IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED
MAY 27 2020
DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-PR-056

RE: Order Under 2020 House Substitute for Senate Bill 102 and Governor's May 26, 2020, State of Disaster Emergency Declaration Authorizing the Use of Two-Way Audio-Visual Communication In Any Court Proceeding

2020 House Substitute for Senate Bill 102 became effective upon its publication in the Kansas Register on March 19, 2020 (39 Kan. Reg. 304). Its provisions authorize me, as Chief Justice of the Kansas Supreme Court, to enter certain orders during any state of disaster emergency declared under K.S.A. 48-924 upon a finding that the orders are necessary to secure the health and safety of court users, staff, and judicial officers.

On March 12, 2020, Kansas Governor Laura Kelly declared a state of disaster emergency under K.S.A 48-924 in response to confirmed cases of novel Coronavirus (COVID-19) in the state of Kansas, finding that a public health emergency existed. The Legislature subsequently ratified and extended that declaration through May 1, 2020, in House Concurrent Resolution No. 5025.

Through Administrative Order 2020-PR-016, filed on March 18, 2020, I entered a statewide order limiting court functions in Kansas state courts after determining the order was necessary to protect the health and safety of court users, staff, and judicial officers because of the COVID-19 outbreak. On April 3, 2020, through Administrative Order 2020-PR-32, I issued a second order that expanded district court functions but continued limitations as necessary to protect the health and safety of court users, staff, and judicial officers.

Both Administrative Orders 2020-PR-016 and 2020-PR-032 invoked a provision in H. Sub. for S.B. 102 that allows me to "issue an order to authorize the use of two-way electronic audio-visual communication in any court proceeding. . ." H. Sub. for S.B. 102, § 1(b). Numbered paragraph 7 of Administrative Order 2020-PR-16 invoked this provision as did numbered paragraph 9 of Administrative Order 2020-PR-32. In Administrative Order 2020-PR-045, I again invoked the provision under Governor Laura Kelly's April 30, 2020, State of Disaster Emergency Declaration under the authority of K.S.A. 48-924. This Administrative Order does not affect Administrative Orders 2020-PR-016, 2020-PR-032, or 2020-PR-045.

Yesterday, Governor Laura Kelly issued a third State of Disaster Emergency Declaration under the authority of K.S.A. 48-924.

I find that in-person judicial proceedings continue to pose a threat to the health and safety of court users, staff, and judicial officers.

Under the authority granted to me in H. Sub. for S.B. 102 and in connection with the May 26, 2020, declaration issued by Governor Kelly, I order the following to secure the health and safety of court users, staff, and judicial officers:

1. For the safety of litigants, attorneys, members of the public, judicial branch employees, judicial officers, and others, remote proceedings through the use of two-way telephonic or electronic audio-visual communication is authorized for any essential or nonessential court proceeding or any portion of a proceeding, including all criminal, juvenile offender, civil, probate, child in need of care, or other proceeding under the jurisdiction of Kansas district courts or appellate courts. This includes all pretrial, trial, and post-trial proceedings, including plea, criminal sentencing, probation revocation, show cause, or any other proceeding. Judges and litigants are encouraged to use these remote proceedings whenever possible and especially when any party, witness, attorney, or other participant expresses health concerns.

2. A remote proceeding must be consistent with rights under the United States and Kansas Constitutions, including those of a criminal defendant or victim. Nothing in this order requires an individual to waive a constitutional right.

3. A remote proceeding must allow for confidential communication between a party and the party's counsel, a witness and the witness's counsel, or as otherwise necessary.

4. Access to a remote proceeding must be provided to the public either during the proceeding or immediately after via access to a recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.

5. A remote proceeding must enable the person conducting or administering the proceeding to create a recording sufficient to enable a transcript to be produced after the activity.

6. This order will remain in effect until further order or this order's expiration under H. Sub. for S.B. 102.

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

Marla Luckert

MARLA LUCKERT
Chief Justice