Supreme Court of Kentucky

2020-43

AMENDED ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY – HEALTH AND SAFETY REQUIREMENTS FOR THE EXPANSION OF COURT OPERATIONS

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."

Considering the Governor's new guidelines authorizing the phased reopening of Kentucky's businesses and government offices, and the constitutional rights guaranteed to the people of this Commonwealth, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby ORDERS the following health and safety measures be implemented beginning June 1, 2020:

1. Courts shall resume hearing civil and criminal matters using available telephonic and video technology to conduct all proceedings remotely. Remote proceedings shall be scheduled through the judge's office.

   If a judge determines in his or her discretion that a matter requires in-person attendance, the following health and safety precautions must be followed:

   a. Courtroom attendance for the matter being heard must be limited to attorneys, parties, witnesses, and other necessary persons as determined by the judge but in no event can attendance exceed 33% of the courtroom's occupancy capacity.

   b. Individuals who are exhibiting symptoms of COVID-19 as identified by the CDC (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, or new loss of taste or smell); have been asked to self-quarantine by any doctor, hospital, or health agency; or have been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19

within the past 14 days, or who fall into a high-risk category[1] must be allowed to participate remotely.

c. The judge must take steps to ensure appropriate social distancing by those in attendance.

d. Access to view any courtroom proceeding that is not otherwise confidential must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.

e. The proceeding must be scheduled so that it reduces the number of individuals entering, exiting, or gathering at a certain time; and

f. At the end of the proceeding or after each use, the judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the KCOJ COVID-19 Health and Safety Requirements.

2. Any court order requiring the remote attendance of a party or his or her counsel shall have the same effect as if requiring attendance in person, and failure to appear remotely as ordered by a court may be grounds for sanctions.

3. To the extent possible and consistent with social distancing practices, attorneys should continue to prepare and litigate cases during the effective dates of this Order, including providing discovery, negotiating possible resolutions, filing motions, and conducting investigations, to minimize delay in bringing cases to trial or resolution.

4. In-person services are strictly limited as follows:

    a. Entrance to court facilities is limited to:

        i. Attorneys, parties, witnesses, persons ordered by the judge to appear at in-person hearings;

        ii. Individuals seeking emergency protective orders, interpersonal protective orders, emergency custody orders,

[1] According to the CDC, high-risk individuals include: people 65 years and older; people who live in a nursing home or long-term care facility; people of all ages with underlying medical conditions, particularly if not well controlled, including people with chronic lung disease or moderate to severe asthma; people who have serious heart conditions; people who are immunocompromised; people with severe obesity; people with diabetes; people with chronic kidney disease undergoing dialysis; and people with liver disease.

orders under KRS 222.430 et seq. (Casey's law), and involuntary commitments under KRS Chapter 202A and KRS Chapter 645;

iii. Individuals attending judicial sales;

iv. Attorneys or parties to a case who need access to a physical case file and have scheduled an appointment with the local Office of Circuit Court Clerk;

v. After June 15, 2020, other individuals who need access to a physical case file and have scheduled an appointment with the local Office of Circuit Court Clerk.

b. All filings must be mailed, eFiled, or conventionally filed using a drop-box provided outside the judicial facility.

c. Payments for court costs, fines, fees, and restitution can be made by money order mailed to the circuit clerk's office or by cash or credit card by calling the local circuit clerk's office. Pre-payable citations can be paid online through ePay at kycourts.gov.

d. Individuals posting bond should contact the local circuit clerk's office for further instruction.

e. Limited driver's license services will resume June 1, 2020, as provided in Kentucky Transportation Cabinet Order 2020-215. Individuals seeking entry into court facilities for this purpose must have a scheduled appointment through the circuit clerk's office. Permit testing and road testing will resume at the discretion of the Kentucky State Police.

5. No KCOJ offices should have more than 50% of its employees physically present, unless the appointing authority requests a limited exception and obtains approval from the AOC's Director of Human Resources. In-office staffing is limited to those employees who:

a. Are necessary to serve members of the public or whose physical presence in the courthouse or court office is necessary for the performance of the employee's duties; and

b. Can be accommodated with appropriate social distancing.

6. Judges and circuit court clerks must collaborate to ensure there is sufficient staff to cover in-person dockets within the 50% staffing limitation mandated by this Court.

7. To enable full productivity and maintain a safe work environment, all KCOJ employees who can telework should be directed to do so.

8. All KCOJ officials and employees who are not scheduled to telework are required to self-administer a temperature and health check before reporting to work. Any official or employee who is exhibiting symptoms of COVID-19 as identified by the CDC (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, or new loss of taste or smell); has been asked to self-quarantine by any doctor, hospital, or health agency; or has been diagnosed with or has had contact with anyone who has been diagnosed with COVID-19 within the past 14 days must stay home and self-report this information as provided in the KCOJ COVID-19 Health and Safety Requirements.

