Supreme Court of Florida

No. AOSC20-23
Amendment 5[1]

IN RE: COMPREHENSIVE COVID-19 EMERGENCY MEASURES FOR THE FLORIDA STATE COURTS

ADMINISTRATIVE ORDER

As a result of the Coronavirus Disease 2019 (COVID-19) pandemic, the State Surgeon General and State Health Officer on March 1, 2020, declared that a

1. This administrative order is issued to create a new section II.D. (Law School Practice Programs) to address issues relating to remote appearance by law students participating in the programs; create an introductory paragraph for section III. (Court Proceedings); revise section III.A. (Jury Proceedings and Jury Trials) to address in-person conduct and suspensions of statewide grand jury proceedings and make conforming changes based on other revisions in the order; revise section III.B. (Remote Civil Jury Trial Pilot Program) to enable in-person conduct of portions of the trials under certain circumstances; revise section III.C. (Juror Excusals and Postponements), section III.E. (Other Trial Court Proceedings), section III.F. (Limits on In-person Conduct of Other Trial Court Proceedings), and section IV.A. (Speedy Trial) to make conforming changes based on other revisions in the order and to reflect the issuance of Fla. Admin. Order No. AOSC20-32, Amendment 2; revise section IV.B. (Persons Arrested for First Degree Murder) to address the suspension of certain rules of criminal procedure during specified suspensions of grand jury proceedings; revise section VI. (Speedy Trial Procedure in Noncriminal Traffic Infraction Court Proceedings) to continue the suspension of the speedy trial procedure; revise section VII. (Suspension of Time Periods in Certain Small Claims Rules) to specify that the suspension of the time periods will end on a date certain; delete section VIII. (Writs of Possession) and renumber subsequent sections; and create a new section X. (Reversion to a Previous Phase) to address procedures for circumstances wherein a circuit or county must revert to a previous phase of the pandemic.

public health emergency exists in Florida, and the Governor on March 9, 2020, declared a state of emergency for the entire state. The Florida state courts have taken measures to mitigate the effects of this public health emergency upon the judicial branch and its participants. To that end, I have issued several administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic.[2] The overarching intent of those orders has been to mitigate the impact of COVID-19, while keeping the courts operating to the fullest extent consistent with public safety.

It is the intent of the judicial branch to transition to optimal operations in a manner that protects the public's health and safety during each of the following anticipated phases of the pandemic:

a) Phase 1 – in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare;

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2. *In re: COVID-19 Emergency Procedures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-13 (March 13, 2020); *In re: COVID-19 Essential and Critical Trial Court Proceedings*, Fla. Admin. Order No. AOSC20-15 (March 17, 2020); *In re: COVID-19 Emergency Procedures for the Administering of Oaths via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16 (March 18, 2020); *In re: COVID-19 Emergency Measures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-17 (March 24, 2020); *In re: COVID-19 Emergency Procedures in Relation to Visitation for Children Under the Protective Supervision of the Department of Children and Families*, Fla. Admin. Order No. AOSC20-18 (March 27, 2020); and *In re: COVID-19 Emergency Procedures for Speedy Trial in Noncriminal Traffic Infraction Court Proceedings*, Fla. Admin Order No. AOSC20-19 (March 30, 2020).

b) Phase 2 – limited in-person contact is authorized for certain purposes and/or requires use of protective measures;

c) Phase 3 – in-person contact is more broadly authorized and protective measures are relaxed; and

d) Phase 4 – COVID-19 no longer presents a significant risk to public health and safety.

This order extends, refines, and strengthens previously enacted temporary remedial measures. The measures shall remain in effect until *In re: COVID-19 Public Health and Safety Precautions for Operational Phase Transitions* , Fla. Admin. Order No. AOSC20-32, Amendment 2 (July 2, 2020), is amended or terminated or unless a different end date is indicated herein, or as may be provided by subsequent order.

