



Long Term Planning Committee:

Ramp-Up Report

May 13, 2020

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Introduction

Committee Scope and Purpose

At the request of Chief Justice Paul Reiber, a Long-Term Planning Committee (the committee) was established to make recommendations to the Court concerning the transition of the Vermont Judiciary from the limited operations authorized under Administrative Order (A.O.) 49 to full judicial operations.

Committee Membership and Methods

The committee is comprised of judicial officers and staff from the Court Administrator's Office and has met frequently since mid-March to address these issues. Committee membership is as follows:

- . Harold Eaton, Jr., *Chair*
Associate Justice
- . Karen Carroll
Associate Justice
- . Trial Court Operations
 - o Theresa Scott, Chief
 - o Laurie Canty, Special Assistant
- . Research and Information Services
 - o Jeffery Loewer, Chief
- . Patricia Gabel, *ex officio*
State Court Administrator
- . Brian Grearson, *ex officio*
Chief Superior Judge
- . Finance and Administration
 - o Gregg Mousley, Chief
 - o John McGlynn, HR Manager
 - o Robert Schell, Security Manager
- . Planning and Court Services
 - o Scott Griffith, Chief

The committee divided into subgroups to address issues related to the areas below. Due to overlapping scope and functions, the work of some subgroups was combined.

- . Budget
- . Staffing
- . Facilities
- . Jury Trials
- . Scheduling
- . Communications
- . Safety and Security
- . Interbranch Liaison and Coordination
- . Interstate Liaison and Coordination
- . NG-CMS
- . Technology

Many of the recommendations included in this report have been informed by input that was solicited from the entities listed below. Without exception, the information received from these entities was helpful.

- . Vermont Department of Health
- . Vermont Bar Association
- . Defender General

- Panels of judges representing each of the Superior Court divisions (and in the case of the Family Division, recommendations specific to both the juvenile and domestic dockets)
- Child support magistrates and the Judicial Bureau
- Superior Court Clerks and Operations Managers
- State’s Attorneys
- Vermont Legal Aid

This report represents the committee’s efforts to date to integrate the work of the subgroups into a cohesive document, and to make its own recommendations.

Context and Key Assumptions

The committee has made certain assumptions in preparing this report, and members have been mindful throughout of the rapidly changing circumstances relating to the pandemic and the degree to which this can impact decision-making and shift priorities for all involved.

Foremost among these assumptions is that current guidance from the Vermont Department of Health will allow for the expansion of operations as proposed as of June 1, 2020. The timelines and recommendations presented in this report are based upon that assumption. To the extent that expanded Judiciary operations cannot or do not resume as of June 1, 2020, the committee recommends that the timelines offered herein be established consistent with Vermont Department of Health guidance.

The committee uses the term “expansion of operations” in this document rather than “resumption of operations” or “reopening” because the courts of Vermont have remained in operation for emergency functions throughout the pandemic. This is due to the extraordinary efforts of Judiciary employees, with assistance from other branches of government and in collaboration with the legal community, for which the committee is grateful.

The committee acknowledges that some of the recommendations offered in this report come with a cost and that it is unknown at present whether the funds needed to pursue all recommendations will become available. The committee notes, however, that some recommendations may be implemented without formal action by the Supreme Court. Indeed, this report includes reference to several initiatives, such as holding and livestreaming remote hearings, that are essential to an expansion of operations and which are already underway in pilot form.

The committee also acknowledges that additional disruptions related to the Coronavirus are likely in the months ahead and that a cycle of imposing and relaxing emergency provisions through Supreme Court Administrative order or other authority may be the norm for some time. The committee feels that building and sustaining the capacity to respond to such a likelihood with agility is critical.

In undertaking its work to develop strategies to expand operations, the committee has tried to balance the need to address issues of concern with the recognition that many decisions are best made on the local level. As a result, the committee confines its recommendations largely to state-wide or docket-wide concerns. Many of the recommendations made by the various groups,

which are included in the Appendix to this report, are worthy of consideration and the fact that they are not discussed in this report is not a reflection on their merit.

