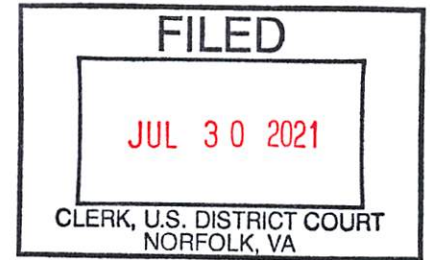


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA



In re:
COURT OPERATIONS UNDER THE EXIGENT
CIRCUMSTANCES CREATED BY THE OUTBREAK
OF CORONAVIRUS DISEASE 2019 (COVID-19):
UPDATED MASK AND DISTANCING POLICY

Case No. 2:20mc7

General Order No. 2021-11

The United States District Court for the Eastern District of Virginia has continued to closely monitor the outbreak of Coronavirus Disease 2019 (COVID-19), as well as the developing guidance from the Centers for Disease Control and Prevention (CDC) and state and local health authorities. Notwithstanding ongoing COVID-19 vaccination efforts, the COVID-19 Delta variant has caused a clear upward trend in COVID-19 cases, hospitalizations, and percent positivity across Virginia and this District, and the current state of community transmission supports modifications to the Court's mask and distancing policy.

In May of 2020, this Court adopted a mask and distancing policy for all individuals entering our Courthouses and Court facilities. See Gen. Order No. 2020-14. On June 7, 2021, in accordance with updated CDC guidance and information obtained through consultations with local public health officials, this Court issued General Order No. 2021-06, which removed the requirement that fully vaccinated individuals wear a mask in our Courthouses and facilities, though the requirement that all

individuals maintain six feet of distancing remained in effect. One month later, the Court issued General Order No. 2021-10, which adopted a discretionary distancing policy during jury trials and grand jury proceedings that allowed a presiding judge to reduce distancing from six feet to three feet, with additional conditions dependent upon the stage of the jury proceeding.

During the three weeks since the issuance of General Order No. 2021-10, pandemic conditions have materially worsened due to the rapid spread of the Delta variant. Specifically, the 7-day average of daily new COVID-19 cases in Virginia has more than quadrupled, from less than 200 to over 800. As hospitalizations generally lag behind newly identified cases, the 7-day average for Virginia hospitalizations with a positive COVID-19 test has been increasing for a shorter period, but the upward trend is likewise concerning, with the 7-day average doubling over the past two weeks. The percent positivity metric similarly demonstrates that each Division of this Court has seen positivity rates double over the last two weeks.

In light of the accelerating nationwide spread of the Delta variant, as well as data suggesting that vaccinated individuals may be contributing to at least part of such spread, on July 27, 2021, the CDC issued updated guidance indicating that fully vaccinated individuals living in cities/counties with "substantial" or "high" community transmission should once again

wear masks "indoors in public." See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html> (last visited July 29, 2021).

In response to the recent updates to CDC guidance, local health officials within the Eastern District of Virginia have recommended that fully vaccinated individuals resume wearing masks in indoor public places. Furthermore, as reported by the Virginia Department of Health (VDH) based on data through July 29, 2021, all four cities where our Courthouses are located fall into the "substantial transmission" category. See <https://www.vdh.virginia.gov/coronavirus/key-measures/pandemic-metrics/locality-metrics/> (last visited July 29, 2021). Similarly, almost every city/county immediately adjacent to the cities where our Courthouses are located fall into the "substantial transmission" category. Id. A regional analysis based on VDH data confirms this elevated community transmission, with the Central and Eastern regions of Virginia, areas in which three of our four Courthouses are located, falling into the "substantial transmission" category. See <https://www.vdh.virginia.gov/coronavirus/key-measures/pandemic-metrics/region-metrics/> (last visited July 29, 2021).¹

¹ Based on VDH data through July 29, 2021, the Northern Region falls at the extreme upper end of the "moderate" transmission category.

In light of the above, and after considering the fact that vaccination rates in the majority of the cities where our Courthouses are located lag behind the statewide average, the following COVID-19 precautionary measures are adopted, Districtwide, effective **Tuesday, August 3, 2021**:

(1) Regardless of vaccination status, all individuals, to include employees, vendors, contractors, litigants, attorneys, stakeholders from other agencies, and members of the public, shall be required to wear a mask in all indoor public areas and public-facing areas² in our Courthouses/facilities, to include hallways, stairwells, elevators, and entrance foyers. Such masking requirement applies inside our courtrooms unless otherwise directed by the presiding judge.³ The masking requirement remains subject to medical exceptions as determined by the Chief Judge or the Senior Active Judge of the Division.

