Supreme Court of Kentucky

2020-63

AMENDED ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY – HEALTH AND SAFETY REQUIREMENTS

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that "[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

In light of the declared federal and state emergencies and considering the need to balance access to the courts and the constitutional rights guaranteed to the people of this Commonwealth with the health and safety of court employees, elected officials, and the public during the COVID-19 emergency, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders that Administrative Order 2020-43 and Administrative Order 2020-47 are replaced in their entirety and the following measures shall be implemented effective August 1, 2020:

A. COURT FACILITIES

1. Entrance to court facilities is limited to:

    a. Attorneys, parties, witnesses, jurors, domestic violence advocates and other persons scheduled or approved to appear at in-person hearings;

    b. Individuals seeking emergency protective orders, interpersonal protective orders, emergency custody orders, orders under KRS 222.430 et seq. (Casey's law), and involuntary commitments under KRS Chapter 202A and KRS Chapter 645;

    c. Individuals attending judicial sales;

    d. Individuals who need access to a physical case file or a public access terminal and have scheduled an appointment with the local Office of Circuit Court Clerk;

e. Individuals who have scheduled an appointment for driver's license services with the local Office of Circuit Court Clerk; and

f. Individuals who are reporting for a scheduled drug test.

2. Signage shall be posted outside of all entry points of all KCOJ court facilities, offices, or other locations where court proceedings are being held, advising the public, attorneys, and KCOJ officials and employees that they shall not enter or remain on the premises unless they are wearing a protective facial covering such as a mask, scarf, bandana, or other cloth which covers the nose and mouth. If a member of the public seeks entry but does not have an appropriate facial covering and their business cannot be accomplished remotely, then a facial covering will be provided. Further, individuals shall not enter the building if they have:

   a. Have any symptoms of COVID-19, including cough; shortness of breath or difficulty breathing; fever; chills; fatigue; muscle pain; headache; congestion or runny nose; nausea or vomiting; diarrhea; sore throat; or new loss of taste or smell;

   b. Been instructed to self-quarantine by any doctor, hospital, or health agency; or

   c. Been diagnosed with COVID-19 within the past 14 days or had contact with anyone who has been diagnosed with COVID-19 within the past 14 days.

3. A member of the public who is not granted access to a court facility, courtroom, or court office is not relieved of his or her obligation to make payment or report to or appear before the court. He or she will be provided a phone number or email address and must make arrangements to reschedule, appear remotely, or otherwise complete his or her business to avoid possible adverse action being taken by the court.

4. Members of the public are prohibited from bringing non-transparent purses or other similarly enclosed bags into any court facility that does not have an X-ray machine, unless items in the bag are medically necessary. Any items that are necessary for the individual's business before the court should be carried by hand or brought in an open container capable of visual inspection.

B. COURTS

1. Courts shall hear civil and criminal matters using available telephonic and video technology to conduct all proceedings remotely. Remote proceedings shall be scheduled through the judge's office.

2. If a judge determines in his or her discretion that a matter requires in-person attendance, the following health and safety precautions must be followed:

    a. Courtroom attendance for the matter being heard must be limited to attorneys, parties, witnesses, and other necessary persons as determined by the judge.

    b. **Judges are responsible for ensuring that appropriate social distancing is observed in their courtroom.** Courtroom attendees must be separated by a minimum of six feet at all times.

    c. Except as provided in Section E(1)of this Order, all persons in the courtroom, including parties, litigants, members of the public, jurors, attorneys, court employees, and bailiffs, must wear a protective facial covering over their mouth and nose while in the courtroom. **Judges are responsible for enforcing the use of facial coverings in their courtroom.**

    d. Individuals who have symptoms of COVID-19 as identified by the Centers for Disease Control and Prevention ("CDC") (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, congestion or runny nose, headache, nausea or vomiting, diarrhea, or new loss of taste or smell); are currently self-quarantined as directed by any doctor, hospital, or health agency; or have been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19 within the past 14 days, or who fall into a high-risk category[1] must be allowed to participate remotely.

    e. Access to view any courtroom proceeding that is not otherwise confidential must be provided to members of the

[1] According to the CDC, high-risk individuals include: people 65 years and older; people who live in a nursing home or long-term care facility; people of all ages with underlying medical conditions, particularly if not well controlled, including people with chronic lung disease or moderate to severe asthma; people who have serious heart conditions; people who are immunocompromised; people with severe obesity; people with diabetes; people with chronic kidney disease undergoing dialysis; and people with liver disease.

public and media. Access may be provided by live audio or video or by digital recording.

f. The proceeding must be scheduled so that it reduces the number of individuals entering, exiting, or gathering at a certain time.

g. At the end of the proceeding or after each use, the judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the KCOJ COVID-19 Health and Safety Requirements.

