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

AD 83-2020

In Re: 39th Judicial District : Emergency Judicial Order

57 MM 2020

Eighth Supplemental Emergency Judicial Order
Revising the Allotment of Persons Admitted to Judicial Facilities and Location of Proceedings
During the Judicial Emergency for the 39th Judicial District
Through August 31, 2020

And now this 19th day of June, 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 to be in the "Green" Zone as of June 5, 2020 and identified Franklin County as a county that has been granted permission to move from the "Yellow" to "Green" status for the opening and operation of businesses and gatherings of persons as of June 19, 2020.

Certified
JUN 19 2020
CLERK OF COURTS
FRANKLIN COUNTY, PA

And WHEREAS, under the "Green" Zone designation, the following conditions are to be observed by the general public and businesses as set forth by the Pennsylvania Department of Health website as of June 20, 2020:

*Continued Telework Strongly Encouraged
*Businesses with In-Person Operations Must Follow Updated Business and Building Safety Requirements
*All Businesses Operating at 50% Occupancy in the Yellow Phase May Increase to 75% Occupancy
*Child Care May Open Complying with Guidance
*Congregate Care Restrictions in Place
*Prison and Hospital Restrictions Determined by Individual Facilities
*Schools Subject to CDC and Commonwealth Guidance
*Large Gatherings of More Than 250 Prohibited
*Masks Are Required When Entering a Business
*Restaurants and Bars Open at 50% Occupancy
*Personal Care Services (including hair salons and barbershops) Open at 50% Occupancy and by Appointment Only
*Indoor Recreation, Health and Wellness Facilities, and Personal Care Services (such as gyms and spas) Open at 50% Occupancy with Appointments Strongly Encouraged
*All Entertainment (such as casinos, theaters, and shopping malls) Open at 50% Occupancy
*Construction Activity May Return to Full Capacity with Continued Implementation of Protocols
*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, various provisions which are attached as an exhibit to this order and incorporated herein.

IN RESPONSE TO THE CHIEF JUSTICE'S PROVISIONS IN HIS ORDER OF APRIL 28, 2020, THE UNDERSIGNED PRESIDENT JUDGE ISSUED AN ORDER ON MAY 27, 2020 DECLARING THE JUDICIAL EMERGENCY TO BE EXTENDED THROUGH AUGUST 31, 2020.

THE UNDERSIGNED PRESIDENT JUDGE HAS EVALUATED THE CHANGE IN PHASES IN BOTH FRANKLIN AND FULTON COUNTIES AND HAS DETERMINED THAT WHILE THE OVERALL NUMBER OF PERSONS ADMITTED TO THE JUDICIAL FACILITIES MAY BE INCREASED, THE OVERALL GOALS OF CONTINUING TO MINIMIZE THE POTENTIAL OF A WIDE SCALE COVID-19 EXPOSURE TO COURT EMPLOYEES, ATTORNEYS, LITIGANTS AND THE PUBLIC REQUIRES THE CONTINUED MAINTENANCE OF CERTAIN REGULATIONS.

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 under the "Green" restrictions. Furthermore, the testing of courthouse entrants for the COVID-19 virus or air quality testing for the presence of COVID-19 in the courthouses is not currently available or feasible to perform. More recent studies of available data and analysis reveals that the engagement of persons in close quarters for more extended periods of time, (15 minutes +), while sharing the immediate air space increases the risk for breathing in droplets expectorated by

another person. The existence of "super-spreaders" of COVID-19 in communities is compounded by close interactions with persons in enclosed, poorly ventilated areas. See, *WallStreetJournal.com/Daniela Hernandez, Sarah Toy & Betsy McKay /6.16.2020 How Exactly Do You Catch Covid-19? There is a Growing Consensus.*

The courts of the 39th Judicial District are open for business and have been since May 11, 2020 per an order of court dated May 1, 2020. The courts have been processing cases on all dockets as previously ordered, 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 that are required to come into the court facilities 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 of court employees, attorneys or litigants have been provided to the court as of the filing of this order, the court is aware of reports of testing of staff in other facilities such as the Franklin County Jail and positive tests in other corrections facilities that house criminal defendants of the 39th Judicial District, that if pre-COVID-19 standard procedures were being observed, could lead to exposures within either courthouse and other court facilities.

