2), Rules of Civil Procedure. After November 1, 2020 and notwithstanding Rules 8.1(e) and 8.4(a)(4), the presiding superior court judge may exclude additional time from individual cases or groups of cases due to trial calendar congestion or, at the request of the trial judge, due to extraordinary circumstances caused by COVID-19 public health emergency.

2. The time for conducting preliminary hearings for in-custody defendants under Rule 5.1(a) and (d) and probation revocation arraignments under Rule 27.8 (a)(1), Rules of Criminal Procedure is extended to twenty (20) days from an initial appearance that occurs through November 1, 2020.

3. Through November 1, 2020, notwithstanding Rule 6 (b)(2), Rules of Civil Procedure, in an individual case, the court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c), and (d), and 60(c) as those rules allow, or alternatively, may extend the time to act under those rules for 30 days upon a showing of good cause.

4. The following are not excluded from calculations of time:

   (a) For persons held in-custody: initial appearances, arraignments, preliminary hearings, in-custody probation violation, and conditions of release;
   (b) Domestic violence protective proceedings and injunctions;
   (c) Child protection temporary custody proceedings;
   (d) Court-ordered evaluation and treatment proceedings under Title 36, A.R.S.;
   (e) Appointment of a temporary guardian or temporary conservator;
   (f) Habeas corpus proceedings;
   (g) COVID-19 public health emergency proceedings;
   (h) Juvenile detention hearings;
   (i) Election cases; and
   (j) Any other proceeding that is necessary to determine whether to grant emergency relief.

5. For the period of March 18, 2020 through November 1, 2020, if a judicial officer is unable to rule on a pending matter due to the judicial officer's illness or is otherwise unable to work, the judicial officer is deemed to be physically disabled, and the period of time the judicial officer is ill or unable to work is excluded from the calculation of the 60 days from the date of submission in which a matter must be determined under A.R.S. § 12-128.01 or § 11-424.02.

IV. TO APPROPRIATELY PRIORITIZE CASE PROCESSING:

1. Constitutional and statutory priorities for cases continue to apply unless otherwise waived.

2. For cases where the right to a jury trial has not been waived, but where the availability of courthouse facilities, judicial officers or court employees require prioritization and recognizing that constitutional and statutory priorities govern for specific issues raised in a specific case, trials shall be scheduled in the following order of priority:
   (a) Criminal felony and misdemeanor cases, where the defendant is in custody;
   (b) Sexually violent person cases;
   (c) Criminal felony cases, where the defendant is not in custody;
   (d) Criminal misdemeanor cases, where the defendant is not in custody; and
   (e) Civil and any other jury trial cases.

3. Recognizing that the priority required by the regular calculation of time for the proceedings listed in section III(4) applies first, where the limited availability of courthouse facilities, judicial officers, or court employees require prioritization, court proceedings shall be scheduled in the following order of priority:

   (a) In superior court:
      (1) Juvenile;
      (2) Criminal;
      (3) Evaluation and treatment (under chapter 5, title 36, A.R.S.);
      (4) Family (involving minor children);
      (5) Family (not involving minor children);
      (6) Probate (under chapter 5, title 14, A.R.S.), subject to paragraph 5 below;
      (7) Civil;
      (8) General Probate; and
      (9) Tax and Administrative cases.

   (b) In justice and municipal courts:
      (1) Juvenile;
      (2) Criminal misdemeanors;
      (3) Other criminal;
      (4) Residential eviction;
      (5) Civil traffic;
      (6) Civil; and
      (7) Small claims.

4. Where backlogs exist, judicial leadership should expand case disposition capacity, including calling back retired judges, using judges pro tempore and temporarily reassigning judges from other assignments.

5. The superior court shall give priority to cases in which the appointment of a guardian under title 14, A.R.S. has been requested for an incapacitated person whom a healthcare institution has determined is medically appropriate for discharge from that healthcare institution. For purposes of this paragraph, 'healthcare institution' has the same meaning as prescribed in A.R.S. § 36-401(22).

V. TO SAFELY PROVIDE FOR JURY TRIALS AND GRAND JURIES:

1. Trials of cases to a jury may resume when Arizona enters Phase I. When considering when and how to restart jury trials, courts should consult the guidance provided in the Arizona Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency.

2. The presiding superior court judge in each county should determine when jury trials can safely begin, taking into consideration the physical space of individual courthouses and courtrooms and the public health threat in the county. Judicial leadership shall employ appropriate social distancing and other measures necessary for the protection of jurors and the general public and shall post on court websites a schedule and information describing the protective measures taken.

