IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE COVID-19	§
PRECAUTIONARY MEASURES	§

ADMINISTRATIVE ORDER NO. 7

EXTENSION OF JUDICIAL EMERGENCY

On this 5th day of June 2020:

WHEREAS, under the Delaware Constitution, Article IV, § 13, the Chief Justice of the Delaware Supreme Court is the administrative head of all the courts in the State and has general administrative and supervisory powers over all the courts;

WHEREAS, under 10 *Del. C.* § 2004(a), the Chief Justice, in consultation with other members of the Supreme Court, has the authority to "declare a judicial emergency when the Chief Justice determines that there are emergency circumstances affecting 1 or more court facilities;"

WHEREAS, under 10 *Del. C.* § 2004(a), "emergency circumstances" includes "disease … or other natural or manmade causes [affecting] the ability to access the courthouses, or the ability to staff courts;"

WHEREAS, under 10 *Del. C.* § 2004(c), an order declaring a judicial emergency is limited to an initial duration of not more than 30 days, but may be modified or extended for additional periods of 30 days each;

WHEREAS, under his authority set forth in 20 *Del. C.* ch. 31, Governor John C. Carney, on March 12, 2020, declared a State of Emergency for the State of Delaware due to the public health threat caused by COVID-19, and extended the State of Emergency on April 10, 2020 and May 8, 2020;

WHEREAS, under 10 *Del. C.* § 2004, the Chief Justice, in consultation with other members of the Supreme Court, declared a judicial emergency that went into effect on March 16, 2020 at 8:00 a.m., and extended the judicial emergency on April 14, 2020 and May 14, 2020;

WHEREAS, all courthouses and their administrative offices in the State of Delaware have been closed to the public since March 23, 2020 but the courts have continued essential operations;

WHEREAS, certain deadlines that expired between March 23, 2020 and June 13, 2020 were extended until July 1, 2020;

WHEREAS, after Governor Carney modified his order declaring a State of Emergency to require that Delawareans wear a mask or face covering in public areas, the Chief Justice ordered court staff, lawyers, litigants, jurors, contractors, vendors, and any other visitors to any court facility to wear a mask or face covering when in the common or public areas of court facilities if they could not maintain a 6-foot separation from other individuals;

WHEREAS, on April 27, 2020, the Chief Justice established a Courts Reopening Committee ("the Committee"), chaired by Superior Court Judge William C. Carpenter, Jr. and consisting of members of the judiciary, court staff, the Administrative Office of the Courts, the Department of Justice, the Office of Defense Services, the Department of Correction, Capitol Police, law enforcement, and others, to recommend criteria for courts to safely increase courthouse operations in a manner that would minimize the risk of COVID-19 to employees and the public;

WHEREAS, the Committee was advised by Dr. Alfred E. Bacon, III, M.D., an infectious disease physician;

WHEREAS, on May 26, 2020, the Committee submitted a report recommending a four phase approach to reopening judicial facilities;

WHEREAS, the Committee requested that the report be designated an interim report ("Interim Report") because a subcommittee is further analyzing issues related to jury trials and additional work may be necessary if COVID-19 infections increase as our State reopens;

WHEREAS, the Justice of the Peace Court has also submitted plans for reopening their facilities;

WHEREAS, on June 1, 2020, non-essential businesses were permitted, subject to certain limitations, to reopen in Delaware under the Nineteenth Modification to Governor Carney's order declaring a State of Emergency;

WHEREAS, public information provided by the Delaware Division of Public Health reflects that the COVID-19 situation in Delaware currently allows for increased activities at judicial facilities;

WHEREAS, COVID-19 continues to pose a serious risk to public health, but a careful, phased reopening of the courts will reduce the risk that COVID-19 poses to jurors, parties, witnesses, lawyers, judges, and court staff who typically enter the State courthouses; and

WHEREAS, the Chief Justice, in consultation with the other members of the Supreme Court, has determined that extension of the judicial emergency is necessary and that the courts should implement the recommendations in the Interim Report and the recommendations of the Justice of the Peace Court for reopening.