3. Any court order, summons, or subpoena requiring the remote attendance of a party or his or her counsel shall have the same effect as if requiring attendance in person, and failure to appear remotely as ordered by a court may be grounds for sanctions.

4. Consistent with social distancing and other health and safety guidelines, attorneys are expected to continue to prepare and litigate cases during the effective dates of this Order, including providing discovery, negotiating possible resolutions, filing motions, and conducting investigations, to minimize delay in bringing cases to trial or resolution.

5. Nothing in this Order should be used to delay or effectively stay a proceeding in contravention of the rights guaranteed to the people of the Commonwealth in Section 14 of the Kentucky Constitution. All parties are expected to use available technology to further the resolution of all cases.

C. OFFICE OF CIRCUIT COURT CLERK

1. The local Office of Circuit Court Clerk will only be open to the public from 9:00 a.m. to one hour before normal closing time, local prevailing time, except for those individuals seeking emergency petitions under Section 5(a)(ii) of this Order.

2. All filings are encouraged to be eFiled but may also be mailed or conventionally filed using a drop-box provided outside the judicial facility.

3. Payments for court costs, fines, fees, and restitution can be made by money order mailed to the Office of Circuit Court Clerk or by cash or credit card by calling the local Office of Circuit Court Clerk. Pre-payable citations can be paid online through ePay at kycourts.gov.

4. Individuals posting bond should contact the local Office of Circuit Court Clerk for further instruction.

5. As provided in Kentucky Transportation Cabinet Order 2020-215, limited driver's license services have resumed subject to the following restrictions:

    a. Appointments are required for any in-person driver's license services.

    b. Under Transportation Cabinet Official Orders 11228 and to limit in-person traffic in court facilities, driver's licenses that expire between March 1, 2020 and September 30, 2020, must be renewed remotely.

    c. Permit testing and road testing will resume at the discretion of the Kentucky State Police.

D. STAFFING

1. To enable full productivity, reduce the spread of COVID-19, and ensure continuity of court operations, all KCOJ employees who can telework should be directed to do so.

2. Elected officials should determine appropriate in-person staffing for their offices based on the following factors:

    a. The ability to maintain appropriate social distancing among employees at all times and, where applicable, among employees and other individuals with whom employees must interact such as attorneys or members of the public;

    b. The ability to divide staff into work teams with clearly identified and separate workspaces, allowing for physical separation of the teams throughout the work day, including any breaks, in order to limit the number of individual exposures in the event an employee tests positive for COVID-19;

    c. The ability to properly clean and sanitize frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; countertops; tables; and cabinets and knobs; and

    d. The ability to continue essential court functions in the event an employee reports a positive COVID-19 infection. Key to continuation of essential court functions in that

event will be designing, implementing, and enforcing the work team approach referenced in paragraph 2(b) of this Section.

3. Special Leave is authorized for employees who are not scheduled to work during normal business hours based on a reduced-staff work schedule, not to exceed 7.5 hours of Special Leave in any work day or 37.5 hours of Special Leave in a two-week period.

   a. Any employee who is not scheduled to work and is receiving Special Leave must be available to report to work within 24 hours of being contacted unless he or she has tested positive or has had prolonged close contact with someone who has tested positive for COVID-19 or needs to care for a dependent.

   b. Failure to report when scheduled may disqualify an employee from receiving Special Leave.

4. Elected officials must submit staffing plans to the Human Resources Department at the Administrative Office of the Courts to ensure appropriate tracking of employees' work hours.

5. Judges and circuit court clerks must collaborate to ensure there is adequate staff to prepare for and cover court dockets or other proceedings.

6. All KCOJ officials and employees who are not scheduled to telework are required to self-administer a temperature and health check before reporting to work. Any official or employee who is exhibiting symptoms of COVID-19 as identified by the CDC (cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, headache, congestion or runny nose, nausea or vomiting, diarrhea, or new loss of taste or smell); has been instructed to self-quarantine by any doctor, hospital, or health agency; or has been diagnosed with or has had contact with anyone who has been diagnosed with COVID-19 within the past 14 days must stay home and self-report this information as provided in the KCOJ COVID-19 Health and Safety Requirements.

7. Additional staffing guidance may be found in the Court of Justice Flexible Staffing Guidance During a Pandemic or Public Health Emergency.

E. GENERAL HEALTH AND SAFETY PROTOCOLS FOR KCOJ EMPLOYEES AND OFFICIALS

1. All KCOJ officials and employees are required to wear facial coverings while interacting with co-workers or in common areas of the building (e.g. hallways, elevators, conference rooms, bathrooms, entries, and exits). Facial coverings are not required to be worn when KCOJ officials or employees are alone in their personal office or if doing so would pose a serious threat to their health or safety. Additionally, judges are not required to wear a facial covering while conducting court proceedings if doing so will impede their ability to make a clear record and if no parties or KCOJ employees are located within a ten-foot radius of the judge and do not approach the bench during the proceeding.

