

# INTRODUCTION

## Confronting the Pandemic

In 2020 the Delaware Judiciary confronted a challenge unlike any in the past 100 years in the form of the COVID-19 pandemic. Over the course of several days in March 2020, the State of Delaware went from hearing distant concerns about a seemingly far away pandemic, to Governor John Carney announcing a state of emergency and reported incidents of the infection in our courthouses.

The Delaware Judiciary was forced to find a way to meet the needs of our justice system and keep urgent and necessary business of the courts going while also finding ways to protect the health of the public, court staff and all those who use our court facilities.

This was not easy or simple and meant that, just a few months after the swearing in of Chief Justice Collins J. Seitz, Jr., followed by the appointment of Gayle Lafferty as the new State Court Administrator and Karlis Johnson as Supreme Court Administrator, the Delaware Judiciary had to set aside plans, priorities and programs to focus on keeping the courts operating safely. The result was a transformative change in the way the Delaware Judiciary administers justice.

After Governor John Carney announced a state of emergency to address the pandemic, Chief Justice Seitz followed suit, declaring a state of emergency for the Judicial Branch on Saturday March 14, 2020. Among other things, the order suspended speedy trial guidelines and put limits on the number of people in court facilities. The Delaware Judiciary also estab-

lished its COVID-19 response page at <https://courts.delaware.gov/aoc/covid-19> to keep the public, the Delaware Bar and our justice system partners updated on the judiciary's response to the pandemic.

Following the first report of possible COVID exposure in a court facility, on March 23, 2020, the Chief Justice took the unprecedented but necessary step to

close most court facilities to the public. He also directed judicial branch employees to work from home when possible. The Justice of the Peace Courts deserve special recognition for their work in the early days of the COVID-19 crisis, keeping their 24-hour essential operations going while Delawareans sheltered in place at home.

While the doors of most of the state's courthouses were closed to the public, the work of the courts continued. Pre-pandemic

the word "Zoom" conjured up images of speeding cars or rockets, not a video platform that has now become an integral part of daily judicial operations. Judicial officers used Zoom to hear cases and connect with justice partners and correctional facilities. And court staff frequently turned to the platform to take the place of face-to-face meetings. Prosecutors, public defenders, law enforcement and correctional officials met with Judicial Officers and court staff on daily conference calls (that later turned to weekly) to meet the challenge of hearing criminal cases during the COVID-19 state of emergency.



*Sign outside the Renaissance Center in March 2020, with the Leonard L. Williams Justice Center reflected in the window.*

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The Delaware Courts confronted the challenges from the pandemic head-on and kept court proceedings moving. The Delaware Court of Chancery showed the world once again why it is the favored court to resolve global business disputes. During the early days of the pandemic, from March 15 to June 15, 2020, the Chancellor and Vice Chancellors held 279 audio or video hearings and issued 402 rulings. Masters in Chancery held an additional 56 remote hearings and issued 100 rulings. And according to an October 31, 2020 survey of 10 of the nation's top state court systems by Law 360, the Court of Chancery was one of only three state court systems that saw court filings increase in September 2020 over 2019. Others courts not only saw decreases but significant drops of almost half of the number of filings over the previous year.

During that same March to June 2020 period, the Delaware Supreme Court issued 108 final orders and 10 opinions. The Superior Court held 308 remote motion hearings and conferences in civil matters and 541 criminal proceedings, including bail matters, *capias* returns, violations of probation, and sentencings. The Superior Court issued 161 opinions or orders. The Court of Common Pleas, the Family Court and the Justice of the Peace Court also continued their work, holding hearings, issuing rulings and making sure essential and urgent matters were addressed.