The committee further acknowledges that the expansion of operations is one of several—and perhaps the most pressing—strategic areas on which the Judiciary will need to focus in the months ahead. The obstacles to developing and executing such strategies will not be easy. Nonetheless, there is always a need, perhaps more urgent now than prior to the pandemic, to develop new initiatives and new metrics by which to assess our work. This will be especially important as the Judiciary prepares for what may be a protracted period of recovery, both from a public health and a public finance perspective. In short, this is not a time to “return to normal” but to embrace the reality that traditional ways of operating need to be revisited and in some cases revised.

The COVID-19 pandemic has affected court operations in myriad ways too numerous to address within the scope of this report. For example, this report does not address impacts on professional regulation, bar admissions, continuing legal education, judicial education, or other largely administrative, non-docket specific concerns.

Finally, the committee recognizes that expansion of court operations, no matter how carefully considered, involves compromise and that activities associated with expansion will not always go smoothly or be implemented without unintended consequences. It is the committee’s hope that when those difficulties arise, they will be met with the same resourcefulness and spirit of cooperation and collaboration which has sustained us during this difficult time.

Planning for the Next Phase: Foundational Considerations and Recommendations

Planning for the next phase, including expanding Judiciary operations, requires consideration of the Judiciary budget and available resources, staffing limitations associated with the COVID-19 pandemic, the structural and design limitations of state and county-owned Judiciary facilities, and the availability, deployment, and support of technology assets. The Judiciary’s success in expanding operations will depend in part on its success in addressing the matters of budget, staffing, facilities, and technology. We consider these factors and make recommendations relating to them below. (Recommendations are in bold.)

Budget

Patricia Gabel provided testimony to the Senate Judiciary on May 6 regarding the Judiciary’s COVID-19 emergency funding needs. The May 5 memo that was the basis of her testimony has since been updated to reflect new information. That update, entitled *Vermont Judiciary COVID-19 Emergency Funding Authorization Needs Memo*, is included on pp. 1-6 of the Appendix to this report.

The memo includes detail about the FY20 and FY21 expenses associated with the Judiciary’s response to the pandemic. The process of developing the items in the memo included obtaining

input from the Justices, assessments by and deliberations among Court Administrator's Office (CAO) division chiefs, and outreach conducted by the Court Administrator and others to peers in other states, as well as to national subject-matter experts.

It is estimated that approximately \$4.9M will be needed in FY20 and an additional \$2.6M will be needed in the first half of FY21 to meet the COVID-19 related needs outlined in the memo. These amounts are likely to change as new information is received and expansion of operations plans are refined.

The memo highlighted funding needs in the following areas:

- Safe Spaces for Judiciary Staff and Participants in Court Proceedings
- Jury Trials and Social Distancing
- Remote Technology for Other Court Proceedings
- Remote Technologies and Services for Court Users
- Public Access to Court Proceedings
- Administrative and Case Management Challenges
- Recognition of Staff Challenges and Service
- Treatment Docket Supports

The *COVID-19 Emergency Funding Authorization Needs Memo* in the Appendix contains a more detailed explanation of these funding needs.

The Judiciary's receipt of the funds it has requested is not guaranteed. If the Judiciary's funding request is approved, CAO staff will fast-track the purchase of goods and services and recruitments for staff. If the request for funding is not approved, alternative strategies to secure funds necessary to meet emergency needs will be pursued, but this will create a delay in the implementation of the recommendations contained in this Report and may, thus, delay the Judiciary's progress toward full judicial operations. If the needed emergency funding is not obtained from any source, the execution of some elements of an expansion of operations plan may be seriously constrained.

Patricia Gabel and Gregg Mousley are in contact with the Joint Fiscal Office of the Legislature and the Department of Finance and Management in the Executive Branch relating to the budget and appropriations process. Scott Griffith is monitoring the availability and assessing the suitability of various grants that may be useful in addressing areas of need and opportunity. Scott is in contact with Sen. Leahy's office in this work.

Staffing

At present, the Judiciary is working with roughly 93% of its docket clerk workforce, which continues to work in shifts. Approximately 45% of staff is working statewide during each shift. A fully staffed docket clerk workforce is approximately 180. It appears that most of the Judiciary's staff will be available to work. (See *J. McGlynn and T. Scott Memo to Long Term Planning Committee re Return to Work Planning* on pp. 7-8 of the Appendix to this report.) Absences may occur for reasons not directly related to sickness, such as home-schooling,

availability of summer camps, day care, etc. Budget constraints may also affect staff levels, which in turn will affect capacity to process work.

