

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

In re:

BANKRUPTCY COURT OPERATIONS UNDER )  
THE EXIGENT CIRCUMSTANCES )  
CREATED BY THE OUTBREAK OF ) STANDING ORDER 21-16  
CORONAVIRUS DISEASE 2019 (COVID-19): )  
VACCINATION & TESTING POLICY FOR )  
ADMITTED COUNSEL AND EMPLOYEES & )  
CONTRACTORS OF THEIR OFFICES. )  
)

ORDER ESTABLISHING VACCINATION AND TESTING POLICY  
FOR ADMITTED COUNSEL AND EMPLOYEES AND CONTRACTORS THEREOF  
APPEARING IN PERSON FOR PROCEEDINGS BEFORE  
THE UNITED STATES BANKRUPTCY COURT  
DUE TO THE OUTBREAK OF CORONAVIRUS DISEASE 2019

The United States Bankruptcy 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 a well-established COVID-19 vaccination effort, many adult Americans eligible for vaccination remain unvaccinated, and the COVID-19 Delta variant has caused a dramatic spike in COVID-19 cases and hospitalizations across the United States, Virginia, and this District. Recently, the United States District Court for the Eastern District for Virginia as well as this Court each adopted a vaccination and testing policy applicable to the employees and contractors of the respective Courts and the Probation Office. *See* United States District Court General Order No. 2021-12 (Aug. 13, 2021); United States Bankruptcy Court Standing Order No. 21-15 (Aug. 13, 2021). In the ten days since the issuance of the aforementioned Orders, COVID-19 hospitalizations in Virginia have increased by 25%. During this same time, the United States District Court also had employees, as well as a trial participant, test positive for COVID-19. On August 20, 2021, the Chief Judge of the United States District Court for the Eastern District of Virginia entered General Order No. 2021-13,

which established a vaccination and testing policy for attorneys who are admitted to practice before the United States District Court and employees of their offices who will appear in person in the Courthouses and Court facilities in the Eastern District of Virginia. The District Court’s Order is grounded in available guidance and data and demonstrates considered judgment given the risk posed by the spread of the Delta variant. These reasons support the extension of the previously adopted policy applicable to the Court’s employees and contractors regarding COVID-19 vaccination and testing to counsel admitted to practice in this Court and employees and contractors of their offices who enter our Courthouses and Court facilities to appear for live, in person proceedings<sup>1</sup> before the United States Bankruptcy Court, with appropriate modifications as set forth herein.

The Court’s decision to extend such policy incorporates by reference the discussion set forth in Standing Order 21-15. The Court has also considered the fact that other federal courts have adopted policies requiring that attorneys appearing in person provide proof of vaccination or, alternatively, proof of a negative COVID-19 test taken within 72 hours of counsel’s appearance. *See, e.g.*, [http://www.ca7.uscourts.gov/forms/Current\\_Covid-19\\_Courtroom\\_Procedures.pdf](http://www.ca7.uscourts.gov/forms/Current_Covid-19_Courtroom_Procedures.pdf) (last visited Aug. 23, 2021). Multiple federal circuit courts have similarly adopted vaccination policies applicable to all individuals (including counsel, their clients, and members of the public) that enter court facilities. *See, e.g.*, [https://www.ca11.uscourts.gov/sites/default/files/courtdocs/general/General\\_Order\\_No\\_51.pdf](https://www.ca11.uscourts.gov/sites/default/files/courtdocs/general/General_Order_No_51.pdf) (last visited Aug. 23, 2021). This Court, at least at this time, limits the extension of its vaccination and testing policy to all members of the bar of this Court and employees and contractors of their offices entering our Courthouses and Court facilities, whether together or individually, which includes counsel on behalf of any party in any proceeding before the United States Bankruptcy Court for the Eastern District of Virginia, any Trustee in any case under any Chapter of the United States

---

<sup>1</sup> “Proceedings” before the United States Bankruptcy Court include, but are not limited to, trials, hearings, conferences, pretrial conferences, mediations, settlement conferences, and status hearings.

