Rescinded 06-16-20 by 2020-PR-076

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

MAY 27 2020

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-PR-054

RE: Order Related to Appellate and District Courts Operations

Beginning on March 12, 2020, with 2020-PR-13, this court has issued a series of administrative orders addressing steps to be taken by courts in response to the novel coronavirus (COVID-19) pandemic. Those orders have restricted court functions or methods of operation as necessary to secure the health and safety of court users, staff, and judicial officers. Generally, these orders have required courts to follow the most restrictive measures ordered by the Governor of Kansas, the Kansas Department of Health and Environment, or local public health officials and to follow public health guidance of local and state public health officials as well as the Centers for Disease Control, and the Occupational Safety and Health Administration.

Most recently, on May 1, 2020, this court issued two orders—2020-PR-048 and 2020-PR-049. These orders differentiated between courts in locations impacted by only Governor Laura Kelly's Executive Order No. 20-29 and those courts impacted by a more restrictive local order. Executive Order No. 20-29 implemented Phase one of "Ad Astra: A Plan to Reopen Kansas." Since that time, Governor Kelly has issued subsequent orders implementing later phases of the Ad Astra plan. Meanwhile, this court maintained the 10-person limitation in 2020-PR-48. Yesterday, the Governor issued a proclamation making the Ad Astra plan guidance only and left to county and municipal public health officers the determination of whether to enter local public health orders.

This order is entered to protect the health and safety of court users, staff, and judicial officers of Kansas district and appellate courts.

1. All Kansas district and appellate courts must comply with:

   - Orders of the Supreme Court and Chief Justice;
   - all COVID-19 Safety Directives of the Office of Judicial Administration;
   - any applicable order or guidance from local public health officials;
   - any orders issued by the Kansas Governor;

- all guidelines available at https://covid.ks.gov/ad-astra-a-plan-to-reopen-kansas;

- any applicable guidelines of the Occupational Safety and Health Administration; and

- the guidelines from the Kansas Department of Health and Environment.

If provisions in this bulleted list conflict, the court must follow the most restrictive provisions.

2. Provisions in this Administrative Order do not amend or impact previous orders of this court, unless that amendment is specifically stated or a provision of this order conflicts with an earlier Administrative Order. If a conflict exists, this order controls. Nor does this order affect any provisions in prior orders issued by the Chief Justice related to 2020 House Substitute for S.B. 102, including authorizing use of two-way audio-visual communications in any court proceeding; suspending deadlines and time limitations under K.S.A. 2019 Supp. 22-3402, and suspending deadlines and time limitation in judicial proceedings.

3. If a court has not yet reopened offices or courtrooms to public operations, the court must abide by 2020-PR-049 and should only return staff to the courthouse when conditions meet the following requirements:

    - The chief judge has consulted with the head of the local public health department or his or her designee to determine how to phase in a return to in-person hearings given the local risk and the courthouse facility.

    - The chief judge has assured compliance with any engineering or other suggestions made by the public health official as to all work and courtroom spaces.

    - A plan has been developed with the local health official for appropriate screening of those entering any courtroom or court office.

    - The chief judge has determined how to comply with all requirements for assuring personal protective equipment is available for all court or courthouse staff and court participants. This would include, but not be limited to, masks, gloves, and cleaning supplies that will allow sanitizing work or courtroom surfaces between contacts with more than one individual—i.e., different individuals sitting at counsel table or touching courtroom surfaces such as doors or lecterns.

- The chief judge, other judges, and other court personnel have triaged the court docket, weighing health risks versus the need for a hearing and determining whether in-person hearings are necessary. In assessing these factors, decision makers need to remember that a judicial order to appear in person necessarily exposes the individual to whom it is directed and others to an increased health risk.

- All orders to appear for a hearing have been modified to include, or be accompanied by, information on restrictions in paragraph 7 below and stating that those who have conditions placing them at high risk if exposed to COVID-19, should not appear but should contact the court through a phone number or email address provided.

4. All hearings should be conducted remotely, if possible.

5. Except as provided in paragraph 6 and regardless of any public order or guidance, no hearing or docket may be conducted if it requires more than 10 people in a courtroom, and each of those 10 people must be able to remain at least 6 feet apart throughout, with cleaning between groups of individuals in the courtroom. If a public health order or guidance calls for fewer than 10 to be gathered, the court must abide by that restriction.