The recommendations here are based on an assumption that it is unlikely that the Judiciary will have full staffing for a combination of reasons when we resume non-emergency operations. On a positive note, the Access and Resource Center has been instrumental in handling calls for the trial courts during the staffing shortages. The Center will continue to provide relief during the ramp-up of court services and hearings. **Expansion of the Center's assistance statewide should be implemented to the greatest extent possible.**

A significant potential impact regarding staffing is the need to maintain social distancing, which likely will be part of the Governor's recommendation for the foreseeable future. When considering the expansion of court operations, reconciling the safety needs of court users and Judiciary staff with adequate staffing should be at the forefront of the discussion. Operations cannot be increased without sufficient staff and should not be held if social distancing cannot be maintained. At this point it is unclear how many staff can be accommodated at each courthouse at one time while operating under social distancing constraints.

Social distancing requirements may prove to have the most significant impact on staffing levels in the months ahead. This limitation will affect staffing numbers in each courthouse irrespective of the availability of that staff. Workspaces in several courthouses are too small to maintain adequate distancing among more than a few employees, and the installation of plexiglass around workstations, while potentially helpful, will not fully satisfy Vermont Department of Health social distancing requirements. (See Excel File: *Staffing questionnaire 5-6-20.*) **Clerks and COMS, in consultation with Chief of Finance and Administration Gregg Mousley, should continue to identify ways to enable more staff to work, including by reorganizing work spaces, making adjustments to workspaces, and leveraging remote technologies for court staff where possible.**

The next region to roll out the Next Generation Case Management System ("NG-CMS") includes the Bennington, Rutland, Addison, and Chittenden units and the Environmental Division of the Superior Court ("BRACE"). Staff in the BRACE region will have NG-CMS commitments that need to be met. This will need to be considered in any staffing plan. **Retired judges should be trained to use the NG-CMS system, as well as to conduct remote hearings, to expand their ability to hear cases.** Use of COVID 19 funding sources for training judges is being pursued.

Because of the possibility that scheduling of hearings may outstrip staffing capacity Clerks and COMs should retain "veto power" concerning the scheduling of hearings, at least during the "ramp up" phase, if matters to be scheduled exceed staff capacity.

Because of the varying needs in dockets and courts, the Chief Superior Judge should move judges among divisions and units as needed, regardless of prior judicial assignments, and judges should expect this.

Facilities

Social distancing requirements may limit availability of some Judiciary facilities for courtroom operations as well as other Judiciary functions. Block scheduling may be more limited for an indefinite time, and creative strategies will be required to accommodate proceedings involving multiple parties, witnesses, and counsel.

In addition, conference rooms for case manager conferences are generally not large enough to accommodate the parties, attorneys, OCS representatives, and case managers while maintaining social distancing. **Strategies should be employed, including remote participation and alternate locations, to allow case manager conferences to proceed at least on a limited basis. In some cases, this may mean providing some time for case manager conferences in courtrooms or in courthouses which are not generally used for that purpose.** (See Excel File: *Staffing questionnaire 5-6-20.*)

It is important that each facility receive adequate cleaning and the current CDC recommendations should be followed. **A uniform cleaning protocol should be instituted and followed in both State and county buildings.**

Children's rooms in the courthouses should be closed while social distancing is required.

While some individuals may have to take children to court with them, the closing of the children's rooms will help to discourage people from doing so unless it is absolutely necessary. In addition, keeping these rooms clean after use would require tremendous effort.

Each person entering a courthouse should be asked whether s/he has had any of the following symptoms within the 24 hour period preceding their arrival at court: coughing, shortness of breath, chills, repeated shaking with chills, muscle pain, headache, sore throat, or new loss of taste or smell. In addition, each person entering a courthouse should be asked whether s/he has had contact, within the last 14 days, with any person who has tested positive for COVID-19.

The Judiciary should consider the use of infrared thermometers to take the temperature of all people entering a courthouse on a voluntary basis. While not a requirement presently, this will provide an added measure of safety. Screeners must keep in mind that some individuals entering the courthouse have special needs which may require a departure from these practices.

Any person entering a courthouse, including employees, must be required to wear a mask at all times while in the building. A supply of masks should be kept available at screening points for people who arrive without them.

