

IN THE COURT OF COMMON PLEAS FOR THE 39TH JUDICIAL DISTRICT Franklin
County and Fulton County Branches

In Re: 39th Judicial District : Emergency Judicial Order
:
: 57 MM 2020
:
: No. 20-2020 MCP

Application to Chief Justice Thomas Saylor and the Pennsylvania Supreme Court for the entry of
Seventh Supplemental Emergency Judicial Order
Extending the Judicial Emergency for the 39th Judicial District
Through August 31, 2020

And now this ^{27th} day of May 2020,

BACKGROUND

WHEREAS, the Pennsylvania Supreme Court issued an order on April 28, 2020 that extended the state wide judicial emergency though June 1, 2020;

and WHEREAS under that same order, the Chief Justice of the Pennsylvania Supreme Court Thomas Saylor ordered that individual President Judges may extend the judicial emergency within their respective judicial district on the condition that reasons are provided for the extensions;

And WHEREAS, the 39th Judicial District is comprised of two counties, Franklin and Fulton, which have had differing experiences and documented impacts of the COVID-19 virus;

And WHEREAS Governor Wolf has created a three tiered level of requirements to restrict and permit certain activities within counties on a Red, (most restrictive), Yellow (moderately restrictive), and Green (least restrictive) based upon the effects of COVID-19 in each county;

And WHEREAS Governor Wolf identified Fulton County as a county that was granted permission to move from the "Red" to "Yellow" status for the opening and operation of businesses and gatherings of persons as of May 15th, 2020, but Franklin County remained in the "Red" Zone which required persons to observe a stay-at-home order and to not gather in groups of greater than 10 up until May 29, 2020;

E-MAILED

And WHEREAS Governor Wolf has announced that as of May 29th, 2020, Franklin County will move from the Red to Yellow zone. However under the Yellow Zone designation, the following conditions are to be observed by the general public and businesses as set forth on the Pennsylvania Department of Health as of May 27, 2020:

- *Telework Must Continue Where Feasible
- *Businesses with In-Person Operations Must Follow Business and Building Safety Orders
- *Child Care Open Complying with Guidance
- *Congregate Care and Prison Restrictions in Place
- *Schools Remain Closed for In-Person Instruction
- *Stay at Home Order Lifted for Aggressive Mitigation
- *Large Gatherings of More Than 25 Prohibited
- *In-Person Retail Allowable, Curbside and Delivery Preferable
- *Indoor Recreation, Health and Wellness Facilities and Personal Care Services (such as gyms, spas, hair salons, nail salons and other entities that provide massage therapy), and all Entertainment (such as casinos, theaters) Remain Closed
- *Restaurants and Bars Limited to Carry-Out and Delivery Only
- *All businesses must follow CDC and DOH guidance for social distancing and cleaning
- *Monitor public health indicators, adjust orders and restrictions as necessary

The courts, while not required to adhere to the designations of the Governor for private business operations and activities of citizens, are required to follow the requirements set forth in the orders of Chief Justice Saylor. In his order of April 28th 2020, Chief Justice Saylor specifically provides that while the courts shall remain centered on “critical functions”, and the courts are to “put forth their best efforts to accomplish the timely administration of justice in all other matters”, such efforts are “subject to the constraints and safety considerations in the court’s order.”

Chief Justice Saylor goes on to provide in the April 28, 2020 order,

Some local courts have utilized the procedures specified in Rule of Judicial Administration 1952 and/or this Court’s prior orders to declare local emergencies. Such local emergencies REMAIN IN FULL FORCE AND EFFECT, empowering President Judges in those districts to continue to exercise emergency powers under Rule 1952(B)(2). Extant local

emergency orders and directives, including any provisions of these affecting time calculations or deadlines, SHALL REMAIN IN FULL FORCE AND EFFECT until they expire or are rescinded locally.

Should other President Judges deem it prudent to exercise emergency powers above and beyond the authority and latitude provided in this Order, they may file a declaration of an emergency in their districts with the Supreme Court Prothonotary in the Eastern, Western, or Middle District Office, as appropriated for the particular local judicial district. Such a declaration generally SHALL BE SELF-EFFECTUATING subject to any subsequent order by this Court or the local court, with the understanding that the temporary suspension or modification of any statewide court rules other than those addressed in this Order shall first require an application to this Court pursuant to Rule of Judicial Administration 1952(B)(2)(m).

In the jurisdictions with prevailing local emergencies, self-effectuating extensions may be filed. However, any declaration extending a local emergency beyond June 1, 2020, should provide supporting reasoning.²

² If a docket number has been assigned to the judicial district for emergency purposes, any further order concerning administrative directives or other matters associated with the local judicial emergency should be captioned so as to indicate that docket number. For convenience, declarations of emergency and associated local orders may be transmitted via electronic mail to: Irene.Bizzoso@pacourts.us.