Under the administrative authority conferred upon me by article V, section 2(b) of the Florida Constitution and by Florida Rules of Judicial Administration 2.205(a)(2)(B)(iv) and 2.205(a)(2)(B)(v),

IT IS ORDERED that:

I. GUIDING PRINCIPLES

A. The presiding judge in all cases must consider the constitutional rights of crime victims and criminal defendants and the public's constitutional right of access to the courts.

B. To maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all necessary steps to facilitate the remote conduct of proceedings with the use of technology. For purposes of this administrative order, "remote conduct" or "conducted remotely" means the conduct, in part or in whole, of a court proceeding using telephonic or other electronic means.

C. Nothing in this order is intended to limit a chief judge's authority to conduct court business or to approve additional court proceedings or events that are required in the interest of justice, if doing so is consistent with this administrative order and protecting the health of the participants and the public.

D. Judges and court personnel who can effectively conduct court and judicial branch business from a remote location shall do so. Participants who have the capability of participating by electronic means in remote court proceedings shall do so.

II. USE OF TECHNOLOGY

A. All rules of procedure, court orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for the remote conduct of proceedings shall remain suspended.[3]

3. This measure initially went into effect at the close of business on March 13, 2020. (AOSC20-13).

B. The chief judge of each district court of appeal and each judicial circuit remains authorized to establish procedures for the use, to the maximum extent feasible, of communication equipment for the remote conduct of proceedings, as are necessary in their respective district or circuit due to the public health emergency.[4]

C. Administering of Oaths

(1) Notaries and other persons qualified to administer an oath in the State of Florida may swear a witness remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the witness.[5]

(2) If a witness is not located within the State of Florida, a witness may consent to being put on oath via audio-video communication technology by a person qualified to administer an oath in the State of Florida.[6]

(3) All rules of procedure, court orders, and opinions applicable to remote testimony, depositions, and other legal testimony, including the attestation of family law forms, that can be read to limit or prohibit the use

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4. This measure initially went into effect on Friday, March 13, 2020. (AOSC20-13).

5. This measure initially went into effect on March 18, 2020. (AOSC20-16)

6. This measure initially went into effect on March 18, 2020. (AOSC20-16)

of audio-video communications equipment to administer oaths remotely or to witness the attestation of family law forms shall remain suspended.[7]

(4) Notaries and other persons qualified to administer an oath in the State of Florida may swear in new attorneys to The Florida Bar remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the new attorney.

(5) For purposes of the provisions regarding the administering of oaths, the term "positively identify" means that the notary or other qualified person can both see and hear the witness or new attorney via audio-video communications equipment for purposes of readily identifying the witness or new attorney.

D. Law School Practice Programs.

(1) A supervising attorney in a law school practice program, under Rule 11-1.2(b) of the Rules Regulating the Florida Bar, may utilize audio-video communication technology to remotely supervise the law student in satisfaction of the requirement that the supervising attorney be physically present. The supervising attorney and law student must maintain a separate, confidential communication channel during the proceedings.

7. This measure initially went into effect on March 18, 2020. (AOSC20-16)

(2) In a law school practice program, the requirement in Rule 11-1.2(b) of the Rules Regulating the Florida Bar that an indigent person and the supervising attorney must consent in writing to representation by a supervised law student may be satisfied by the judge receiving the consent verbally under oath.

III. COURT PROCEEDINGS

The following provisions govern the conduct of court proceedings, except as modified by Section X., addressing reversions to a previous phase by a circuit or a county within the circuit.

A. Jury Proceedings and Jury Trials.

(1) Statewide grand jury proceedings shall remain suspended through July 26, 2020.

a. After the suspension ends, the proceedings shall be conducted remotely or, if one of the following criteria is satisfied, may be conducted in person:

- The presiding judge for the statewide grand jury, under consultation with the county health department or local health expert, determines that the in-person proceeding can be conducted in a manner that protects the health and safety of all participants if the circuit is in or has reverted to Phase 1; or
- The circuit has transitioned to Phase 2 or Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2, and the proceeding is

conducted in a manner that is consistent with the circuit's operational plan.

b. If the presiding judge for the statewide grand jury determines that the proceedings of the statewide grand jury cannot proceed remotely or in person in Phase 1, the presiding judge may issue a local administrative order suspending the proceedings for a specified period of time not to exceed 30 days after the circuit returns to Phase 2.