Recognizing that closing judicial facilities indefinitely was not an option, early on the Chief Justice formed the Courts Reopening Committee, headed by

Superior Court Judge William C. Carpenter, Jr. The Committee included representatives from the Delaware Department of Justice, the Office of Defense Services, the Department of Correction, members of the Bar and law enforcement. The Committee put in hundreds of hours studying reopening plans, looking to the experience of other jurisdictions, and consulting with state health officials. The Chief Justice

also hired an infectious disease expert, Dr. Alfred Bacon, to consult with the Committee and the courts to recommend best practices for reopening the courts and protecting the health and safety of litigants, attorneys, court staff and the public. In two town hall meetings held via Zoom on May 29, 2020, the Chief Justice and Judge Carpenter unveiled the Committee's reopening plan to court staff and members of the Bar. The 56-page plan called for the Court to reopen in a thoughtful and careful way over four phases. As the pandemic progressed, the Chief Justice also held several other video Town Hall meetings with Dr. Bacon for court employees, and shared with the Bar and public, to keep everyone up to date on developments.



*Work crews installing social distancing stickers outside the Leonard L. Williams Justice Center in July 2020.*

The courts launched Phase One of the reopening plan on June 8, 2020. Phase One was a "soft" reopening of court facilities to test social distancing and other safety measures. Phase One protective measures included requiring masks, limiting the number of people in the facility, temperature checks and screening questions at the entrances. A week later the courts went to Phase Two, which fully reopened court facilities to the public (though with at 50 percent of building capacity) and kept the Phase One safety measures in place while

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*A sign about COVID-19 greeting visitors at the Leonard L. Williams Justice Center.*

increasing the number of people and court staff allowed in court facilities.

Visitors returning to the courthouse in June saw a far different place than just a few months earlier. Outside our courthouses, visitors were greeted with social distancing stickers affixed to the pavement to ensure people stayed six feet apart as they

waited to enter. Inside, visitors saw masks on court security and all court employees, and all were required to stop at the new COVID screening stations where Capitol Police implemented the new protocols.

Past the screening area, visitors found clear plastic barriers installed throughout court facilities to slow or eliminate the potential airborne spread of the virus, particularly in places where the public interact with court staff. Cleaning staffers were also visible throughout the day, carrying out an increased cleaning regimen, with a particular focus on high-touch areas like railings, door handles and elevator buttons. Hand sanitizer was widely available at newly installed hand sanitizer stations in high traffic areas. And behind the scenes, the Judicial Branch also acquired several industrial “fogging” devices to completely disinfect courtrooms or other public spaces if someone infected with COVID-19 had been present.

There were also major changes in the courtrooms, the heart of any courthouse. Social distancing markers were installed on the benches or chairs in the public gallery. Clear plastic shielding was affixed to judges’ benches, on the areas where court clerks and staff sit, and on the witness box. In many courtrooms, plastic

barriers were also installed on counsels’ tables to allow attorneys to sit safely next to their clients. And in courtrooms used for jury trials, plastic barriers were installed in the jury boxes.

Once the Courts Reopening Plan was put into action, the Courts Reopening Committee turned its attention to creating a plan to safely restart jury trials, which would come as part of Phase Three. The Committee reviewed and reexamined every aspect of the courts jury selection process from the initial juror questionnaire to dismissal. Also, because each of Delaware’s three main state courthouses presented unique challenges, the Committee crafted new procedures for each building to ensure safety for each county’s prospective jurors. The new procedures reduced or eliminated the need for prospective jurors to stand in line or gather or move in large groups through the courthouses. For example, in the Leonard L. Williams Justice Center in Wilmington, 200 of the 260 chairs that had been in the jury assembly room were removed to allow for the proper distance between jurors as they waited in that room. In addition, judges used video technology to allow judges and other trial participants to appear remotely in the jury assembly room and interact with potential jurors, reducing or eliminating the need to have them brought to a courtroom. In Kent

County, jurors assembled in the largest room in the courthouse – historic Courtroom 1 – rather than the jury assembly room, so that they could be seated in a socially distant way. Once seated in Courtroom 1, the process was changed so that jurors remained there throughout check-in, juror orientation, most of voir dire, and then through the trial itself. The Sussex



*Work crews installing clear plastic shields in a Wilmington courtroom in June 2020.*

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County Courthouse adopted a similar process, summoning smaller groups and using their historic Courtroom 1. Sean O’Sullivan, the courts’ chief of community relations, spearheaded new informational videos – available on the courts website at <https://courts.delaware.gov/superior/jury/juryfaq.aspx> – to walk prospective jurors through the new process and advise them of the new health and safety changes.