NOW, THEREFORE, IT IS ORDERED that:

(1) Under the authority of 10 *Del. C.* § 2004, the judicial emergency for all State courts and their facilities in Delaware is extended for another 30 days effective June 8, 2020, subject to further review.

(2) As recommended in the Interim Report, the courts, except for the Justice of the Peace Court which is addressed in Paragraph 4 of this Order, will reopen to additional employees and the public in the phases set forth below. Modification of these phases may be necessary as the reopening proceeds, more information about COVID-19 becomes available, and public health experts track the spread of COVID-19 in Delaware.

A. Phase 1

i. This phase shall commence on June 8, 2020.

ii. During Phase 1, State courthouses and their administrative offices shall remain closed to the public, but shall be open to court staff and attorneys. Data miners, bail bondsmen, individuals posting bail, and media members are allowed in the courthouse with time restrictions or by appointment. All individuals must wear face coverings and maintain 6-feet of social distance from individuals outside of their household. No more than 10 individuals will be permitted in a courtroom or courtroom related public areas, excluding court personnel and attorneys. All non-courtroom related public areas shall remain closed.

iii. The following proceedings are permitted:

- Supreme Court oral arguments in the Dover Courthouse;
- Court of Chancery hearings;
- Routine criminal motions in Superior Court, the Court of Common Pleas, and Family Court that do not require the presence of the defendant or are conducted by video;
- Plea by appointment of incarcerated defendants by video;
- Violation of probation hearings of incarcerated defendants by video;
- Sentencing of incarcerated defendants by video;
- Preliminary hearings of incarcerated defendants by video;
- Capias/bail review/arraignments for incarcerated defendants by video;
- Attorney-only conferences and hearings in civil cases;
- Civil pre-trial conferences;
- Involuntary outpatient hearings by video;
- Family Court protection from abuse hearings by video;
- Family Court civil trials by video;
- Family Court mediations and arbitration by video;
- Family Court arraignments, case reviews, and violations of probation by video.

iv. Non-emergency and non-essential telephonic arguments, telephonic hearings or videoconferences not identified above should continue at the discretion of each of the State courts. The courts are encouraged to continue the use of video and audio conferences whenever possible.

v. Court staffing shall increase to no more than 25%. Judicial branch personnel identified by the Presiding Judges of each court and the State Court Administrator, or their designees, shall report to work as required. If an identified employee is unable to serve due to illness or has been excused consistent with applicable leave policies, a substitute shall be determined. Other judicial branch personnel shall continue not to report to the courthouses until further notice. Instead, other judicial branch personnel shall work remotely as directed by the Presiding Judge of each court, the State Court Administrator, or their designee.

vi. Notwithstanding the above, each State court shall have sufficient judicial officers and staff to hear the proceedings identified above as well as emergency and essential matters in person or remotely through video or teleconferencing during the pendency of this Order.

vii. For all court proceedings during Phase 1, the courts, when practical, shall post on their websites the date and time of the hearing or proceeding, and when requested and permitted, provide reasonable access to media organizations.

B. Phase 2

i. Phase 2 shall commence on June 15, 2020. The start date for Phase 2 will be reevaluated if conditions change.

ii. During Phase 2, all State courthouses will open to the public. All individuals must wear face coverings and maintain 6-feet of social distance from individuals outside of their household. No more than 10 individuals will be permitted in a courtroom or courtroom-related public areas, excluding court staff and attorneys. All non-courtroom related public areas shall remain closed. Courthouse admission will be monitored and corrective action will be taken when 50% of building capacity is reached.

iii. In addition to the proceedings permitted under Phase 1, the following proceedings are permitted under Phase 2:

- Civil hearings that require the participation of witnesses or clients;

