IN THE COURT OF APPEALS OF MARYLAND

THIRD AMENDED ADMINISTRATIVE ORDER

EXPANDING AND EXTENDING

STATEWIDE JUDICIARY RESTRICTED OPERATIONS

DUE TO THE COVID-19 EMERGENCY

WHEREAS, Pursuant to the Maryland Constitution, Article IV, § 18, the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State; and

WHEREAS, The Court of Appeals has approved Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure setting forth the emergency powers of the Chief Judge of the Court of Appeals; and

WHEREAS, Due to the outbreak of the novel coronavirus, COVID-19, and consistent with guidance issued by the Centers for Disease Control, an emergency exists that poses a threat of imminent and potentially lethal harm to individuals who may come into contact with a court or judicial facility and personnel; and

WHEREAS, The COVID-19 emergency requires further expansion and extension of comprehensive measures to protect the health and safety of Maryland residents and Judiciary personnel,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 1st day of May 2020, as follows:

(a) All courts in the Maryland Judiciary, court offices, administrative offices, units of the Judiciary, and the Offices of the Clerks of the Circuit Courts and the clerks' offices of the District Court having been restricted to emergency

operations and closed with limited exceptions beginning on March 17, 2020, shall remain restricted to emergency operations, except as otherwise described in this Order, and closed to the public with limited exceptions, through June 5, 2020, pending further order of the Chief Judge of the Court of Appeals; and

(b) This Administrative Order does not affect or prohibit the courts' consideration or resolution of:

(1) matters that can be addressed without a proceeding; or

(2) matters that require a proceeding, to the extent that an individual court has the capacity to hear such proceedings, with access to the public as justice requires. Courts shall notify all participants to the proceeding if a matter will go forward; and

(c) Courts further are authorized to conduct remote proceedings using communication platforms, consistent with the Administrative Order on the Implementation of Remote Electronic Participation in Judicial Proceedings, filed June 18, 2018, and the Amended Administrative Order on Remote Proceedings Held During the COVID-19 Emergency, filed May 1, 2020; and

(d) Each County and Baltimore City shall have sufficient judges to hear the emergency matters listed in sections (i) and (j) each weekday, during the pendency of this Administrative Order; and

(e) Essential personnel, as identified by administrative judges, court administrators, clerks of courts, administrative clerks, and administrative heads of units of the Judiciary, shall report as required. If an employee identified as essential is unable to serve due to illness or otherwise has been excused consistent with applicable leave policies, a substitute shall be determined by that employee's administrative head; and

(f) Essential court personnel shall be available to the public by telephone between the hours of 8:30 AM to 4:30 PM; and

(g) For the duration of the emergency, all incumbent Maryland judges are hereby cross-designated to sit in any trial court in the state of Maryland; and

(h) For the pendency of the emergency, incumbent judges shall be available to respond in person or remotely by phone, e-mail or other electronic means, as shall be determined by their administrative judge; and

(i) In keeping with the urgency of the following mandatory matters and consistent with statutory requirements, such matters shall continue to be scheduled or heard, either in person or remotely, pursuant to section (c) of this Order. The court shall notify all participants necessary to the proceeding.

(1) In the Court of Appeals:

(A) certain election law matters
(B) certain petitions for Writs of Mandamus
(C) certain certified questions of law
(D) quarantine and isolation matters;

(2) In the Court of Special Appeals:

(A) requests for injunctive relief pending appeal
(B) appeals in cases in which a lack of action would result in a dispositive outcome
(C) appeals from quarantine and isolation petitions;

(3) In the Circuit Courts:

(A) bail reviews/bench warrants
(B) arraignments for detained defendants
(C) juvenile detention hearings
(D) juvenile shelter care hearings

(E) peace order petitions (juvenile respondents)

(F) emergency evaluation petitions

(G) quarantine and isolation petitions

(H) extradition cases

(I) body attachments

(J) extreme risk protective order appeals

All other emergency matters shall be handled pursuant to (j); and

(4) In the District Court:

(A) bail reviews/bench warrants

(B) emergency evaluation petitions

(C) quarantine and isolation violations

(D) body attachments; and

All other emergency matters shall be handled pursuant to (j); and

(5) District Court Commissioners shall handle the following matters:

(A) new extreme risk protective order petitions

(B) new domestic violence protective petitions (adult respondents)

(C) new peace order petitions (adult respondents)

