SUPREME COURT OF WISCONSIN

IN RE THE MATTER
OF APPELLATE COURT OPERATIONS
DURING THE COVID-19 PANDEMIC **(UPDATED)**

FILED

APR 2, 2020

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

You are hereby notified that the Court has issued the following order, extending the order issued March 17, 2020:

WHEREAS Governor Evers has declared a public health emergency for the State of Wisconsin in connection with the COVID-19 pandemic; and

WHEREAS on March 24, 2020, the Wisconsin Department of Health Services, at the direction of Governor Evers, issued a "Safer at Home" order requiring Wisconsin residents to stay at home unless they must perform certain exempted activities. See Emergency Order #12, "Safer at Home."

WHEREAS the Safer at Home Order excepts the performance of "essential activities" by all residents of the state, the operation of "essential businesses and operations," and the operation of "essential governmental functions," which includes the operation of the Wisconsin court system, however. even while performing those exempt activities, the Safer at Home Order requires people "as reasonably possible [to] maintain social distancing of at least six (6) feet from any other person."

WHEREAS the United States Centers for Disease Control has issued guidance related to the COVID-19 pandemic recommending, inter alia, that organizations develop and implement flexible attendance policies that allow employees to stay home when sick, to remain home to care for sick household members, or to work from home when possible; and

WHEREAS the Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; In re Kading, 70 Wis. 2d 508, 519-20; 235 N.W.2d 409 (1976); and

WHEREAS the Supreme Court has determined that, in light of the existing public health emergency and to protect the health of the public and the individuals who work for the appellate courts of this state, it is necessary to limit temporarily the number of individuals who are physically present within the offices of the appellate courts of this state and to modify temporarily certain procedures of the appellate courts of this state to ensure that the essential operations of the appellate courts continue in an appropriate manner during the present public health emergency;

NOW THEREFORE, IT IS HEREBY ORDERED that the essential operations of this court and the Court of Appeals shall continue, but those courts will be expanding remote working capabilities and will be reducing the number of employees in the physical offices of the courts; and

IT IS FURTHER ORDERED that the office of the Clerk of the Supreme Court and the Court of Appeals shall remain open to accept filings. Through May 22, 2020 (inclusive), however, the hours that the Clerk's office shall be open shall be modified, and the office shall be open to receive filings between 9:00 a.m. and 5:00 p.m. each business day. During this time period, parties are encouraged, if feasible, to file documents with the Clerk's office by mail using the post office box (P.O. Box 1688, Madison, WI 53701-1688). If necessary, parties may also physically file documents at the office of the Clerk, which is located on the second floor of the Tenney Building, 110 E. Main St., Madison, WI. In order to protect the public and the staff of the Clerk's office, only one person at a time shall be allowed to enter the physical office of the Clerk and the person shall follow the directions of the Clerk's staff as to the procedure for filing documents and obtaining file-stamped copies, if requested; and

IT IS FURTHER ORDERED that, if a person wishes to have in-person access to a court file that is currently in the possession of the Clerk of the Supreme Court or Court of Appeals, the person shall submit a request for such access to the Clerk via email to clerk@wicourts.gov, via telephone call, or via written request physically filed with the clerk's office in the same manner as set forth above. The Clerk shall then make reasonable arrangements for the person to receive or to view the requested document or file; and

IT IS FURTHER ORDERED that, subject to the modifications set forth below, all deadlines in all matters pending in the appellate courts of this state that would expire on or before Friday, May 22, 2020 (inclusive) and all deadlines for the filing in the circuit courts of documents under Wis. Stat. §§ (Rules) 809.107, 809.30, and 809.32 that would expire on or before May 22, 2020 (inclusive), shall be tolled for a period of 21 days, except as provided below. (This means that 21 calendar days should be added to whatever the deadline would otherwise be.) This tolling shall include, but not be limited to, deadlines for briefs, motions, responses to motions, docketing statements, statements on transcripts, etc.; and

IT IS FURTHER ORDERED that the tolling set forth in the preceding paragraph shall not apply to the following matters:

