FILED
12/22/2020
Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: COVID-19 PANDEMIC

No. ADM2020-00428

ORDER EXTENDING STATE OF EMERGENCY AND REINSTATING SUSPENSION OF IN-PERSON COURT PROCEEDINGS

On March 13, 2020, in response to the COVID-19 pandemic, the Chief Justice of the Tennessee Supreme Court declared a state of emergency for the Judicial Branch of Tennessee government and activated a Continuity of Operations Plan for the courts of Tennessee. See Tenn. Const. Art. VI, § 1; Tenn. Code Ann. §§ 16-3-501 to 16-3-504 (2009); Moore-Pennoyer v. State, 515 S.W.3d 271, 276-77 (Tenn. 2017); Tenn. Sup. Ct. R. 49. This state of emergency constitutes a "disaster" for purposes of Tenn. Sup. Ct. R. 49 and Tenn. Code Ann. § 28-1-116. The Court hereby extends the state of emergency for the Judicial Branch of Tennessee government and the Continuity of Operations Plan for the courts of Tennessee. Unless otherwise noted herein, the provisions of this order shall remain in place until further order of this Court.

On March 25, 2020, the Tennessee Supreme Court continued the suspension of in-person court proceedings and the extension of deadlines. On April 24, 2020, the Court modified the suspension of in-person court proceedings and extended deadlines. Under the Court's April 24, 2020 order, the Court reviewed and approved comprehensive written plans received from the judicial districts in Tennessee to gradually begin the conduct of in-person court proceedings. On May 26, 2020, the Court extended the state of emergency, but eased the restrictions on in-person court proceedings, including the lifting of the suspension of jury trials, subject to certain enumerated requirements. On July 9, 2020, the Court ordered the mandatory use of face coverings. On November 17, 2020, the Court extended the state of emergency and again suspended jury trials, through January 31, 2021. On December 7, 2020, the Court mandated compliance with CDC quarantine and isolation guidelines for persons entering courthouses or buildings in which court facilities are located for purposes of court-related business.

In light of the recent record number of COVID-19 cases and related hospitalizations in Tennessee and the Governor's issuance of Executive Order 70 on December 21, 2020, and under the constitutional, statutory, and inherent authority of the Tennessee Supreme Court, the Court adopts the following provisions:

1) The suspension of all jury trials is extended through the close of business on Friday, February 26, 2021, subject only to exceptions which may be granted by the Chief Justice on a case-by-case basis.

2) All in-person proceedings in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, shall be suspended from the close of business on Monday, December 28, 2020, through the close of business on Friday, January 29, 2021, subject to the exceptions enumerated in item 3 below.

3) The following are exceptions to the suspension of in-person court proceedings:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters, preliminary hearings for incarcerated individuals, and plea agreements for incarcerated individuals
- Proceedings related to relief from abuse, including but not limited to orders of protection
- Proceedings related to statutory order of protection hearings after entry of an ex parte order necessary to satisfy any due process concerns
- Proceedings related to emergency child custody orders
- Proceedings related to the voluntary surrender of parental rights
- Settlements involving a minor or a person with a disability
- Department of Children's Services emergency matters related to child safety, placement, permanency, or federal funding for children in foster care
- Proceedings related to petitions for temporary injunctive relief
- Proceedings related to emergency mental health orders
- Proceedings related to emergency protection of elderly or vulnerable persons
- Proceedings directly related to the COVID-19 public health emergency
- Other exceptions as approved by the Chief Justice

4) The presiding judge or the designee of the presiding judge of each judicial district is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice.

Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, court clerks, and other necessary persons, as determined by the judge and should be scheduled and conducted in a manner to minimize wait-time in courthouse hallways. If other persons or media want to request access to a courtroom for an in-person hearing, they must contact the office of the judge presiding over the case at least 48 hours before the scheduled proceeding. Judges and their staff shall ensure that social distancing and other such measures are strictly observed, including but not limited

to the measures mandated by this Court's July 9, 2020 order regarding the use of face coverings and its December 7, 2020 order regarding compliance with CDC quarantine and isolation guidelines, which remain in full force and effect.

5) Courts should continue to conduct as much business as possible by means other than in-person court proceedings. Courts are encouraged to continue and even increase the use of telephone, teleconferencing, email, video conferencing or other means that do not involve in-person contact. All of these methods should be the preferred option over in-person court proceedings.

6) Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. See Tenn. Code Ann. §§ 18-1-101 (2009); 18-1-105 (Supp. 2019). Court clerks are to work cooperatively and at the direction of the presiding judge of each judicial district to fulfill the court clerks' obligation to facilitate continuing court function. Nevertheless, all judges and court clerks should continue to minimize in-person contact by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing.

7) Any Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended until further order of this Court. See, e.g., Tenn. R. Civ. P. 43.01. With respect to plea agreements for non-incarcerated individuals, this suspension expressly applies to those provisions of Tenn. R. Crim. P. 11 which otherwise would require the proceeding to be in person in open court. See, e.g., Tenn. R. Crim. P. 11(b)(1) and (2), 11(c)(2)(A). For purposes of implementing procedural matters during this time, the provisions of Rule 18(c) of the Rules of the Tennessee Supreme Court are suspended to allow judges to issue general orders.

8) Judges' offices and court clerks' offices may limit in-person contact with the public during the period of suspension, but must remain functional. If it becomes necessary to close judges' or court clerks' physical offices during the period of suspension, these offices shall remain accessible by telephone, email and fax to the extent possible during regular business hours. If available, drop boxes should be used for conventionally filed documents.

9) Attorneys and judges are encouraged to utilize the "Online Notary Public Act," Tenn. Code Ann. § 8-16-301, et seq., and the regulations promulgated by the Secretary of State at Sec. of State, Tenn. Comp. R. and Reg. 1360-07-03-.01. Additionally, Executive Order No. 26 issued by Governor Lee on April 9, 2020, and most recently extended by Executive Order No. 66 issued October 28, 2020, addresses notary issues. With regard to court filings, declarations under penalty of perjury may be used as an alternative to a notary. The use of electronic signatures as provided under Rule 5B of the Tennessee

Rules of Civil Procedure and Rules 46 and 46A of the Rules of the Tennessee Supreme Court is extended to any pleadings or documents to be filed or served by conventional means during the time that the state of emergency for the Judicial Branch remains in place.

This order applies statewide to all courts and court clerks' offices except administrative courts within the Executive Branch and federal courts and federal court clerks' offices located in Tennessee.

Under the terms of this order, the courts of Tennessee remain open, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19. Judges should work with local law enforcement and other county officials to ensure that, to the extent possible, courthouses remain accessible to carry out essential constitutional functions and time-sensitive proceedings.

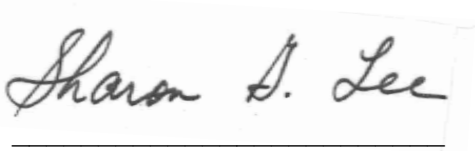
This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.

It is so ORDERED.

FOR THE COURT:

Jeffrey S. Bivins, Chief Justice

Cornelia A. Clark, Justice



Sharon G. Lee, Justice

Holly Kirby, Justice

Roger A. Page, Justice