II. The Safety of Judges, Court Staff, Court Users, and Others

To the extent they are not already in place, all court leaders MUST IMPLEMENT AND MAINTAIN procedures that restrict potential COVID-19 exposure which could result from interactions of judges, court staff, and county agency staff among themselves and with or among members of public present at court facilities. Among other measures, President Judges may restrict access to court facilities so that appropriate social distancing can be maintained. To the

degree practicable in light of the necessity for some in-person appearances and proceedings, safety measures should be employed that are as consistent as possible with the federal and state executive guidance associated with countering the spread of the COVID-19 virus. To the extent that hearings and conferences can be held in the presence of counsel only, the courts SHALL PERMIT the parties' physical presence to be excused. In all events, any necessary in-person proceedings SHALL BE HELD in courtrooms designated by the individual courts of common pleas to minimize person-to-person contact.

Consistent with the previous guidance, and subject to the direction of President Judges, all courts – including magisterial district courts – are encouraged to consider deciding matters on the papers and/or to conduct court proceedings through the use of advanced communication technologies,³ to the extent that constitutional requirements can be satisfied. Any state or local rule that impedes a judge's ability to utilize available technologies to limit in-person contact is suspended through June 1, 2020.

³ Advanced communication technology includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail. *See* Pa.R.J.A. No. 1952(A)(2)(e) & comment (citing Rule of Criminal Procedure 103 for the definition of advanced communication technology).

The Administrative Office of Pennsylvania Courts stands ready to provide guidance to courts concerning local implementation of technological resources. In the absence of a certification as provided in Part III of this Order, no proceeding should be delayed solely on account of the present public health crisis that could reasonably be conducted using available advanced communication technologies in a manner that is consistent with constitutional requirements.

III. Court Filings and Time Limitations and Deadlines

The suspensions of time calculations and deadlines indicated in the Court's previous orders and in any order of an intermediate or local court SHALL REMAIN IN EFFEDCT for the time specified in those orders. In all events, legal papers or pleadings (other than commencement of actions where statues of limitations may be in issue) which are required to be filed between march 19, 2020, and May 8, 2020 generally SHALL BE DEEMED to have been filed timely if they are filed by close of business on May 11, 2020. Upon adequate notice, however, President Judges or presiding judges may enforce deadlines prior to May 11, 2020, in the critical-functions arena.

President Judges are HEREBY INVESTED with substantial discretion in connection with the enforcement of time deadlines are DIRECTED to ensure that the enforcement of any deadline does not created an unreasonable risk to the health or safety of court personnel, attorneys, court users, or the general public.

Should any attorney or *pro se* litigant believe that the enforcement of a time deadline or participation in any proceeding poses a significant danger to the health of one or more persons, or that compliance or participation is unreasonable or impossible in light of restrictions arising out of the Governor's prevailing orders and directives, he or she may file a certification detailing the reasons with the court having jurisdiction over the litigation. Upon receipt of such a certification, the presiding judge SHALL SET a deadline for responses and provide a reasonable opportunity to be heard to all parties.

All courts SHALL PROVIDE FOR COURT FILING BY MEANS OTHER THAN IN-PERSON DELIVERY WHENEVER POSSIBLE. Any state or local rule that impedes such alternative means of filing is suspended through June 1, 2020.

VI. Jury Trials

Jury trials, both criminal and civil, remain SUSPENDED and will be scheduled for a date in the future by the courts. Local court leaders SHALL ASSESS options for resumption of jury trials consistent with prevailing health-and-safety norms.

VIII. Prompt Trial

Rule of Criminal Procedure 600(C) remains SUSPENDED in all judicial districts through at least June 1, 2020. The purport of this directive is that the time period of the statewide judicial emergency continuing through at least June 1, 2020, SHALL BE EXCLUDED from the time calculation under Rule 600(C). Nothing in this Order, however, or its local implementation, shall affect a criminal defendant's right to a speedy trial under the United States and Pennsylvania Constitutions – albeit that the circumstances giving rise to this Order and the suspension may be relevant to the constitutional analysis.

39TH JUDICIAL DISTRICT REASONS FOR JUDICIAL EMERGENCY EXTENSION

Taking into account the strictures set forth in the April 28, 2020 Pennsylvania Supreme Court order, the undersigned President Judge has been able to discern that the current judicial facilities in both counties offer limited ability to comply with social distancing requirements or otherwise permit gatherings in excess of the 25 person limit under the Yellow restrictions. Furthermore, the testing of entrants to the courthouse is not currently available or feasible for COVID-19, which has been documented to an asymptomatic virus.

