Supreme Court of Kentucky

2020-44

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."

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, this Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders as follows, effective June 1, 2020:

A. JURIES

1. Jury trials shall be postponed and rescheduled for no sooner than August 1, 2020, with in-custody criminal trials taking priority over all other matters.

2. Grand jury proceedings may resume upon the effective date of this order.

3. 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.

4. 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.

5. 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.

6. 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).

7. 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, by:

    a. Requiring 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

    b. Requiring jurors to attend a 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 jury orientation; or

    c. Requiring jurors to report in person for orientation, but in no event can the number of persons present in the designated juror orientation area exceed 33% of its occupancy capacity. Jury panels shall be subdivided into smaller groups so that there is six feet distance between all jurors in the designated juror orientation area at all times. The Jury Management Program may be utilized for grouping.

        The Chief Circuit Judge shall ensure that each designated juror orientation area is demarked with six-foot spacing to maintain appropriate social distancing and shall require jurors to report in smaller groups with staggered reporting times.

8. Jurors who are ill, 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.

9. 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.

10. 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.

11. Juror qualification forms shall be reviewed prior to the first day of service and any jurors who meet the criteria under sections 8, 9, or 10 of this Order shall have their service postponed or be excused prior to reporting.

12. The following health and safety precautions for grand jury proceedings must be followed:

    a. Proceedings must be conducted in a large ventilated space. If the designated area is not large enough, then grand jury proceedings shall be conducted in the courtroom. The number of persons present in the designated area shall not exceed 33% of its occupancy capacity.

    b. All jurors will be required to wear facial coverings while inside the court facility.

    c. The judge presiding over the grand jury and the Commonwealth Attorney shall ensure that each designated area is demarked with six-foot spacing to maintain appropriate social distancing

    d. Any common area in the court facility that cannot be configured to maintain appropriate social distancing must be closed.

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

    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 2020-39.

B. CIVIL MATTERS

1. **Evictions.** In accordance with Kentucky Governor Andy Beshear's Executive Order 2020-257, as amended by Executive Order 2020-323, suspending evictions from residential premises within the Commonwealth for failure to pay rent and directing law enforcement officers to cease enforcement of any such orders of eviction for the duration of the State of Emergency under Executive Order 2020-215; and, Public Law 116-136 (the "CARES Act"), imposing a moratorium on the initiation of actions for eviction from certain residential properties for nonpayment of rent or other fees or charges, and notwithstanding the exceptions in subsection (d) below, this Court orders as follows:

a. Until the expiration of the State of Emergency declared in Executive Order 2020-215, evictions from all residential premises for nonpayment of rent are ***suspended***, and filings related to any such eviction shall not be accepted by the circuit court clerk.

b. Until the expiration of the State of Emergency or July 25, 2020, whichever is later in time, evictions for nonpayment of rent or other fees or charges from "covered dwellings," as defined in Section 4024 of the CARES Act, are ***prohibited***, and filings related to any such eviction shall not be accepted by the circuit court clerk.

c. Until the expiration of the State of Emergency or the expiration of the forbearance granted under Section 4023 of the CARES Act, whichever is later in time, evictions for nonpayment of rent or other fees or charges from dwelling units located in or on residential multifamily properties subject to federally backed multifamily mortgage loans that are in forbearance are ***prohibited***, and filings related to any such eviction shall not be accepted by the circuit clerk.

d. Upon the effective date of this Order, the following may be filed and the action allowed to proceed if the filing is accompanied by the AOC form 1026.1 ("Verification of Compliance"), as provided under subsection (e):

    i. Notices of, or any motions or other papers related to, voluntary dismissal of an eviction action pursuant to CR 41.01;

    ii. Pleadings, motions, or other papers associated with an eviction from residential premises for which the Office of the Governor has granted the Plaintiff an exemption from the suspension of evictions under Executive Order 2020-257, paragraph 5;

    iii. Pleadings, motions, or other papers associated with an eviction from residential premises for a reason other than nonpayment of rent or other fees or charges; and

    iv. Pleadings, motions, or other papers associated with an eviction from non-residential premises.

e. The plaintiff in any action for eviction, when filing pleadings, motions, or other papers, shall verify, using AOC form 1026.1 ("Verification of Compliance"), that the action meets one of the criteria set out in (d.)(i.) - (iv.) of this section. The AOC-1026.1 shall

be filed with every eviction filing, and the circuit court clerk shall reject any such filing unless it is accompanied by the AOC-1026.1. The fillable version of this form can be found at kycourts.gov on the Legal Forms page under the Resources tab.

f. In the event that pleadings, motions, or other papers are filed in an eviction action that has not met the criteria set out in (d.)(i.) - (iv.) of this section, the action shall be deemed by the presiding judge to violate this Order and sanctions may be imposed, up to and including dismissal, award of attorneys' fees, and other appropriate sanctions as determined by the court.

g. 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 2020-43, "Kentucky Court of Justice Response to COVID-19 Emergency – Health and Safety Requirements for the Expansion of Court Operations," 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 2020-43.

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.

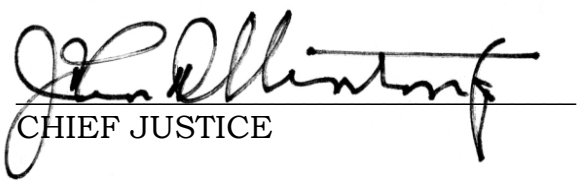
E. LOCAL PROTOCOL

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.

Entered this 29th day of May 2020.



CHIEF JUSTICE

All sitting; Minton, C.J.; Hughes, Keller, Nickell, VanMeter, and Wright, JJ., concur. Lambert, J., concurs but would only tie the suspension of evictions for non-payment of rent on residential properties under Section (B)(1) to the limited moratorium under the federal CARES Act.