IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order

2020-PR-32

Order Amending 2020-PR-016

FILED
APR 0 3 2020
DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

This order complements Administrative Orders 2020-PR-13 and 2020-PR-15, amends 2020-PR-016, and incorporates the provisions in 2020-PR-024. It continues actions of the Kansas Supreme Court aimed at mitigating local or statewide outbreaks of the coronavirus COVID-19 and protecting the health and safety of the public and court personnel while allowing access to judicial functions.

These measures became necessary after the World Health Organization declared the COVID-19 outbreak a pandemic on March 11, 2020. The next day, Kansas Governor Laura Kelly declared a state of disaster emergency. Then, on March 13, 2020, President Donald Trump declared a national emergency. These declarations warrant extraordinary measures to mitigate COVID-19 spread.

Due to the outbreak of COVID-19, an emergency exists that poses a threat of imminent and potentially lethal harm to those who may have contact with a carrier of COVID-19. Rapid escalation of the emergency required the comprehensive measures we put in place on March 18, 2020, in 2020-PR-016. Our March 18, 2020 order and this order are necessary to protect the health and safety of Kansans, including our judicial branch employees and judges. While 2020-PR-016 did not contain an expiration date, the Kansas Supreme Court announced it would review the order after two weeks to determine if the order should stay in place and, if so, whether amendments were warranted.

The next day, 2020 House Substitute for SB 102 was published in the Kansas Register (39 Kan. Reg. 304). Further, many local public health officials put in place stay home orders and on March 28, 2020, Governor Laura Kelly issued 2020 EO 20-16, which imposed a statewide stay home order that became effective March 30, 2020. Further, many county commissions across Kansas have closed or are considering closing courthouses. These events and circumstances lead me as the Chief Justice of the Kansas Supreme Court, in consultation with the members of the Kansas Supreme Court, to order the continuation of 2020-PR-016, as amended by this order. This remains necessary to secure the health and safety of court users, staff and judicial officers.

It is ordered:

1. This order supersedes any portion of a district court order or prior order of this court that conflicts with this order.

2. Except as stated in paragraph 17, this order does not limit the conduct of litigation—including such matters as discovery or mediation—that does not involve a judge or judicial employee.

3. All jury trials, both civil and criminal, scheduled to begin in any Kansas state court on or after March 18, 2020, are continued until further order of the Chief Justice. Questions concerning prospective scheduling of hearing or trial dates should be directed to the assigned judge.

4. Civil and criminal jury trials in progress on March 18, 2020, may continue to conclusion, in the discretion of the assigned judge. The assigned judge should encourage jurors to follow Centers for Disease Control and Prevention and Kansas Department of Health and Environment guidance on reducing the spread of COVID-19 to the extent possible. The assigned judge should consult with his or her Chief Judge regarding personnel required to complete the jury trial in progress.

5. As of March 19, 2020, when 2020 House Substitute for Senate Bill No. 102 became effective upon its publication, all deadlines and time limitations to bring a defendant to trial established by K.S.A. 22-3402 and its amendments are suspended until further order of the Chief Justice.

6. All Kansas district and appellate courts, administrative offices, the Offices of the Clerks of the District and Appellate Courts, and court services offices must, at a minimum, perform essential functions until further order. Nonessential functions may be performed in a manner consistent with this order as local resources and circumstances allow. Each Chief Judge must ensure that information is posted to inform members of the public how to contact court personnel.

7. Essential functions for the district courts include:

<u>CRIMINAL:</u>

- 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 hearing, 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 hearing, 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.

8. 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.

9. To the extent feasible, any hearing related to an essential function must be conducted by two-way telephonic or electronic audio-visual communication. Such communication is authorized for any court proceeding outside of jury trials to the extent permitted by the United States and Kansas Constitutions and rules related to judicial conduct. No hearing related to a nonessential function may be conducted except by two-way telephonic or electronic audio-visual communication.

10. Each Chief Judge of the District Courts, the Chief Judge of the Court of Appeals, and the Chief Justice of the Kansas Supreme Court must assure each respective court has sufficient judges to carry out the essential functions listed in paragraphs 7 and 8 each weekday during the effective dates of this Administrative Order.

11. Essential personnel—as identified by each Chief Judge of the District Courts, the Chief Judge of the Court of Appeals, the Chief Justice of the Kansas Supreme Court, and the Judicial Administrator of the State of Kansas—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 shall 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.

12. To the extent possible given the resources and needs of each court, and as directed by administrative heads, essential and nonessential personnel should work remotely and may perform essential and nonessential functions.

13. During the effective dates of this Administrative Order, all Kansas district court judges, appellate judges, and justices of the Kansas Supreme Court must be available to respond in person or remotely by phone, e-mail, or other electronic means, as determined by their chief judge, departmental justice, or Chief Justice.

14. All Deoxyribonucleic Acid (DNA) collection, urinalysis testing, alcohol testing, and home visits performed by Judicial Branch employees are suspended until further order of the Court.