3. Until further order, to reduce the number of citizens summoned to jury duty, procedural rules (including Rule 18.4(c), Rules of Criminal Procedure; Rule 47(e), Rules of Civil Procedure; Rule 134(a)(1), Justice Court Rules of Civil Procedure; and Rule 12, Rules of Procedure for Eviction Actions) are modified to afford litigants only two peremptory strikes for potential jurors per side in all civil and felony cases tried in the superior court, and one peremptory strike per side in all misdemeanor cases, and all civil cases tried in limited jurisdiction courts. This provision does not apply to capital murder cases.

4. To accommodate social distancing standards, courts may stagger times for prospective jurors to report for jury duty, direct them to individual courtrooms rather than jury assembly rooms, and conduct voir dire remotely or in multiple groups. At the direction of the presiding superior court judge, more than 30 prospective jurors may be summoned to a courthouse and non-courthouse facilities provided social distancing standards can be accommodated.

5. Judicial leadership may authorize the use of technology to facilitate alternatives to in-person appearance for selecting grand and petit jurors and for conducting grand jury proceedings, and with the permission of the presiding superior court judge, for jury trials.

6. As required by A.R.S. § 21-202(b)(2), jury commissioners must temporarily excuse prospective jurors whose jury service would substantially and materially affect the public welfare in an adverse manner, including but not limited to those who report a COVID-19 diagnosis, symptoms, or notification by a public health official of exposure to COVID-19 and may temporarily excuse potential jurors who are highly vulnerable to COVID-19.

7. The presiding superior court judge in coordination with the county attorney in each county may determine when grand juries can be resumed in a safe manner with proper social distancing. Grand jury selection may be conducted in-person by staggering the appearance of prospective jurors or remotely by use of technology. The presiding superior court judge may authorize grand jury proceedings to be held by video-conferencing.

IN GENERAL:

1. Court offices shall remain accessible to the public by telephone and email during their regular business hours to the greatest extent possible, including using drop boxes for documents.

2. During this period of reduced operations, courts and court clerks shall make reasonable efforts to provide alternative methods of accessing court records.

3. Probation officers are authorized to use social distancing and technology of all types to supervise those on criminal and juvenile probation, including, where appropriate, for contacts with such individuals.

4. Clerks of the court shall continue to issue marriage licenses and may do so remotely if the available technology allows licenses to be properly issued.

5. A judge may perform a marriage ceremony at the courthouse with no more than 10 persons present with proper social distancing and may perform a marriage ceremony in the electronic presence of the couple and witnesses at the parties' request.

6. The Administrative Office of the Courts may use technology to ensure social distancing for its operations, including the Court Appointed Special Advocate program, the Foster Care Review Boards program, and the Certification and

Licensing programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.

7. Limited jurisdiction judicial leadership may issue orders as necessary to implement the provisions of this order and take actions consistent with this order and orders issued by their presiding superior court judge.

8. Judicial leadership must notify court customers, the public, and the Administrative Director of all administrative orders issued under the authorization provided by this order using the most effective means available.

9. Judicial leadership must provide information regarding court access and operations in both English and Spanish.

10. The presiding superior court judge of a county and the judicial officers and court employees in leadership in the limited jurisdiction courts in the county shall periodically meet to coordinate county-wide court activities impacted by the current COVID-19 crisis. Attendance at such properly scheduled meetings is mandatory unless excused by the presiding superior court judge.

Dated this 18th day of November, 2020.

FOR THE COURT:

ROBERT BRUTINEL
Chief Justice

ATTACHMENT A

Standards for Resumption of On-site Court Operations During a Public Health Emergency

In planning for a phased resumption of on-site court operations, courts[1] must consider the following factors:

1. The status of the pandemic in each local court jurisdiction;
2. The size and functionality of courthouse facilities, both in terms of courtrooms and other public meeting areas; and
3. The size of the bench and supporting court staff.

The timing of the phases will be largely determined by Arizona specific directives. The Administrative Director will notify the judicial leadership of the current phase. Taking these factors into account, local courts should systematically resume on-site operations as follows:

Phase Zero: Due to the statewide public health emergency, all in-person court proceedings should be avoided to the greatest extent possible, consistent with constitutional rights.

- Courts should follow CDC social distancing guidelines and limit the number of persons at any court event to 10. Judicial leadership may authorize groups larger than 10, but not to exceed 30.
- The empaneling of new petit juries is suspended.
- In-person contact is to be limited through the use of virtual hearings (audio or video), electronic recording of court proceedings and electronic transmission of documents.
- Certain state and local court rules are suspended or amended to maximize public safety.
- Courts shall require masks or face coverings to be worn in the courthouse.

Phase I: Courts were authorized to begin on June 1, 2020 transitioning to in-person proceedings to the extent it could be safely accomplished in compliance with the following standards:

- Courthouse Safety:
    - Except where the size of the employees or other constraints will not allow, judicial leadership shall implement a staffing plan, which may include dividing employees and judicial officers into two or more teams or other methods to accomplish the goal of preventing all or a substantial portion of court employees and judicial officers from becoming infected or requiring quarantine at the same time due to work related contact. The presiding superior court judge may exempt

[1] In this attachment, courts include Arizona courts, Office of the Presiding Disciplinary Judge, and Court of Appeals.

employees and judicial officers who perform critical court functions from this provision if there is no practical alternative.

