

IN THE SUPREME COURT OF PENNSYLVANIA

In Re: 39th Judicial District : Emergency Judicial Order
:
: 57 MM 2020
: AD 108-2020

Request for Emergency Judicial Order

TO THE HONORABLE CHIEF JUSTICE THOMAS G. SAYLOR AND JUSTICES OF THE PENNSYLVANIA SUPREME COURT:

1. Shawn D. Meyers, President Judge of the 39th Judicial District, hereby requests the following relief by Order of the Supreme Court:

a. Authorize the president judge to declare a judicial emergency in this judicial district and take any actions authorized by Pa.R.J.A. No. 1952(B)(2).

b. Approve the entry of an Emergency Judicial Order for the 39th Judicial District in the following form:

In Re: 39th Judicial District : Emergency Judicial Order
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Emergency Judicial Order

And now this 7th day of December, 2020,

BACKGROUND

WHEREAS, the Pennsylvania Supreme Court issued an order on April 28, 2020 that extended the state wide judicial emergency though June 1, 2020;

DEC 07 2020

ATTEST: A TRUE COPY
Kimberly Kulp
Clerk of Courts

And WHEREAS, under that same order, the Chief Justice of the Pennsylvania Supreme Court Thomas Saylor ordered that individual President Judges may extend the judicial emergency within their respective judicial district on the condition that reasons are provided for the extensions;

And WHEREAS, the 39th Judicial District is comprised of two counties, Franklin and Fulton, which have had differing experiences and documented impacts of the COVID-19 virus but recently have experienced positivity rates that are in the highest reported levels within the Commonwealth of Pennsylvania;

And WHEREAS, in March and April, 2020 Governor Wolf had created a three tiered level of requirements to restrict and permit certain activities within counties on a “Red”, (most restrictive), “Yellow” (moderately restrictive), and “Green” (least restrictive) based upon the effects of COVID-19 in each county;

And WHEREAS, a review of the criteria to confirm the color coded status for a county clearly establishes Franklin and Fulton Counties to be in the “Red” Zone as of December 4, 2020;

And WHEREAS, under the “Red” Zone designation, the following conditions are to be observed by the general public and businesses as set forth by the Pennsylvania Department of Health website as of June 20, 2020:

Work & Congregate Setting Restrictions
Life Sustaining Businesses Only
Masks Are Required in Businesses
Congregate Care and Prison Restrictions in Place
Schools (for in-person instruction) and Most Child Care Facilities Closed
Social Restrictions
Stay at Home Orders in Place
Large Gatherings Prohibited
Masks Are Required in all Public Spaces
Restaurants and Bars Limited to Carry-Out and Delivery Only
Only Travel for Life-Sustaining Purposes Encouraged
Reiterate and reinforce safety guidance for businesses, workers, individuals, facilities, update if necessary
Monitor public health indicators, adjust orders and restrictions as necessary

The courts, while not required to adhere to the designations of the Governor for private business operations and activities of citizens, are required to follow the requirements set forth in the orders of Chief Justice Saylor. In his order of April 28th 2020, Chief Justice Saylor specifically provides that while the courts shall

remain centered on "critical functions", and the courts are to "put forth their best efforts to accomplish the timely administration of justice in all other matters", such efforts are "subject to the constraints and safety considerations in the court's order."

IN RESPONSE TO THE CHIEF JUSTICE'S PROVISIONS IN HIS ORDER OF APRIL 28, 2020, THE UNDERSIGNED PRESIDENT JUDGE HAS ISSUED A SERIES OF EMERGENCY ORDERS SINCE MAY 27, 2020 UP THROUGH AND INCLUDING NOVEMBER 18, 2020 DECLARING THE JUDICIAL EMERGENCY TO BE EXTENDED THROUGH JANUARY 31, 2021.

THE UNDERSIGNED PRESIDENT JUDGE HAS EVALUATED THE CHANGE IN PHASES IN BOTH FRANKLIN AND FULTON COUNTIES AND HAS DETERMINED THAT GIVEN THE POSITIVE CASES OF COVID-19 THAT ARE INFECTING PERSONS INCLUDING THE STAFF AND JUDICIARY OF THE DISTRICT, ATTORNEYS AND STAFF OF OFFICES THAT SUPPORT THE COURT, THE FAILURE TO ISSUE A REVISED ORDER TEMPORARILY SUSPENDING ALL IN PERSON PROCEEDINGS, EXCLUDING CERTAIN EMERGENCY PROCEEDINGS, IS REQUIRED AND CONSISTENT WITH THE INSTRUCTIONS OF CHIEF JUSTICE SAYLOR'S APRIL 28, 2020 ORDER. THE PRESIDENT JUDGE CANNOT CONTROL THE ACTIVITIES OUTSIDE THE COURT HOUSES AND COURT FACILITIES, BUT CAN CONTROL THE ACTIVITIES WITHIN THE COURTHOUSE AND COURT FACILITIES AND HAS RECEIVED COOPERATION FROM COUNTY LEADERSHIP AND ROW OFFICES IN THAT REGARD.