The courts of the 39th Judicial District are open for business and have been since May 11, 2020 per and order of court dated May 1, 2020. The courts can process cases on all dockets as previously ordered and have begun processing cases on all dockets, but have done so under strict access policies. The ongoing presence of the COVID-19 virus in both counties requires the court to revise the way in which cases are scheduled so as to prevent the “mass” or commonly referred to “cattle calls”, that result in dozens if not more than 100 persons including litigants, attorneys, court staff finding themselves sitting shoulder to shoulder in the gallery areas of court rooms, and in the case of jury deliberation rooms having little space to move. Furthermore there are few alternate large gathering spaces or common areas in either courthouse other than fairly narrow hallways that can permit persons to wait for the commencement of hearings in large quantities while observing social distancing of at least 6 feet. While many methods of containment have been questioned in the medical community, social distancing has been emphasized as an accepted method to slow or prevent the spread of COVID-19. (As cited in Medical News Today, Written by Maria Cohut, Ph.D. on March 24, 2020 - Fact checked by Anna Guildford, Ph.D.,; <https://www.health.harvard.edu/diseases-and-conditions/preventing-the-spread-of-the-coronavirus>; <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>). By reducing the numbers of persons coming to the courts in both counties on a daily basis, the court cannot prevent, but can limit the likelihood of a substantial or significant infection of a large gathering of persons, which if such an event occurs, could in turn lead to the large scale testing and quarantine of numerous court employees, attorneys, litigants and members of the public and even a complete closure of court facilities and disinfection effort as has already occurred in the Commonwealth. (<https://www.timesonline.com/news/20200326/lawrence-county-courthouse-worker-tests-positive-for-virus-county-now-up-to-8-cases>). While no actual confirmed cases of COVID-19 have been provided to the court as of the filing of this request, the court is aware of

reports of testing of staff in other facilities such as the Franklin County Jail and inmates that if standard procedures were being observed, could lead to exposures within the courthouse and other court facilities.

The extension of the judicial emergency through August 31, 2020 empowers the court to do the following:

1. Continue the use of ACT to conduct proceedings where possible, especially in the Civil, Orphans' Court and Domestic Relations dockets.
2. Allow for the use of ACT to conduct criminal proceedings that otherwise would be required to be in person under Pa.R.Crim.P. 119, when defendants agree and to limit the transport of inmates from the Franklin County Jail to the courthouse, thus limiting the possibility of infection of the jail population and assist the Franklin County warden in his quarantine efforts.
3. Allow for the continued filing of pleadings in an electronic form with the Prothonotary and Clerk of Courts, even though "efiling" systems are not yet in place.
4. Allow for the commencement of jury trials on Monday, July 13, 2020 in Franklin County and Monday, July 27, 2020 in Fulton County. The court declares that the time from June 1, 2020 until July 13, 2020 in Franklin County and June 1, 2020 until July 27, 2020 in Fulton County shall be excluded from the Pa.R.Crim.P. 600 calculation for all criminal cases.
5. Allow for the scheduling of criminal and civil/family law cases by Court Administration in limited numbers on an hourly basis or based upon available square footage in court and hearing rooms to emphasize and promote social distancing consistent with the Yellow Code strictures of the Pennsylvania Department of Health and the CDC recommendations until such limitations are modified.

6. Allow and empower Court Administration in conjunction with the Sheriff's Department of both counties to manage and direct access within common areas of court facilities to promote social distancing.
7. Allow and empower the court and court administration to secure alternate facilities other than the existing court facilities to proceed with essential functions such as jury selection and/or jury trials in venues other than the existing court facilities if deemed appropriate.
8. To allow access to the public and media on a limited basis or to provide access to recordings immediately after a proceeding.
9. Suspend all previously scheduled matters such as criminal call of the list and pretrial conferences for the months of June and July except as specifically ordered for the limited purpose of preparing for the available jury trial days in the months of July and August.
10. Allow the court's masters and hearing officers to conduct hearing matters using ACT.
11. Allow Magisterial District Judges to continue to provide alternate forms of access and to schedule matters by appointment so as to encourage social distancing.
12. Allow the President Judge to monitor the constantly changing impact of the COVID-19 virus on the populations of both Franklin and Fulton Counties and when recommended restrictions are lessened from Yellow to Green to take action to expand access to the courts.
13. Provide that a copy of the court's order shall be posted on the exterior of every court facility, the court/county websites and filed of record with the Pennsylvania Supreme Court Prothonotary for the Middle District.

For all of the foregoing reasons, the undersigned President Judge for the 39th Judicial District respectfully beseeches and requests the Chief Justice and the Pennsylvania Supreme Court to approve the attached Seventh Emergency Order for the 39th Judicial District a copy of which is attached.

FULTON COUNTY
PENNSYLVANIA
FILED
MAY 27 2020
PROTHONOTARY, CLERK OF COURTS,
CLERK OF ORPHANS COURT,
REGISTER OF WILLS, RECORDER OF DEEDS

4:00 PM

BY THE COURT

Signed: *Shirley Meyers*

Dated: May 27, 2020 P.J.

Dist:

CA

Common Pleas Judges for the 39th Jud. Dist.

Hon. Angela Krom

Hon. Jeremiah Zook

Hon. Todd Sponseller

Hon. Mary Beth Shank