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
	:	2020-1129
	:	
	:	57 MM 2020

PROTHONOTARY FRANKLIN COUNTY, PA 2020 AUG 31 PM 1:27

Ninth Supplemental Emergency Judicial Order
Extending the Judicial Emergency for the 39th Judicial District
Through December 31, 2020

And now this 31st day of August, 2020,

BACKGROUND

WHEREAS, the Pennsylvania Supreme Court issued an order on April 28, 2020 that extended the Statewide Judicial Emergency through June 1, 2020;

And WHEREAS, the Pennsylvania Supreme Court issued an order on May 27, 2020, ordering the Cessation of the Statewide Judicial Emergency after June 1, 2020, which did not limit but specifically authorized the exercise of emergency powers under Rule 1952(B)(2);

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, since the issuance of the last order extending the judicial emergency, this court issued an order that acknowledged the move of both Fulton and Franklin Counties to the "Green" (least restrictive) phase based upon the effects of COVID-19 in each county;

Certified
on this August 31, 2020
Pamela J. Slagle
Prothonotary of 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 July 30, 2020:

Work & Congregate Setting Restrictions:

- Telework Must Continue Where Feasible
- 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, Except Where Noted for Bars and Restaurants
- Masks Are Required in Businesses
- 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

Social Restrictions:

- Indoor Gatherings of More Than 25 Prohibited; Outdoor Gatherings of More Than 250 Prohibited
- Masks Are Required in all Public Spaces
- Restaurants and Bars Open at 25% Capacity for Indoor Dining
- On-premises Alcohol Consumption Prohibited Unless Part of a Meal; Cocktails-to-go and Carryout Beverages are Allowed
- Personal Care Services (including hair salons and barbershops) Open at 50% Occupancy and by Appointment Only
- Indoor Recreation and Health and Wellness Facilities (such as gyms and spas) Open at 50% Occupancy with Appointments Strongly Encouraged; Fitness Facilities Are Directed to Prioritize Outdoor Fitness Activities
- 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

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 orders of April 28, 2020 and May 27, 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."

IN RESPONSE TO THE CHIEF JUSTICE'S PROVISIONS IN HIS ORDERS OF APRIL 28, 2020 AND MAY 27, 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 and May 27, 2020 Pennsylvania Supreme Court orders, the undersigned President Judge has been able to discern the following reasons for extending the judicial emergency:

1. The current judicial facilities in both counties offer limited ability to comply with social distancing requirements under the "Green" restrictions. Furthermore, the testing of all 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.*

2. Since the entry of the court's last order, the Pennsylvania Department of Health Secretary, on July 1, 2020, issued a masking order for all occupants of public areas, which this court has confirmed with legal counsel of the Administrative Office for Pennsylvania Courts, applies to courtrooms and the public areas of court facilities. This court directed that masks be worn in courtrooms and common areas of court facilities.
3. On Monday, July 20, 2020, the Franklin County Commissioners issued a directive to county employees requiring the practice of social distancing and the wearing of masks when social distancing cannot be practiced in county facilities as well as travel restrictions.
4. On July 12, 2020, U.S. Surgeon General Jerome Adams appeared on multiple news outlets wearing a mask and advised that while federal mask mandates may be difficult to impose, wearing a mask contributes significantly to the reduction of possible infection. This recommendation was based on scientific evidence.

5. On July 14, 2020, The Centers for Disease Control issued an advisory that provides: In an editorial published today in the Journal of the American Medical Association (JAMA), CDC reviewed the latest science and affirms that cloth face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the disease, particularly when used universally within communities. There is increasing evidence that cloth face coverings help prevent people who have COVID-19 from spreading the virus to others. "We are not defenseless against COVID-19," said CDC Director Dr. Robert R. Redfield. "Cloth face coverings are one of the most powerful weapons we have to slow and stop the spread of the virus – particularly when used universally within a community setting. All Americans have a responsibility to protect themselves, their families, and their communities." This review included two case studies out today, one from JAMA, showing that adherence to universal masking policies reduced SARS-CoV-2 transmission within a Boston hospital system, and one from CDC's Morbidity and Mortality Weekly Report (MMWR), showing that wearing a mask prevented the spread of infection from two hair stylists to their customers in Missouri.