39TH JUDICIAL DISTRICT REASONS FOR JUDICIAL EMERGENCY RESTRICTIONS AND/OR EXTENSION

Taking into account the strictures set forth in the April 28, 2020 Pennsylvania Supreme Court order, the undersigned President Judge has been able to discern that the current judicial facilities in both counties offer limited ability to comply with the social distancing requirements recommended by the CDC.

The court frequently sees attorneys, interpreters, clients and witnesses sitting face to face or shoulder to shoulder, with varying levels of mask compliance. To accommodate the execution of papers and documents, and to conduct confidential discussions, persons are compelled to speak face to face, again sometimes wearing masks properly, frequently not doing so.

The court has been proactive with county leadership to begin screening protocols of individuals to limit access to court facilities of both the public and employees who do not have a fever exceeding 100.4°, and provide answers that diminish the likelihood they have been exposed to COVID-19. However, the

screening of courthouse and court facility entrants for COVID-19 cannot eliminate asymptomatic carriers, who frequently are infectious days before manifesting symptoms. “Studies have shown that people may be contagious for about two days before developing COVID-19 symptoms. ‘In fact, right before developing symptoms is when people are likely the most contagious’, said Dr. Werner Bischoff, an infectious disease specialist at Wake Forest University.”

Furthermore, even with screening, 1 in 5 person who are asymptomatic are likely contagious and able to transmit the infection to others. See [healthline.com](https://www.healthline.com) “Researchers found an estimated 20 percent of people with an infection with the new coronavirus remain symptom-free. Even people who are truly asymptomatic are able to spread the virus . . . The researchers from the University of Bern in Switzerland reviewed studies conducted in the early weeks of the pandemic using a database of SARS-CoV-2 evidence from March and June of this year. Their findings suggest only an estimated 20 percent of infections remained symptom-free.” www.healthline.com.

Despite best efforts, the courts do not have the ability to conduct air quality testing for the presence of COVID-19 in the courthouses or all court facilities. The courthouses do not have the ability to conduct open air proceedings given the current temperatures and security concerns. More recent studies of available data and analysis reveals that the engagement of persons in close quarters for more extended periods of time, (15 minutes +), while sharing the immediate air space increases the risk for breathing in droplets exhaled by another person. The existence of “super-spreaders” of COVID-19 in communities is compounded by close interactions with persons in enclosed, poorly ventilated areas. See, *WallStreetJournal.com/Daniela Hernandez, Sarah Toy & Betsy McKay /6.16.2020 How Exactly Do You Catch Covid-19? There is a Growing Consensus.*

The courts of the 39th Judicial District have remained open for hearing all matters and have been since May 11, 2020 per an order of court dated May 1, 2020. The courts have been processing cases on all dockets as previously ordered, but have done so under strict access policies. The ongoing presence of the COVID-19 virus in both counties required the court to revise the way in which cases are scheduled so as to prevent the “mass” or commonly referred to “cattle calls”, that result in dozens, if not more than 100 persons including litigants, attorneys, court staff finding themselves sitting shoulder to shoulder in the gallery areas of court rooms, and in the case of jury deliberation rooms having little space to move. Furthermore there are few alternate large gathering spaces or common areas in either courthouse other than fairly narrow hallways that can permit persons to wait for the commencement of hearings in large quantities while observing social distancing of at least 6 feet. While many methods of containment have been questioned in the medical community, social distancing has been emphasized as an accepted method to slow or prevent the spread of

COVID-19. (As cited in Medical News Today, Written by Maria Cohut, Ph.D. on March 24, 2020 - Fact checked by Anna Guildford, Ph.D.; <https://www.health.harvard.edu/diseases-and-conditions/preventing-the-spread-of-the-coronavirus>; <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>). By reducing the numbers of persons that are required to come into the court facilities in both counties on a daily basis, the court cannot prevent, but can limit the likelihood of a substantial or significant infection of a large gathering of persons, which if such an event occurs, could in turn lead to the large scale testing and quarantine of numerous court employees, attorneys, litigants and members of the public and even a complete closure of court facilities and disinfection effort as has already occurred in the Commonwealth. (<https://www.timesonline.com/news/20200326/lawrence-county-courthouse-worker-tests-positive-for-virus-county-now-up-to-8-cases>).

