IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

December 1, 2020

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-PR-123

District and Appellate Court Operations as of December 1, 2020

Kansas district and appellate courts are operating under Administrative Orders issued in response to the novel coronavirus (COVID-19) pandemic. This order is the latest in a series updating district and appellate court operating requirements and judicial branch policies related to COVID-19. This order is complemented by 2020-PR-122, which rescinds obsolete COVID-19 related administrative orders; 2020-PR-124, requiring masks in district and appellate courts; and 2020-PR-125, which sets out visitor policies for the Kansas Judicial Center, office of the Disciplinary Administrator, and the office of the Kansas Lawyers Assistance Program. If a conflict exists between this order and previous orders, this order controls.

This order does not affect any provisions in prior orders issued by the Chief Justice related to 2020 House Substitute for Senate Bill 102, and its amendments in 2020 Spec. Sess. House Bill 2016, including authorizing the use of two-way audio-visual communications in any court proceeding, suspending deadlines and time limitations under K.S.A. 2019 Supp. 22-3402, and suspending deadlines and time limitation in judicial proceedings.

This order is entered to protect the health and safety of court users, staff, and judicial officers of Kansas district and appellate courts.

1. The Office of Judicial Administration, in consultation with the Kansas Supreme Court, is in contact with state health and emergency preparedness officials and is monitoring the ever-changing conditions. As necessary, OJA and the Court will release updates that may impact the workplace or court proceedings. The judicial branch workforce must monitor email for updates and be ready to immediately implement any directions.

2. At times, courts may need to close offices or courtrooms temporarily due to changing COVID-19 conditions. If a court or court operations are in a county subject to a stay-at-home order; a county in which a municipality is subject to a stay-at-home-order; or a courthouse or court office that is not open to public operations for public health reasons, the following apply:

    - The court must, at a minimum, perform essential functions set forth in Attachment A.

- Nonessential functions should also be performed in a manner consistent with this order as local resources and circumstances allow.

- No filing will be rejected because it is not within a defined essential function. Processing of filings related to nonessential functions may be delayed depending on staffing levels and the demands of essential functions.

- Essential personnel, as identified by the chief judge of the district court, the chief judge of the court of appeals, and the chief justice of the Kansas Supreme Court, will physically report to the workplace as required. If an employee identified as essential is unable to serve in the workplace due to illness or has otherwise been excused consistent with applicable leave policies, a substitute will be determined by that employee's administrative head. Essential personnel may also perform functions not listed as essential functions during the work hours in which their presence in the workplace is required for essential functions.

- To the extent possible, any hearing related to an essential function must be conducted by two-way telephonic or electronic audio-visual communication. No hearing related to a nonessential function may be conducted except by two-way telephonic or electronic audio-visual communication.

- The chief judge must ensure that information is posted to inform members of the public how to contact court personnel.

- A court operating under this numbered paragraph may conduct a jury trial to preserve a constitutional speedy trial right.

- The court must comply with all other requirements of this order unless specifically excepted.

3. District courts operating under numbered paragraph 2 must only resume public operations after reviewing reopening plans developed as required under 2020-PR-048 and making any necessary adjustments to the following reopening requirements:

    - The chief judge has consulted with the head of the local public health department or his or her designee to determine how to phase-in a return to in-person hearings given local risk and the courthouse facility.

- The chief judge has assured compliance with any engineering or other suggestions made by the public health official as to all work and courtroom spaces.

- A plan has been developed with the local health official for appropriate screening of those entering any courtroom or court office.

- The chief judge has determined how to comply with all requirements for assuring personal protective equipment is available for all court or courthouse staff and court participants. This would include, but not be limited to, masks, gloves, and cleaning supplies that will allow sanitizing work or courtroom surfaces between contacts with more than one individual—i.e., different individuals sitting at counsel table or touching courtroom surfaces such as doors or lecterns.

- The chief judge, other judges, and other court personnel have triaged the court docket, weighing health risks versus the need for a hearing and determining whether in-person hearings are necessary. In assessing these factors, decision makers need to remember that a judicial order to appear in person necessarily exposes the individual to whom it is directed and others to an increased health risk.

