

To: Long Term Planning Committee

From: VBA COVID-19 Committee

Re: Ramp Up Report

Date: June 8, 2020

The COVID-19 Committee acknowledges the thoroughness and detail of the Ramp-Up Report and appreciates the tremendous amount of preparation and analysis that the Long Term Planning Committee (LTPC) did to produce the Report. It also appreciates the input the LTPC sought from the VBA while preparing the Report, and the input it has sought following the Report's dissemination. The Committee offers this memo as initial feedback about the Report and would be happy to offer additional feedback on a regular basis as the timing for various recommendations in the Report unfold. The comments noted herein are grouped according to different aspects of the Report, and not in a particular order of priority.

1. Resource Allocation/Supplementation
 - a. The Committee requests that the Judiciary be cognizant of the fact that not all users of the judicial system have ready or quality access to resources such as broadband internet, terminals/devices or software needed to effectively access the internet and thereby interface with the Judiciary. It is recommended that kiosks or other means of accessing the courts be planned at different locations, especially in the more rural counties, to enable remote access. Small, private rooms at libraries, for example, might be equipped for remote connection to courthouses, to enable court users to participate remotely in a hearing if they lack the ability to do so at their homes. Other local venues might include community justice centers or town clerk offices. Also, see 2b below.
2. Staffing & Attendance
 - a. Like court personnel, those who interface with the Judiciary as "consumers" may be challenged by COVID-19 related responsibilities for child or family-elder care that limit their availability and travel. The Committee asks that the Judiciary and staff be flexible (if not over-accommodating) when addressing scheduling and rescheduling of court matters attributable to these reasons. In particular, the Committee asks that the judiciary approve requests for extensions or rescheduling for these reasons, and resist requiring the requesting party to "show cause" for the extension/rescheduling, and instead grant such requests as a matter of course absent circumstances that suggest abuse of the judiciary's deference.
 - b. To the extent that the resources are in place to enable court users to interact with the courts remotely, via broadband internet or other suitable (i.e., conference call) technology, such access methodologies should be the preferred means of interaction, and the courts are encouraged to be accommodating of requests to rely on such technological interaction when reasonable.

- c. The Judiciary is asked to be mindful of emergent situations such as a 104-degree temperature at a courthouse screening point, or a litigant or counsel who develops a dry cough the morning of a scheduled appearance, hearing or trial. The Judiciary is urged to put in place a standing order/directive that if such conditions arise, the person will be asked to participate by phone off-site, if possible, or the appearance, hearing or trial will be re-scheduled or held remotely
 - d. The Committee asks that additional time be built into scheduling hearings to account for the time required to safely exit/enter the courtroom and to allow for the additional time needed to set up phone or video connections if the hearing is a remote one.
 - e. The Committee encourages as many judges as possible to remain in their current assignments at the next rotation, to facilitate continuity and to prevent delays occasioned by the need for judges to become acquainted with a different courthouse and cases when an assignment changes. This is especially true in the criminal docket.
3. Distancing in the Courtroom/Courthouse
- a. The Committee will encourage compliance with all directions and instructions present in the courthouses as relates to distancing and health.
 - b. The Committee asks that consideration be given to the practical implications of attorneys and clients needing to consult one another in confidence prior to and during court proceedings. It is virtually impossible to consult orally with another at a minimum 6-foot distance and do so confidentially while sitting at counsel table. Even the passing of handwritten notes may be problematic without each wearing gloves. Attorneys and clients may need breaks in courtroom proceedings or “technological isolation” if participating in a video proceeding to facilitate “safe” consultation. We understand that break requests made for tactical reasons are disruptive and may be disrespectful (or worse). We understand that the Judiciary will need to be vigilant to prevent or curtail abuses.
4. Access to Justice
- a. The Committee is concerned that the ability to “veto” scheduling decisions may result in hardship, if not denial, of justice to some clients. That authority should be tempered by such considerations and the needs of the client and counsel considered and should be exercised only upon consultation with the sitting judge.
 - b. The Committee supports the great care and forethought that the Judiciary has invested in planning re-initiation of jury trials. In that vein, however, the Committee is concerned that relocation of jury trials to facilitate social distancing and protection of the health of participants may create significant challenges for clients and counsel related to travel, child care, time away from work, and the like if the venue change results in a trial in a courthouse a long distance from the original venue.