Despite these efforts, the court has had to acknowledge the stark reality that jury selection and jury trials had to be suspended as of November 18, 2020, as multiple jurors and potential jurors reported exposures to individuals who were either known or suspected to be infected with the COVID-19 virus. Since November 18, 2020, there have been no less than one-half dozen confirmed cases affecting the judiciary and court supervised employees and attorneys that work in the courts and a partial shutdown of the Franklin County Courthouse was ordered when a person alleged to be positive declared that fact during Central Court. Furthermore, all transports to and from the Franklin County Jail and Bedford County Correctional Facility have been either suspended or modified based upon quarantine practices in each facility. The court is aware of reports of testing of staff in other facilities such as the Franklin County Jail and positive tests in other corrections facilities that house criminal defendants of the 39th Judicial District that if pre-COVID-19 standard procedures were being observed, could lead to exposures within either courthouse or other court facilities. Equally important to the consideration of the court is that as society experiences fatigue, and has engaged in gatherings despite being urged to avoid such activities by health officials, the information provided by local health officials confirms that “spikes”, “clusters” or “wide scale infections”, have been confirmed in large gatherings of persons who spend significant periods of time together in close proximity. Those same officials are warning that our health system is at or near capacity and medical resources are stretched to the point where patients may need to be treated at facilities outside of our region, placing a stress on families who’s loved ones may need hospitalization and treatment. A recent study confirms that the most significant increase in cases in the Commonwealth is among persons 19-24 years of age. This same demographic is frequently represented in various court proceedings in the civil, family and criminal dockets. Overall, people have relaxed their vigilance, despite the virus having the same infectious potential now as in the spring of this year.

No matter the best efforts of the various stakeholders to try and work safely, the reality is that the risk of transmission remains likely given the areas that must be occupied in our courthouse and court facilities. Person who are infectious pose a great risk of causing an infection if present in a court facility for long periods of time with judges, court employees, attorneys and litigants. Court proceedings are compulsory. Failure to appear frequently will result in a loss of rights. The court desires to provide all stakeholders and the citizens of the 39th Judicial District and opportunity to “reset” and to revise protocols so as to provide each and every party the same protections and access to the court.

**For the foregoing reasons the undersigned President Judge does decree and
IT IS HEREBY ORDERED:**

AND NOW this 7th day of December, 2020, in accord with the Order of the Supreme Court of Pennsylvania dated April 28, 2020, authorizing this Court to declare a judicial emergency,

IT IS HEREBY DECLARED that a judicial emergency exists in the 39th Judicial District of the Court of Common Pleas for both Franklin and Fulton Counties, Pennsylvania for the period of December 7, 2020 and through January 31, 2021, due to the COVID-19 coronavirus. All references to “County”, “Courts”, “Courthouse” or “Court Facility” within this order applies to both Franklin County and Fulton County.

Consistent with the foregoing Declaration and in concert with this court’s authority under Pa.R.J.A. Rule 1952(B)(2), it is hereby ordered:

1. Time Calculations: The time calculations for the purposes of time computation within this judicial district for the filing of documents with the court or taking other judicially mandated action are suspended beginning November 19, 2020 and ending date January 31, 2021. The Court reserves the right to issue an additional order extending the Judicial Emergency period until April 1, 2021, if necessary.
2. Use of Technology to Conduct Proceedings: The use advanced communication technology, (“ACT”), including Google Meet, Zoom, Polycom and

teleconferencing shall be evaluated and used for any all scheduled proceedings, if possible. All court supervised employees shall work with their supervisors to make use of the technology. All judicial staff at all levels shall work with their judge to coordinate proceedings using remote technology and the attendant transmission of documents electronically. The use of AC shall only be limited where there are clear statutory prohibitions or constitutional restrictions.

3. Suspended or Modified Rules: The following statewide procedural or administrative rules are suspended or modified as follows:

a. The operation of Rule of Criminal Procedure 600 shall be suspended in the 39th Judicial District during the period of the local judicial emergency.

The Court finds and declares the time for such delay is not chargeable to the Commonwealth or the Defendants.

b. All time calculations for the purposes of time computations relevant to all other court cases or other judicial business, as well as time deadlines, are suspended subject to constitutional restrictions.

