Rescinded 12-01-20 by 2020-PR-122

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

JUN 16 2020

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-PR-076

Order Related to Appellate and District Courts Operations as of June 16, 2020

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.

On May 1, 2020, this court issued two orders—2020-PR-048 and 2020-PR-049—removing some of the restrictions within 2020-PR-016 and 2020-PR-32. 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." Subsequently, Governor Kelly has issued orders implementing later phases of the Ad Astra plan. And on May 26, 2020, the Governor issued a proclamation making the Ad Astra plan guidance only and left to local governments the determination of whether to enter local public health orders.

On May 27, 2020, this court issued Administrative Order 2020-PR-54, providing updated requirements for courthouses that had reopened offices or courtrooms to public operations. It maintained the 10-person capacity limitation for most court hearings.

This order once again updates the requirements for appellate and district courts that have reopened offices or courtrooms to public operations. This order:

- rescinds 2020-PR-54;
- rescinds portions of this court's other prior orders discussing 10-person capacity limitations for court hearings unless a court is operating under 2020-PR-49; and
- revises the direction provided in paragraph 3 of 2020-PR-62.

This order does not affect any provisions in prior orders issued by the Chief Justice related to 2020 House Substitute for Senate Bill 102, and its amendments in 2020 Spec. Sess. House Bill 2016, 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.

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

1. 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 6 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.

2. All Kansas district and appellate courts, including those operating under 2020-PR-049, 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.

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

4. For any court not operating under 2020-PR-049, a hearing can be conducted with no more than the amount of people who can remain socially distanced at least 6 feet apart throughout the courtroom or any other facility being used by the court for a proceeding. Cleaning of all surfaces should occur between hearings. All hearings must also comply with the applicable recommended mass gathering guidance in Ad Astra: A plan to Reopen Kansas, unless the departmental justice has authorized a waiver of these provisions. If a public health order or guidance restricts the number of people who may be gathered, the court must abide by that restriction.

5. Jury trials must still be limited at this time. A court that is not operating under 2020-PR-049 may gather 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 location that allows for social distancing where people can remain at least 6 feet apart;

    - 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 venire and 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 potential jurors and jurors to report any of the situations provided in paragraphs 6 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).

6. 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 an elevated temperature at or over 100.4°F or two or more of the COVID-19 symptoms identified by the Centers for Disease Control and Prevention; or

- if the person has traveled to any of the following within the previous 14 days:

    - To any international location under a global level 3 or 4 health advisory from the United States State Department. For updates, see US travel restriction.

    - To high risk areas in the United States currently mandated for self-quarantine by the Kansas Department of Health and Environment. Updates to this list by the Kansas Department of Health and Environment will be included without revision to this order. For updates, see www.kdheks.gov/coronavirus.

    - On a cruise ship or river cruise (both international and domestic).

- Each chief judge must assure the requirements in paragraph 6 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.

7. 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.

8. The chief judge or appointing authority 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 an elevated temperature at or over 100.4 F will not be allowed access to court offices or courtrooms.

9. Any employee asked to report to work but who is not granted access to his or her workplace must contact his or her appointing authority through electronic communication as soon as possible.

10. If any judicial branch employee has an elevated temperature at or over 100.4°F or 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 workplace.

11. 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 being used for a court proceeding. 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.

12. Staffing in a courthouse and any court office should be limited to only those employees who can be accommodated with appropriate social distancing or engineering adjustments approved by a local health officer.

13. 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.

14. 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 16th day of June 2020. This order is effective on filing.

FOR THE COURT

Marla Luckert

MARLA LUCKERT
Chief Justice