Technology

The Judiciary's ability to quickly deploy and make use of the technology assets available to it have been critical to its ability to sustain operations in a manner consistent with A.O. 49. There can be little doubt that technology solutions are an essential part of expanding operations during a time of physical distancing.

The experience with remote conferencing has been largely positive. There appears to be buy-in from stakeholders on the use of video technology, creating an optimal time to encourage its widespread and continued use. **Any hearings which can be done remotely should be done in this manner, consistent with constitutional and statutory constraints and the policies promulgated by the Court Administrator's Office.** Remote hearings are more efficient, more cost effective and safer, and the use of livestreaming court hearings and trials will assist in reducing foot traffic while allowing public access to the courts. COVID-19 funding sources are being pursued to improve and expand on our video capabilities.

The Judiciary is currently piloting the expanded use of WebEx for convening hearings, complemented by the use of livestreaming, when appropriate. Scott Griffith and Andy Campbell are working with the Livestream Committee to develop draft protocols providing for the broader use of the technology used to conduct remote hearings.

Pandemic-related technology solutions and needs feature prominently in the *Vermont Judiciary COVID-19 Emergency Funding Authorization Needs Memo*. In planning for an expansion of operations it will be key to build on the process improvements that the pandemic has required the Judiciary to adopt, namely supporting staff working remotely using Microsoft Teams and other tools, and the expanded use of WebEx for convening hearings, complemented by the use of livestreaming, when appropriate.

The Committee recommends the following:

- That once the WebEx and livestream pilot activity in Washington County concludes, policies be adopted regarding when and the manner in which remote hearings and livestreaming can, or must, be used.
- That a system by which ongoing training of court staff relating to available and emerging technologies be developed and implemented.
- That priority be given to ensuring that strategies and policies relating to the use of technology to provide information and services reflect the reality that not all of the Judiciary's constituents have access to the technology needed to fully participate, and that there may be other barriers, including language barriers, that may inhibit or effectively prevent a court user from accessing a court or judicial proceeding.

Finally, emergency rules that have facilitated more widespread use of technology should be extended and made permanent where appropriate. To that end, the Court should convene a committee to review rules concerning remote proceedings to consider whether the underlying rules (pre-COVID-19) should be amended in light of lessons learned during the pandemic.

Expanding Judiciary Operations: Jury Trials and Other Proceedings

With the above considerations in mind, the committee further recommends that the Judiciary take the following steps concerning expanding operations with respect to jury trials and other court proceedings. (Recommendations are in bold.)

Jury Trials

Resumption of jury trials in the wake of COVID-19 poses one of the biggest challenges in expansion of operations. This is true not only in Vermont, but elsewhere. The unique challenges inherent in a jury draw and jury trial have implications for the timing of resumption of jury trials, the locations in which trials may be held, the manner in which they are conducted, and the scheduling of and venue for jury trials.

- Timing

Criminal Division: In considering this issue, the committee has tried to strike a reasonable balance between the right to speedy trial and current COVID-19 related conditions. **With that in mind, the Criminal Division should not send notices to potential jurors until at least August 3, 2020 and should not hold any jury trials before September 1, 2020.** Given the current and expected ongoing public health guidance regarding the need to maintain social distancing and avoid large gatherings in order to mitigate the spread of COVID-19, the lead time needed to summon jurors and prepare for a jury trial, and (evidence-based) public fears of gathering in groups, the Judiciary does not expect to be in a position to conduct jury draws and jury trials until at least September 1.

Civil Division: The civil panel of judges has recommended that there be a moratorium on civil jury trials for six months. Given the lack of space available for jury trials as noted above, priority should be given to the large number of criminal trials, and other backlogged cases, that will need to be scheduled. **No scheduling of civil jury trials should take place or notices sent to jurors prior to January 1, 2021 unless the Supreme Court further delays their resumption.** The resumption of civil jury trials is also subject to the limits on gathering size then in effect by Vermont Department of Health guidance.

- Locations

We expect that even when jury trials resume, social distancing requirements of some sort will remain in place. Those requirements will reduce the number of locations with adequate space to conduct jury trials. We have worked with Clerks and COMs to identify courthouses that can accommodate jury trials while still observing social distancing. Some of the larger courtrooms are in county buildings. Each location will require some modifications to meet social distancing concerns.

