ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: JUDICIAL EMERGENCY DECLARED, SECOND AMENDED ORDER

WHEREAS, on March 22, 2020, in response to the COVID-19 crisis, the Chief Justice of the Supreme Court of Appeals of West Virginia entered an order declaring a judicial emergency, pursuant to Article 8, Section 3 of the Constitution of West Virginia, which grants the Supreme Court of Appeals of West Virginia constitutional supervisory power over the circuit courts, family courts, and magistrate courts in West Virginia;

WHEREAS, Article 3, Section 17 of the Constitution of West Virginia requires that the courts of this state shall be open, and every person, for any injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay;

WHEREAS, the Supreme Court of Appeals of West Virginia desires to balance public health with the constitutional mandate that our courts continue to function for our citizens;

WHEREAS, W. Va. Code § 2-2-2 authorizes the Chief Justice of the Supreme Court of Appeals of West Virginia to declare an emergency in situations where conditions prevent the general transactions of court business;

WHEREAS, due to the ongoing nature of the COVID-19 crisis, the Supreme Court of Appeals of West Virginia deems it necessary to extend the judicial emergency, to suspend certain in-person proceedings, and extend or toll certain deadlines as set forth herein;

THEREFORE, it is ORDERED that in order to protect the health and well-being of court employees, litigants, witnesses, jurors, attorneys, and the general public, a judicial emergency is declared for the day(s) of March 23, 2020, through May 15, 2020, in all fifty-five (55) counties in West Virginia. Pursuant to W. Va. Code §2-2-2(a), all in-person proceedings and court deadlines, except the emergency proceedings described and other proceedings authorized herein, directed to take place or any act required to be done on any day falling within this period of judicial emergency, are stayed. All jury trials and grand jury proceedings are stayed during this period of judicial emergency. Deadlines set forth in court rules, statutes, ordinances, administrative rules, scheduling orders, or otherwise that are set to expire between March 23, 2020, and May 15, 2020, are hereby extended to May 18, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period between March 23, 2020, and May 15, 2020, are hereby extended to May 18, 2020. Deadlines, statutes of limitations, and statutes of repose that are not set to expire between March 23, 2020, and May 15, 2020, are not extended or tolled by this Order. Proceedings previously scheduled between March 23, 2020, and May 15, 2020, are continued until a later date determined by the presiding judicial officer, unless the hearing, proceeding, or bench trial can occur via telephone or video conference as permitted below. The Court may extend this order in the event the public health crisis continues.

It is further ORDERED that very limited emergency proceedings that are required to protect the immediate health or safety of a party or the community, specifically, domestic violence; child abuse and neglect only upon the initial removal, where there is an imminent threat to the

health or safety of a child, or a non-contested final disposition where family reunification is anticipated; infant guardianship; non-contested adoptions; physical custody cases involving an imminent threat to the health or safety of a child or protected adult; juvenile detention or placement in state custody; criminal initial appearances, bond hearings, search warrants, and criminal preliminary hearings; mental hygiene; and matters initiated by public health or governmental officials to enforce orders related to the COVID-19 crisis are not limited by this Order, and applicable deadlines and time limits remain in effect. Magistrates may conduct those proceedings expressly required by Rule 1(b) of the Administrative Rules for the Magistrate Courts of West Virginia. Consistent with the Court's prior March 16, 2020, Administrative Order, these proceedings should utilize available technology to limit person-to-person contact whenever possible. To the extent they do not impermissibly infringe upon the constitutional rights of a party or litigant, any West Virginia state or local rules, including but not limited to criminal rules, civil rules, or administrative rules, that limit or preclude a judicial officer or court clerk's ability to utilize remote, telephonic or video technology to limit in-person contact, are suspended.

It is furthered ORDERED that circuit court judges, family court judges, and magistrates may conduct hearings, proceedings, or bench trials via telephone or video conference in non-emergency matters. A hearing, proceeding, or bench trial may only occur with the mutual consent of the parties, which shall not be unreasonably withheld. A judicial officer may set deadlines related to these hearings, proceedings, or bench trials. Notwithstanding the authorization contained herein, except in cases where there would be significant harm if the proceeding is delayed, proceedings related to wrongful occupation and evictions shall not be held prior to May 18, 2020.

It is further ORDERED that it is the responsibility of each Chief Circuit Judge and each Chief Family Court Judge to notify the employees of all offices under their supervision of the content of this Order. Each judicial officer shall ensure that these functions are carried out remotely to the greatest extent possible to reduce the number of employees in a courthouse at any given time. The Chief Circuit Judge and the Chief Family Court Judge in every circuit shall prepare a schedule appointing at least one circuit judge and one family court judge to be on-call and available during regular business hours and shall develop a plan to ensure the public's continued access to the judicial system. The Chief Circuit Judge shall provide a copy of this schedule and communication plan to the Administrative Director of the Supreme Court of Appeals of West Virginia. The Circuit Clerk Office and Magistrate Clerk Office shall remain staffed with sufficient personnel to carry out the authorized functions, but in all counties, at least one person must answer telephone calls during regular business hours.

It is further ORDERED that this ORDER supersedes any local administrative order issued by a judicial official.

The Clerk of Court is hereby directed to distribute copies of this Administrative Order by appropriate means to all circuit judges, family court judges, and magistrates.

ENTERED: April 22, 2020

Tim Armstead, Chief Justice

Edythe Nash Gaiser, Clerk of Court