Supreme Court of Kentucky

2020-64

AMENDED ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY: EXPANSION OF COURT PROCEEDINGS

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that "[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

In light of the declared federal and state emergencies and considering the need to balance access to the courts and the constitutional rights guaranteed to the people of this Commonwealth with the health and safety of court employees, elected officials, and the public during the COVID-19 emergency, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders Administrative Order 2020-44 replaced in its entirety as follows:

A. JURIES

1. Postponements and Excusals. Juror qualification forms shall be reviewed prior to the first day of service and any jurors who meet the following criteria shall have their service postponed or be excused prior to reporting.

    a. Jurors who are ill or in a high-risk category or are caring for someone who is ill or in a high-risk category shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.

    b. Jurors who are unable to wear a facial covering because doing so would pose a serious threat to their health or safety shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.

    c. Jurors who were laid off, became unemployed, or otherwise suffered an economic loss due to the COVID-19 pandemic,

and who show they would suffer further economic loss as a result of jury service, shall be excused for undue hardship.

2. Petit Jurors and Jury Trials. Criminal jury trials may resume after August 1, 2020, with in-custody trials taking priority over all other matters. Civil jury trials may resume after October 1, 2020.

Jury trials shall only resume if the trial judge determines in his or her discretion, after having considered local public health conditions and the health and safety requirements established by the Supreme Court, that it is advisable.

a. Jury trials and voir dire must be conducted at a court facility in the county, unless otherwise authorized by the Supreme Court in accordance with KRS 26A.100.

b. Petit juror orientation shall be conducted by one of the following formats, as directed by the chief circuit judge:

i. Requiring petit jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or

ii. Requiring petit jurors to participate in a remote video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person juror orientation; or

iii. Requiring petit jurors to attend orientation as part of the voir dire proceedings. Jury panels shall be subdivided into smaller groups so that there is six (6) feet distance between all jurors in the courtroom at all times. The Jury Management Program may be utilized for grouping.

c. Voir dire shall be conducted in smaller groups with staggered reporting times and over the course of multiple days, if necessary.

d. In all cases scheduled for a jury trial, a final pretrial conference shall be conducted no more than three days prior

to the date of trial. If jurors still need to report for a jury trial, they shall be notified after the final pretrial conference.

e. Bench conferences shall be conducted outside the presence of the jury where a complete record can be made while still maintaining appropriate social distancing.

f. The use of technology to publish exhibits to the parties, counsel, and jurors should be strongly encouraged, with preservation of the exhibits shown.

g. Attorneys shall be granted a reasonable continuance if they or their clients are ill or in a high-risk category or are caring for someone who is ill or in a high-risk category.

h. Access to view jury trials must be provided to members of the public and media. However, in-person viewing shall be subject to the social distancing, capacity limitations, and other restrictions set out in this Order or any other subsequent Order issued by this Court. If there is no room for members of the public or media to be inside the courtroom, the court shall provide access to view the trial by live audio or video or by digital recording.

3. Grand Jury Proceedings. A grand jury may be conducted remotely via available telephonic or video technology, subject to applicable Rules of Criminal Procedure. The indictment may be returned to the circuit judge using available technology. If a grand juror is unable to participate remotely, the chief circuit judge shall excuse that grand juror either temporarily or permanently and swear another grand juror from the current jury panel in place of the one excused.

a. Access to view the return of indictments pursuant to RCr 5.20 must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.

b. Any case where the 60-day period in RCr 5.22(3) or an extension thereof was tolled by operation of Administrative Order 2020-28 shall be presented to the grand jury on or before July 30, 2020. The Commonwealth's Attorney is encouraged to give priority to cases where the defendant is in custody and proceedings have been tolled by the Supreme Court's response to the COVID-19 emergency.

c. Existing grand jury panels may be extended at the discretion of the court, subject to the 20-day limitation set out in AP Part II, Sec. 19(3).

d. If an existing grand jury panel is unable to be extended, juror education shall be conducted by one of the following formats, as directed by the chief circuit judge:

i. Requiring grand jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring grand jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or

ii. Requiring grand jurors to participate in a remote video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person grand jury orientation; or

iii. Requiring grand jurors to report in person for orientation on the date they report for grand jury service. Grand jury panels shall be subdivided into smaller groups with staggered reporting times. The Jury Management Program may be utilized for grouping.

e. The Chief Circuit Judge shall ensure that each designated grand juror orientation area is demarked with six-foot spacing to maintain appropriate social distancing.