In some locations the lack of a holding cell may be an obstacle to conducting a trial when the defendant is in custody. The Clerks have been surveyed and have identified the courts that can accommodate trials with full juries, while maintaining social distancing with little modification as: Chittenden Courtroom 2C; Woodstock (no holding cell); Orange, St. Johnsbury Courtroom 2 and Lamoille. Courtrooms that may be able to accommodate trials while maintaining social distancing but require greater modification are Brattleboro Courtroom 1, Franklin, and White River Junction. The latter three, at least, would require jury deliberation to take place in a second courtroom, thus tying up two dockets. This list is not exclusive.

Use of courtrooms for jury deliberations poses privacy, security, confidentiality and logistical concerns which must be taken into account if the courtroom is to be used for deliberation. In every case, social distancing will require jurors to be seated at least partially outside of the jury box. It may be that accommodations can be made in some other courts to make them suitable for jury trials, especially when parties have agreed to trial with less than 12 jurors. Examples of such accommodations might be moving the witness stand, expanding juror seating into a segregated portion of the gallery and live-streaming the trial while limiting public attendance. **When jury trials resume, Judge Grearson will work with Clerks and COMs to move trials requiring 12 jurors to suitable locations.**

- Conduct of Jury Trials

The manner of doing business prior to COVID-19 and the manner of doing business after resumption of non-emergency operations will be different in numerous ways.

To the extent not discussed above, as operations expand, social distancing requirements and assembly restrictions will likely affect the jury trial and juror selection process, not only impacting court staff and judges, but jurors and witnesses as well. It will be necessary for court staff to actively monitor the arrival and seating of the potential jurors to maintain social distancing.

After consideration, it has been determined that remote voir dire of jurors is likely not feasible at the present time, due to issues with potential jurors having access to adequate technology. It is highly likely that it will be necessary to impose limits on the size of the venire and to use two panels to select one jury (e.g., a panel brought in at 9 a.m. and a panel brought in at 1 p.m.). At present, it appears that 30 potential jurors at any one time is the maximum number of people who can be accommodated at any one time while maintaining social distance. This will make the selection of a complete jury from one panel unlikely, especially in the most serious cases, which are likely to be tried first. It is also likely that drawing only one jury per jury draw day will be possible given time and space limitations.

Some courts in other states are considering not holding other court hearings on jury trial days in order to reduce other traffic in the court building. Nearly every state and federal trial court has suspended jury trials and are working on plans for their resumption, with varying plans for when and how to resume jury trials.¹ (See *Congressional Research Service* report on pp. 9-12 of the Appendix to this report.) **To the extent possible, if other court hearings are taking place in the same building during jury trials, these should not be ones with numerous in-person participants. In any event, jury trials will need to be prioritized regionally or throughout the state in order to make use of the limited courtroom space.** The committee considered suggestions made to hold trials in public or private spaces other than courthouses, e.g. a college auditorium or high school gym. While consideration may be given to this issue in the future, it should be noted that this would require the moving of staff and security equipment and

¹ Texas did hold, on average, 187 jury trials per week, but has currently stopped jury work until at least June 1, to correct what was stated in a recent telephone conference.

acknowledgement from the owners of these sites of the inherent security risks of the presence of incarcerated defendants.

As noted, much anxiety will accompany the resumption of jury trials. This will likely be reflected by reduced numbers of people honoring the jury summons and should be anticipated in the summoning process.

A vigorous education program for potential jurors and the public at large, which includes the Judiciary's recognition of the need to keep jurors safe and the steps we are taking to do so should be undertaken. This should include press releases, public service announcements and other strategies to underscore the vital role jurors play in our justice system. The Judiciary should consider public outreach prior to the summoning of jurors to limit anxiety. **The message should be sent that when jurors are ultimately summoned, it is being done after full consideration and implementation of Vermont Department of Health and CDC guidelines and social distancing will be observed during their term of service.**

Twelve-person juries are required in both civil and criminal cases. However, in both types of cases parties may agree to fewer jurors. **Judges should ask the parties if they will agree to smaller juries, especially in civil cases.**

- [Scheduling and Venue](#)

Because of the limited number of facilities that are suited to jury trials, and the likelihood that some jury trials may take place in a county other than the one in which the case was brought, venue rules should remain flexible, and the scheduling of jury trials should be coordinated on a regional basis.