Bankruptcy Code and their counsel, Assistant United States Attorneys, Assistant United States Trustees and their counsel, and those appearing *pro hac vice* (hereinafter, “admitted counsel and employees of their offices”). The Court finds that the extension of its vaccination and testing policy to admitted counsel is appropriate because such individuals are “Officers of the Court,” and in such role, they (and employees and contractors of their offices) interact with countless others while in our facilities, including their clients, opposing counsel, Clerk’s Office employees, court security officers, judges, courtroom deputies, chambers staff, and other members of the public.

Admitted counsel and employees of their offices entering our Courthouses or Court facilities are therefore required to either be fully vaccinated against the COVID-19 virus and attest to their vaccination status,<sup>2</sup> or alternatively: (1) be tested for COVID-19 and provide proof of a negative COVID-19 test **taken no more than 72 hours** before entering our Courthouses or Court facilities (and at least once every seven calendar days thereafter if involved in a trial or proceeding spanning more than one week);<sup>3</sup> and (2) wear a mask while indoors in our Courthouses and Court facilities at all times, unless authorized to remove the mask by the presiding judge.<sup>4</sup> Anyone with a positive

---

<sup>2</sup> Individuals with concerns about the safety of the available COVID-19 vaccines are encouraged to consult their doctor/medical provider to discuss the safety of the vaccines and the risks to themselves, their family members, and the public should they remain unvaccinated, particularly in the context of the Delta variant and potential future variants of concern.

<sup>3</sup> “At-home” COVID-19 test results will not be accepted by the Court, though in light of masking requirements and the need to receive timely test results, “rapid-tests” obtained through a pharmacy, health department, doctor’s office, or other healthcare provider will be accepted. PCR test results will likewise be accepted. While the cost of testing, if any, will be the responsibility of admitted counsel and employees and contractors of their offices, no-cost testing may be available through a local health department and/or through the partnership between the Virginia Department of Health and Walgreens pharmacy. *See, e.g.*, <https://www.vdh.virginia.gov/coronavirus/covid-19-testing/walgreens-partnership/> (last visited Aug. 23, 2021).

<sup>4</sup> The currently in-force mask policy for vaccinated individuals is set forth in General Order No. 2021-11 entered on July 30, 2021, by Chief United States District Judge Mark S. Davis, and Standing Order No. 21-14 entered on August 5, 2021, by Chief United States Bankruptcy Judge Frank J. Santoro (which latter order provides for a consistent mask policy for the Martin V.B. Bostetter, Jr. Courthouse in the Alexandria Division, where the District and Bankruptcy Courts do not share divisional courthouse facilities).

COVID-19 test result will not be permitted to enter our Courthouses and Court facilities for fourteen (14) days after the test was administered, unless a shorter period is approved on a case-by-case basis by the Chief Bankruptcy Judge or his designee. Should the default quarantine period change by subsequent Order, such change shall supersede the fourteen (14) day period set forth herein.

For admitted counsel and employees of their offices who are not fully vaccinated, the presiding judge may, on a case-by-case basis, require test results from an additional COVID-19 test taken more than 72 hours before entering a Courthouse for any trial, any other lengthy proceeding, any proceeding where witnesses or participants have traveled significant distances to appear, or any other proceeding where time is of the essence, in order to avoid a last minute continuance due to a positive test result. Admitted counsel and employees of their offices who are not fully vaccinated should ensure that they plan ahead to arrange for all required testing as last minute requests for continuances based on a failure to comply with the testing policy will likely be viewed with disfavor.

In order to implement the instant vaccination and testing policy, all admitted counsel and employees of their offices entering our Courthouses or Court facilities to appear for live, in person proceedings before the United States Bankruptcy Court must submit a vaccination attestation form, a copy of which is attached to this Order. A fillable version of such form will also be made available on the Court's public-facing website, and such form should be emailed to: [vaeb\\_counsel\\_attestation@vaeb.uscourts.gov](mailto:vaeb_counsel_attestation@vaeb.uscourts.gov).<sup>5</sup> The same email address should be used to submit proof of negative test results.