Equally important to the consideration of the court is that as society returns to more normal gatherings, the information provided by local health officials confirms that "spikes", "clusters" or "wide scale infections", have been confirmed in large gatherings of persons who spend significant periods of time together in close proximity. The same individuals may be infected but asymptomatic, thus posing the credible possibility of causing an infection if present in a court facility for long periods of time with judges, court employees, attorneys and litigants. These gatherings are presumably elective, and thus all persons who elect to gather are doing so without compulsion. The same cannot be said for court proceedings, most of which are compulsory. Failure to appear frequently will result in a loss of rights. For the foregoing reasons the undersigned President Judge does decree and

IT IS HEREBY ORDERED:

1. The extension of the judicial emergency in the 39th Judicial District is hereby confirmed through August 31, 2020.

2. The courts of the 39th Judicial District are open and all cases are hereby authorized to be heard on every docket by the assigned judge, subject to the following restrictions: There shall never be more than 75% occupancy in a courthouse or courtroom and, when possible, no more persons shall be permitted in a court room that would prevent on a square footage basis all occupants to practice social distancing of 6 feet, whichever is the lesser occupancy rate. Court Administration is authorized to post applicable limits for all court facilities outside the doors of each courtroom and hearing room. The judges and Court Administration shall cooperate and shall schedule matters in a way so as to permit dockets that demand more persons to appear to use the largest courtrooms and those requiring few parties or litigants to use the smaller courtroom and hearing spaces. Requests to enlarge the occupancy beyond these limits must be expressly approved by the President Judge. Court Administration shall also post such directives advocating the practice of social distancing in all court facilities. The same guidance applies to all masters, conciliation officers and hearing officers.
3. All judges, hearing officers, masters, and conciliators may continue the use of ACT to conduct proceedings where possible, especially in the Civil, Orphans' Court/Juvenile and Domestic Relations dockets.
4. Use of ACT shall continue to be used to conduct criminal proceedings that otherwise would be required to be in person under Pa.R.Crim.P. 119, when either the defendants and counsel agree and for the express purpose of limiting the transport of inmates from the Franklin County Jail, Bedford County Correctional Facility or another place of detention to the courthouses, thus limiting the possibility of infection by COVID-

19 of the jail populations and assist the wardens in their quarantine efforts. When quarantine efforts can cease at the Franklin County Jail, or any other facility, and the needs of the court to bring defendants to the courthouse is warranted, the court will issue orders revising the use of video conferencing for Franklin County Jail, Bedford County Correctional Facility and any other facility, except for bench warrant and extradition proceedings or such other proceedings as may be scheduled with the consent of the Commonwealth, Defendant and defense counsel.

5. Counsel or parties may continue to file pleadings in an electronic form with the Prothonotary and Clerk of Courts, even though "efiling" systems are not yet in place.
6. Jury selection shall commence 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. The conduct of jury selection and trials shall be confirmed at locations selected by the court in both counties once a venue process that conforms with health advisories can be confirmed. In all instances for the balance of calendar year 2020, social distancing shall be emphasized for the selection of jurors and the conduct of trials.
7. Scheduling of criminal and civil/family law cases shall be coordinated with 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 "Green" status advisement of the Pennsylvania Department of Health and the CDC recommendations until such limitations are modified.

8. Court Administration in conjunction with the Sheriff's Department of both counties shall manage and direct access within common areas of court facilities to promote social distancing.
9. The court and Court Administration are authorized 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 if deemed appropriate.
10. The public and media may be granted access to the court proceeding on a limited basis as approved by Court Administration or in the alternative the press or public may make a request of Court Administration for access to recordings immediately after a proceeding.
11. All previously scheduled matters such as criminal Call of the List and Pretrial Conferences for the months of June and July are hereby cancelled, except as may be specially ordered for the limited purpose of preparing for the available jury trial days in the months of July and August. Call of the List and Pretrial Conferences for the criminal dockets shall continue to be evaluated to conduct them consistent with the prescribed social distancing recommendations so as to minimize the chance of a large scale COVID-19 infection.
12. Magisterial District Judges may permit up to 75% occupancy within their offices and hearing facilities, but also may continue to provide alternate forms of access to their offices and to schedule matters by appointment so as to encourage social distancing.
13. The President Judge will 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 "Green" to no restrictions may take

action to either terminate the judicial emergency or expand access to the courts and court facilities as circumstances warrant.

14. A copy of this 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.

BY THE COURT,

Signed: Thomas A. Mayes
P.J.

Dated: June 19, 2020

Dist:

CA

Common Pleas Judges for the 39th Jud. Dist.

Hon. Angela Krom

Hon. Jeremiah Zook

Hon. Todd Sponseller

Hon. Mary Beth Shank

Exhibit

THE FOLLOWING ARE EXERPTS TO CHIEF JUSTICE THOMAS SAYLOR'S ORDER OF APRIL 28, 2020.

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 and 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 mage 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 EFFECT 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 dated 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.