A.O. 49 invokes the Court's broad authority under 4 V.S.A. § 37(b) to promulgate venue rules in all dockets. This provision of A.O. 49 provides essential flexibility and should be extended as long as the extraordinary circumstances that gave rise to A.O. 49 continue.

In addition, **because jury trials will likely be held regionally when we begin to schedule them, the appointment of an individual to oversee the scheduling process would be helpful, similar to the work being done to schedule video hearing time.** By all accounts, this has been very successful.

[Scheduling of Proceedings other than Jury Trials](#)

Non-emergency hearings may resume on June 1, and scheduling for those matters may resume on May 18, 2020. This recommendation is based on guidance from the Vermont Department of Health and associated relaxation of some restrictions on public activity in the Governor's Executive Order. Given the staffing and facilities limitations, as well as the need for the Judiciary as a whole to work through a backlog of urgent and pressing matters, decisions about scheduling hearings will be made on a unit-by-unit basis, and not a division-by-division basis. It is highly likely that judges and staff will be called upon to work on the highest priority cases, regardless of their assigned rotation or usual work assignments. **For example, courts**

may consider appointing Probate Judges to conduct permanency reviews, where they can be utilized in at least some cases to assist in relieving juvenile case backlog.

Accordingly, upon the Court's approval of this report and amendment of A.O. 49, the Presiding Judge and Clerk of each unit should convene the judges and COMs in the unit to map out a plan for expansion of operations in that unit, with the highest priority cases receiving priority. As indicated scheduling cases should be deferred until May 18. It is important to ensure that staff across the state, to the extent possible, are working under similar circumstances. **Resumption of in-court hearings must be done on a gradual basis, balancing the needs of staff, judges, attorneys and litigants to the extent possible, and keeping in mind the lead time needed to schedule hearings.**

In developing a plan, the team in each unit should consider the following:

- **Staffing availability: As noted above, Clerks and COMs will determine the amount and type of hearing time available based on available staffing.** In addition to the staffing challenges noted above, during a transitional period limited staff availability will result in curtailed courtroom hours so that staff have adequate time each day to attend to work without the requirement to be in the courtroom. For that reason, **judicial hearing time in each division, whether in-person or remote, should be limited to five hours per day, including status conferences, until August 3, 2020.** This will allow adequate hearing time and will also provide staff a period of time each day to attend to their work without the requirement to be in the courtroom. When the courtroom is not in use for scheduled judicial hearings, it should be available for use for other purposes, such as case manager conferences. Case managers should hold in-person conferences only when adequate space, which allows for social distancing, is available. Beginning August 3, full-day operations should resume. These recommendations assume that the Governor's stay-at-home order will no longer be in effect at that time.
- **Space availability and social distancing: Each division must observe applicable social distancing and assembly limitations in scheduling and avoid bringing a large number of people into the courthouses and courtrooms at one time.** Consideration should be given to limiting block scheduling to fewer cases, scheduling arraignment days and times by agency, and staggering flash-citing times in counties with historically high numbers of emergency arraignments. Assembly size restrictions and social distancing guidelines apply to every court proceeding, including arraignments. Court officers should regulate entry into the courtroom, and behavior within it, consistent with these requirements. **In counties with more than one courthouse, courts may consider scheduling some proceedings in a different court building than the one where such proceedings are typically held.** For example, a unit may decide to hold juvenile merits or TPR hearings in a county courthouse to reduce the number of litigants and witnesses entering the state courthouse building.
- **Remote hearing capability: All courtrooms should have remote hearing capability, and to minimize foot traffic into courthouses, remote hearings should be employed as much as possible, consistent with constitutional and statutory constraints and**

applicable rules. Courts should favor remote hearings where feasible not only during the transition to full operations but thereafter.

