

Temporary Courtroom Use Guidelines for Court of Appeals
Spring Sessions 2021

These guidelines will be in effect for April, May, and June 2021 panels but are subject to revision or revocation by the Chief Judge at any time, as needed based upon the evolving COVID-19 circumstances and the Court's experience with in-person arguments under the guidelines. These guidelines will expire on June 15, 2021. The Court will consider the need for new guidelines based upon conditions in the fall of 2021 and if restrictions on in-person arguments are still needed, the Court will announce guidelines for arguments held in the fall of 2021.

I. **Election to Have In-Person Oral Argument**

The Clerk of Court will contact all counsel in cases scheduled for oral argument, starting with the April 2021 panels. If ALL counsel who will be presenting the oral argument agree to participate in oral argument in person, under the conditions set out herein, the argument shall be held in person if the following conditions are met. If any counsel prefers WebEx argument based upon any medical concerns related to COVID-19, the argument will be held by WebEx.

The conditions for in-person oral argument are:

1. The Courtroom will have plexiglass screening on the bench, at counsel tables, and at the podium.
2. The Clerk of Court or his designee may open court remotely and need not be in the Courtroom.
3. Lead counsel, co-counsel,¹ judges, and any person who plans to attend oral argument who has not been vaccinated for COVID-19 must have PCR COVID-19 tests done, at their own expense, 4 days before the argument, with test results to be reported to the Clerk of Court no later than 5:00 p.m. on the day prior to the argument.
 - a. Vaccination standards: Judges, lead counsel, co-counsel, or any person who plans to attend oral argument who have received their final vaccination no less than two weeks before the date of oral argument (Second vaccination for Pfizer and Moderna vaccines; one for Johnson & Johnson) need not be tested before argument. Counsel and any other person planning to attend argument who

¹ "Lead counsel" refers to the attorney(s) who will be presenting the oral argument. "Co-counsel" refers to any counsel who plan to attend the oral argument but will not be presenting oral argument. "Counsel" refers to all attorneys planning to attend or participate in the argument.

have been vaccinated must provide written proof of vaccination and the date(s) to the Clerk of Court at least one week before the argument date.

b. COVID-19 testing: Any party, lead counsel, co-counsel, or other person who plans to attend an oral argument must also be tested (unless they have been vaccinated and provide proof of vaccination. If any test result for a judge or lead counsel is positive, the argument will be rescheduled or heard by WebEx, as determined by a majority of the panel. If all test results are not provided to the Clerk of Court by 5:00 p.m. the day before the argument, the argument will be rescheduled or held by WebEx, as determined by a majority of the panel. If co-counsel or another person who had planned to attend the argument has a positive test result, that person may not attend in person.

4. All counsel, judges on the panel, and any other person who will be in the Courtroom for argument must certify to the Clerk of Court on the day before the argument they have not likely been exposed to COVID-19 as directed by Emergency Directive 2 (2-13-2021), which provides:

For purposes of this order, a person who has likely been exposed to COVID-19 is defined as any person who:

- a. is experiencing fever, cough, shortness of breath, or loss of smell and/or taste;
- b. is under a direction to quarantine, isolate, or self-monitor;
- c. has been exposed to a person who tested positive for COVID-19 within the last fourteen days;
- d. has been diagnosed with COVID-19 within the last fourteen days; or
- e. resides with or has been in close contact with any person in the abovementioned categories.

If any judge or lead counsel has had a likely exposure to COVID-19, the argument shall be rescheduled or held by WebEx, as determined by the majority of the panel. If co-counsel or another person who had planned to attend the argument has had a likely exposure, that person may not attend in person.

5. If any case of COVID-19 infection or person with a positive COVID-19 test is identified in any person working in the Court of Appeals building within 2 days before the argument date, the panel may elect to reschedule the argument or hold the argument by WebEx, as determined by a majority of the panel. The Clerk of Court will notify all counsel as soon as practicable of cancellation of the in-person argument.

II. Oral Argument

Attendance shall be limited to the judges, necessary court staff, the attorneys of record, and the parties for the case being argued, unless otherwise permitted by unanimous agreement of the panel. The Court anticipates that in most cases only the lead counsel will attend in person and encourages others to watch the live-streamed argument remotely. The maximum number of people in the Courtroom at one time is currently 25. The oral argument will be live-streamed for viewing by the general public and shall be recorded.

The Courtroom shall be set up for in-person arguments with these precautions:

1. Large container of hand sanitizer at entrance of Courtroom and two small containers on counsel tables.
2. Sign at the Courtroom entrance for attendees to maintain social distancing and wear face masks.
3. Set up water for the judges as usual, if requested by judges.
4. Water will not be provided at counsel tables. The Court recommends that counsel bring their own bottled water.
5. Temperature of all attendees will be taken. If a person's temperature exceeds 100.4, that person will not be admitted.
6. Weather permitting, some Courtroom windows will be opened to provide additional ventilation.

All persons must wear a face mask while in the common areas of the Court of Appeals building, including the Courtroom, and when interacting with others pursuant to Emergency Directive 21 (2/12/21). Counsel may remove their masks while arguing but must remain behind the plexiglass screen at the podium and shall put the mask back on when they have completed the argument.

Only counsel and parties for the case being argued will be allowed in the Courtroom. Counsel and those attending an argument will not be allowed to enter the Court of Appeals building until 15 minutes before their case is scheduled to begin. There shall be a break of at least 15 minutes between arguments during which time the Courtroom including but not limited to counsel tables, counsel chairs, and the lectern will be sanitized. If the panel is different for arguments the bench shall also be sanitized.

To the extent practicable the bench shall be arranged in a way that provides for at least 6 feet of distance between judges sitting on the bench.

Individual judges may, in their discretion, opt to recuse from an in-person argument if a majority of the panel has determined to permit an in-person argument.

III. Ceremonial Sessions

Attendance shall be limited to the judges, necessary court staff, presenters, oath takers and their invited guests. The Courtroom shall be set up for the session in the same manner as for in-person oral argument as described above.

Everyone [except the judges when on the bench and the attorney being sworn in, during his or her oath administration,] is required to wear a mask unless subject to one of the exceptions under current rules. Applicable exceptions in this setting are:

Unable to wear a face covering due to medical or behavioral conditions or disabilities. This includes, but not limited to, trouble breathing, unconscious or incapacitated, or is otherwise unable to put on or remove the face covering without assistance;

Under 5 years of age;

Communicating with someone who is hearing-impaired and requires the mouth to be visible;

Giving a speech for a broadcast or audience;

Temporarily removing the covering to show identification.

Seating areas in the Courtroom shall be marked by group. Each group may sit together, with proper distance between groups. Seats will be marked with numbers and each group will be assigned a numbered area.

If there are more than 25 people present at one time, seating other than the judges conducting the session will be “first come, first served.” The overflow will wait outside the Courtroom, and some chairs will be provided. Once an attorney has completed his/her oath, that person and their group will exit the Courtroom through the back door of the Courtroom to make space for another group to enter through the main door and be seated. After all attorneys have been sworn in, any new attorneys who had to leave the Courtroom will have a chance to return for photos if not already done, while keeping the number in the Courtroom below 25.

Each new attorney will have the opportunity to take a photo with the panel still on the bench and the new attorney, family, and friends standing in front of the

bench. Individual judges and new attorneys are also free to do additional photos off the bench as they prefer, but these will be done after court has adjourned.