15. All Court Services Officer personal contact at any jail or other custodial or detention facility will be suspended until further order of the Chief Justice, unless the Chief Judge of the Judicial District deems the contact a necessity.

16. Those who have been directed to report on probation or for interviews with Court Services Officers are directed to report by telephone and not report in person. Court Services Officers are responsible for communicating this information to those affected. No additional in-person reporting will take place until further order of the Chief Justice.

17. As of the publication of 2020 House Substitute for Senate Bill No. 102 on March 19, 2020, all statutes of limitations and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings are suspended until further order. During the effective dates of this Administrative Order, no action shall be dismissed for lack of prosecution. Parties are encouraged to meet all deadlines that do not require in-person proceedings.

18. 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. The time requirements of Supreme Court Rule 23(c)(2) are suspended as long as this Administrative Order is in effect.

To aid the reader in comparing today's order with 2020-PR-016, the necessary amendments to 2020-PR-016 are shown below through the underlining of words now added and the strikethrough of words now omitted.

1. This order supersedes any portion of a district court order or prior order of this court that conflicts with this order.

2. Except as stated in paragraph 17, this order does not limit the conduct of litigation—including such matters as discovery or mediation—that does not involve a judge or judicial employee.

3. ~~1.~~ All jury trials, both civil and criminal, scheduled to begin in any Kansas state court on or after ~~the date of this order~~ March 18, 2020, are continued until further order of the Chief Justice. Questions concerning prospective scheduling of hearing or trial dates should be directed to the assigned judge.

4. ~~2.~~ Civil and criminal jury trials ~~that are~~ in progress ~~as of~~ on March 18, 2020, may continue to conclusion, in the discretion of the assigned judge. The assigned judge should encourage jurors to follow Centers for Disease Control and Prevention and Kansas Department of Health and Environment guidance on reducing the spread of COVID-19 to the extent possible. The assigned judge should consult with ~~their~~ his or her Chief Judge regarding personnel required to complete the jury trial in progress.

5. ~~3. Effective on publication of~~ As of March 19, 2020, when 2020 House Substitute for Senate Bill No. 102 became effective upon its publication, ~~this order suspends~~ all deadlines and time limitations to bring a defendant to trial established by K.S.A. 22-3402 and its amendments~~,~~ are suspended until further order of the Chief Justice.

6. ~~4. Other than jury trials in progress, a~~All Kansas district and appellate courts, administrative offices, the Offices of the Clerks of the District and Appellate Courts, and court services offices ~~will be restricted to emergency operations~~ must, at a minimum, perform essential functions until further order. Nonessential functions may be performed in a manner consistent with this order as local resources and circumstances allow. Each Chief Judge must ensure that information is posted to inform members of the public how to contact court personnel.

7. 5. ~~Emergency operations~~ Essential functions for the district courts 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").

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PROTECTION ~~FROM ABUSE~~ ORDERS:

- Issuing emergency protection from abuse ~~emergency~~ 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 ~~orders on an emergency basis~~, 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).

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- Any other matters that would require expeditious handling.

8. 6. ~~Emergency operations~~ Essential functions for the appellate courts include:

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

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

9. ~~7.~~ To the extent feasible, any ~~emergency operation~~ hearing related to an essential function must be conducted by two-way telephonic or electronic audio-visual communication. Such communication is authorized for any court proceeding outside of jury trials to the extent permitted by the United States and Kansas Constitutions and rules related to judicial conduct. No hearing related to a nonessential function may be conducted except by two-way telephonic or electronic audio-visual communication.

10. ~~8.~~ Each Chief Judge of the District Courts, the Chief Judge of the Court of Appeals, and the Chief Justice of the Kansas Supreme Court must assure each respective court has sufficient judges to ~~hear~~ carry out the ~~emergency matters~~ essential functions listed in paragraphs ~~7~~5 and ~~8~~6 each weekday during the effective dates of this Administrative Order.

11. ~~9.~~ Essential personnel—as identified by each Chief Judge of the District Courts, the Chief Judge of the Court of Appeals, the Chief Justice of the Kansas Supreme Court, and the Judicial Administrator of the State of Kansas—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 shall 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.

12. ~~10.~~ To the extent possible given the resources and needs of each court, and as directed by administrative heads, ~~Either~~ essential ~~or~~ and nonessential personnel should ~~may~~ work remotely and may perform essential and nonessential functions.

13. ~~11.~~ During the effective dates of this Administrative Order, all Kansas district court judges, appellate judges, and ~~J~~justices of the Kansas Supreme Court must be available to respond in person or remotely by phone, e-mail, or other electronic means, as determined by their chief judge, departmental justice, or Chief Justice.

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17. ~~15.Effective upon~~ As of the publication of 2020 House Substitute for Senate Bill No. 102 on March 19, 2020, all statutes of limitations and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings ~~is~~ are suspended until further order. During the effective dates of this Administrative Order, no action shall be dismissed for lack of prosecution. Parties are encouraged to meet all deadlines that do not require in-person proceedings.

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Dated this 3rd day of April 2020. This order is effective upon filing.

Marla Luckert

MARLA LUCKERT
Chief Justice