1. Deadlines for the filing of any documents in the circuit courts, including the filing of notices of appeal, but the tolling shall apply to deadlines for documents filed under Wis. Stat. §§ (Rules) 809.107, 809.30, and 809.32, as provided above. All deadlines for the filing of notices of appeal in the circuit courts shall not be affected by this order. For circuit court deadlines, parties should consult the appropriate statutes and/or rules, and any orders issued by the circuit court in which the action is pending, including general orders relating to the COVID-19 pandemic;

2. Deadlines for the filing of petitions for review in the Supreme Court pursuant to Wis. Stat. §§ 808.10 and 809.62 shall not be extended. Petitions for review must be physically filed in the office of the Clerk of the Supreme Court within the time period required under Wis. Stat. § 808.10. However, if the deadline for filing a petition for review falls on or before May 22, 2020 (inclusive), a party may comply with the deadline for filing a petition for review by filing a short statement that the party seeks Supreme Court review of an identified decision of the Court of Appeals, which statement shall be deemed to be a timely petition for review. A party who complies by filing such a short statement shall file a supplemental petition that contains all of the items set forth in Wis. Stat. § (Rule) 809.62(2) within 21 days after the filing of the short statement. Absent an extension of time granted by the Supreme Court for good cause shown, the failure to file the supplemental petition conforming to Wis. Stat. § (Rule) 809.62(2) within the 21-day period shall subject the petition for review to dismissal. The time period for responses to petitions for review will begin upon the service of a complete petition for review or the service of a supplemental petition pursuant to the provision allowing supplemental petitions above, and the response time period in either situation will be subject to the 21-day tolling as set forth above;
3. The parties in the following cases which are pending in the Supreme Court have been contacted regarding deadlines for the filing of briefs, motions, or other documents:
    a. State v. Brooks, No. 2018AP1774-CR;
    b. Quick Change Kiosk LLC v. Kaul, No. 2018AP947;
    c. Office of Lawyer Regulation v. Menard, No. 2018AP659-D;
    d. State v. Dobbs, No. 2018AP319-CR;
    e. Town of Delafield v. Central Transport Kriewaldt, No. 2017AP2525;
    f. State v. Muth, No. 2018AP875-CR;
    g. Bartlett v. Evers, No. 2019AP1376-OA;
    h. Wisconsin Small Business United, Inc. v. Brennan, No. 2019AP2054-OA;
    i. Hammer v. Board of Bar Examiners, No. 2019AP1974-BA; and

IT IS FURTHER ORDERED that non-emergency motions to the Court of Appeals or the Supreme Court on or before May 22, 2020 (inclusive), are discouraged so that court personnel may focus on essential court functions. If non-emergency motions are filed during that time period, the parties may expect that a ruling on those motions may be delayed to some degree. If a party truly requires immediate emergency relief from the Court of Appeals or the Supreme Court, the party shall identify their motion, petition for leave to file an interlocutory appeal, writ petition, original action petition, or other filing with the word "EMERGENCY" on the face of the document. The party shall also at the beginning of the document state the nature and reason for the emergency, shall specify the date by which the emergency relief is needed, and shall identify with specificity the harm the party will suffer if the emergency relief is not granted by the requested date. The Supreme Court and Court of Appeals shall retain discretion to determine whether the filing represents an emergency sufficient to require immediate action by the court; and

IT IS FURTHER ORDERED that the parties in the cases originally scheduled for oral argument in the Supreme Court on March 30, 2020, April 1, 2020, and April 20, 2020, have been contacted and arrangements made to reschedule or waive oral argument; and

IT IS FURTHER ORDERED that the provisions of this order shall be subject to further modification or extension by future orders of the Supreme Court. In addition, the Court of Appeals may issue separate orders addressing the handling of matters pending in that court; and

IT IS FURTHER ORDERED that the State Bar of Wisconsin shall take all reasonable steps to notify its members of the contents of this order.

REBECCA GRASSL BRADLEY, J. (*dissenting).* The approved extension is longer than necessary. I would make the extension of this order coterminous with the Safer at Home order issued March 24, 2020, by the Wisconsin Department of Health Services. See Emergency Order #12, "Safer at Home."