4. Revised Court Operations: The Court hereby declares such other relief as follows:

During the period of the judicial emergency the court **will remain open**, but the following procedures will be in effect:

All individuals that have valid County issued prox-cards or identification shall have access to the Courthouse and court facilities subject to their current authorizations. However, all persons accessing a court house or court facility shall comply with the COVID-19 screening protocols adopted by the counties and the courts. The Court reserves the right to request modification of access authorization as may be necessary for individuals who fail to comply with this requirement.

For the period of 12:00 a.m. Tuesday, December 8th, 2020 through January 8th, 2021, all in person appearances at the Franklin and Fulton Courthouses or court facilities occupied by Magisterial District Judges, Court Appointed Standing Masters or Permanently Appointed Hearing

Officers in either county will not be permitted, absent exigent circumstances.

Exigent circumstances include but are not limited to:

1. Protection from Abuse Matters where no temporary order has been entered by the court;
2. Bench Warrant Hearings;
3. Bail hearings, provided the appropriate motion is filed and presented to the court and served upon the Commonwealth and a hearing is scheduled by an assigned judge;
4. Emergency/Special Relief Custody Hearings;
5. Emergency Guardianship Petitions/Hearings
6. Protective petitions and hearings filed by the AAA or other agencies authorized to protect the rights and interests of the elderly or disabled;
7. Dependency Matters as further described herein;
8. Delinquency Matters as further described herein.
9. Preliminary Injunctions regarding issues related to public health or the protection and preservation of interests of a person, corporation or an entity that cannot be assured adequate protection under any other lawful means.

When possible all matters shall be heard via video or teleconference, but if the participants are within the courthouse or court facility, in those instances, only participants to the action will be permitted to be present in the Courthouse during the period of judicial emergency. Court employees shall cooperate with their supervising judges to reschedule the matters currently scheduled using ACT or to a date certain following the end of the judicial

emergency. Furthermore, when ACT is used, an emphasis shall be on insuring each participant accesses the proceeding using their own device and invitation code. The court envisions that two people will never be compelled to use the same device absent their consent. Thus an attorney and client should not be expected to sit in a court room or office together using a computer to participate in a Zoom or Google Meet proceeding unless they consent to same. When possible counsel will supply their own computer to access a proceeding and shall cooperate with the court in the scheduling and testing of the devices in advance of the hearing. If their clients cannot access the proceeding remotely using technology, that information will be supplied to the assigned judge who may work with Court Administration to secure a laptop computer and location for the person to participate.

5. Filings: In person filings may be accepted within the filing offices, absent exigent or emergency circumstances as are presented to Court Administration and approved by the Court. This applies to the Court of Common Pleas as well as the Magisterial District Courts. For individuals who cannot pass the screening for COVID-19 symptoms, Franklin County filings may be brought to the lobby area of the Franklin County Courthouse, 157 Lincoln Way East, Chambersburg, PA 17201 and placed in the designated box for the filing office. All required filing fees shall be provided with the filing. The filing office will monitor the box and process the filings returning all courtesy copies via United States Postal Service mail. All filings for Fulton County may be brought to the lobby area of the Fulton County Courthouse, 201 North Second Street, McConnellsburg, PA 17233 and placed in the

designated box for the filing office. All required filing fees shall be provided with the filing placed in a box. The filing office will monitor the boxes and process the filings returning all courtesy copies via United States Postal Service mail. In the alternative, each row office is encouraged, but not required to accept filings via mail, email, or facsimile. Email and/or fax filings will need to be followed by the original document (with original signatures) via mail and include the appropriate filing fee, if any. Filings submitted by either email or fax will be time stamped upon receipt and preserve filing dates provided originals are received. Each filing office shall supply an email address upon request. This process will be reviewed with the applicable row offices and adjustments made as necessary to preserve filing access to the courts.

6. Civil Proceedings: All scheduled hearings on the Civil Docket, including all Family Law proceedings that are not an emergency or a matter of special relief, or have not already been scheduled as a teleconference or video conference by the Court are continued during the emergency period and shall be rescheduled by the judge who is assigned to the case or Court Administration. Counsel or the parties shall confer with the judge and Court Administration to identify an appropriate date to reschedule the matter. The Court shall remain available to handle all exigent or emergency matters in paragraph 4.

