



**THIRD JUDICIAL CIRCUIT
OF MICHIGAN**

TIMOTHY M. KENNY
CHIEF JUDGE

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ADMINISTRATIVE ORDER 2020 – 11

**STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT**

**SUBJECT: Establish Parameters for Conducting In-Person Jury Proceedings
during the COVID-19 Pandemic**

This administrative order is issued in accordance with Michigan Supreme Court Administrative Order No. 2020-19, effective June 26, 2020. The purpose of this order is to establish parameters for conducting in-person jury proceedings during a pandemic.

The Court shall:

- Work in ongoing consultation with the local public health department to determine whether conducting each jury proceeding will create an excessive public health risk, by assessing the following metrics:
 - The 7-day average of daily percent positive test results for the county must be 10 percent or less.
 - The 7-day average of number of cases per day, per million people in the county must be 70 cases per million or less. If a county has a daily 7-day average of fewer than 20 cases, the criteria of 70 cases per million or less may not apply, depending on county population.
 - In addition to considering the number of cases per million and the percent positive test results, the Court's decision about whether to proceed with a jury trial must consider the following:
 - The percentage of cases in the county that are associated with localized outbreaks, such as nursing homes;
 - The number of deaths among county residents;
 - The proportion of emergency department visits for coronavirus-like symptoms for the Michigan Economic Recovery Council region;
 - The COVID hospitalization rates for the Michigan Economic Recovery Council region; and,
 - Whether there have been known COVID-19 cases associated within the court facility during the past 14 days, and if the building has evidence of ongoing transmission.

- Require everyone seeking to enter the courthouse to complete a health screening and to have on a CDC recommended face covering. It is insufficient to only wear a face shield or a gaiter.
- A jury trial may not commence if a determination is made that such a trial would create an excessive public health risk. Excessive public health risk means the risk of disease transmission that cannot be reasonably mitigated through implementation of the safety precautions provided here or otherwise recommended by the local public health department.
- Maximize the use of remote participation as much as possible for all other court proceedings within the courthouse on the days of jury proceedings.
- As Third Circuit Court locations are shared, multi-use facilities with office of other judicial and other government partners, the Court will not collect the names of everyone in the building when there is a jury trial. Judges will ensure that they have the names of all those involved in the jury trial proceedings. To collect names and contact information of anyone coming into the building is not practical or possible.
- If an attorney, party, or participant feels ill or has symptoms of illness, they must not appear in the Court. They must contact the judge's courtroom and advise they cannot appear for court.
- Adhere to the following checklist regarding risk mitigation measures.

Section 1. Stakeholders

The Court shall consult with all of the following stakeholders for planning and preparation prior to commencing each scheduled trial:

- Health Department
- Attorneys
- Sheriff or Court Security
- Facilities Maintenance
- Information Services and Technology
- County Clerk
- Courtroom Staff
- Other: (e.g. city/county offices that would be impacted by jury traffic)

Section 2. Physical Location

The Court has reviewed and determined the following physical specifications for on-site or off-site locations.

- For all jury trial activities, including selection, trial, and deliberations, the Court requires six-foot social distancing and face coverings consistent with the Return to Full Capacity [Guidance](#).
- Security needs have been met.
- If an off-site location is used, the Court will post notice of the off-site location for the public, but will not need to complete a separate LAO for places of holding court.
- The trial will be recorded according to [SCAO standards](#).
- The Court will adhere to ADA compliance.
- The layout of the room allows for: jurors to see witnesses; jurors to hear the proceedings; parties/attorneys to interact easily with jurors; and the judge to see all participants.

Section 3. Summoning Jurors

- Jurors will be summoned after the Chief Judge has given approval for the trial to go forward on the date requested.
- Panel selection will remain consistent with MCR 2.511.
- Communication addressing safety concerns, selection, and trial location will be provided to all prospective jurors.
- Courts will consider and grant any requests for excusals or deferrals because a juror or person residing with them may be considered high-risk for COVID-19.

Section 4. Jury Selection

- Jurors will be screened for COVID-19 symptoms in accordance with the protocols established in the Court's Return to Full Capacity Phased Plan. A juror that cannot pass the screening will not be allowed to enter the facility.
- Any jury selection held at the courthouse will be done in a room that can accommodate the number of potential jurors summoned for jury duty, either in bulk or by staggered reporting, with proper social distancing.
- Any jury selection held remotely via Zoom will be consented to by all the parties, if required¹. Additionally, all parties and potential jurors must be provided instructions for how to access the remote jury selection.
- Members of the courtroom jury panel will be provided face shields. During individual questioning by the court or counsel for the parties, potential jurors will lower their masks so their faces can be seen through the face shields.

Section 5. Jury Trial

The Court has determined processes for the following trial aspects:

- Sidebars at the bench must be five (5) minutes or less to ensure there is no close contact pursuant to the CDC guidelines.
- Everyone must put on gloves when they touch or handle an exhibit.
- To the degree possible, motions will be heard outside of times that jurors are reporting and present in the courtroom.
- The process for hearing motions or sidebars requires that the judge will either have the jurors leave the courtroom and return to the jury assembly area or another area where they may socially distance or the attorneys and judges will move to another location for the motions to be heard and ensure the proper record is made.
- The process for addressing a seated juror who does not pass the health screening or who becomes ill during the proceedings will be the juror will be excused as alternates have been selected.
- The process for juror breaks and refreshments will be escorted to the assembly room where there is adequate room for social distancing. Lunch is being provided by the Court.
- Other: (please list) Masks are to be worn by counsel for the parties at all times. A party may lower his/her mask for identification purposes.
- Witnesses shall wear face shields rather than masks when testifying.

¹ See [Remote Jury Trial Discussion Guide](#) for considerations.

Section 6. Jury Deliberations

[Select the ones that apply]

- Jury deliberations will be held in a private space at the off-site location.
- Jury deliberations will be held in the courtroom instead of the juror room.
Recording equipment in the courtroom will be turned off during deliberations.
- Jury deliberations will be held in a private space at the courthouse large enough to accommodate physical distancing.
- Other: (please list)

Section 7. Public Access

[Select the ones that apply]

- The public may view the proceeding in the courtroom or at the off-site location up to a maximum room capacity, adhering to six-foot social distancing measures and wearing face coverings.
 - If the location cannot accommodate public viewing, public access will be provided by other means as authorized by SCAO. Note: Please review MCR 8.115 and Administrative Order 1989-1 regarding live streaming of jurors or the jury selection process.
 - Other: (please list)
- Keep a record of all jury proceedings held that includes case number and date of jury proceeding, to submit to SCAO as requested.

Dated: October 13, 2020



Honorable Timothy M. Kenny, Chief Judge
Third Judicial Circuit of Michigan

Date Approved by SCAO: November 10, 2020