Admitted counsel and employees of their offices planning to enter our Courthouses and Court facilities in the next several weeks to appear for live, in person proceedings before the United States

---

<sup>5</sup> Individuals indicating on the attestation form that they are in the vaccination process, but are not yet "fully vaccinated" (defined as two weeks after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or the single-dose vaccine (Johnson & Johnson)) will be required to follow the testing and masking safety protocols for unvaccinated individuals until they are fully vaccinated.

Bankruptcy Court are encouraged to submit their attestation forms by **Tuesday, August 31, 2021**, as the policy requiring proof of negative COVID-19 test results for individuals that are not fully vaccinated, or who decline to disclose their vaccination status, will be effective **September 1, 2021**. Admitted counsel who do not have any live, in person proceedings scheduled before the United States Bankruptcy Court do not need to submit a vaccination attestation form unless and until a live, in person proceeding is scheduled by the presiding judge for which admitted counsel and employees of their offices will appear. A completed vaccination attestation form must be submitted in advance of entering our Courthouses or Court facilities on or after **September 1, 2021**. The Court requests that, when possible, such forms be submitted at least two (2) business days prior to entering our Courthouses and Court facilities.

Exemptions to the vaccination policy may be granted for individuals with medical conditions that prevent them from being vaccinated and for individuals with sincerely held religious beliefs that prohibit them from being vaccinated. To request an exemption, admitted counsel and employees of their offices should submit a letter providing sufficient details and/or supporting documents to permit full consideration of the request. Similar to the attestation form, individuals submitting an exemption request are required to provide accurate information and sign the request. The exemption request letter may be submitted by email to the address specified above with “Confidential” in the subject line, or alternatively, may be mailed in paper format to the Clerk of the Bankruptcy Court with “Confidential” designated on the envelope. Such requests will be considered by the Chief Bankruptcy Judge or his designee, who will determine the appropriate accommodation for any individual granted an exemption, though there will still be health and safety requirements in place if admitted counsel

and employees of their offices ultimately enter our Courthouses or other facilities. These health and safety requirements will include COVID-19 testing and masking.<sup>6</sup>

Vaccine mandates, even broad statewide mandates applicable to all adults, have been long deemed constitutional by the United States Supreme Court, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),<sup>7</sup> with the history of mandated inoculation dating back to the founding of our nation. This Court, however, is not mandating a vaccine for all adults, or even for all admitted counsel and employees of their offices entering our facilities, but is instead adopting a vaccination and testing policy that presents two alternatives (vaccination, or testing within 72 hours of entering our Courthouses or facilities coupled with universal masking) to promote the health and welfare of everyone who enters our Courthouses and Court facilities. Moreover, the Court will authorize “exceptions for persons who declare vaccination incompatible with their religious beliefs and persons for whom vaccination is medically contraindicated.” *Klaassen v. Trustees of Indiana Univ.*, No. 21-2326, -- F.4th --, 2021 WL 3281209, at \*1 (7th Cir. Aug. 2, 2021). Such policy, consistent with the policies adopted by the President and the Governor of Virginia, as well as the policy adopted by this Court and by the United States District Court for both Courts’ employees and contractors, is a reasonable and lawful response during a nationwide state of emergency and will promote safety in our Court facilities during the resurgence of the deadly COVID-19 virus. *Cf.*

---

<sup>6</sup> Unless modified by the Chief Bankruptcy Judge or his designee through the exemption process, the default safety policy for admitted counsel and employees of their offices who receive an exemption will require proof of a negative COVID-19 test result **taken no more than 72 hours** before entering our Courthouses or Court facilities (and follow-up testing at least once every seven calendar days thereafter if involved in a trial or proceeding spanning more than one week).

<sup>7</sup> In *Jacobson*, the United States Supreme Court rejected the claim that “a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best,” explaining that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint” and that there “are manifold restraints to which every person is necessarily subject for the common good.” *Jacobson*, 197 U.S. at 26 (emphasis added).