*The Jury Services room at the Leonard L. Williams Justice Center after the chairs were rearranged to provide proper social distance.*

On October 2, 2020, the courts moved to Phase Three of the reopening plan, allowing the resumption of jury trials. The first jury trial – a three-day DUI case involving six witnesses – was successfully held on October 26, 2020 in the Kent County Courthouse. However, on Nov. 16, 2020 following an increase in COVID-19 cases in Delaware, the Chief Justice in consultation with the other Justices and the Presiding Judges of all the courts and Dr. Bacon, put a pause on jury trials and moved the court system back to Phase Two until at least early 2021.



*The entrance to Courtroom 1 at the Sussex County Courthouse with a reminder about the mask policy.*

The full reopening contemplated in Phase Four of the Courts Reopening Plan will not happen until well into 2021 and perhaps for most of the year. And once the Delaware Courts move to Phase Four, we expect there will be a new normal, where some of the changes will become permanent, such as the continued use of videoconferencing technology. This change in particular has proven easier and more

efficient for all involved, saving both time and money. Other procedures adopted for health and safety reasons might also remain in place for years.

The pandemic has shown the resilience and adaptability of our justice system and taught us many important lessons that will guide the courts for a long time. Unfortunately, COVID-19 diverted the judiciary from many other pressing justice issues. For the past several years, the courts have focused on a wide range of justice reforms includ-

ing Access to Justice initiatives, Community Court programs, bail reform initiatives, fees and fines, and addressing implicit bias. The Delaware Courts remain committed to these efforts. When conditions improve, we will resume working closely with state legislators, our criminal justice partners, and community organizers to address these important initiatives.

The Delaware Judiciary also recognizes the need and benefits of increasing diversity in our Bar and on the Bench. The Delaware Bar is rightly proud that it can count among its members such consequential figures as Louis L. Redding and Leonard L. Williams, Jr., whose work shaped civil rights advances in Delaware and the nation. And last year, the Delaware Judiciary welcomed the historic confirma-

tion of Justice Tamika Montgomery-Reeves to the Delaware Supreme Court, making her the first African American to serve on our highest court. Several new diversity initiatives are also underway, includ-

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ing starting a pipeline program involving Delaware State University and the Delaware Law School at Widener University.

Finally, while the Delaware Courts continue to press for key infrastructure improvements – most notably the urgent need for new Family Court facilities in Kent and Sussex Counties to replace aging and unsafe buildings – the courts have reason to celebrate some infrastructure achievements. During the pandemic, construction was completed on new courtrooms on the 7th Floor of the Leonard L. Williams Justice Center in Wilmington. In addition to providing vital courtroom space, improvements on the 7<sup>th</sup> floor will eventually allow the Justice of the Peace Court to join the other courts in the main courthouse in 2021.

Looking to the needed Family Court facilities, building design is well underway, and the courts will once again ask the Governor and the General

Assembly to fund construction of these buildings as soon as possible.

In closing, we can take comfort in the fact we can now look at 2020 in hindsight. But as the year comes to a close, it is clear that the pandemic will stretch well into 2021, so our work to combat it and protect the health and safety of all who visit our court facilities is not yet done. At the same time the pressing needs and priorities that existed prior to the pandemic have not gone away and we are hopeful that in 2021 we will be able to address those issues.

While much remains uncertain about what the Delaware Judiciary will face in 2021, one thing is certain — even with our embrace of technology and new ways of doing business, the Delaware Courts remain committed to maintaining our status as a world leader in providing the fair, just and efficient resolution of criminal and civil disputes. ♦



*A member of the courthouse cleaning staff wipes down a railing at the Kent County Courthouse.*