- Non-jury criminal and civil trials of non-incarcerated defendants;
- Final case reviews of incarcerated defendants by video;
- First case reviews of incarcerated defendants by video to the extent a waiver form has not been filed;
- Involuntary outpatient hearings in Kent and Sussex with hearings by video in New Castle County;
- Sentencing of non-incarcerated defendants;
- Presentence review of incarcerated defendants by video;
- Grand jury proceedings;
- Gun relinquishment hearings;
- Case reviews for non-incarcerated defendants;
- Problem solving court proceedings for non-incarcerated defendants.

iv. Non-emergency and non-essential telephonic arguments, telephonic hearings or videoconferences not identified above shall continue to proceed at the discretion of each of the State courts. The courts are encouraged to continue the use of video and audio conferences whenever possible.

v. Court staffing shall increase to no more than 50%. Judicial branch personnel identified by the Presiding Judges of each court and the State Court Administrator, or their designees, shall report to work as required. If an identified employee is unable to serve due to illness or has been excused consistent with applicable leave policies, a substitute shall be determined. Other judicial branch personnel shall continue not to report to the courthouses until further notice. Instead, other judicial branch personnel shall work remotely as directed by the Presiding Judge of each court, the State Court Administrator, or their designee.

vi. Each State court shall have sufficient judicial officers and staff to hear the proceedings identified above as well as emergency and essential matters in person or remotely through video or teleconferencing during the pendency of this Order.

vii. For all court proceedings during Phase 2, the courts, when practical, shall post on their websites the date and time of the hearing or proceeding, and when requested and permitted, provide reasonable access to media organizations.

C. Phase 3

i. This phase will commence at a time to be determined by the Chief Justice, in consultation with the other justices, the Committee, and Dr. Bacon.

ii. During Phase 3, all State courthouses will be open to the public. All individuals must wear face coverings and maintain 6-feet of social distance from individuals outside of their household. No more than 50 individuals will be permitted in a courtroom or courtroom related public areas, excluding judicial staff and attorneys. All non-courtroom related public areas shall remain closed. Courthouse admissions will be monitored and corrective action will be taken when 75% of building capacity is reached.

iii. In addition to the proceedings permitted under Phases 1 and 2, the following proceedings are permitted under Phase 3:

- Criminal and civil jury trials;
- Hearings on pretrial criminal motions;
- In-court preliminary hearings of incarcerated defendants;
- In-court final case reviews of all defendants;
- Sentencing of all defendants;
- Violation of probation hearings for all defendants;
- Minor tort settlement hearings;

- Inquisition hearings;

- Problem solving court proceedings involving incarcerated defendants.

iv. Inmates will be transported to the courthouse for matters that are not handled by video.

v. Non-emergency and non-essential telephonic arguments, telephonic hearings or videoconferences not identified above shall continue to proceed at the discretion of each of the State courts. The courts are encouraged to continue the use of video and audio conferences whenever possible.

vi. Court staffing shall increase to no more than 75%. Judicial branch personnel identified by the Presiding Judges of each court and the State Court Administrator, or their designees, shall report to work as required. If an identified employee is unable to serve due to illness or has been excused consistent with applicable leave policies, a substitute shall be determined. Other judicial branch personnel shall continue not to report to the courthouses until further notice. Instead, other judicial branch personnel shall work remotely as directed by the Presiding Judge of each court, the State Court Administrator, or their designee.

vii. Each State court shall have sufficient judicial officers and staff to hear the proceedings identified above as well as emergency and essential matters in person or remotely through video or teleconferencing during the pendency of this Order.

viii. For all court proceedings during Phase 3, the courts, when practical, shall post on their websites the date and time of the hearing or proceeding, and when requested and permitted, provide reasonable access to media organizations.

ix. When possible, courts are encouraged to conduct proceedings remotely to limit the spread of COVID-19 and to protect the safety of the staff and the public.

