

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

Administrative Order

March 2, 2022

2022-PR-014

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

District and Appellate Courts Operations as of March 2, 2022

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 vaccines and boosters are widely available and COVID-19 case numbers are declining in Kansas. Even as COVID-19 conditions improve, courts should continue to use COVID-19 mitigation 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 should consider whether COVID-19 screening and communication protocols, 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.
4. In developing minimum standard health protocols, Kansas district and appellate courts should consult any applicable order or guidelines from:
 - Local public health officials;
 - The Kansas Department of Health and Environment;
 - The Centers for Disease Control and Prevention; and
 - The Occupational Safety and Health Administration.

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.

Section C: Jury Trials

6. Chief judges should consult with the head of the local public health department or their designee when developing and updating plans for conducting jury proceedings given local risk and the facilities available. Chief Judges may contact the Office of Judicial Administration for assistance with plans. Chief judges are responsible for communicating plans and plan amendments to court users, staff, and judicial officers.
7. Judges should consider juror deferral and excusal requests based on COVID-19 vulnerabilities or other COVID-19 concerns on an individualized basis.
8. 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 at the approved temporary alternative sites under updated jury plans without further order of this court.

Section D: Media and Public Access

9. All courts must determine how to provide public and media access to court proceedings while complying with minimum standard health protocols.

10. 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

11. 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.

Section F: Interaction with Other Administrative Orders

12. This order supersedes and rescinds 2021-PR-048, district and appellate court operations as of June 1, 2021, as obsolete.
13. If a conflict exists between this order and previous orders, this order controls.
14. 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 2nd day of March 2022.

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