6. Despite efforts to mitigate the virus, Franklin County, Fulton County and other counties in the region from which litigants and attorneys frequently travel, Cumberland, Dauphin and York, equal or exceed the statewide incident rate of 3.2%, some as high as 5%.

   See, https://www.health.pa.gov/topics/disease/coronavirus/Pages/Monitoring-Dashboard.aspx August 30, 2020.

The court is aware of three (3) positive cases of Coronavirus in court facilities since June 20, 2020 to the present date. The spread of known infection was able to be managed, contact tracing protocols followed and potential infection of employees, attorneys, litigants and the public was minimized due to the environment within the courthouse which emphasizes limited hourly access, social distancing and the wearing of masks, as well as other hygiene initiatives such as following CDC cleaning protocols and reminders to employees to minimize contact person to person contact and washing of hands, use of sanitizers and other virus-killing solutions.

7. 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 continue to schedule cases, including issuing jury summons, 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 and 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 efforts, an event that as has already occurred on more than one occasion in the Commonwealth. (https://www.timesonline.com/news/20200326/lawrence-county-courthouse-worker-tests-positive-for-virus-county-now-up-to-8-cases, https://www.timesleader.com/news/790924/luzerne-county-central-court-shut-down-amid-covid-19-concern). Even with protocols and judicial emergency orders in place, cases of COVID-19 have been confirmed for individuals in court facilities and other county facilities including the Franklin County Jail. The court is aware of reports of testing of staff in other facilities such as the Bedford County Correctional Facility, which houses defendants for Fulton County, that prevented cases to be scheduled for jury trial in Fulton County due to lock down protocols and limits on attorney access. If pre-COVID-19 standard procedures were being observed, all the positive tests and infected people could lead to mass exposures within the courthouses of both facilities and other buildings that provide office space and hearing space to court employees and the public.

8. Equally important to the consideration of the court is that as society has returned 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.
9. Also an evaluation of available facilities has lead the court to conclude that as for jury trials, the only existing courtroom that can accommodate jury trials in Franklin County that are able to also permit the jurors, attorneys, litigants and court personnel to exercise social distancing is Courtroom # 1 in the Franklin County Courthouse. Although there are 3 other courtrooms that have jury boxes, they cannot accommodate social distancing. Jurors have reported back to the court that while they wish to honor their Constitutional duty to serve as jurors, they expect reasonable steps such as masking and social distancing to be observed and enforced in the courthouse in order to provide them a safe environment in which to serve. The court has worked with Franklin County administration to obtain the use of the Capitol Theater to provide an alternate jury trial space, but that venue has limited viability taking into account safety concerns that are attendant to major criminal cases.

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 December 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. Masking requirements shall be observed in courtrooms and common spaces and court employee occupied offices as directed by the President Judge. 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 Magisterial District Judges, masters, conciliation officers and hearing officers.
3. All judges, Magisterial District Judges, hearing officers, masters, and conciliators may continue the use of advanced communication technology ("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, Bedford County Correctional Facility, 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 continue on a schedule determined by Court Administration and approved by the court. The conduct of jury selection and trials shall be confirmed at locations selected by the court in both counties at venues including courthouses and other public buildings under a process that conforms with health advisories. In all instances for the balance of calendar year 2020, social distancing and masking of participants shall be required 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 and compliance with masking directives of the court subject to compliance with all ADA or other health restrictions.
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. For the balance of 2019, multi-day criminal trials shall be limited to permit more Defendant's cases to be tried in Courtroom #1.
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. 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 and masking requirements or video transmission 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. When recommended restrictions are lessened or adequate effective vaccination and/or treatment is made available to the citizens of both counties, the President Judge 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: _____ P.J.

Dated: August 31, 2020

Dist:

CA

Common Pleas Judges for the 39th Jud. Dist.

Hon. Angela Krom

Hon. Jeremiah Zook

Hon. Todd Sponseller

Hon. Mary Beth Shank