7. Criminal Proceedings: All scheduled proceedings for defendants who are not incarcerated in the Franklin County Jail are continued during the judicial

emergency period. All continued cases shall be rescheduled by Court Administration in coordination with the assigned judge. All persons who have cases that are continued will receive notice of the new scheduling date. The Court shall remain available to handle all exigent or emergency matters in paragraph 4.

8. Juvenile Delinquency: Notwithstanding any other provision of this order, Juvenile Delinquency Matters shall be handled on a case by case basis. Parties should appear for all juvenile delinquency matters scheduled before the Court, unless otherwise notified.

9. Juvenile Dependency: Notwithstanding any other provision of this order, Juvenile Dependency Matters shall be handled on a case by case basis. Parties should appear for all juvenile dependency matters scheduled before the Court, unless otherwise notified.

The Court shall continue to handle shelter care proceedings, pursuant to Pa.C.S. § 6332.

The Court shall continue to issue orders for protective custody, pursuant to Pa.R.C.P. Rule 1210.

The Court shall continue to be available to issue orders for Authorization for Medical Treatment of a Minor, pursuant to 18 Pa.C.P.S. 3201.

10. Orphans' Court Division:

Notwithstanding any other provision of this order, all matters are postponed except for involuntary commitment hearings scheduled at facilities or hearing

sites. The Court shall remain available to handle all exigent or emergency matters in paragraph 4.

The Orphans' Court Clerk shall exercise appropriate discretion in the issuance and processing of marriage licenses. Applicants are asked to contact the Orphans' Court Clerk to allow appropriate scheduling and staggering of applications and distribution of marriage licenses.

11. Magisterial District Court:

All cases are continued unless expressly agreed to be heard by the Magisterial District Judge assigned to the case using the available ACT technology.

All time calculations relevant to Magisterial District Court proceedings located in the Pennsylvania Rules of Conduct, Office of Standards for Civil Procedure for Magisterial District Judges and the Pennsylvania Rules of Criminal Procedure shall be suspended.

Magisterial District Judges shall still provide all available services required while serving in an "on call" capacity including review and approval of search warrants, criminal bench warrants, preliminary arraignment and the establishment of bail.

Magisterial District Judges shall provide all reasonable means to collect monies from payers.

12. Sheriff and County Office access: Anyone with business with the Sheriff may advise the security staff of any building and they shall be admitted per the directives and policies of the Sheriff.

Anyone with business in a county office that is not also a filing office for matters for the court, shall be permitted access to those offices and facilities per county directives.

13. Transports: The Sheriff and constables of both counties may elect to transport any and all individuals or detainees or decline such transport as they so choose within their sound discretion. The Sheriffs of both counties shall not transport a defendant from any jail or corrections facility to a courthouse or court facility for any purpose, unless expressly approved by the judge to whom the case is assigned.

14. Probation and Parole Offices and Domestic Relation Offices: This order limiting interaction with employees and the public and counsel shall apply to the court offices of Probation and Parole and Domestic Relations. Those offices shall conduct hearings when possible via teleconference or videoconference.

15. Factors Requiring the Declaration of a Judicial Emergency: The circumstances necessitating this request for an emergency judicial order have been recited in the preamble to this order

16. Media: Media who have valid credentials may have access to the Courthouse or court facilities. The total number of media members in any facility shall not exceed 3 at one time. All media members accessing the Courthouse are requested to move directly to Court Administration who will be able to address any questions or inquiries. If there are questions related

to the validity of the credentials of a media member Court Administration shall be notified and they shall resolve the issue.

17. Posting and Notice: To the extent possible and practical under the circumstances, notice of this request for an emergency judicial order has been or will be:

posted in the courthouse or other judicial office

posted on the courts or county's website

posted on the county bar association's website

submitted to the Administrative Office of Pennsylvania Courts for publication pursuant to Rule of Judicial Administration No. 1952(C)(5)

published in the legal publication designated by the court for publication of legal notices

published in a newspaper of general circulation within the county

18. Objection: Interested parties are advised that objections to any emergency judicial order issued by the Supreme Court should be transmitted to the Supreme Court Prothonotary.

Signed: 
P.J.

Dated: December 7, 2020

Dist:
Board of Judges
Court Administration
Magisterial District Judges
Tim Sponseller, Prothonotary
Todd Rock, Clerk of Courts

Linda Miller, Register and Recorder
Sheriff Dane Anthony
Chief Douglas Wilburne – Franklin County Probation/Parole
Chief Richard Ackerman – Franklin County Juvenile Probation
Franklin County District Attorney, Matt Fogal
Franklin County Public Defender, Casey Bogner