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**Court Ethics**

**January 2021 Survey**

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**Courts, COVID, and Vaccinations:**

**What Have We Learned?**

**What Are We Still Learning?**

The Coronavirus has hobbled our nation’s court systems for most of 2020.  Here at the dawn of 2021, we are faced with new hope but also new challenges.  No matter how quickly the vaccines are distributed, it appears likely that restrictions will remain in place for the balance of 2021 and will be lifted only cautiously.

How will individual courts operate while the pandemic is being brought under control?  How will courts deal with continuing restrictions? How will courts manage employees who are vaccinated; how will courts manage those who choose not to be vaccinated?

In January of 2021, over 150 court administrators and clerks of court from around the country were invited to take a short survey on their court’s response to the Coronavirus and the upcoming vaccinations. Thirty-four individuals responded, representing 15 states.[[1]](#footnote-1)

As a preamble, the range of responses to many of these questions was surprising. This indicated that the experiences of courts around the country were quite varied. The survey raises several interesting ethical questions including 1) should courts require their employees to be periodically tested for COVID-19, and 2) when the vaccines become widely available, should courts require their employees to be vaccinated? Paraphrased respondent comments have been added to provide context to many of the survey results.

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| **Did Your Court Have to Close to In-Person Traffic During the Pandemic?**  **If So, for How Long?** | | |
| The court ***Never Closed*** to in-person traffic | 11 | 32% |
| The court closed for ***Less than 1 Month*** | 3 | 9% |
| The court closed for between ***1 and 2 Months*** | 2 | 6% |
| The court closed for between ***2 and 3 Months*** | 7 | 21% |
| The court closed for ***More than 3 Months*** | 11 | 32% |

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| **Did Your Court Have to Limit Employee Attendance in the Office During the Pandemic?**  **If So, for How Long?** | | |
| The court ***Never Limited Employee Attendance*** in the office | 4 | 12% |
| The court limited employee attendance for ***Less than 1 Month*** | 3 | 9% |
| The court limited attendance for between ***1 and 2 Months*** | 3 | 9% |
| The court limited attendance for between ***2 and 3 Months*** | 5 | 15% |
| The court limited attendance for ***More Than 3 Months*** | 19 | 55% |

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| **Did Your Court Coordinate with Public Health Officials in Making Operational Decisions?** | | |
| Responses to this question may have been skewed somewhat by interpretations of “coordinate.” Some courts consulted with public health but retained final decisions to themselves. | | |
| ***Yes*** - the court coordinated with public health officials | 29 | 88% |
| ***No*** - the court did not coordinate with public health officials | 4 | 12% |

**Additional Respondent Comments:**

* The Court has followed the health department's guidelines for close contact, potential symptoms, and positive test results.

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| **Did Your Court Coordinate with Other Agencies in the Court Facility in Making Operational Decisions?** | | |
| This question assumes that in many instances, the Court may be a tenant in a multi-use facility. | | |
| ***Yes*** - the court coordinated with other agencies within the facility | 33 | 97% |
| ***No*** - the court did not coordinate with other agencies within the facility | 1 | 3% |

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| **Does Your Court Require Employees to Be Periodically Tested Before Coming to Work?** | | |
| As stated, this is an interesting ethical question since the CDC and the Journal of the American Medical Association recently published models that 59% of COVID transmissions come from asymptomatic individuals. This implies that the only effective way to accurately identify the spread of COVID is through testing.[[2]](#footnote-2) | | |
| ***No Court*** said it required employees to be tested before coming to work | 34 | 100% |

**Additional Respondent Comments:**

* The Court encourages employees to be tested but it is not required (2 comments).
* The Court encouraged employees to monitor their own health and get tested if they experience symptoms.
* The Court does not require testing, but each judge, employee, and corrections officer must initial a sign-in sheet indicating they have no symptoms and have not been in contact with a confirmed case, before coming to work.
* This Court is in a small city. All employees have been tested, but they were not required to do so. No court employee has tested positive nor has received a positive antibody test.
* Over a third of the staff have developed COVID. Employees who have been exposed to an infected individual are required to quarantine per CDC guidelines.
* The Court has asked employees to notify if they are not feeling well and to self-quarantine if they do not feel well or if they have engaged in risky behavior.
* Employees are tested only if exposed and contacted through contact tracing.
* Employees are required to report if they have symptoms of COVID and to get tested.

