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DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order
2020-PR-049
Order Relating to District Court Operations in Counties Affected by a Stay-at-Home Order or Subject to a Directive Closing a County Courthouse or Other Judicial Office

On March 12, 2020, Governor Laura Kelly issued a State of Disaster Emergency Declaration in response to confirmed cases of novel Coronavirus (COVID-19) in the state of Kansas, finding that a public health emergency existed. The Legislature ratified and continued the period of disaster emergency through May 1, 2020, in House Concurrent Resolution No. 5025. On April 30, 2020, the Governor issued a new State of Disaster Emergency Declaration, finding the public health emergency continued.

Soon after the March 12, 2020, emergency declaration, the Governor issued a statewide stay-at-home order, Executive Order No. 20-16, which she later extended through Executive Order No. 20-24. That order expires at 11:59 p.m., May 3, 2020.

Beginning with the filing of Administrative Order 2020-PR-016 on March 18, 2020, Kansas courts have restricted functions or methods of operation in order to secure the health and safety of court users, staff, and judicial officers. Initially, operations were restricted to essential functions. Since April 3, 2020, under Administrative Order 2020-PR-032, Kansas courts have conducted essential functions and any other function that could be performed without an in-person hearing. These orders have balanced the need to perform judicial functions with the safety of those who use and are employed by the Kansas judicial system.

On April 30, 2020, the Governor issued Executive Order No. 20-29. That order, effective May 4, 2020, lifts some restrictions, including the statewide stay-at-home orders in EO 20-16 and EO 20-24, but it continues social distancing and other limits to protect the health and safety of Kansans. Local officials can impose, and some have announced, more restrictive orders in light of local public health conditions. Some county commissions have announced plans to keep public buildings, including courthouses, closed to the public. Given the potential for varying public health conditions and orders, the steps that are necessary to protect the safety of court users, staff, and judicial officers may vary county to county and, as a result, court functions and operations may vary court to court.

To account for the potential of differing public health orders, the Kansas Supreme Court is issuing two orders today that address courthouse operations. The two orders issued by the Court vary, depending on whether a local court is subject to public health orders that are more restrictive than EO 20-29. Additionally, the Chief Justice is issuing three orders today under the authority granted her in 2020 House Substitute for Senate

Bill 102: Administrative Orders 2020-PR-045 (authorizing use of two-way audio-visual communications in any court proceeding); 2020-PR-046 (suspending deadlines and time limitations under K.S.A. 2019 Supp. 22-3402); and 2020-PR-047 (suspending deadlines and time limitation in judicial proceedings). These three orders uniformly apply to all Kansas courts.

This order applies only to those courts or to those court operations located in the following:

- A county that is *subject to* a stay-at-home order
- A county in which a municipality is *subject to* a stay-at-home order; or
- A courthouse or a court office that is *closed* to the public for public health reasons.

All other courts are subject to Administrative Order 2020-PR-048.

For any court or court operation subject to this order (2020-PR-049), the court orders the following:

1. The court must, at a minimum, perform essential functions until further order. Nonessential functions should also be performed in a manner consistent with this order as local resources and circumstances allow.

2. Essential functions for the district court 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").
- 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 hearings, 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 hearings, 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.

3. To the extent feasible, any hearing related to an essential function must be conducted by two-way telephonic or electronic audio-visual communication. No hearing related to a nonessential function may be conducted except by two-way telephonic or electronic audio-visual communication. All remote hearings must comply with 2020-PR-045.

4. Essential personnel, as identified by the chief judge, 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 will 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.

5. To the extent possible, telework should be used to enable full productivity while operating with fewer staff in the courthouse or 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.

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

7. 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.

8. 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.

9. 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.

10. The chief judge must ensure that information is posted to inform members of the public how to contact court personnel.

11. 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 in at the Office of Judicial Administration, or her designee, will direct the employee to leave the office.

12. All courtrooms and court offices must comply with:

- Governor Laura Kelly's Executive Order 20-29 and any other applicable gubernatorial executive orders;
- any applicable order or guidance from local public health officials;
- all guidelines available at https://covid.ks.gov/ad-astra-a-plan-to-reopen-kansas;
- any applicable guidelines of the Occupational Health and Safety Administration;
- all COVID-19 Safety Directives of the Office of Judicial Administration; and
- the guidelines from the Kansas Department of Health and Environment.

13. 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.

Dated this 1st day of May 2020. This order is effective upon filing.

FOR THE COURT

Marla Luckert

MARLA LUCKERT
Chief Justice