- **Case priorities: While all dockets are important, priority shall be given to juvenile cases and those involving defendants detained pre-trial.** This prioritization may require expansion of hearing time in these dockets and a reduction in hearing time in other dockets relative to the pre-COVID-19 baseline. Each division of the Superior Court has made recommendations as to case priority and scheduling within the respective divisions. (See recommendations on pp. 13-44 of the Appendix to this report.). Based on this and other input, the committee has developed more detailed recommendations concerning case priorities and the conduct of proceedings on a division-by-division basis. **These more detailed recommendations, which are included on pp. 45-48 of the Appendix to this report and entitled “Scheduling Guidelines,” are incorporated by reference here. The county team should follow the prioritization of case types and division-specific recommendations in developing an expansion plan. Prioritization/triage of particular cases within those case types will be a matter of local concern to be addressed by the clerks, COMs, and judges. As indicated, clerks and COMs have “veto power” concerning the scheduling of hearings if matters to be scheduled exceed staff capacity.** Trial Court Operations has prepared a spreadsheet outlining the numbers of new cases added and motions filed since A.O. 49 went into effect and the number of hearings were cancelled. (See Excel files: *SCC scheduling info 4-30-20* and *SCC hearing charts 5-1-20*.)
- **Parties, counsel, witnesses and others:** In addition, consideration must be given to the availability of attorneys, parties, witnesses, GALs, and other participants in the court process who may also be unavailable for COVID-19 related reasons. County teams must be cognizant of the resource limitations of attorneys and agencies in scheduling hearings. **To keep abreast of attorney and agency concerns regarding scheduling and their available resources, along with other issues of concern, courts should schedule virtual bench-bar meetings.**

No matter what the staffing levels may be, staff and judges in each location should work within the defined parameters of the expansion of operations plan.

The time limitations noted above should not apply to the Judicial Bureau which should reopen full operations on June 1, 2020 or when the State Court Administrator authorizes resumption, whichever occurs earlier. Staff is not required to be present in the courtroom during Judicial Bureau hearings because court officers perform all necessary duties during hearings. Staff, therefore, will have time to perform their other duties without having to go into the courtroom.

In the Environmental Division, hearings may be resumed starting June 1, 2020 but only if there is no higher priority demand for the courtroom space in which the hearing would occur, and only if otherwise consistent with staffing limitations. However, the Chief Superior Judge may assign Environmental Division judges responsibilities on other dockets that would take precedence and effectively limit the number of Environmental Division hearings. The

Environmental Division is fully staffed, which will allow them the time to both work in the courtroom and at their desks. However, the Chief of Trial Court Operations may assign staff from the Environmental Division to support the work of other divisions processing higher priority cases.

Additional Recommendations

Communications

The Judiciary's COVID-19-related communications protocols were to some degree developed in real-time. This is particularly true with respect to internal communications related to the Coronavirus.

Beginning on March 4 Gregg Mousley began sending regular emails out to the Judiciary with information relating to public health guidance; information about key Supreme Court or Court Administrator's Office (CAO) actions; information relating to human resource issues (e.g., timekeeping); and general information relating to court operations. Pat Gabel and CAO division chiefs review and suggest additions to these emails, as needed.

Since March 9 Gregg Mousley has facilitated weekly calls of managers to provide updates and to discuss issues of common concern. The conversation on the calls typically relates to human resources policies, though they have proven to be a useful forum in which managers can raise issues of concern and share information. The calls are designed for clerks and court operations managers, though CAO division chiefs and programs managers also often attend, as does Judge Grearson.

Andy Campbell is working with John McGlynn to create a dedicated place on JustUsNet where all pandemic-related information can be placed for easy access.

Chief Justice Reiber holds weekly calls with superior court judges, State Bar leaders, and the CAO. The purpose of these calls is to ensure that communication lines remain open. Chief Justice Reiber also sends out periodic Judiciary-wide emails.

There is a well-established protocol for getting information out to the public about matters impacting the Judiciary. The process has been followed in connection with A.O. 49. Once the order was finalized, and in the case of every amendment to the order, Supreme Court and CAO staff work with Patricia Gabel to draft and send out a press release to all media contacts, draft and send out a memo to the State Bar (if needed), and to post information on the Judiciary's website. News about the amended A.O. is also posted to the Judiciary's Twitter account. A dedicated webpage on the Judiciary website has been established on which all versions of the order are posted and which contains a version that includes all amendments.² When needed, information of this type is summarized by Patricia Gabel and sent by email to Judiciary staff. The use of embedded links is common in all messaging of this type.

² See <https://www.vermontjudiciary.org/news/information-regarding-coronavirus-disease-2019-covid-19-and-court-operations>.