D. Phase 4

i. This phase will commence at a time to be determined by the Chief Justice, in consultation with the other justices, the Committee, and Dr. Bacon. All public areas will be open. Courthouse admissions will be monitored to ensure that courthouses are not exceeding capacity to maintain public and staff safety.

ii. During Phase 4, all State courthouses and their administrative offices will be open to the public. Procedures should be put in place to minimize crowded settings and encourage social distancing.

iii. In addition to the proceedings permitted under Phases 1, 2, and 3, the following proceedings are permitted under Phase 4:

- Criminal jury trials that require a large jury pool;
- Hearing related to Rule 61 matters;
- Contempt of court proceedings;
- Carrying a concealed deadly weapon hearings;
- Expungement hearings;
- Return of property hearings;
- Restitution hearings.

iv. Court staffing will increase to 100%.

v. When possible, courts are encouraged to conduct proceedings remotely to limit the spread of COVID-19 and to protect the safety of the staff and the public. The courts are encouraged to continue the use of video and audio conferences whenever possible.

(3) To implement the phased reopening of the courthouses, except for the Justice of the Peace Court which is addressed in Paragraph 4 of this Order, the courts shall follow the following Interim Report recommendations:

A. Entry to the Courthouse

i. Designate an entrance or process for judicial branch employees to enter the courthouse in a manner that minimizes contact with the public.

ii. Have courthouse visitors line up under direction of Capitol Police or other appropriate authority to maintain 6-foot social distancing requirements. Capitol Police or other appropriate authority should wear protective equipment and, when feasible, maintain appropriate social distancing consistent with their responsibilities.

iii. Process courthouse visitors in a manner that will allow appropriate scanning to occur in a planned and controlled fashion.

iv. Post signs in English and Spanish and Haitian Creole in Sussex inside and outside of the courthouse advising of the new measures required to enter the courthouse. These measures include 6-foot social distancing, wearing a face covering, using hand sanitizer upon entering the building, answering COVID-19 screening questions, and submitting to a temperature scan. As information concerning the transmission of COVID-19 develops, additional measures may be added.

v. Limit entry to employees and visitors to those who answer "no" to the following questions:

> Are you currently experiencing, or have you experienced within the last 14 days, any of the following symptoms that were not due to a known chronic condition such as asthma, sinusitis, or COPD?
>
> - Fever or shaking chills
> - Cough
> - Shortness of breath
> - Severe sore throat

- Loss of taste or smell
- Muscle aches

Within the last 14 days have you been in close contact with (i.e. within 6 feet for more than 10 minutes) with a person with a confirmed COVID-19 infection?

Within the last 14 days, have you travelled internationally?

vi. Individuals who refuse to cooperate or do not pass established screening and safety protocols will not be admitted to the courthouse. If the individual is a visitor, the officer or other appropriate authority who turned the individual away will document the individual's name, identify the proceeding they were there to attend, and notify the appropriate court of the action. If the individual is an employee, they will be denied entrance and should contact their supervisor.

vii. If a court is notified that a visitor or employee has tested positive for COVID-19 within 14 days of their appearance in the courthouse, the court will make arrangements to sanitize where needed and begin tracking and notifying others who may have been in close contact with the individual at the courthouse.

viii. Limit entry to employees and visitors who are wearing masks or other face coverings over their nose and mouth. If an employee or visitor arrives at the courthouse without a face covering, a disposable mask will be provided.

ix. Upon entry, take the temperature of all individuals by a thermal scan or other approved device. Anyone that registers a temperature of 99.5 degrees Fahrenheit or above, will be directed to leave. If the individual is a visitor, the screening authority will document the individual's name, identify the proceeding they were there to attend, and notify the appropriate court of the action. If the individual is an employee, they will be denied entrance and should contact their supervisor.

x. Screening equipment at the entrance will be disinfected on a regular basis.

xi. Where feasible, courthouse guides will be at the courthouse entrance to direct visitors to the appropriate courtroom.

xii. Consistent with the emergency orders issued by the Governor and Chief Justice, Capitol Police, and court officers are authorized to enforce all screening and courthouse protocols.