(2) Regardless of vaccination status, all individuals shall continue to maintain at least six feet of distance from people outside of their household whenever possible. The previously adopted discretionary three-foot distancing rule applicable to jury trials and grand jury proceedings is withdrawn

² Public-facing areas refers to the areas in the Clerk's Office and Probation Office where Court employees assist litigants, attorneys, supervisees, or members of the public.

³ A presiding judge may continue to exercise his or her discretion to allow jurors/prospective jurors, witnesses, parties, attorneys, and anyone else that needs to speak as part of the proceeding to remove his or her mask for the purpose of facilitating the hearing or otherwise promoting the functioning and effective operation of the Court. All efforts should be made to ensure that individuals permitted to remove their masks generally stay at least six feet apart from other individuals.

effective Tuesday, August 3, 2021, and jury proceedings will revert to the rule requiring six feet of distancing.⁴

Consistent with existing policy, in office areas within our Courthouses and facilities, employees should be spaced at least six feet apart to the greatest extent practicable. If vaccinated employees do not have an enclosed office or are unable to maintain six feet of distance between themselves and others in a shared office space, masks must be worn in such non-public office setting notwithstanding the employee's vaccination status.⁵ Unvaccinated employees are required to wear a mask in shared office settings regardless of the distancing that can be achieved, though unvaccinated employees may remove their mask if they have a private enclosed office space which consists of a door, ceiling, and walls.⁶

⁴ The CDC's updated guidance no longer states that fully vaccinated individuals can forgo maintaining six feet of distancing while in public places, which is in notable contrast to the guidance that was in place when this Court issued General Orders Nos. 2021-06 and 2021-10. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html> (last visited July 29, 2021).

⁵ Individual judges continue to oversee the specific protocols for vaccinated individuals in their chambers, which may be affected by the vaccinated status and/or vulnerabilities of chambers staff and the impact the physical space has on the ability of staff to maintain a full six feet of distancing.

⁶ Courthouse employees, both vaccinated and unvaccinated, should consult General Order No. 2021-06, updated CDC guidance, and their supervisors regarding recommended testing and quarantining after international travel and after known or potential exposure to COVID-19.

To reflect updated CDC guidance on mask wearing, and to inform those entering our Courthouses of the findings above, the Court hereby **ADOPTS** the attached updated "Mask and Distancing Policy" notice and **ORDERS** that it be posted at the public entrance of each respective Courthouse and Court facility in our District. The Court separately **ORDERS** that the "Face Covering and Social Distancing Policy" that is available on the Court's public website be updated to reflect the provisions of this Order. A copy of such updated policy is attached hereto.

The above restrictions, while temporary, will remain in place until further Order of the Court based upon emerging CDC guidance and the recommendations from state and local health officials.

It is so ORDERED.



Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 30, 2021



Mask and Distancing Policy

All individuals, REGARDLESS OF VACCINATION STATUS:

- Are required to wear a mask that covers their nose and mouth continuously unless it is medically unsafe for them to do so and they obtain permission from the Chief Judge or Senior Active Judge. Inside of each courtroom, the presiding judge may permit removal of masks for the purposes of facilitating a hearing.
- Are required to maintain six feet of distance from all individuals from outside their household whenever possible.

Any person who does not comply with these requirements may be denied entry or be subject to removal.

Face Covering and Social Distancing Policy

The Court has found it necessary and appropriate to adopt a face covering and social distancing policy for all individuals entering our Courthouses and Court facilities.

As established by General Order 2021-11, **ALL individuals, regardless of vaccination status**, that appear in person in the Courthouses/facilities in this District, to include employees, vendors, contractors, litigants, attorneys, stakeholders from other agencies, and members of the public, **are required to**:

- (1) **Wear a mask** that covers their nose and mouth continuously in all indoor public areas of our Courthouses/facilities unless it is medically unsafe for them to do so **and** they obtain permission from the Chief Judge or Senior Active Judge. Inside of each courtroom, the presiding judge may permit removal of masks for the purposes of facilitating a hearing or otherwise promoting the functioning and effective operation of the Court, with efforts made to ensure that individuals permitted to remove their mask generally stay at least six feet apart from other individuals.
- (2) **Maintain six feet of distance** from all individuals from outside their household whenever possible.
- (3) **Stay home if you are sick.**

Any visitor seeking entry to our Courthouses/facilities that does not comply with these requirements may be denied entry by security staff and will be asked to contact the office/chambers to be visited and determine whether alternate arrangements can be made to accomplish the business needs of the visitor without entry to the Courthouse.