6. This order supersedes the provisions of 2020-PR-16 and 2020-PR-32 stating jury trials are continued until further order of the Chief Justice. Nevertheless, jury trials must still be limited at this time. A court may gather more than 10 people for the purpose of jury proceedings, including grand jury and jury trials, on the following conditions:

    - No jury trials shall proceed unless necessary to preserve a constitutional speedy trial right.

    - The court has presented its departmental justice with a plan that has been approved providing for:

        - A voir dire process involving panels of no more than 12 jurors at a time;
        - A location that allows for social distancing;
        - How and where sidebars will occur with social distancing;
        - How exhibits will be handled between attorneys and court staff, and by jurors;
        - A video stream of the proceedings for viewing by the public and others not physically present, if necessary;
        - The handling of the jury from entry into the facility through discharge, including items such as:

        - Special social distancing requirements—both for the room in which the proceeding is being conducted and during recesses;
        - Assuring jurors' ability to hear and see witnesses and exhibits;
        - How food will be handled and delivered to jurors;
        - Where the jury will deliberate and how the jury will leave for and return from its deliberation;
        - Procedures for jurors to report any of the situations provided in paragraphs 7 and 9 and actions for response by the court and parties; and
    - A review of the above procedures from front door to jury room with court staff, attorneys, and county and facility personnel (i.e., security and screening personnel).

7. Anyone entering a courthouse or other court office must be denied access as follows:

    - if the person has been in close contact with someone who has been diagnosed with, or is suspected to have had, COVID-19 within the last 14 days;

    - if the person is experiencing two or more of the COVID-19 symptoms identified by the Centers for Disease Control and Prevention; or

    - if the person has traveled to an area subject to COVID-19 travel restrictions imposed by the Kansas Department of Health and Environment within the previous 14 days or if the Department recommends self-isolation or quarantine after return.

8. Each chief judge must assure the requirements in paragraph 7 are posted at all entrances to the courthouse, any court office, or any other facility being used by the court for a proceeding within the judicial district. COVID-19 Safety Directives must also be posted in employee work areas and distributed to all employees. The directive and posters will be available on the Kansas judicial branch intranet.

9. The chief judge may authorize security personnel or staff members to request a judicial officer or employee to voluntarily take a temporal temperature or allow a thermal scan for fever. Any person who refuses to have his or her temperature taken or who has a temperature of 100.4 F or higher will not be allowed access to court offices or courtrooms.

10. Any member of the public who is not granted access to a courtroom, court office, or any other facility being used by the court for a proceeding must be provided a phone number or email address where the individual may seek assistance in rescheduling or otherwise completing his or her court business.

11. Any employee who is not granted access to his or her workplace must contact his or her appointing authority through electronic communication as soon as possible, and he or she will be placed on the leave appropriate for the circumstances.

12. If any judicial branch employee exhibits two or more COVID-19 symptoms in the workplace, an appointing authority, after consultation with the director of personnel at the Office of Judicial Administration, or her designee, will direct the employee to leave the office.

13. Steps must be taken to ensure members of the public exercise appropriate social distancing in any court office, courtroom, or other portion of any facility under court control. These steps may include requiring appointments and must include marking 6-foot distances in any area where people are likely to congregate. Any public area that cannot be adapted for appropriate social distancing must be closed.

14. Staffing in a courthouse and any court office should be limited to only the following employees:

    - those who 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

    - those who can be accommodated with appropriate social distancing.

15. To the extent possible, telework should be used to enable full productivity while operating with fewer staff in the courthouse or court office. A chief judge of a district court may authorize employees to telework. Any person authorized to telework must complete a teleworking notice and agreement provided by the Office of Judicial Administration, unless one has already been completed.

16. An appointing authority should contact the director of personnel at the Office of Judicial Administration, or her designee, if any employee expresses concern about working conditions or about health risks in the workplace.

17. To the extent possible, work schedules should be arranged to minimize the number of employees affected if workplace exposure occurs. Thorough cleaning should occur between any rotations of personnel.

Dated this 27th day of May 2020. This order is effective upon filing.

FOR THE COURT

Marla Luckert

MARLA LUCKERT
Chief Justice