B. Managing the Courthouse

i. When possible, reconfigure employee workspaces to comply with social distancing requirements and provide employees with cleaning supplies so they can clean their work area. Require employees to wear masks when they leave their work area or are within 6 feet of another individual. If it is not possible to maintain social distancing in a breakroom, close the breakroom.

ii. Install protective material in offices that have regular interaction with the public. Mark public areas in courthouse offices to reflect 6-foot spacing requirements.

iii. Limit access to elevators, with no more than four people allowed in an elevator at a time. Post signs in English and Spanish and Haitian Creole in Sussex at the elevators and in each elevator stating that no more than four people at a time are allowed in an elevator. To the extent possible, offer alternative means to move around the building. If available, give employees access to non-public elevators.

iv. Place sanitizer stations at both ends of escalators and on each floor at the elevators. Clean elevators and escalators multiple times per day. Post signs in English and Spanish at each escalator reminding individuals of the need for proper social distancing and sanitation.

v. Limit access to public bathrooms to two people at a time. Post signs in English and Spanish and Haitian Creole in Sussex at the bathrooms stating that access is limited to two people at a time and reminding individuals to maintain proper social distancing.

vi. Post all measures adopted on the court website and identify these measures in communications to jurors.

C. Courtroom Management

i. Place hand sanitizer at the clerk's bench in all courtrooms. Courtroom personnel should wash their hands or use hand sanitizer after each proceeding. Clean courtrooms after each proceeding.

ii. Ensure as many courtrooms as possible have the capability to use JIC approved technology to connect with attorneys, litigants, and the Department of Correction for proceedings involving incarcerated defendants. Courtrooms should be equipped to allow witnesses and victims to participate remotely in proceedings when deemed appropriate by the judge.

iii. Configure and mark courtrooms to maintain proper social distancing between attorneys, litigants, and court employees with counsel tables at least 6 feet from the jury and court employees.

iv. Podiums will be removed, when possible, from courtrooms. Attorneys will remain at counsel tables when addressing the court or the jury.

v. Establish procedures to limit the need for counsel to directly approach the clerk's table. The clerk should use hand sanitizer or protective gloves when handling pleadings or exhibits.

vi. Consider the installation of plexiglass dividers when appropriate social distancing cannot be maintained between employees, attorneys, litigants, or jurors.

vii. All participants, including non-litigants, are required to wear a face covering or mask while in the courtroom. During courtroom proceedings, the judge may authorize the removal of masks or face coverings for the fair presentation of the case.

viii. Until Phase 4 is reached, courts should limit live proceedings to only those individuals that can be accommodated under the

social distancing requirements and that are needed for the effective presentation of the matter. Whenever it is reasonably possible to do so, courts should consider the use of technology in the presentation of evidence or legal arguments to limit the number of people in the courthouse. The judge in each proceeding is authorized to ensure that the health and safety of the participants and staff are maintained. When limitations on participants are imposed, courts should consider the use of technology to allow public participation.

ix. To the extent it is not possible to comply with both social distancing and constitutional requirements, especially for criminal defendants and their attorneys, judges should make social distancing determinations based upon statutory or constitutional requirements. Judges should consider the use of conversation aids that will permit communications between attorneys and their clients while maintaining social distance.

x. Courts should liberally grant continuances and make reasonable accommodations for individuals who are considered at high risk for contracting COVID-19 or who report a COVID-19 diagnosis, symptoms or exposure.

xi. When deemed appropriate by the presiding judge, court clerks, court reporters, and/or counsel may be authorized to attend court proceedings by electronic means to aid in limiting the number of individuals who are in the courtroom.