- All orders to appear for a hearing have been modified to include, or be accompanied by, information on restrictions in numbered paragraph 15 below and stating that those who have conditions placing them at high risk if exposed to COVID-19 should not appear but should contact the court through a phone number or email address provided.

4. A departmental justice or the Chief Justice, after consultation with the chief judge, may order a court closed because of an infectious disease outbreak. Any closure ordered and approved in this manner shall result in a "legal holiday" for that court for purposes of preserving statutes of limitation, as provided in K.S.A. 2019 Supp. 60-206(a). Once such order is entered the chief judge must consult with the director of personnel to determine whether employees who are otherwise scheduled and able to work during the period of closure will be assigned to another office, allowed to perform work at home, or be placed on the type of leave appropriate under the circumstances which may include administrative leave.

5. All Kansas district and appellate courts must comply with:

    - Orders of the Supreme Court and Chief Justice, including 2020-PR-124 requiring masks in district and appellate courts;

- all COVID-19 Safety Directives of the Office of Judicial Administration;
- any applicable order or guidance from local public health officials;
- any orders issued by the Kansas Governor;
- all guidelines available at https://covid.ks.gov/ad-astra-a-plan-to-reopen-kansas/;
- any applicable guidelines of the Occupational Safety and Health Administration; and
- the guidelines from the Kansas Department of Health and Environment.

If provisions in this bulleted list conflict, the court must follow the most restrictive provisions. If more specific direction is provided in this order, this order controls.

6. Courts must continue to expand the use of remote hearings as much as possible to reduce any backlog and to dispose of new cases efficiently and safely. All remote hearings must comply with 2020-PR-056. Courts should consider all virtual courtroom standards and guidance posted on the Kansas judicial branch website and any updates that follow. When standards or guidelines and related updates are issued, it will be announced on the Kansas judicial branch website and communicated to chief judges.

7. All Kansas district and appellate courts must take steps to ensure members of the public exercise appropriate physical distancing in any court office, courtroom, or other portion of any facility being used for a court proceeding. These steps may include requiring appointments and must include marking six-foot distances in any area where people are likely to congregate or utilizing engineering adjustments approved by a local health officer. Any public area that cannot be adapted for appropriate physical distancing must be or remain closed.

8. Courts conducting a hearing (including a jury trial) must take steps to allow no more than the number of people who can be accommodated with six-foot of physical distance between people or with engineering adjustments approved by a local health officer in the courtroom or any other facility used by the court for a proceeding. All surfaces must be cleaned between hearings. All hearings must also comply with applicable recommendations for mass gatherings in Ad Astra: A plan to Reopen Kansas, unless the departmental justice authorizes a waiver of these provisions. If a public health order or guidance restricts the

number of people who may be gathered, the court must abide by that restriction.

9. Courts not operating under numbered paragraph 2 of this order may resume holding jury proceedings, regardless of whether there is a constitutional speedy trial issue, after the chief judge has complied with the following:

    - Consulted with the head of the local public health department or his or her designee to determine how to resume jury proceedings given local risk and the facilities available; and

    - Developed written plans approved by the Office of Judicial Administration for implementing the Supreme Court mandates regarding resuming jury proceedings. The Supreme Court Mandates and Guidance Regarding Resuming Jury Proceedings are posted on the Kansas judicial branch website.

10. The Supreme Court Mandates and Guidance Regarding Resuming Jury Proceedings may be updated periodically. Updates will be announced on the Kansas judicial branch website and communicated to chief judges. Courts are responsible for complying with updated mandates.

11. All courts must have a plan for managing media requests and media access, while maintaining physical distancing and limiting the number of people in a courtroom.

12. Courts should consider using a media pool to limit the number of visitors in the courthouse.

13. All courts must determine how to provide public access to proceedings while maintaining physical distancing and limiting the number of people in a courtroom.

14. Due to physical distancing requirements and public health and safety concerns, some courts are using court-initiated livestreams to provide public and media access to court proceedings. While Supreme Court Rules 1001 and 1002 address use of electronic devices by those who are physically present in a courtroom or court facility, those rules do not address court-initiated livestreams. By this order, the following rules apply to court-initiated livestreamed judicial proceedings:

    - When public access to a proceeding is via livestream, a hearing should convene publicly in open court with the livestream activated.