4. Health and safety precautions. The following health and safety precautions for grand jury proceedings and jury trials must be followed:

a. Grand jury proceedings must be conducted in a large ventilated space so that there is six (6) feet distance between all jurors in the courtroom at all times. If the designated grand jury area is not large enough, then grand jury proceedings shall be conducted in the courtroom.

b. For grand jury proceedings, the judge presiding over the grand jury and the Commonwealth Attorney shall ensure that each designated area is demarked to maintain

appropriate social distancing among witnesses, the Commonwealth Attorney, and grand jurors.

c. For jury trials, the judge presiding over the trial shall ensure that the courtroom is demarked to maintain appropriate social distancing among and proper use of facial coverings by parties, attorneys, witnesses, jurors, and members of the public or media.

d. Any space utilized by grand jurors or petit jurors must be configured to maintain appropriate social distancing.

e. Grand jury proceedings and voir dire must be scheduled so as to reduce the number of individuals entering, exiting, or gathering at a certain time.

f. At the conclusion of the proceedings, the presiding judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the COVID-19 Health and Safety Requirements for the Expansion of Operations for the Kentucky Court of Justice, Administrative Order 2020-55.

B. CIVIL MATTERS

1. **Evictions.** All actions for residential and commercial eviction may proceed, subject to the following:

   a. All eviction filings must be accompanied by form AOC-1027 ("Verification of Compliance with CARES Act"), verifying that the eviction is not prohibited under Public Law 116-135 (the "CARES Act"). The AOC-1027 shall be filed with every eviction filing, and the circuit court clerk shall reject any such filing unless it is accompanied by the AOC-1027. The fillable version of this form is available at kycourts.gov on the Legal Forms page under the Resources tab.

   b. Residential evictions subject to the CARES Act must comply with the following requirements:

      i. In accordance with Section 4024 of the CARES Act, the following provisions shall apply to actions for eviction from "covered dwellings," as defined in subsection (a) of Section 4024, for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent.

a) Thirty days' notice to vacate is required prior to filing an action for eviction. The lessor of a "covered dwelling" shall not require the tenant to vacate until 30 days after the date on which the lessor provides the tenant with notice to vacate; and

b) Fees, penalties, or other charges are prohibited. The lessor of a "covered dwelling" shall not charge a tenant any fees, penalties, or other charges that accrued during the period between March 27, 2020, and July 25, 2020, when those fees, penalties, or other charges are related to nonpayment of rent.

ii. In accordance with Section 4023 of the CARES Act, the following provisions shall apply to actions for eviction from "federally backed multi-family properties," as defined in subsection (f) of Section 4023, solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent:

a) Evictions and notice to vacate are prohibited during the period of forbearance. Evictions from "federally backed multi-family properties" solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent are prohibited for the duration of the period during which the borrower has received forbearance of its mortgage loan payments, and notice to vacate shall not be issued until after the expiration of the forbearance.

b) Thirty days' notice to vacate is required prior to filing an action for eviction. The multi-family borrower shall not require the tenant to vacate until 30 days after the date on which the borrower provides the tenant with notice to vacate.

c) Fees, penalties, or other charges are prohibited. The multi-family borrower shall not charge a tenant any fees, penalties, or other charges that accrued during the period of forbearance when those fees, penalties, or other charges are related to nonpayment of rent.

c. Actions for eviction that were filed prior to March 27, 2020, are not subject to the CARES Act and, therefore, are not subject to the provisions of subsection b above.

