

A Guide to West Virginia Courts' Resumption of Operations after Covid-19 Judicial Emergency

Thomas J. Hurney, Jr., Jackson Kelly PLLC

On May 6, 2020, the Supreme Court of Appeals of West Virginia declared the end of the Covid-19 related Judicial Emergency which began on March 23, 2020, by entering a "Resumption of Operations" order which included "Covid-19 Resumption of Operations Protocols." This order is the last in a series of orders entered by the Court starting in early March to deal with the public health crisis.

Date	Title (linked to order)	Time Period
March 12, 2020	Covid-19 Planning Document	
March 16, 2020	Administrative Order	
March 22, 2020	Judicial Emergency Declared	March 23 to April 10
April 3, 2020	Judicial Emergency Declared – Amended Order	March 23 to May 1
April 22, 2020	Judicial Emergency Declared – Second Amended Order	March 23 to May 15
April 24, 2020	Temporary Order Regarding Civil Litigation and Rules of Civil Procedure in Circuit Court, Docket No. 20-Rules-04	April 24 to May 15
May 6, 2020	Resumption of Operations	May 15, 2020

The last two orders – April 22 and April 24 – were in effect until May 15, 2020 when the judicial emergency expired, and the Resumption of Operations Protocols went into effect.

Under the Resumption of Operations Protocols, counties are now either "Green" or "Hot Spot" counties. The "Hot Spot" designation is consistent with the West Virginia Department of Health and Human Resources ("DHHR") County Classification System. When the protocols were issued, Harrison, Marion, Monongalia, Berkeley, and Jefferson were designated "Hot Spot" Counties. But on May 18, the Court's updated map showed *all* West Virginia counties as "Green."

Trials, proceedings and grand jury proceedings start in "Green" Counties as follows:

Type of Proceeding	Commence Date
In-person hearings or proceedings	May 18, 2020
Grand Jury proceedings	June 15, 2020
Jury Trials	June 29, 2020

When a county changes from “Hot Spot” to “Green,” these deadlines occur seven days after the change. The court intends to issue a weekly map designating “Green” or “Hot Spot” Counties based on (“DHHR”) County Classification System designations.

All proceedings and deadlines stayed due to the COVID-19 crisis except for “emergency proceedings” authorized in the April 22 order remain stayed until **May 15**. Other deadlines and limitation periods previously stayed are lifted in stages, unless otherwise ordered by the presiding judicial officer, as follows:

Limitation Period	Expiration Date	New Expiration Date
Statutes of Limitations and Statutes of Repose	Between March 23, 2020, and May 15, 2020	May 18, 2020
Deadlines set forth in court rules, statutes, ordinances, administrative, rules, scheduling orders, or otherwise.	Expired between March 23, 2020, and April 17, 2020	May 29, 2020
Deadlines set forth in court rules, statutes, ordinances, administrative, rules, scheduling orders, or otherwise.	Between April 18, 2020 and May 15, 2020	June 12, 2020
Deadlines created by, or in response to, the Court's April 24, 2020 order	N/A	Not affected
Non-emergency, in-person proceedings	Scheduled between March 23, 2020, and May 15, 2020	Rescheduled on or after May 18, 2020

Circuit courts should continue to “utilize available technology to limit person-to-person contact whenever possible, unless otherwise directed” and to use “remote technology to conduct hearings and proceedings” but in “Green” Counties, judges are *permitted* to use remote technology; in “Hot Spot” Counties, it is *required*. State or local rules that limit or preclude a judge or clerk’s ability to use remote technology are suspended (as long as the use does not infringe on the constitutional rights of a party or litigant). The protocols are meant to establish minimum standards; counties are empowered to take additional steps if recommended by local health authorities and encouraged close collaboration among local officials.

The Human Resource section of the protocols provides extensive details for workplace precautions – sanitation and hand washing, social distancing and use of video technology, appropriate use of masks and gloves, remote work - and provides flexibility in using remote work and dealing with employees affected by community efforts to stop Covid-19, such as child care issues due to school closings. Employees with illness or symptoms cannot return to work until they have quarantined for fourteen days and produce a negative test.