(2) Non-statewide grand jury selection and proceedings, civil jury selection and trial proceedings, and criminal jury selection and trial proceedings shall remain suspended until 30 days after the chief judge of a judicial circuit has determined that the circuit or a county within the circuit has transitioned to Phase 2 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2.[8]

(3) Additional days equal to the number of days for which grand jury proceedings are suspended shall be restored to the term of the impaneled statewide grand jury or other impaneled grand jury; however, the number of days restored may not exceed the number of days the impaneled grand jury had remaining in its term when the suspension began.

B. Remote Civil Jury Trial Pilot Program. A pilot project to identify and evaluate issues relating to the conduct of a civil jury trial through remote means

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8. This measure initially went into effect on March 16, 2020. (AOSC20-13).

has been authorized through *In re: Remote Civil Jury Trial Pilot Program*, Fla. Admin. Order No. AOSC20-31, Amendment 1 (June 8, 2020). Notwithstanding any other provision in this administrative order, judicial circuits selected to participate in the program by the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 may conduct remote civil jury trials pursuant to the requirements established by the workgroup. To conduct any portion of those trials in person:

(1) The chief judge, under consultation with the county health department or local health expert, must determine that the in-person proceeding can be conducted in a manner that protects the health and safety of all participants if the circuit or a county within the circuit is in or has reverted to Phase 1; or

(2) The circuit or a county within the circuit must have transitioned to Phase 2 or Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2, and the proceeding must be conducted in a manner that is consistent with the circuit's operational plan.

C. Juror Excusals and Postponements. For purposes of limiting in-person contact to mitigate the spread of COVID-19 and of addressing hardships related to the pandemic, each chief judge of a judicial circuit shall direct the clerks of court to create a process that will enable the automatic:

(1) Excusal of a potential juror who indicates, subject to penalty of perjury, that he or she:

a. Does not meet the court's Phase 2 or Phase 3 screening requirements for courthouse entry as established in the circuit's operational plan;

b. Is a person at higher risk for severe illness due to COVID-19 infection as identified by the Centers for Disease Control and Prevention and requests to be excused;

c. Must care for a child or relative whose regular care provider is closed or unavailable for reasons related to COVID-19; or

d. Is receiving leave pursuant to the Families First Coronavirus Response Act.

(2) Postponement of the service of a potential juror for up to six months because the potential juror indicates, subject to penalty of perjury, that he or she:

a. Has recently returned to work after being unemployed due to COVID-19; or

b. Has suffered a financial or personal loss due to COVID-19 that makes it a hardship to perform jury service.[9]

D. Essential and Critical Trial Court Proceedings.[10] Essential and critical trial court proceedings should continue to be conducted remotely or, if necessary, in person.

(1) All circuit and county courts shall continue to perform essential court proceedings, including but not limited to: first appearance; criminal arraignments; hearings on motions to set or modify monetary bail for individuals who are in custody; juvenile dependency shelter hearings; juvenile delinquency detention hearings; hearings on petitions for injunctions relating to safety of an individual; hearings on petitions for risk protection orders; hearings on petitions for the appointment of an emergency temporary guardian; hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act; and hearings on petitions for extraordinary writs as necessary to protect constitutional rights.

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9. Postponements are subject to the six-month statutory maximum specified in section 40.23(2), Florida Statutes. If granting a postponement based on one or both of these reasons would exceed the statutory maximum because of a previous postponement granted to a potential juror, the chief judge or the presiding judge is encouraged to consider whether to grant an excusal based on either reason.

10. These measures initially went into effect on March 17, 2020. (AOSC20-15).

(2) In addition to essential proceedings, all circuit and county courts shall perform, as necessary and applicable, critical proceedings related to the state of emergency or the public health emergency, including but not limited to proceedings related to: violation of quarantine or isolation; violation of orders to limit travel; violation of orders to close public or private buildings; and enforcement of curfew orders.

