IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE COVID-19 §
PRECAUTIONARY MEASURES §

ADMINISTRATIVE ORDER NO. 10

EXTENSION OF JUDICIAL EMERGENCY

On this 4th day of September 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, May 8, 2020, June 6, 2020, and July 6, 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 in orders dated April 14, 2020, May 14, 2020, June 5, 2020, July 6, 2020 and August 5, 2020;

WHEREAS, on May 26, 2020, the Courts Reopening Committee established by the Chief Justice submitted an interim report recommending a four-phase approach to reopening the courthouses to additional employees and the public;

WHEREAS, in an order dated June 5, 2020, the Chief Justice accepted the recommendations of the Courts Reopening Committee and the Justice of the Peace Court for reopening;

WHEREAS, Phase 1 of the Courts Reopening Plan commenced on June 8, 2020, and Phase 2 of the Reopening Plan commenced on June 15, 2020;

WHEREAS, Phase 1 and Phase 2 of the Reopening Plan have proceeded successfully while the Courts Reopening Committee studied how to safely resume jury trials as contemplated by Phase 3 of the Reopening Plan;

WHEREAS, the Courts Reopening Committee submitted to the Chief Justice, in August 2020, a plan for resuming jury trials ("Jury Management Plan") attached as Exhibit 1 to this Order;

WHEREAS, on August 5, 2020, the Governor extended the State of Emergency in Delaware, reflecting the continuing threat COVID-19 poses to Delaware citizens;

WHEREAS, COVID-19 continues to pose a serious risk to public health and safety of Delawareans, requiring the courts to continue a careful, phased reopening of judicial facilities to reduce the risk that COVID-19 poses to jurors, parties, witnesses, lawyers, judges, and court staff and the public who enter judicial facilities;

WHEREAS, the Chief Justice, in consultation with the other members of the Supreme Court, the presiding judges, and health experts, has determined that extension of the judicial emergency is necessary and the courts should continue to comply with the Reopening Plan set forth in the June 5, 2020 as preparations are made in September to shift to a modified Phase 3 of the Court's Reopening Plan in October; and

WHEREAS, the Chief Justice has accepted the Jury Management Plan, and, subject to further review if COVID-19 conditions deteriorate, Phase 3 of the Reopening Plan, as modified below, will commence on October 5, 2020.

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 September 6, 2020, subject to further review.

(2) The courts shall continue to operate under Phase 2 as set forth in Paragraphs 2A, 2B, 3, and 4 of the June 5, 2020 order.

(3) Effective October 5, 2020, Phase 3 of the Court's Reopening Plan, as modified below, will be implemented:

i. All State courthouses will be open to the public and all individuals that enter and remain in the courthouses must wear face coverings and maintain 6-feet of social distance from individuals outside of their household. No more than 50 individuals who are socially distanced and wearing masks will be permitted in a courtroom or courtroom-related public areas, excluding judicial staff and attorneys. Courthouse admissions will be monitored and corrective action will be taken when 75% of building capacity is reached.

ii. Criminal and Civil jury trials may proceed as set forth in the Jury Management Plan.

iii. The following proceedings involving incarcerated defendants shall be conducted remotely: hearings regarding pretrial motions, preliminary hearings, arraignments, first and final case reviews, violation of probation hearings, and problem solving court proceedings.

iv. Sentencing of incarcerated defendants will proceed remotely unless counsel or the defendant advises the Court that the defendant wishes to appear in person for sentencing.

v. Minor tort settlement hearings and Inquisition hearings may now proceed.

vi. Inmates will be transported to the courthouse only for trials and sentencings where counsel or the defendant requests an in-person hearing.

vii. 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.

viii. 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.

ix. 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.

x. For all court proceedings during the modified 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.

xi. 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.

(4) 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.

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

(6) 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.

(7) 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 which will be considered filed with the court when received.

(8) 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