(D) initial appearances

(E) applications for statement of charges

(F) acceptance of bail bonds

(G) bench warrant satisfactions

All other emergency matters shall be handled pursuant to (j); and

(j) For all other emergency matters including those listed below, the administrative judge or his or her designee shall review the petition, determine whether it must be heard in person, or can be heard with remote electronic participation, or can be scheduled after the emergency period has ended, or can be resolved without a hearing, including, but not limited to:

(1) CINA matters, consistent with FCCIP Subcommittee of the Maryland Judicial Council recommendations of April 3, 2020, appended hereto

(2) emergency delinquency hearings, including motions related to juveniles who are detained, committed pending placement, or committed, consistent with the Administrative Order Guiding the Response of the Circuit Courts Sitting as Juvenile Courts to the COVID-19 Emergency as It Relates to Those Juveniles who are Detained, Committed Pending Placement, or in Commitments, filed April 13, 2020

(3) emergency Habeas Corpus petitions

(4) emergency issues in guardianship matters

(5) domestic violence protective orders

(6) appeals from peace orders

(7) family law emergencies, including time urgent matters related to special juvenile immigrant status

(8) temporary restraining orders

(9) criminal competency matters

(10) motions regarding:

(A) extreme risk protective orders

(B) domestic violence protective orders

(C) peace orders

(11) contempt hearings related to peace or protective orders

(12) matters involving locally incarcerated defendants, consistent with the Administrative Order Guiding the Response of the Trial Courts of Maryland to the COVID-19 Emergency as It Relates to Those Persons who are Incarcerated or Imprisoned, filed April 14, 2020; and

(k) Search warrants must be addressed on a 24-hour, 7-day per week basis. Search warrants shall be handled electronically to the greatest extent possible. The administrative judges of the Circuit Courts and the District

Court each shall designate a judge who is responsible to cover search warrant duty for a specified timeframe; and

(l) All other matters scheduled to be heard beginning March 16, 2020, through the end of the COVID-19 emergency are hereby postponed or suspended, unless participants are notified that the matter(s) will proceed or as otherwise ordered by the Chief Judge of the Court of Appeals; and

(m) The Amended Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters, filed on April 8, 2020, issued pursuant to Maryland Rule 16-1003(a)(7), shall control as to statutory and rules deadlines, except that the deadline for the scheduling of criminal jury trials shall be governed by the Administrative Order on Expanding the Statewide Suspension of Jury Trials and Suspending Grand Juries, filed April 3, 2020; and

(n) Application of case time standards shall be governed by the Administrative Order on Case Time Standards and Related Reports for Fiscal Years 2020 and 2021 in Light of the COVID-19 Emergency, filed May 1, 2020; and

(o) Maryland Rules 2-507 and 3-507, which provide for notices of contemplated dismissal for failure to obtain jurisdiction or to prosecute civil matters, shall be suspended for cases pending during the COVID-19 emergency period; and

(p) Scheduling orders issued in civil and family law matters shall be addressed by motion on a case-by-case basis by the administrative judge or his or her designee; and

(q) The Maryland Electronic Courts (MDEC) continues to be available for electronic filing and is required to be used in all MDEC counties; and

(r) In Baltimore City, Montgomery and Prince George's Counties (non-MDEC jurisdictions) only, to the extent that a Court determines to make a virtual drop box available for filings during the COVID-19 emergency period, such drop boxes may be utilized consistent with protocols adopted in an administrative order issued by that Court, announced electronically, and posted on that Court's website; and

(s) In the three non-MDEC jurisdictions only, a Court may determine to process and handle only the emergency and urgent matters listed in (i), (j), and (k), with such a determination to be made by administrative order issued by that Court, announced electronically, and posted on that Court's website; and

(t) During this emergency period, for pleadings not required to be filed electronically or where permitted by virtual drop box, filings will be received by mail and may be received via physical drop boxes installed at local courthouses:

(1) Filings subject to the Amended Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters, filed on April 8, 2020, shall have a filing date as determined by that Order; and

(2) For filings not controlled by the Amended Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters, filed on April 8, 2020, the date of filings will be considered the date a mailed filing has been postmarked or, if filed via a physical drop box, the previous business day, unless there is a timestamp on the drop box; and

(u) Clerks of the Circuit Courts, the Court of Special Appeals, the Court of Appeals, and the District Court of Maryland shall continue to process MDEC filings, filings by virtual drop box where permitted, and paper filings to the extent possible with essential staff working onsite, staff teleworking, or both; and

(v) The Second Amended Administrative Order on Expanding Statewide Judiciary Restricted Operations Due to the COVID-19 Emergency, filed on April 14, 2020, shall be and hereby is rescinded; and

(w) To the extent that this Administrative Order conflicts with extant Administrative Orders, local administrative orders or policies, this Administrative Order shall prevail; and

(x) This Administrative Order will be revised as circumstances warrant.