D. Court Calendar Management

i. Courts within one courthouse should coordinate their calendars to minimize the number of people entering the courthouse each day.

ii. During Phase 1 and Phase 2, courts should coordinate their calendars between live and video proceedings to limit the number of individuals in the courthouse and to allow for the staging of individuals in courtrooms to maintain social distancing requirements.

iii. When courtroom limitations will be exceeded by the number of individuals on a court's calendar, the court should use separate staging areas for those waiting to appear. Those staging areas will be subject to distancing and density restrictions.

iv. To minimize the number of people that are in the courthouse at any given time, courts should adjust when proceedings begin and when employees report to work.

E. Prisoner Management in the Courthouse

i. To the degree it is reasonable and possible, transportation of inmates to the courthouse should be managed to maintain social distancing requirements.

ii. Courthouse cell blocks will be managed to maintain social distancing requirements.

iii. Inmate temperatures should be taken before their arrival at the courthouse. If an inmate has a temperature, they should not be transported to the courthouse or should be returned to the prison with the appropriate court notified.

iv. The Department of Correction should notify the court of any inmate who has tested positive for COVID-19 and was in the courthouse two weeks prior to the diagnosis.

v. The Department of Correction should be notified if any employee, witness or other litigant has tested positive for COVID-19 within 14 days of any proceeding involving an inmate.

vi. When Phase 3 begins, continued use of video proceedings should be considered to minimize unnecessary transportation of inmates to the courthouse.

vii. To the extent a courthouse structure and technology can accommodate, the use of intra-courthouse video between cellblock and courtrooms should be considered to minimize the risk to correctional officers and staff.

viii. Even when Phase 3 begins, counsel should continue to interview and communicate with incarcerated clients by video.

(4) The Justice of the Peace Court shall reopen consistent with its reopening plans approved by the Chief Justice.

(5) In light of the continuing threat COVID-19 poses to public health, all courts in the State are authorized, to the greatest extent possible under 10 *Del. C.* § 2008, to continue to utilize audiovisual devices at their facilities and remotely to conduct proceedings (except for jury trials) for the duration of this order.

(6) During the period of judicial emergency, all time requirements under the Speedy Trial Guidelines are tolled.

(7) Except as set forth in 10 *Del. C.* § 2007(c), deadlines in court rules or state or local statutes and ordinances applicable to the judiciary that expire between March 23, 2020 and June 30, 2020 are extended through July 1, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period between March 23, 2020 and June 30, 2020 are extended through July 1, 2020. Deadlines, statutes of limitations, and statutes of repose that are not set to expire between March 23, 2020 and June 30, 2020 are not extended or tolled by this order. Deadlines imposed by court order continue to remain in place but may be extended, consistent with court practices, for good cause shown, including a COVID-19 related cause. Notwithstanding the foregoing, each State court shall retain the discretion to require the prompt filing of public versions of documents initially filed under seal and, for good cause shown, to expedite proceedings.

(8) The time periods for bringing an arrested person before a magistrate pursuant to 11 *Del. C.* § 1909 and for bringing a prisoner before a judge pursuant to 10 *Del. C.* § 6907 are extended not than more than 7 days under § 2007(c). The time for taking a juvenile charged with a delinquent act before a court is extended not more than 2 days under § 2007(c).

(9) The Family Court shall continue to have the authority, in its discretion, to extend emergency ex parte protection from abuse orders beyond 30

days, but not to exceed 45 days. Temporary injunctions and interim guardianships that would expire between March 23, 2020 and June 13, 2020 are hereby extended through July 1, 2020.

(10) Administrative Order No. 3 regarding the suspension of any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, or the Justice of the Peace Court will remain in effect.

(11) Each courthouse shall continue to provide a method, such as a dropbox or mailing address, for attorneys and the public to fill out and file paper documents if electronic filing is not available to them. For such cases, the courts shall continue to provide, when practical, an email address for attorneys and the public to email paper documents will be considered filed with the court when received.

(12) The Clerk of the Court is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE CHIEF JUSTICE:

/s/ Collins J. Seitz, Jr.
Chief Justice