- Judicial leadership shall limit any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, judicial officers, court employees, and other necessary persons.
- Judicial leadership should modify operations to limit the number of transportation events to necessary in-court hearings for individuals in custody.
- Courts should limit the number of persons at any court event to 30 people depending on the size of the facility and with appropriate precautions. In extraordinary circumstances, the presiding superior court judge may authorize more than 30 people to gather in one location to conduct court business based on social distancing recommendations and the space available at the location.
- Courts shall utilize the health screening protocols provided by the AOC.
- Courts shall require masks or face coverings to be worn in the courthouse.
- Courts shall exclude persons failing the screening protocol from entry to the courthouse.
- Rules which provide litigants a change of judge as a matter of right are suspended until December 31, 2020.
- Courts shall exclude persons failing the screening protocol from entry to the courthouse and attempt to make alternative arrangements for them to conduct court business. If an excluded person is attempting to attend a scheduled court proceeding, the appropriate court shall be notified of the person's inability to enter the courthouse.

- Technology
  - Courts shall continue the use of virtual hearings, electronic recording and electronic transmission of documents.
  - Courts shall provide public access by video or audio to court proceedings which are typically open to the public, specifically for the case types designated in this Administrative Order.
  - Courts shall consider and encourage the use of on-line dispute resolution (ODR).
- Appropriately Prioritize Case Processing
  - Courts shall follow the prioritization of case types, both for jury and non-jury cases.

- Courts shall expand case disposition capacity, using retired judges and judges pro tempore and temporarily reassigning judges from other assignments.

- Jury Trials and Grand Juries
  - Jury trials may resume, subject to the approval of the presiding superior court judge.
  - Courts shall utilize appropriate social distancing and measures necessary for the protection of jurors, including the use of technology for virtual selection of petit and grand jurors and conducting of grand jury proceedings and, with the approval of the presiding superior court judge, for jury trials.
  - The presiding superior court judge may determine when grand juries can be resumed.
- In General
  - Courts shall provide for the use of drop boxes for filing documents.

Phase II: Scheduling of in-person court proceedings can resume, while limiting the projected number of courthouse visitors during peak times.

- Courthouse Safety
  - On-site court staffing should systematically increase during Phase II, as necessary to serve the increased number of visitors at the courthouse. Except where the number of judicial officers and court employees or other constraints will not allow, judicial leadership shall implement a staffing plan, which may include dividing judicial officers and court employees into two or more teams or using other methods to prevent all or a substantial portion of judicial officers and court employees from becoming infected or requiring quarantine at the same time due to work-related contact. The presiding superior court judge may exempt judicial officers and court employees who perform critical court functions from this provision if there is no practical alternative.
  - Courts should limit the number of persons at any court event to 50 people depending on the size of the facility and with appropriate precautions. In extraordinary circumstances, the presiding superior court judge may authorize more than 50 people to gather in one location to conduct court business based on social distancing recommendations and the space available at the location.
  - Courts shall utilize the health screening protocols provided by the AOC.
  - Courts shall require masks or face coverings to be worn in the courthouse.

- Courts shall exclude persons failing the screening protocol from entering the courthouse.

- Technology
  - The use of technology should continue, both to maximize public safety and to maximize efficiencies in court operations.
- Appropriately Prioritize Case Processing
  - Some courts may no longer have a need to expand case disposition capacity.
- The other Phase I provisions remain in effect during Phase II, specifically the sections of this Administrative Order regarding:
  - Jury Trials and Grand Juries
  - In General

Phase III: Scheduling of in-person court proceedings and other on-site court services can fully resume, while limiting the projected number of courthouse visitors during peak times.

- Courthouse Safety
  - On-site court staffing should be largely restored during this phase to serve the increased number of visitors at the courthouse. Courts may still opt to have some judicial officers and court employees continue working remotely. These judicial officers and court employees would be available for deployment to the courthouse in the event that on-site judicial officers and court employees become infected.
  - Courts should follow CDC social distancing guidelines and limit the number of persons at any court event accordingly.
- Technology
  - The use of technology should continue, both to maximize public safety and to achieve efficiencies in court operations.
- Jury Trials and Grand Juries
  - Courts should continue to employ appropriate social distancing and other measures necessary for the protection of jurors, including the use of technology for virtual selection of petit and grand jurors and conducting of grand jury proceedings and, with the approval of the presiding superior court judge, for jury trials.
- In General
  - Courts shall provide for the use of drop boxes for filing documents.

Phase IV: Return to normal operations – no restrictions.