



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

February 10, 2022

To: All UCS Judges and Non-Judicial Staff

From: Nancy J. Barry *NJB*
Justin Barry *JB*

Re: Modifications to Mask Policy and Social Distancing

Following a dramatic reduction in COVID-19 positive cases over the past two weeks and the latest guidance from the New York State Department of Health (DOH), the Unified Court System (UCS) will make the following changes to its Mask Policy and social distancing guidelines.

Mask Policy

Effective Monday, February 14, 2022, all judges and non-judicial personnel who have been issued an "orange card" may enter and remain in a non-public area of a courthouse or other UCS facility without wearing a mask. All others must continue to wear masks in private areas in accordance with existing protocols.

Judges and staff, regardless of vaccination status, must continue to wear masks in all public areas of a courthouse or UCS facility.

UCS may make additional, graduated adjustments to its mask policy in the coming weeks, depending on the latest COVID metrics and DOH guidance.

Social Distancing Requirements for Criminal Jury Trials

We have sought and received guidance from DOH on physical distancing requirements in jury trial settings (see attached memorandum from Commissioner of Health Mary T. Bassett, dated February 9, 2022).

Effective February 14, 2022, physical distancing for all participants in criminal jury trials throughout the State may be reduced from 6 feet to 3 feet as long as the following measures have

been taken:

- COVID screening for all court users continues;
- Trials and deliberations take place in rooms with ventilation and/or filtration;
- Trial participants, to the extent possible, are vaccinated (Note, however, that expanding a vaccination mandate to non-UCS court users would raise serious constitutional and access to justice concerns that militate against such a course of action);
- Judges, employees, lawyers, jurors and all other trial participants wear well-fitting masks, such as the KN-95 masks distributed to all Judicial Districts;
- Trial courtroom capacity continues to be reduced, particularly in the audience area where strategies such as maintaining 6-foot distancing or providing well-fitting masks to members of the public should be used;
- Consumption of food and beverages in deliberation rooms where 6-foot distancing cannot be maintained is prohibited;
- Hand sanitizer is available to all trial participants; and
- Enhanced cleaning protocols continue and cleaning supplies continue to be available in trial courtrooms for high touch surfaces and areas.

Each Judicial District should evaluate their criminal jury trial courtrooms and deliberation space, make the necessary adjustments using the criteria listed above and coordinate with their Commissioner of Jurors to return to full criminal trial capacity.

While this is a major step forward in our return to full trial capacity, at this time these changes only apply to criminal trials, both in the superior and local courts, not to civil jury trials. As we gain experience with these changes and receive additional guidance from public health officials, we will determine whether they can be applied to other practice areas.



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

TO: Hon. Lawrence Marks
Chief Administrative Judge

FROM: Mary T. Bassett, M.D., M.P.H.
Commissioner of Health

DATE: February 9, 2022

SUBJECT: Social Distancing Requirements for Jury Trials and Courtroom Proceedings

You have asked for guidance concerning social distancing requirements for courts in light of other mitigation strategies taken by the court system and the need to increase the number of jury trials to protect the rights of criminal defendants, generally, and pre-trial detainees, specifically.

The New York State Department of Health has not issued court-specific guidance, nor is there any formal social distancing requirement that applies to the court system at this time. To help protect New Yorkers from COVID-19, the Office of Court Administration should evaluate and determine how to best enact and maintain a combination of multilayered mitigation strategies, which include social distancing, mask wearing, testing, ventilation and filtration, hand hygiene, and vaccination while addressing the serious challenges the court system is facing.

Because of the critical importance of conducting jury trials within constitutional and statutory time frames, the Unified Court System (“UCS”) should continue its COVID mitigation strategies in a manner that supports expedient conduct of the business of the court while providing the greatest protection to participants, including jurors. This may include reducing the physical distance between trial participants to not less than 3 feet if they wear well-fitting masks, are in ventilated rooms, have been screened for COVID, and, to the extent possible, are vaccinated. Further, UCS should continue taking common-sense measures such as:

- Ensuring that jurors and employees follow the New York State policy regarding the use of masks
- Encouraging jurors and employees to reduce capacity and maintain physical distance in breakrooms or other settings where they unmask while actively consuming food/beverages
- Reducing density to the greatest extent possible
- Making hand sanitizer available to jurors and employees
- Making cleaning supplies readily available to clean high-touch surfaces before/after use.