(3) It is recognized that certain essential or critical trial court proceedings in some jurisdictions may in extraordinary, limited circumstances be unavoidably delayed due to the exigencies of the ongoing emergency. When this occurs, chief judges are required to take all steps feasible to minimize the delay.

(4) In conducting essential proceedings and proceedings critical to the state of emergency or the public health emergency, circuit and county courts shall employ all methods feasible to minimize risk of COVID-19 exposure to individuals involved in the proceedings or the general public.

E. Other Trial Court Proceedings.[11] Trial court proceedings that are not addressed under Section III.A. or III.D. shall be conducted as follows. All in-person conduct of such proceedings must be consistent with Section III.F.

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11. A measure related to these proceedings initially went into effect on March 17, 2020. (AOSC20-15).

(1) Non-statewide grand jury selection and proceedings, civil jury selection and trial proceedings, and criminal jury selection and trial proceedings shall be conducted in person after the suspension of these proceedings ends pursuant to Section III.A.

(2) Non-jury trials in:

a. Criminal cases shall be conducted remotely if the parties agree to such conduct or, if not, shall be conducted in person.

b. Termination of parental rights and juvenile delinquency cases shall be conducted remotely if ordered by the chief judge or the presiding judge or, if not, shall be conducted in person.

(3) All other trial court proceedings shall be conducted remotely unless a judge determines that one of the following exceptions applies, in which case the proceeding shall be conducted in person:

a. Remote conduct of the proceeding is inconsistent with the United States or Florida Constitution, a statute, or a rule of court that has not been suspended by administrative order; or

b. Remote conduct of the proceeding would be infeasible because the court, the clerk, or other participant in a proceeding lacks the technological resources necessary to conduct the proceeding or, for reasons directly related to the state of emergency or the

public health emergency, lacks the staff resources necessary to conduct the proceeding.

Chief judges shall take all necessary steps to ensure that the above-listed proceedings are conducted to the fullest extent possible, consistent with the guidance established in this section.

F. Limits on In-person Conduct of Other Trial Court Proceedings.[12] Other trial court proceedings identified under Section III.E. may be conducted in-person only if the circuit or a county within the circuit has transitioned to Phase 2 or Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2, and the proceeding is conducted in a manner that is consistent with the circuit's operational plan.

IV. SUSPENSION OF TIME PERIODS IN CERTAIN RULES OF CRIMINAL PROCEDURE

A. Speedy Trial.[13]

(1) All time periods involving the speedy trial procedure in criminal and juvenile court proceedings shall remain suspended until 90 days after the Chief Justice has approved the certification of a chief judge of a judicial circuit that the

12. This measure initially went into effect on March 17, 2020. (AOSC20-15).

13. This measure initially went into effect at the close of business on March 13, 2020. (AOSC20-13 and AOSC20-17).

circuit or a county within the circuit has transitioned to Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2.

(2) This suspension shall be applied in the manner described in *Sullivan v. State*, 913 So. 2d 762 (Fla. 5th DCA 2005), and *State v. Hernandez*, 617 So. 2d 1103 (Fla. 3rd DCA 1993). The suspension of time limits under the speedy trial procedure restores additional days equal to the number stated in the previous orders and this order. Additionally, when the time periods involving the speedy trial procedure in criminal and juvenile court proceedings are no longer suspended in a circuit or county within a circuit, each of the 10-day time periods in Fla. R. Crim. P. 3.191(p)(3) and Fla. R. Juv. P. 8.090(m)(3) shall be increased to 30 days until such time as the circuit or county within a circuit has transitioned to Phase 4.

B. Persons Arrested for First Degree Murder.[14] With regard to persons arrested for first degree murder, all time periods under Florida Rules of Criminal Procedure 3.133(b) and 3.134 shall:

(1) Remain suspended until such time as grand jury proceedings are resumed pursuant to Section III.A. The suspension of the time limits of Florida Rules of Criminal Procedure 3.133(b) and 3.134 restores additional days equal to the number stated in the previous orders and this order.

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14. This measure initially went into effect at the close of business on March 13, 2020. (AOSC20-17).