The Court Operations protocols similarly contain detailed directions so that all judicial offices and court spaces be “thoroughly disinfected” and provide for ongoing cleaning before and after proceedings.

“Call dockets” where multiple matters are set at one time are prohibited and judges are instructed to schedule their dockets to minimize waiting time and traffic in court areas. The protocols suggest as possible solutions having counsel wait in cars for a call from the judicial assistant that they are “next up”, having judges alternate hearing days or designate waiting areas with safe social distancing. Public access is to be limited in the least restrictive means possible.

Where in court proceedings are held, parties and counsel are to be *spread out* and *movement is to be limited* to assure social distancing. All *may* be required to *use hand sanitizer* upon entry and *must wear masks*, although the judicial officer can direct removal while addressing the court or testifying. “The purpose of the mask or face-covering requirement is to reduce the risk of a person spreading the disease to protect Court and county employees, attorneys, parties, jurors, witnesses, and the public.” Consistent with recommendations from the CDC and from the Governor, “*any type of face covering sufficient to catch droplets leaving the nose and mouth, including homemade fabric masks or bandanas*, is appropriate. Medical masks or N95 masks are not required.” Courtrooms are to be marked with safe distances. Instructions on these requirements must be contained in all notices and summonses. Counsel are directed to inform clients and witnesses of the order’s requirements.

As to trials and grand jury proceedings, courts are instructed to “take appropriate steps to protect the health of jurors and potential jurors.” Large scale jury orientations “should not occur” until further order of the Court. “Instead, jurors should be called to the courthouse in manageable numbers where adequate social distancing measures can continue.” Jurors are permitted to wear self-provided masks and should be arranged in the courtroom so they can hear and observe but are not to be confined to jury boxes or required to sit within six feet of any other person. Judges should give special consideration to a juror seeking relief from jury duty if the juror establishes that they are a “vulnerable individual.” Jury trials may be moved to alternative space to provide for appropriate social distancing. Judges are to consult local health departments about availability and use of appropriate protective equipment.

Parties, attorneys, witnesses, and jurors “should not come to court if they have a fever or other COVID-19 symptoms, or if they have been directly exposed to a suspected case of COVID-19.” Individuals are to contact the court or clerk for guidance. Judges are to be coordinate with County Commissions (the protocols note that the Court supports County Commissions’ efforts to with no contact thermometers) before entry).

Judges are directed to be flexible with “parties, attorneys or witnesses “adversely impacted by continued community efforts to stop the disease, such as extended school closures” and make reasonable efforts to accommodate the individual and support public health efforts. And “[e]ven when the period of judicial emergency is over, judges should continue to be flexible and proactive in managing their dockets.”

Counsel with civil cases in circuit court should carefully read the order and related protocols, particularly to ensure compliance with deadlines and requirements for court appearances.

West Virginia's federal courts also addressed the Covid-19 crisis.

Starting on March 23, the United States District Court for the Southern District of West Virginia issued general orders which cancelled jury trials, limited in person proceedings, and closed courthouses to the public through May 31. The court did not suspend any deadlines including statutes of limitation. According to the court's website, jury selection will resume on May 29, 2020, for "prospective jury service for the period beginning July 1, 2020, and ending September 30, 2020."

The Northern District did not issue an order which generally suspended hearings or trials. The court's website states "[t]he Court remains open and is conducting necessary judicial business, is accepting filings and responding to inquiries. Only essential staff are in our courthouses during business hours with most staff teleworking." The Chief Judge issued an initial order on March 10 limiting courthouse access. On March 20, the Chief Judge issued a Public Advisory which further limited courthouse access to the public and suspended the requirement of providing paper copies of electronically filed documents. The court otherwise directed:

All deadlines and scheduled hearings will remain in place unless the presiding judge in an individual case issues an order directing otherwise. Chambers will contact counsel to reschedule proceedings when appropriate. Statutes of limitation are not tolled. Electronic filing through CM/ECF will remain available, and self-represented litigants may deposit and date stamp papers for filing with the Court in the drop boxes at each point of holding Court between 8:00 a.m. and 5:00 p.m. Monday through Friday.

A March 30 order provided for the use of video technology to conduct proceedings in criminal cases, and Grand Jury proceedings were suspended by order dated April 20.