The committee recommends the following:

- That consideration be given to conducting a survey of staff to determine what pandemic-related communication(s) method(s) work best for keeping them informed, and to learn about the methods, scope, and frequency of information sharing that is most helpful to them.
- That the Judiciary's social media practices be reviewed with the goal of developing protocols for making optimal use of its several platforms (Twitter, Facebook).
- That the Judiciary website be reviewed, and possibly redesigned, to ensure that it is easy to get to information about the status of court operations and that pages with information about programs and services contain information referring an interested party to pages where the most recent information is housed.
- It appears a certainty that there will be ongoing and frequent use of Microsoft Teams. Consideration should be given to acquiring equipment (such as webcams for people without laptops) for staff as needed so that they can fully participate in Teams meetings and calls.
- That plans be made to conduct Pro Se Education class and the Coping with Separation and Divorce (COPE) class in a virtual setting. Such an approach could also be used for juror orientation and possibly in the context of other court services and programs.

Safety and Security

Issues related to staff and public safety and security are central to discussions relating to the expansion of operations. This has been acknowledged in the Court's communications, for example, by reference to, and adherence with, guidelines from the Vermont Department of Health and those of other public health entities. The Judiciary's court security officers (CSOs) are critical assets whose ability to perform essential screening and related functions is essential for an orderly return to in-person operations, even at much-reduced levels.

Rob Schell has worked with state and local partners, including local sheriff's offices and a private security firm with whom the Judiciary has contracts for court security services, to ensure that the Judiciary has reliable information about best practice screening protocols, and in assisting in the acquisition of personal protective equipment (PPE). Rob has worked with Andy Campbell to develop an online order form for PPEs which can be used by select Judiciary staff to place orders. Rob is also providing CAO leadership with Situation Reports from the Vermont State Emergency Operations Center.

The committee recommends the following:

- Formal training be delivered as necessary relating to the proper use of PPEs. Such a training program should include oversight relating to certification and recertification of individual and branch-wide compliance with applicable VOSHA/CDC guidelines.
- A protocol be established to ensure that CSOs are qualified for duty with regard to their COVID-19-related health status.
- Protocols be established for managing people who might present a safety or security risk, e.g., people presenting at court with COVID-19 symptoms; people claiming to be

carrying the virus but who appear, or claim to be, asymptomatic; and people who may be carrying the virus and whose behavior requires intervention by a CSO.

- That safeguards be established to ensure that a COVID-19 related focus does not compromise overall security capacity or CSOs' ability to address routine security needs.
- That signage relating to, and methods to enforce social distancing protocols and use of PPEs be deployed and established.
- That a sufficient number of PPEs in all locations be acquired and that inventory be tracked and rotated to ensure product availability and integrity.
- That return to work guidelines be established for and communicated to Judiciary staff.

Next Generation Case Management System (NG-CMS)

The impact on planning and operations associated with the pandemic may complicate the ease with which the NG-CMS rollout in the BRACE region, and possibly other regions, occurs. It will be important to align any expansion of operations plans with NG-CMS rollout plans, especially since work related to both is highly dependent on staff, and there may be significant training issues associated with both. Dealing with the backlog of cases with reduced staff may leave little time for NG-CMS trainings, which are an essential element of successful deployment. In addition, these NG-CMS trainings will likely have to be conducted in a virtual setting rather than a remote setting, which is not considered as effective as in-person trainings.

That said, the benefits of the NG-CMS are notable, and the e-filing component that is associated with the rollout will provide a paperless environment for much court work that is valuable during times when physical distancing and "low-touch" interactions are important.

The committee recommends the following:

- Align, to the extent possible, expansion of operations plans with NG-CMS rollout plans. These plans must take into account the training that is required both on NG-CMS and with respect to any new local court-based protocols associated with the expansion of operations.
- Continue to conduct a messaging campaign about the benefits of the NG-CMS and e-filing.

List of Appendices

- Vermont Judiciary COVID-19 Emergency Funding Authorization Needs Memo
- J. McGlynn and T. Scott Memo to Long Term Planning Committee re Return to Work Planning
- Congressional Research Service Report
- Scheduling Guidelines
- Criminal Division Recommendations
- Family Division – Juvenile Recommendations
- Family Division – Domestic Recommendations
- Civil Division Recommendations
- Judicial Bureau Recommendations
- Probate Division Recommendations

- . Environmental Division Recommendations
- . Magistrates' Recommendations
- . Vermont Bar Association Recommendations (includes Defender General's Recommendations)
- . Legal Aid Recommendations
- . State's Attorney's Recommendations