(2) Be suspended during any period of time in which grand jury proceedings are suspended under Section III.A.(1)b. or X.B. The suspension of the time limits of Florida Rules of Criminal Procedure 3.133(b) and 3.134 restores additional days equal to the number of days of the suspension under Section III.A.(1)b. or X.B.

C. Incompetence to Proceed.[15] Where exigencies make it impossible to meet the 20-day time period in Florida Rule of Criminal Procedure 3.210(b), chief judges of the circuit courts remain authorized to direct judges to hold competency hearings as soon as feasible after the date of filing a motion to determine competency. Chief judges also remain authorized to allow experts and attorneys to conduct and attend competency evaluations by remote means, if feasible.

V. DEFENDANTS ARRESTED ON WARRANT OR CAPIAS FROM ANOTHER FLORIDA JURISDICTION[16]

To mitigate the health risks associated with the incarceration and transportation of defendants during the pandemic, when a defendant is arrested on a warrant or capias from another Florida jurisdiction, chief judges of the circuit courts remain encouraged to facilitate communication between the circuit or county where the case originated ("home court") and the circuit or county where

15. This measure initially went into effect on March 24, 2020. (AOSC20-17).

16. These measures initially took effect on March 24, 2020. (AOSC20-17).

the defendant is incarcerated ("holding court"), for the handling of matters on a temporary basis, as follows:

A. Pretrial Release and First Appearance Hearings. Chief judges remain authorized to direct judges conducting pretrial release and first appearance hearings to address detention and monetary bond or other conditions of pretrial release in the county of arrest, regardless of whether the case is transferred, rather than requiring transport of the defendant to the county where any warrant or capias originated.

For capiases and violation of probation warrants, before setting monetary bond or other conditions of pretrial release, the first appearance judge, in order to make a proper decision regarding monetary bond or other conditions of pretrial release, must rely on relevant information from the following individuals in the county that issued the capias or warrant: the issuing judge, defense counsel if any, and the state attorney.

Action taken by the holding court at first appearance and any pretrial release hearing should be promptly reported to the home court and reflected in the record of the case.

Any provision of Florida Rule of Criminal Procedure 3.131 inconsistent with these measures remains suspended.

B. Pleas. Judges remain encouraged to coordinate with prosecutors, attorneys, defendants, and victims in order to utilize section 910.035, Florida Statutes, which allows for pleas of guilty or nolo contendere for persons arrested in counties outside of the county of prosecution, upon the consent of the defendant and the state attorney in the county where the crime was committed.

C. Rights of Parties. In cases that are not handled by a plea or pretrial release such that the defendant will continue to be detained in the jurisdiction of the holding court for an indefinite period of time, chief judges are directed to ensure that the due process rights of the defendant are protected by facilitating the temporary transfer of the case to the holding court, if necessary; by having a judge from the holding court designated by the Chief Justice, or designated by the chief judge if the home and holding court are within the same circuit, as a judge of the home court to handle emergency or other necessary matters in the case; or by other appropriate means.

D. Victims. The constitutional rights of crime victims must also be considered in all cases by the presiding judge.

VI. SPEEDY TRIAL PROCEDURE IN NONCRIMINAL TRAFFIC INFRACTION COURT PROCEEDINGS[17]

All time periods involving the speedy trial procedure in noncriminal traffic infraction court proceedings remain suspended. The suspension of time limits under the speedy trial procedure restores additional days equal to the number stated in the previous orders and this order.

VII. SUSPENSION OF TIME PERIODS IN CERTAIN SMALL CLAIMS RULES

All time periods referenced in Florida Small Claims Rule 7.090(b) that are applicable to the clerk of the court in small claims cases are suspended through October 30, 2020.

VIII. FAMILY LAW FORMS[18]

Except as indicated below, the requirement that Florida Family Law Forms be notarized or signed in the presence of a deputy clerk remains suspended, if the filer includes the following statement before the filer's signature:

> Under penalties of perjury, I declare that I have read this document and the facts stated in it are true.