2. A judge may allow a party, attorney, or witness to temporarily remove his or her facial covering if it is necessary to create a clear record and if sufficient social distancing can be maintained while the facial covering is removed.

3. All KCOJ officials and employees will be provided a facial covering to use as required by this Order and are encouraged to keep an extra facial covering to use if the one provided is misplaced. All KCOJ employees are required to report to work with a facial covering that is consistent with the Dress Code Policy contained in Section 3.09 of the KCOJ Personnel Policies.

4. The AOC Director or designee must ensure the KCOJ COVID-19 Health and Safety Requirements are made available on the KCOJ's intranet, distributed to all KCOJ officials and employees, and acknowledged by all employees.

5. If an employee exhibits coughing, shortness of breath, difficulty breathing, or other COVID-19 symptom(s) while in the workplace, an appointing authority, after consultation with the AOC's Director of Human Resources or designee, will direct the employee to leave the office if doing so is consistent with the recommendations of the CDC and provide the employee guidance regarding use of appropriate leave and follow-up.

6. Each chief circuit judge must take steps to ensure that KCOJ employees and members of the public exercise appropriate social distancing in any court facility occupied by the KCOJ within their circuit.

    a. In mixed-use facilities, the chief circuit judge is responsible for ensuring appropriate social distancing practices in the space occupied by the KCOJ, including the common areas.

b. Any common area that cannot be configured to maintain appropriate social distancing must be closed.

c. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing between individuals who are not members of the same household unit.

7. The AOC Director or designee must take steps to ensure that AOC employees and members of the public exercise appropriate social distancing in all AOC offices.

a. Any common area that cannot be configured to maintain appropriate social distancing must be closed.

b. To the extent possible, waiting lines or waiting rooms should be eliminated through the use of appointments or other remote services. If a waiting line is unavoidable, the area should be demarked with six-foot spacing to maintain appropriate social distancing.

8. Each chief circuit judge must ensure that proper arrangements are made for cleaning and disinfecting of the court facilities in their circuit, consistent with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.

9. The AOC Director or designee must ensure that cleaning and disinfecting of all AOC offices complies with the KCOJ COVID-19 Health and Safety Requirements. This includes arrangements for cleaning and sanitation of frequently touched surfaces, such as door knobs; light switches; phones; computers/keyboards; copiers; elevator buttons; toilets; faucets; sinks; countertops; paper towel dispensers; desktops; handrails; counters; tables; and cabinets and knobs.

10. The AOC Director or designee must ensure all KCOJ officials and employees are trained on when and how to properly use

facial coverings, how to clean or dispose of facial coverings, and when and how to properly use gloves, if provided.

11. KCOJ officials and employees should email COJHR2@kycourts.net if they have concerns about working conditions or about health risks in the workplace.

12. Court security personnel shall assist the chief circuit judge in implementing and enforcing all social distancing requirements inside the courtrooms and throughout the court facility.

F. APPLICATION TO KCOJ COMMITTEES

To the extent possible, meetings of committees, commissions, task forces, boards, and other administrative bodies of the Supreme Court, KCOJ, or AOC should be conducted remotely. Meetings that cannot be conducted remotely must follow the health and safety requirements included in this Order, including six-foot spacing between individuals and mandatory use of protective facial coverings.

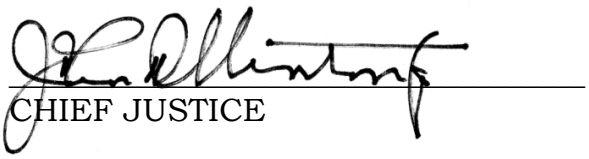
G. LOCAL PROTOCOLS

1. Each chief district and chief circuit judge must develop a local protocol regarding any additional restrictions or changes in local procedure, consistent with this Order. Proposed local protocols shall be submitted electronically by the chief district or chief circuit judge to localrules@kycourts.net for posting to the Kentucky Court of Justice website. To the extent any local protocols are inconsistent or otherwise conflict with this Order, this Order prevails. Any local protocol that substantially deviates from this Order or other Administrative Orders of this Court may be subject to review and final approval by the Chief Justice under SCR 1.040(3).

2. Concerns regarding local application or implementation of this Order may be submitted to COVIDcourtconcerns@kycourts.net.

This Order is effective upon entry and until further Order of this Court.

Entered this 28th day of August 2020.



CHIEF JUSTICE

All sitting; all concur.