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| **If an Employee Does Test Positive for the Coronavirus, Does the Court Require that Employee to Stay Away from Work? (Stay Home?)** | | |
| ***Yes, if the Employee Feels Ill*** | 3 | 9% |
| ***Yes*** - even if the employee is ***Not Experiencing Any Symptoms*** | 29 | 85% |
| Did not respond to the question | 2 | 6% |

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| **What Percentage of Employees in Your Court Can Telework?** | | |
| The court Allows Telework but did ***Not Provide a Percentage*** | 6 | 18% |
| ***All Employees*** can Telework | 1 | 3% |
| ***Most Employees*** can telework | 2 | 6% |
| ***60% to 90%*** of employees can telework | 10 | 30% |
| ***20% to 50%*** of employees can telework | 5 | 15% |
| ***Limited*** ability to telework | 5 | 15% |
| ***No*** - Does not permit telework | 2 | 6% |
| Did not respond | 2 | 6% |

**Additional Respondent Comments:**

* During the State’s “Stay Home” order most staff teleworked depending on work assignments.  Currently, the only employees who are teleworking either have children who are doing e-learning from home or have been exposed to COVID and are asymptomatic.
* The court has been mostly teleworking and holding arguments via Zoom since April.
* The Court has never had to limit employee attendance. The Court provides telework options for employees who need to quarantine.
* The Court has found that a clerk can perform most of their duties from a distance, so this has been an excellent solution.  The Court also has staff in and out at a moment’s notice to quarantine or if they have any concerns or symptoms.  Employees who are well enough to work, come in after-hours or work from home during quarantine.
* One employee teleworks. The City’s Voice Over Internet provider is not syncing well with the State's Virtual Private Network.
* The Court has allowed some telework. It is limited by two things, 1) lack of internet infrastructure for many court employees, and 2) much of what the court does even with eCourt tools, requires the processing of paper which means either being physically in the courthouse or someone scanning documents and emailing documents to employees for processing.
* The Court briefly allowed teleworking during the early months of the pandemic, but it is not really compatible with the needs of the court. The County is allowing quite a few departments to telework, and quite honestly, it has been a mistake. It seems that those working from home do not even answer their phones until midmorning. Some employees act like they are bothered by the phone call. Frequently there are barking dogs in the background. The work ethic does not seem to be the same for most staff to support teleworking.
* During quarantine, the Court has been able to provide allow staff to telework.
* During the closure to the public, the Court completely changed its business processes and has begun offering court sessions via videoconference. That has been well-received, though the number of people served each day has been hampered. One of the benefits is partnering with some of the local Continuum of Care agencies to bring court to them via videoconference, to directly serve their clients … many of whom have court cases but were not coming to Court. It is much less stressful working with the judge when they can sit with their caseworker at the agency, and the judge and bailiff are not in the same room. As a general rule, hearings via videoconference will stay in place.
* Primarily employees in Domestic Relations, and in Adult and Juvenile probation are working remotely. The departments that directly support judges, courtrooms, and courtroom activities (essential functions) are all working on-site including court reporters, court administration and chamber staff (law clerks, secretaries, tip staves), jury and law library staff.
* The Court has had a formal telework program since 2005. Prior to the pandemic, however, maybe a dozen or so telework agreements were approved. The typical agreement was for no more than one telework day a week. Once the pandemic hit the Court rolled out the program on a much broader scale. Now, nearly all employees telework at least once a week; many telework more frequently than that, and a small number telework full-time.
* Employees who do telework are those without adequate internet or live in an impossibly small space with others and cannot work in a private space. The people who must at least rotate into the office are employees who handle incoming and outgoing mail, run the technology for the judges, new employees in training, and supervisors who just need some hands who need to be in the office.