This exception does not apply to Florida Family Law Forms 12.902(f)(1), Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren), 12.902(f)(2), Marital Settlement Agreement for Dissolution of

17. This measure initially took effect on March 13, 2020. (AOSC20-19).
18. This measure initially took effect on March 24, 2020. (AOSC20-17).

Marriage with Property but No Dependent or Minor Child(ren), 12.902(f)(3), Marital Settlement Agreement for Simplified Dissolution of Marriage, and any other family law form that transfers the ownership of property, which must continue to be notarized or signed in the presence of a deputy clerk prior to filing.

IX. VISITATION FOR CHILDREN UNDER THE PROTECTIVE SUPERVISION OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (DCF)[19]

Requirements for in-person visitation pursuant to circuit court orders entered under chapter 39, Florida Statutes, remain suspended. This order does not affect in-person visitations when all parties and the caregiver agree that the visitation can take place in a manner that does not pose a health threat.

In lieu of in-person visitation, visitation shall be conducted through electronic means with video communication as the preferred means, although telephonic contact is permitted if video communication is not feasible.

The suspension of in-person visitation applies to parent-child visitation, sibling visitation, and visitation between children and other family members and non-relatives.

If a party seeks to reinstate in-person visitation while the suspension of in-person visitation requirements remains in effect, such reinstatement shall be

19. These measures initially took effect on March 27, 2020. (AOSC20-18).

determined on a case-by-case basis by the circuit court with jurisdiction over that party's case. Reinstatement of in-person visitation may be ordered if the court determines that it will not jeopardize the health, safety, and well-being of all children and adults (including caregivers) who will be affected by the in-person visitation.

Nothing in these provisions regarding visitation for children under the protective supervision of the DCF overrides existing circuit administrative orders to the extent that those orders are not in conflict with this order. Circuits may enter additional administrative orders addressing visitation and contact pursuant to chapter 39, Florida Statutes, to the extent that they are not in conflict with this order.

X. REVERSION TO A PREVIOUS PHASE

If a circuit or a county within the circuit reverts to a previous phase, as addressed in Fla. Admin. Order No. AOSC20-32, Amendment 2, the following provisions govern.

A. Certain Jury Proceedings and Jury Trials. If a circuit or a county within the circuit reverts to Phase 1, juror selection and proceedings for a non-statewide grand jury and juror selection and trial proceedings for a civil or criminal case that:

(1) Were not commenced before the reversion are suspended until the circuit or county returns to Phase 2, at which time such proceedings may be commenced in person in a manner consistent with the circuit's operational plan.

(2) Were commenced before the reversion may proceed to completion in person if the chief judge determines that completion of the proceeding without delay is required by the interests of justice and determines, under consultation with the county health department or local health expert, that the in-person proceeding can be conducted in a manner that protects the health and safety of all participants. The requirements of the double jeopardy clause must be considered in criminal proceedings.

B. Suspension of Impaneled Non-statewide Grand Jury. If the chief judge determines that the proceedings of an impaneled non-statewide grand jury cannot continue in Phase 1, the chief judge may issue a local administrative order suspending the proceedings for a specified period of time not to exceed 30 days after the circuit or county within the circuit returns to Phase 2. The provisions of Section III.A.(3) apply with respect to the restoration of time to the term of the impaneled non-statewide grand jury during such suspension.

C. Speedy Trial. If a circuit or a county within the circuit reverts from Phase 3 to Phase 1 or Phase 2, all time periods involving the speedy trial procedure in criminal and juvenile court proceedings are suspended until 90 days after the Chief

Justice has approved the recertification of a chief judge of a judicial circuit that the circuit or county within the circuit has again transitioned to Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, Amendment 2. The provisions of Section IV.A.(2) apply except that the suspension of time limits under this section restores additional days equal to the number of days of the suspension under this section.

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Additional orders extending or modifying these measures will be issued as warranted by changing circumstances during the public health emergency.

DONE AND ORDERED at Tallahassee, Florida, on July 2, 2020.

AOSC20-23

Chief Justice Charles T. Canady

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ATTEST:

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John A. Tomasino, Clerk of Court

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