- If a party requests to limit public access to the hearing because of extremely sensitive or confidential information, such as trade secrets, the motion must be on the record prior to the admission of the extremely sensitive or confidential evidence. The movant must describe the evidence in question and clearly identify the overriding interest that will be prejudiced if the evidence is publicly presented. The court should obtain the agreement or objection to the request of all counsel and self-represented litigants on the record. If the court grants the motion or sua sponte closes a proceeding, findings justifying closing a proceeding should be made on the record.

- Courts must take steps to protect against audio pickup of attorney-client privileged communications.

- No electronic communication of a court proceeding, except any recording of the proceeding created by the court or its personnel for the purpose of creating a record, will affect the official court record of the proceeding for purposes of appeal or otherwise.

15. Anyone entering a courthouse or other court office must be denied access if he or she:

    - is experiencing an elevated temperature at or over 100.4°F; or

    - has or two or more of the COVID-19 symptoms identified by the Centers for Disease Control and Prevention; or

    - has been in close contact with someone who has been diagnosed with, or is suspected to have had, COVID-19 within the last 14 days; or

    - has traveled to any of the following within the previous 14 days:

        - To any international location under a global level 3 or 4 health advisory from the United States State Department. For updates, see US travel restriction.

        - To high risk areas in the United States currently mandated for self-quarantine by the Kansas Department of Health and Environment. Updates to this list by the Kansas Department of Health and Environment will be included without revision to this order. For updates, see https://www.coronavirus.kdheks.gov/175/Travel-Exposure-Related-Isolation-Quara.

- On a cruise ship or river cruise (whether international or domestic).

- Each chief judge must assure the requirements in this numbered paragraph are posted at all entrances to the courthouse, any court office, or any other facility being used by the court for a proceeding within the judicial district. COVID-19 Safety Directives must also be posted in employee work areas and distributed to all employees. The directive and posters will be available on the Kansas judicial branch intranet.

16. Any member of the public who is not granted access to a courtroom, court office, or any other facility being used by the court for a proceeding under numbered paragraph 15 must be provided a phone number or email address where the individual may seek assistance rescheduling or otherwise completing his or her court business.

17. Each chief judge must post notices alerting members of the public, including parties and their attorneys, to COVID-19 issues. One notice will include steps to be taken to avoid spread of the disease. One notice will provide a phone number or email address where any individual may seek assistance in rescheduling or otherwise completing his or her court business. The notice templates are available from the Office of Judicial Administration.

18. Any employee asked to report to work but who is not granted access to his or her workplace under numbered paragraph 15 must contact his or her appointing authority through electronic communication as soon as possible.

19. Any judicial branch employee who has close contact with an individual suspected or known to have COVID-19 must report that contact to the employee's supervisor. The supervisor must report any such close contact to the district's court administrator or the chief judge, who should then report the contact to the Kansas Judicial Branch's director of personnel, or her designee. The director of personnel may determine if the contact warrants directing the employee to leave the office and the type of leave appropriate under the circumstances which may include administrative leave.

20. A Kansas judicial branch workforce member will be required to self-quarantine and not report to his or her duty station for 14 days if he or she—or someone with whom he or she lives or is in close contact—has traveled or will travel after March 1, 2020, as follows:

    - To any international location under a global level 3 or 4 health advisory from the United States State Department. For updates, see US travel restriction.

- To high risk areas in the United States currently mandated for self-quarantine by the Kansas Department of Health and Environment. Updates to this list by the Kansas Department of Health and Environment will be included without revision to this order. For updates, see https://www.coronavirus.kdheks.gov/175/Travel-Exposure-Related-Isolation-Quara.

- On a cruise ship or river cruise (both international and domestic).

21. Workforce members required to quarantine may telework if telework is available, as determined by the appointing authority. Workforce members may also avail themselves of benefits under the Families First Coronavirus Response Act (FFCRA), if eligible. Workforce members who choose not to use available benefits under FFCRA and who are unable to telework may use personal leave or leave without pay pursuant to KCPR 8.5.