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last visited Aug. 23, 2021) (discussing the lawfulness of COVID-19 vaccination and testing requirements for individuals physically entering the workplace “because an individual with the virus will pose a direct threat to the health of others”). Such policy will also inform litigants and witnesses that are compelled to appear in our Courthouses and Court facilities that diligent efforts have been made to protect them from the spread of COVID-19.

As indicated above, the vaccination and testing policy for admitted counsel and employees of their offices will take effect **September 1, 2021**, and will remain in place until further Order of the Court. The Clerk of the Bankruptcy Court is hereby ordered to designate a representative to collect and monitor the attestation forms and proof of COVID-19 test results submitted by admitted counsel and employees of their offices who are not fully vaccinated. Such submissions should generally be treated as confidential unless there is a sufficient health and safety reason justifying their disclosure.

IT IS SO ORDERED.

**FOR THE COURT:**

/s/ Stephen C. St. John  
STEPHEN C. ST. JOHN  
United States Bankruptcy Judge

Dated: August 23, 2021

**COVID-19 Vaccination Status Attestation  
For Admitted Counsel and Employees & Contractors of Their Offices  
Appearing in Person for Proceedings Before the  
United States Bankruptcy Court  
Eastern District of Virginia**

All admitted counsel and employees and contractors of their offices entering our Courthouses or Court facilities who will appear for a scheduled, live, in person proceeding before the United States Bankruptcy Court on or after **September 1, 2021**, must submit this vaccination self-attestation form concerning their COVID-19 vaccination status in advance of the entering the Courthouse or Court facility. You do not need to provide any medical information on this form, nor any explanation concerning your decision to receive or not to receive a COVID-19 vaccine. Completed forms must be emailed to [vaeb\\_counsel\\_attestation@vaeb.uscourts.gov](mailto:vaeb_counsel_attestation@vaeb.uscourts.gov). When possible, such forms should be submitted at least two (2) business days prior to entering our Courthouses and Court facilities.

Admitted counsel who do not have any live, in person proceedings scheduled before the United States Bankruptcy Court do not need to submit a vaccination attestation form unless and until a live, in person proceeding is scheduled by the presiding judge for which admitted counsel and employees and contractors of their offices will appear. A completed vaccination attestation form must be submitted in advance of entering our Courthouses or Court facilities on or after September 1, 2021.

If you believe you are entitled to an exemption from vaccination, you will need to request it in writing. Individuals who are not vaccinated and have not received an exemption, as well as those who decline to disclose their vaccination status, will be required to undergo COVID-19 testing and wear a mask when present in our Courthouses and Court facilities, as outlined in Standing Order 21-16. Individuals granted an exemption must similarly undergo COVID-19 testing and wear a mask in our Courthouses and Court facilities, though as outlined in Standing Order 21-16, different requirements may apply to those who are granted an exemption.

Name: \_\_\_\_\_

Classification:            Attorney                            Law Firm Employee/Contractor

**Please choose one of the following options:**

1. I am fully vaccinated (being "fully vaccinated" means that two weeks have passed after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or after receiving the single-dose vaccine (Johnson & Johnson)).
2. I received my second dose of the Pfizer or Moderna vaccine or my single dose of the Johnson & Johnson vaccine less than two weeks ago on \_\_\_\_\_.  
(date)
3. I received my first dose of the Pfizer or Moderna vaccine, and my second appointment is scheduled for \_\_\_\_\_.  
(date)
4. I have not yet been vaccinated, but I have scheduled an appointment to receive my first dose of vaccine on \_\_\_\_\_.  
(date)
5. I have not been vaccinated.
6. I decline to disclose my vaccination status.

I understand that I am required to provide accurate information on this form. I hereby affirm that I have accurately and truthfully answered the above question. I also understand that if I stated that I am fully or partially vaccinated, the Court may request documentation of my vaccination status (e.g., a copy of my vaccine card or other similar official document confirming vaccination status).

\_\_\_\_\_  
Electronic or Ink Signature

\_\_\_\_\_  
Date