/s/ Mary Ellen Barbera

Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: May 1, 2020

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal Materials Act (§§ 10-1601 et seq. of the State Government Article) this document is authentic.

Suzanne Johnson
2020-05-01 16:53-04:00

Suzanne C. Johnson, Clerk

FOSTER CARE COURT IMPROVEMENT PROGRAM SUBCOMMITTEE
MARYLAND JUDICIAL COUNCIL

Honorable Anne Albright, Chair
Honorable Theresa Adams
Honorable William Carr
Honorable Cheryl McCally

Honorable Yolanda Tanner
Magistrate Althea Stewart Jones
Honorable Robert Kershaw, Consultant
Michelle Farr, DHS Ex Officio

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April 3, 2020

The Honorable Mary Ellen Barbera
Chief Judge
Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, Maryland 21401

Dear Chief Judge Barbera:

On behalf of Maryland's Foster Care Court Improvement Program, and with the approval of the Juvenile Law Committee, I write today to respond to your kind request of April 1, 2020 for recommendations in light of the March 27, 2020 letter from the Department of Health and Human Services' Children's Bureau, a copy of which is attached. We appreciate all of your ongoing and substantial efforts in this difficult time. The following comments refer to the Court's March 25, 2020 Administrative Order ("the Order").

(1) ***Shelter Care Hearings***: we recommend that these hearings be moved from Paragraph (g) to Paragraph (f)(3) of the Order.

Removal of a child from his or her parent's custody is such a significant step that it demands a timely judicial determination. Moreover, our experience is that the vast majority of our courts make the required "contrary to the welfare" and "reasonable efforts to prevent removal" findings at Shelter Care Hearings. Where a child is placed into foster care, failure to make these findings in a

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timely fashion has budget implications for the Department of Social Services because this failure renders the child irreparably ineligible for Title IV-E funding during the duration of that foster care episode. Accordingly, we recommend that these matters be timely heard during the emergency period, preferably remotely, or in person.

(2) ***All Other CINA hearings, including Adjudications, CJP 3-816.2 hearings, Permanency Planning Hearings, and Permanency Plan Review Hearings***: we recommend that these be postponed during the emergency period, except as below:

a) Pursuant to Paragraph (g) of the Order, if a CINA litigant files a motion wherein the allegations rise to the level of an "emergency" as contoured through the examples in Paragraph (g), and styles it as such, the court should determine whether, and under what circumstances, to hear the motion, and may schedule it after the emergency period has ended; and

b) Pursuant to Paragraph (h), and for post-adjudication hearings, including permanency plan hearings, permanency plan review hearings, and requests to reunify when parent and child are ready to do so, we believe that many of these can be resolved in a manner that complies with federal time standards without resort to hearings. Accordingly, we recommend that courts encourage litigants to submit timely proposed joint orders, through MDEC, Quest, or otherwise, that include proposed joint findings of fact and conclusions of law, particularly required "reasonable efforts" findings.

This encouragement may be provided informally by the courts or through the addition of language at the end of Paragraph (h), such that Paragraph (h) would read " . . . testimony or argument; for example, in lieu of hearings, litigants in child welfare cases may, where the parties agree, submit timely proposed joint orders containing proposed findings of fact and conclusions of law." Use of such joint proposed orders is consistent with Section 3-816.1 (c) of the Courts Article, as well as *In re Blessen,* 392 Md. 684 (2006) and *In re Damien F.*, 182 Md. App. 546 (2008).

Finally, making "reasonable efforts" findings in a timely fashion, through the mechanism outlined above, will assure that there is no gap in Title IV-E funding for children in foster care.

In reaching these recommendations, we understand, and have considered, that some litigants will want to have hearings as a matter of course on all child welfare matters during the emergency period. With the expectation that litigants submit joint proposed orders where possible, we know that lawyers will have to remain in close touch with their clients, a task that certainly presents its own

challenges, and may not always be possible. While we appreciate these views, we balance them against the health of all those who come to Maryland's courts. Ultimately, we believe our recommendations present an appropriate, flexible balance between child-safety related statutory requirements and public health mandates.

We appreciate the chance to offer these recommendations. Please let us know if you require further information, or if you would like us to do anything else.

Respectfully Submitted,

Anne K. Albright
Chair
Foster Care Court Improvement Program

Enc: as stated
cc: The Honorable Michael J. Stamm (via email)(w/ enc.)
Hope Gary (via email)(w/ enc.)