22. If any judicial branch employee has an elevated temperature at or over 100.4°F or exhibits two or more COVID-19 symptoms in the workplace, an appointing authority, after consulting the director of personnel in the Office of Judicial Administration, or her designee, will direct the employee to leave the workplace. Upon consulting the director of personnel, the required leave may be coded as administrative leave for up to two working days.

23. The chief judge or appointing authority may authorize security personnel or staff members to request a judicial officer or employee to voluntarily take a temporal temperature or allow a thermal scan for fever. Any person who refuses to have his or her temperature taken or who has an elevated temperature at or over 100.4°F will not be allowed access to courtrooms, court offices, or any other facility being used by the court for a proceeding.

24. Staff in a courthouse and any court office must be rotated, if possible, to minimize the number of employees affected if exposure to COVID-19 in the workplace occurs. Thorough cleaning must occur between any rotations of personnel. Staffing must be limited to only those employees who can be accommodated with appropriate physical distancing or engineering adjustments approved by a local health officer.

25. If safely having workforce members in court facilities or providing telework options cannot be accomplished, the appointing authority may work with the director of personnel and the departmental justice to determine limited use of administrative leave.

26. An appointing authority should contact the director of personnel at the Office of Judicial Administration, or her designee, if any employee expresses concern about working conditions or about health risks in the workplace.

27. The time requirements in Supreme Court Rule 23(c)(2) are suspended as long as this administrative order is in effect.

28. To the extent possible, telework should be used to enable full productivity while operating with fewer staff in the courthouse or court office. A chief judge of a district court may authorize employees to telework. Any person authorized to telework must complete a teleworking notice and agreement provided by the Office of Judicial Administration, unless one has already been completed.

29. Kansas judicial branch workforce travel for meetings, conferences, trainings, or similar events is not allowed, although limited exceptions may be granted after consultation with and authorization by the Chief Financial Officer and Chief Justice. Unless authorized, no commitment for future workforce travel is to be made.

30. All in-person trainings provided or organized by the Kansas judicial branch remain canceled. Where possible, the judicial branch workforce will use digital options for meetings, trainings, or similar work tasks.

31. Deoxyribonucleic Acid (DNA) collection, urinalysis testing, saliva testing, and alcohol testing for moderate- or high-risk probation clients performed by judicial branch employees may resume if authorized by the chief judge of the judicial district. When authorizing testing, the chief judge must consider staffing, supplies, and procedures needed to prevent COVID-19 transmission. At a minimum, preventive procedures must include using spaces that allow six feet of physical distance between individuals, having sufficient personal protective equipment for employees collecting samples, sanitizing collection areas between each collection, and requiring masks for all individuals involved. All other DNA collection, urinalysis testing, and alcohol testing remains suspended until further order of the court, unless the chief judge of the judicial district deems the testing a necessity.

32. In-person home visits performed by judicial branch employees remain suspended until further order of this court, unless the chief judge of the judicial district deems the contact a necessity.

33. All court services officer personal contact at any jail or other custodial or detention facility remains suspended until further order of the court, unless the chief judge of the judicial district deems the contact a necessity.

34. Court services officers may resume in-person meetings with moderate- or high-risk probation clients as needed. All in-person participants must wear masks and must maintain six feet of physical distance between individuals. Court services officers are responsible for communicating this information to those affected.

35. Other than moderate- or high-risk probation clients directed to report for in-person meetings, those who have been directed to report on probation or for interviews with court services officers are directed to report by two-way telephonic or electronic audio-visual communication and not report in person. Court services officers are responsible for communicating this information to those affected.

Dated this 1st day of December 2020. This order is effective on filing.

FOR THE COURT

MARLA LUCKERT
Chief Justice

Attachment A: Essential Functions for District and Appellate Courts

1. Essential functions for the district court include:

CRIMINAL:

- Determining probable cause for persons arrested without a warrant (within 48 hours of arrest), *Riverside v. McLaughlin,* 500 U.S. 44 (1991) (bond may be set).

- Conducting first appearances, K.S.A. 2019 Supp. 22-2901 ("without unnecessary delay").