9. Signage shall be posted outside of all entry points of all KCOJ court facilities, offices, or other locations where court proceedings are being held, advising the public, attorneys, and KCOJ officials and employees that they shall not enter or remain on the premises unless they are wearing a protective facial covering such as a mask, scarf, bandana, or other cloth which covers the nose and mouth. If a member of the public seeks entry but does not have an appropriate facial covering and their business cannot be accomplished remotely, then a facial covering will be provided. Further, individuals shall not enter the building if they have:

    a. Experienced any symptoms of COVID-19, including cough; shortness of breath or difficulty breathing; fever; chills; muscle pain; sore throat; or new loss of taste or smell;

    b. Been asked to self-quarantine by any doctor, hospital, or health agency; or

    c. Been diagnosed with COVID-19 within the past 14 days or had contact with anyone who has been diagnosed with COVID-19 within the past 14 days.

10. A member of the public who is not granted access to a court facility, courtroom, or court office is not relieved of his or her obligation to make payment or report to or appear before the court. He or she will be provided a phone number or email address and must make arrangements to reschedule, appear remotely, or otherwise complete his or her business to avoid possible adverse action being taken by the court.

11. Members of the public are prohibited from bringing non-transparent purses or other similarly enclosed bags into any court facility that does

not have an X-ray machine, unless items in the bag are medically necessary. Any items that are necessary for the individual's business before the court should be carried by hand or brought in an open container capable of visual inspection.

12. All KCOJ officials and employees are required to wear facial coverings while interacting with co-workers or in common areas of the building (e.g. hallways, elevators, conference rooms, bathrooms, entries, and exits). Facial coverings are not required to be worn when KCOJ officials or employees are alone in their personal office or if doing so would pose a serious threat to their health or safety. Additionally, judges are not required to wear a facial covering while conducting court proceedings if doing so will impede their ability to make a clear record and if no parties or KCOJ employees are located within a ten-foot radius of the judge and do not approach the bench during the proceeding.

13. The AOC Director or designee must ensure the KCOJ COVID-19 Health and Safety Requirements are made available on the KCOJ's intranet, distributed to all KCOJ officials and employees, and acknowledged by all employees.

14. All KCOJ officials and employees will be provided a facial covering to use as required by this Order and are encouraged to keep an extra facial covering to use if the one provided is misplaced. All KCOJ employees are required to report to work with a facial covering that is consistent with the Dress Code Policy contained in Section 3.09 of the KCOJ Personnel Policies.

15. If an employee exhibits coughing, shortness of breath, difficulty breathing, or other COVID-19 symptom(s) while in the workplace, an appointing authority, after consultation with the AOC's Director of Human Resources or designee, will direct the employee to leave the office if doing so is consistent with the recommendations of the CDC and provide the employee guidance regarding use of appropriate leave and follow-up.

16. Each chief circuit judge must take steps to ensure that KCOJ employees and members of the public exercise appropriate social distancing in any court facility occupied by the KCOJ within their circuit.

    a. In mixed-use facilities, the chief circuit judge is responsible for ensuring appropriate social distancing practices in the space occupied by the KCOJ, including the common areas.

    b. Any common area that cannot be configured to maintain appropriate social distancing must be closed.

c. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing between individuals who are not members of the same household unit.

17. The AOC Director or designee must take steps to ensure that AOC employees and members of the public exercise appropriate social distancing in all AOC offices.

    a. Any common area that cannot be configured to maintain appropriate social distancing must be closed.

    b. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing.

18. Each chief circuit judge must ensure that proper arrangements are made for cleaning and disinfecting of the court facilities in their circuit, consistent with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.

19. The AOC Director or designee must ensure that cleaning and disinfecting of all AOC offices complies with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.

20. The AOC Director or designee must ensure all KCOJ officials and employees are trained on when and how to properly use facial coverings, how to clean or dispose of facial coverings, and when and how to properly use gloves, if provided.

21. KCOJ officials and employees should email COJHR2@kycourts.net if they have concerns about working conditions or about health risks in the workplace.

22. Court security personnel shall assist the chief circuit judge in implementing and enforcing all social distancing requirements inside the courtrooms and throughout the court facility.

Nothing in this Order should be used to delay or effectively stay a proceeding in contravention of the rights guaranteed to the people of the Commonwealth in Section 14 of the Kentucky Constitution. All parties are expected to use available technology to further the resolution of all cases.

Each chief district and chief circuit judge is encouraged to 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).

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

This Order shall be effective June 1, 2020, and until further Order of this Court.

Enter this 29th day of May 2020.

CHIEF JUSTICE

All sitting; all concur.