IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE COVID-19 §
PRECAUTIONARY MEASURES §

ADMINISTRATIVE ORDER NO. 13

RETURN TO PHASE 2 OF THE REOPENING PLAN

On this 16th day of November 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 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, July 6, 2020, August 5, 2020, September 3, 2020, October 2, 2020, and October 30, 2020;

WHEREAS, under his authority set forth in 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, August 5, 2020, September 4, 2020, October 2, 2020, and November 2, 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 ("Administrative Order No. 7"), 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 Reopening Plan commenced on June 8, 2020, and Phase 2 of the Reopening Plan commenced on June 15, 2020;

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 an order dated September 4, 2020 ("Administrative Order No. 10");

WHEREAS, on September 4, 2020, the Chief Justice accepted the Jury Management Plan, and, subject to further review if COVID-19 conditions deteriorated, determined that Phase 3 of the Reopening Plan, as modified in Administrative Order No. 10, would commence on October 5, 2020;

WHEREAS, on October 5, 2020, Phase 3 of the Court's Reopening Plan, as modified in Administrative Order No. 10, commenced;

WHEREAS, COVID-19 conditions in the State have deteriorated and pose a serious risk to the public health and safety of Delawareans, requiring the courts to take additional steps to reduce the risk that COVID-19 poses to jurors, parties, witnesses, lawyers, judges, and court staff and the public who enter judicial facilities; and

WHEREAS, the Chief Justice, in consultation with the other members of the Supreme Court, the presiding judges, and health experts, has determined that the courts should return to Phase 2 of the Reopening Plan;

NOW, THEREFORE, IT IS ORDERED that:

(1) Starting on November 16, 2020, the courts shall transition back to Phase 2 of the Reopening Plan as set forth in Administrative Order No. 7.

(i) During Phase 2, 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 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 be closed. Courthouse admission will be monitored and corrective action will be taken when 50% of building capacity is reached.

(ii) In addition to the proceedings permitted under Phase 1, and proceedings that need to occur during the transition back to Phase 2, 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.

(iii) 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.

(iv) Court staffing shall transition 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 not 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.

(v) 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.

(vi) 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.

(2) With the exception of the return to Phase 2, the other terms of Administrative Order 12, which extended the judicial emergency until December 4, 2020, remain in effect.

(3) 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