- Setting appearance bonds; conditions of release pending preliminary examination or trial, K.S.A. 2019 Supp. 22-2802 (set at first appearance). Note: Arrest for Criminal Trespass/Restraining Order Violation, K.S.A. 2019 Supp. 22-2901(7) (person shall not be allowed to post bond before first appearance as long as first appearance occurs within 48 hours after arrest).

- Issuing warrants pursuant to K.S.A. 2019 Supp. 22-2302 (arrest); K.S.A. 2019 Supp. 22-3716 (violations of probation); K.S.A. 2019 Supp. 22-2502 (searches and seizures); K.S.A. 22-2816 (violation of supervised release program); K.S.A. 22-2805 (holding a material witness); and K.S.A 22-2911 (violation of diversion agreement); see also K.S.A. 22-2912 (district court rules for diversion procedures).

- Issuing orders for wiretaps, K.S.A. 2019 Supp. 22-2516.

- Conducting inquisitions, K.S.A. 22-3101, K.S.A. 2019 Supp. 22-3102, K.S.A. 22-3103, K.S.A. 22-3104, and K.S.A. 22-3105.

JUVENILE OFFENDER:

- Conducting juvenile detention hearings, K.S.A. 2019 Supp. 38-2343(a) (48 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from the time detention initially imposed).

- Issuing warrants for juvenile offenders, K.S.A. 2019 Supp. 38-2342.

CARE AND TREATMENT:

- Commitment of sexually violent predator, K.S.A. 2019 Supp. 59-29a05(b) (Probable cause hearing within 72 hours after person is taken into custody upon the filing of a petition under K.S.A. 2019 Supp. 59-29a04 and a finding of probable cause).

- Issuing ex parte emergency custody orders, K.S.A. 59-2958 (mental illness) and K.S.A. 59-29b58 (alcohol and substance abuse).

- Issuing temporary custody orders, K.S.A. 59-2959 (mental illness) and K.S.A. 59-29b59 (alcohol and substance abuse).

CHILD IN NEED OF CARE:

- Issuing ex parte orders for CINC, K.S.A. 2019 Supp. 38-2242(a).

- Issuing ex parte orders for violation of a valid court order in CINC proceedings, K.S.A. 2019 Supp. 38-2260(c).

- Conducting preliminary hearings on violation of a valid court order in CINC proceedings, K.S.A. 2019 Supp. 38-2260(d).

- Conducting evidentiary hearings on violation of a valid court order in CINC proceedings, K.S.A. 2019 Supp. 38-2260(e).

- Conducting temporary custody hearings, K.S.A. 2019 Supp. 38-2243(b) (72 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible, from child being taken into protective custody).

PROTECTION ORDERS:

- Issuing emergency protection from abuse orders, K.S.A. 2019 Supp. 60-3105; issuing temporary protection from abuse orders, K.S.A. 2019 Supp. 60-3106; and extending final protection from abuse orders, K.S.A. 2019 Supp. 60-3107.

- Issuing temporary protection from stalking, sexual assault, or human trafficking orders, K.S.A. 2019 Supp. 60-31a05; and extending final protection from stalking, sexual assault, or human trafficking orders, K.S.A. 2019 Supp. 60-31a06.

MISCELLANEOUS:

- Conducting hearings and issuing orders of isolation or quarantine, K.S.A. 65-129c(d)(3) (hearing within 72 hours of request contesting isolation/quarantine by order of local health officer).

- Considering petitions to waive notice regarding abortion upon a minor, K.S.A. 65-6705(f). See also Supreme Court Rule 173 (The court must hold a hearing and issue its order, stating findings of fact and conclusions of law, no later than 48 hours after the petition is filed, excluding Saturdays, Sundays, and holidays) [Note: the statute does not exclude holidays].

- Release of garnishments and liens, filings related to bankruptcy, and similar filings.

- All court service officer duties assigned by a chief judge, except as otherwise limited by this order.

- Determining child custody, residency, visitation, parenting time, and related family law issues requiring expeditious resolution.

- Any other matters that would require expeditious handling.

2. Essential functions for the appellate courts include:

- Appeals, motions, or original actions arising from the essential functions of the district court;

- Any other appeal, motion, or original action requiring expeditious resolution.