Rescinded 12-01-20 by 2020-PR-122

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

September 4, 2020

DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-PR-099

District and Appellate Court Operations as of September 4, 2020

Kansas district and appellate courts are operating under Administrative Orders issued in response to the novel coronavirus (COVID-19) pandemic including 2020-PR-049, 2020-PR-076, and 2020-PR-093. This order is the latest in a series updating district and appellate court operating requirements. It amends and rescinds 2020-PR-093. If a conflict exists between this order and previous orders, this order controls.

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 authorization to use 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. At times, courts may need to close offices or courtrooms temporarily due to changing COVID-19 conditions. If a court has offices or courtrooms that are not open to public operations, the court must abide by 2020-PR-049 and only resume public operations after making any necessary adjustments to the following reopening 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 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 13 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. If more specific direction is provided in this order, this order controls.

3. Courts must continue to expand the use of remote hearings as much as possible to reduce any backlog and to dispose of new cases efficiently and safely. Courts must follow any virtual hearing mandates and should consider best practice guidance, if any, when issued and posted on the Kansas judicial branch website and any updates that follow. When mandates or guidance and related updates are issued, it will be announced on the Kansas judicial branch website and communicated to chief judges.

4. Steps must be taken to ensure members of the public exercise appropriate physical 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 six-foot distances in any area where people are likely to congregate or utilizing engineering adjustments approved by a local health officer. Any public area that cannot be adapted for appropriate physical distancing must be or remain closed.

5. For any court not operating under 2020-PR-049, a hearing (including a jury trial) can be conducted with no more than the number of people who can be accommodated with six-foot of physical distance between people or engineering adjustments approved by a local health officer in the courtroom or any other facility used by the court for a proceeding. All surfaces must be cleaned between hearings. All hearings must also comply with applicable recommendations for mass gatherings in Ad Astra: A plan to Reopen Kansas, unless the departmental justice authorizes 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.

6. Courts not operating under 2020-PR-049 may resume holding jury proceedings, regardless of whether there is a constitutional speedy trial issue, after the chief judge has complied with the following:

    - Consulted with the head of the local public health department or his or her designee to determine how to resume jury proceedings given local risk and the facilities available; and

    - Developed written plans approved by the Office of Judicial Administration for implementing the Supreme Court mandates regarding resuming jury proceedings that will be posted on the Kansas judicial branch website along with best practice guidance.

7. The Supreme Court Mandates and Guidance Regarding Resuming Jury Proceedings may be updated periodically. Updates will be announced on the Kansas judicial branch website and communicated to chief judges. Courts are responsible for complying with updated mandates.

8. A court operating under 2020-PR-049 that must hold a jury trial to preserve a constitutional speedy trial right must comply with paragraphs 5 through 7.

9. All courts must have a plan for managing media requests and media access, while maintaining physical distancing and limiting the number of people in a courtroom.

10. Courts should consider using a media pool to limit the number of visitors in the courthouse.

11. All courts must determine how to provide public access to proceedings while maintaining physical distancing and limiting the number of people in a courtroom.

12. Due to physical distancing requirements and public health and safety concerns, some courts are using court-initiated livestreams to provide public and media access to court proceedings. While Supreme Court Rules 1001 and 1002 address use of electronic devices by those who are physically present in a courtroom or court facility, those rules do not address court-initiated livestreams. By this order, the Supreme Court establishes rules relating to court-initiated livestreamed judicial proceedings:

    - When public access to a proceeding is via livestream, a hearing should convene publicly in open court with the livestream activated.

    - If a party requests to limit public access to the hearing because of extremely sensitive or confidential information, such as trade secrets, the motion must be on the record prior to the admission of the extremely sensitive or confidential evidence. The movant must describe the evidence in question and clearly identify the overriding interest that will be prejudiced if the evidence is publicly presented. The court should obtain the agreement or objection to the request of all counsel and self-represented litigants on the record. If the court grants the motion or sua sponte closes a proceeding, findings justifying closing a proceeding should be made on the record.

    - Courts must take steps to protect against audio pickup of attorney-client privileged communications.

    - No electronic communication of a court proceeding will affect the official court record of the proceeding for purposes of appeal or otherwise.

13. Anyone entering a courthouse or other court office must be denied access if he or she:

    - is experiencing an elevated temperature at or over 100.4°F; or

    - has or two or more of the COVID-19 symptoms identified by the Centers for Disease Control and Prevention; or

    - 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; or

    - 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 https://www.coronavirus.kdheks.gov/175/Travel-Exposure-Related-Isolation-Quara.

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

    - Each chief judge must assure the requirements in paragraph 13 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.

14. 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 under paragraph 13 must be provided a phone number or email address where the individual may seek assistance rescheduling or otherwise completing his or her court business.

15. Any employee asked to report to work but who is not granted access to his or her workplace under paragraph 13 must contact his or her appointing authority through electronic communication as soon as possible.

16. 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 consulting the director of personnel in the Office of Judicial Administration, or her designee, will direct the employee to leave the workplace. Upon consulting the director of personnel, the required leave may be coded as administrative leave for up to two working days.

17. 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 courtrooms, court offices, or any other facility being used by the court for a proceeding.

18. Staff in a courthouse and any court office must be rotated, if possible, to minimize the number of employees affected if exposure to COVID-19 in the workplace occurs. Thorough cleaning must occur between any rotations of personnel. Staffing must be limited to only those employees who can be accommodated with appropriate physical distancing or engineering adjustments approved by a local health officer.

19. 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.

20. Deoxyribonucleic Acid (DNA) collection, urinalysis testing, and alcohol testing for moderate- or high-risk probation clients performed by judicial branch employees may resume if authorized by the chief judge of the judicial district. When authorizing testing, the chief judge must consider staffing, supplies, and procedures needed to prevent COVID-19 transmission. At a minimum, preventive procedures must include using spaces that allow six feet of physical distance between individuals, having sufficient personal protective equipment for employees collecting samples, sanitizing collection areas between each collection, and requiring masks for all individuals involved. All other DNA collection, urinalysis testing, and alcohol testing remains suspended until further order of the court, unless the chief judge of the judicial district deems the testing a necessity.

21. In-person home visits performed by judicial branch employees remain suspended until further order of this court, unless the chief judge of the judicial district deems the contact a necessity.

22. All court services officer personal contact at any jail or other custodial or detention facility remains suspended until further order of the court, unless the chief judge of the judicial district deems the contact a necessity.

23. Court services officers may resume in-person meetings with moderate- or high-risk probation clients as needed. All in-person participants must wear masks and must maintain six feet of physical distance between individuals. Court services officers are responsible for communicating this information to those affected.

24. Other than moderate- or high-risk probation clients directed to report for in-person meetings, those who have been directed to report on probation or for interviews with court services officers are directed to report by two-way telephonic or electronic audio-visual communication and not report in person. Court services officers are responsible for communicating this information to those affected.

Dated this 4th day of September 2020. This order is effective on filing.

FOR THE COURT

MARLA LUCKERT
Chief Justice

To aid the reader in comparing today's order with 2020-PR-093, the necessary amendments to 2020-PR-093 are shown below through underlining of words now added and strikethrough of words now omitted.

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as of ~~August~~ September 4, 2020

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