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| **Legend -** Before entering the court facility employees must: | | | |
| **Mask** | Put on a mask | **Contact** | Answer questions regarding contact with others who may have tested positive for COVID |
| **Temp** | Have their temperature taken or take their own temperature | **Other** | Comply with other requirements such as   * answering questions into an automated symptom tracker * regularly cleaning one’s work area * answering additional questions about recent travel and attending risky social gatherings. |
| **Feeling** | Answer questions on how they are feeling and if they are showing any symptoms of COVID | **Various Combinations** | 6 courts responded each with different combinations of requirements including:   * just taking one’s temperature * just answering questions regarding showing COVID symptoms * answering questions about showing COVID symptoms *and* having had contact with others, or * just wearing a mask and taking one’s temperature |
| One Court responded that they had no requirements.  Two courts did not respond to the question | | | |

**Additional Respondent Comments:**

* The Court requires masks at all times. Employees must self-monitor their temperature and answer questions they need to consider before reporting to work.
* The Court facility allows a great deal of spacing between employees, so if they are alone in their workspace, they are allowed to remove their masks.
* The City Human Resources Department has established a symptom tracker for all employees to log if they are having symptoms or not. HR wants everyone to do this every day they come to work in the physical office - however, it is not mandated, and it is unclear if HR reviews the information.
* Employees are required to disclose information regarding travel and social gatherings to ensure that the workplace remains safe.

One court did not respond to the question.

**Additional Respondent Comments:**

* The Court supplies personal protective equipment and cleaning supplies upon request (4 comments).
* The Court supplies personal protective equipment to court interpreters upon request.
* The Court provides sanitizer wipes (2 comments).
* Maintenance regularly wipes down the office.
* The Court provides engineered barriers between employees.
* The Court provides masks, gloves, sanitizer, and face shields to the public upon request.
* The Court provides cleaning supplies for public areas and masks for the public.
* The local health department does not recommend using face shields.

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| **When a Vaccine Becomes Widely Available, Will Your Court Compel Employees (with Exceptions for religious and ADA objections) to Get Vaccinated Before Coming to Work?** | | |
| This is an interesting question since on December 16, 2020, the Federal Equal Employment Opportunity Commission handed down guidelines that employers are allowed to require employees to be vaccinated against the flu in order to come to work.[[3]](#footnote-3) | | |
| ***Yes*** - the Court will compel employees to be vaccinated | 2 | 6% |
| ***No*** - the Court will not compel employees to be vaccinated | 16 | 48% |
| The question is still ***Undecided*** at the point | 15 | 45% |

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| **If an Employee Refuses to Be Vaccinated, Will the Court (notwithstanding a religious or ADA objection) Take Some Action?** | | |
| ***Yes*** - the Court will take action against an employee who refuses to be vaccinated | 0 | 0% |
| ***No*** - the Court will not take action against an employee who refuses to be vaccinated | 14 | 41% |
| The question is still ***Undecided*** at the point | 20 | 59% |

**Take-Aways**

* The experiences that courts have had with COVID around the country were quite varied.
  + COVID has had very little effect in some courts while the effects have been substantial for others.
  + Most courts cooperated with the public health officials and other government agencies within the court facility in making operational decisions.
* No court said it required employees to be tested before coming to work.
  + Although if an employee tests positive to COVID most courts require an employee to stay home even if the employee is asymptomatic.
* Most courts allow employees to telework although the percentage of employees who can telework varies from court to court.

* Most courts provide employees with an array of protective and sanitary supplies.
* Compelling employees to be vaccinated is still a significant question to be decided, although close to half have said that they will not require employees to be vaccinated.

1. Arizona, California, Colorado, Delaware, Florida, Georgia, Kansas, Michigan, Nevada, North Dakota, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin [↑](#footnote-ref-1)
2. “More than Half of COVID Transmissions Comes from People Without Symptoms, CDC Model Shows” Fox News Phoenix, January 12, 2021 [↑](#footnote-ref-2)
3. Camille Caldera, “Fact Check: Yes, Employers Can Require that Workers Receive the COVID -19 Vaccine,” USA Today, Dec. 18, 2020 [↑](#footnote-ref-3)