d. In consideration of the creation of the Healthy at Home Eviction Relief Fund, and to ensure landlords and tenants have access to available rental assistance, the following procedures shall apply effective September 21, 2020 to evictions from residential premises in which only nonpayment of rent is alleged:

i. At the initial hearing noticed by the summons, the parties must be verbally informed that funding agencies may be able to assist tenants with payment for some or all of the rent that is owed and assist landlords with recouping missed or late rent payments. Parties should also be informed that a judgment is not necessary to receive assistance.

ii. Following the initial hearing, all eviction proceedings shall be held in abeyance for fourteen days and rescheduled for the next available court date unless the landlord dismisses the complaint, with or without prejudice; a tenant who was properly served under KRS 383.210 or KRS 383.540 fails to appear; or the parties reach an agreement and file an AOC-218, Forcible Detainer Settlement Agreement, before the fourteen days expire.

iii. A request for a jury trial must be made within fourteen days of the initial hearing.

iv. To the extent possible, the court should require remote participation in eviction proceedings. If a party cannot appear remotely, in-person proceedings must be held in accordance with Administrative Order 2020-63.

e. Nothing in this Order shall be interpreted to suspend or otherwise excuse an individual's duty to pay rent or to comply with any other obligation under tenancy.

2. **Judicial Sales**. Upon the effective date of this Order and with the authorization of the Chief Circuit Judge, judicial sales pursuant to Administrative Procedures of the Court of Justice (AP) Part IV may resume.

a. All sales conducted in-person must meet the health and safety measures required by Kentucky Supreme Court Administrative Order 2020-55, "Kentucky Court of Justice Response to COVID-19 Emergency – Health and Safety Requirements," including but not limited to, the requirements for facial coverings, limited occupancy capacity, social distancing, and cleaning/disinfecting. The Chief Circuit Judge must ensure that the master commissioner is observing and enforcing the health and safety measures required by Administrative Order 2020-55.

b. Notwithstanding AP Part IV, Section 5 (3), when conducting sales in-person, the advertisement shall include a brief description of the COVID-19 health and safety measures that must be observed.

C. FAMILY MATTERS

1. **Child Support.** Until October 1, 2020, judges shall give priority to the following child support matters:

   a. Cases that are determining paternity;

   b. Cases establishing initial child support obligations;

   c. Cases that are being reopened; and

   d. Cases in which the obligee's ***only financial support*** is income from employment or unemployment benefits, maintenance support, non-public benefits, or child support.

   All other child support matters shall be continued until after October 1, 2020, unless a judge determines in his or her discretion that a matter requires prompt attention.

D. CRIMINAL MATTERS

1. **Show Cause Dockets.** All show cause dockets for payment of fines and court costs shall be scheduled no sooner than November 1, 2020.

2. **Bench Warrants.** Judges should continue to issue summonses or notices to appear in lieu of bench warrants, unless the judge has good cause to believe a defendant will not appear voluntarily upon a summons or notice to appear.

E. NIGHT TRAFFIC COURT

Due to health considerations and current staffing limitations, night traffic courts in Jefferson County are suspended until further notice.

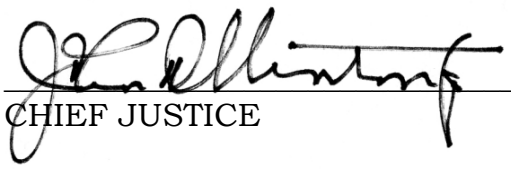
F. LOCAL PROTOCOLS

1. Each chief district and chief circuit judge must develop a local protocol regarding any additional restrictions or changes in local procedure, consistent with this Order. Proposed local protocols shall be submitted electronically by the chief district or chief circuit judge to localrules@kycourts.net for posting to the Kentucky Court of Justice website. To the extent any local protocols are inconsistent or otherwise conflict with this Order, this Order prevails. Any local protocol that substantially deviates from this Order or other Administrative Orders of this Court may be subject to review and final approval by the Chief Justice under SCR 1.040(3).

2. Concerns regarding local application or implementation of this order may be submitted to COVIDcourtconcerns@kycourts.net.

This Order shall be effective upon entry, with the exception of Section B(1)(d), which shall be effective September 21, 2020.

Entered this 28th day of August 2020.



CHIEF JUSTICE

All sitting; all concur.