


MEMORANDUM

From: D. Gregory Geary, President Judge 

To: Scott P. Bittner, Judge
Daniel W. Rullo, Judge
Magisterial District Judges
Court Administrator
Prothonotary
Clerk of Courts
Register of Wills
District Attorney
Sheriff
All Court-Related Offices
Public Defender
Members of the Bar

Subject: Extension of Local Judicial Emergency and Modifications to the Court Calendar

Date: February 12, 2021

Extension of Local Judicial Emergency

As everyone knows, the Covid-19 pandemic triggered a declaration of judicial emergency in March 2020 that has basically suspended jury trials since. This has produced serious caseload backlogs in our Court, most concerningly in our Criminal Division.¹ These backlogs represent more than case-clearance logjams; they represent real people who, for nearly a year now, have been denied their right to have a jury decide their case. Moreover, the criminal backlog holds the potential for a raft of constitutionally-based speedy trial claims which continue to ripen as time passes.

¹ At present, 29 cases are already queued up awaiting trial, and 887 cases are on the April call list.

The Court is again faced with deciding whether to extend the local judicial emergency. The decision is a difficult one because it requires us to predict the behavior of a virus that has thus far proven to be unpredictable. The decision also necessitates balancing the risk of harm posed by further suspension of jury trials against the risk of harm posed by bringing large numbers of people back into the Courthouse. As always, the Court's paramount concern is providing a safe environment for Courthouse workers, bar members, and the public.

Having balanced the foregoing concerns, the Court has decided to extend the local judicial emergency through May 31, 2021, thereby suspending the April and May jury trial terms. Hospitalization and positive test rates are steadily declining at the moment, an encouraging sign for sure, but one that must be viewed in light of similar declines in the past that were soon followed by spikes in rates. Somerset County remains in the group of counties with the highest level of community transmission. Further, the virus continues to mutate, producing variants that scientists say are more transmissible than their predecessors. It is not a question of *whether* these new variants will arrive in Somerset County, but merely a question of *when*. Lastly, the vaccination process is still in its earliest stages, and the Court has seen nothing to suggest that a large portion of our population will be vaccinated by April. For these reasons, given our duties to all who work in and use the Courthouse, we believe it most prudent to extend the local judicial emergency. An Order to that effect will soon follow.

Modifications to Court Calendar

Having found it prudent to extend the local judicial emergency through May 31, 2021, the Court believes it equally prudent to take aggressive steps this summer to reduce the overwhelming caseload backlogs caused by the suspension of jury trials. Our plan is laid out in detail below. We

suggest the plan be closely read. It incorporates major changes to the court calendar that will impact nearly all who practice and work in our courts. Hopefully this plan will eliminate the worst of the caseload backlogs by this October.

1. June will be designated a civil jury trial month. All parties who desire a civil bench trial should praecipe the Court for a bench trial to be held in April or May. In other words, if you were planning for a bench trial in June, request instead that it be held in April or May. July and August will be designated criminal jury trial months. September will continue to be a civil trial month with priority being given to backlogged jury trials. Civil bench trials will be scheduled in September if the schedule permits.
2. All three judges will be presiding over trials (perhaps at the same time) throughout the June, July, August and September trial months. Please note that “trial terms” are being extended to “trial months”. The Court’s intent is to schedule jury trials for all parties who request one, with priority necessarily being given to the oldest cases on the list.
3. The past method of selecting juries by summoning several hundred jurors at one time will not be utilized. The Court has already identified trial dates for each judge for all four months. Jurors will be summoned to appear on the first day of the scheduled trial. In other words, jurors will be summoned for specific trials on specific dates. The Court will employ and enforce CDC and Pennsylvania Department of Public Health guidelines in conducting the jury trials.

4. Trial schedules will be released approximately 60 days in advance of the trial month(s). This gives the parties more than adequate time to notify witnesses of the pending trial date(s) and prepare their cases. Trials will be scheduled with minimal consideration given to the availability of counsel or witnesses. **Continuance requests will be denied as a matter of course unless opposing counsel consents to the continuance in writing and acknowledges that he or she has read this Memorandum. A party who consents to a continuance will not be able to complain later that he or she was denied access to a jury trial.**
5. Cases that are already on the civil and criminal trial lists will be scheduled for trial first, without the need for further input from counsel. Cases added to the trial lists after the March civil call and the April criminal call will be scheduled last but not necessarily on dates that fall late in the trial months. The June and September civil trial schedules will be released separately; the July and August criminal schedules will be released together.
6. The trial schedules will incorporate at least two-deep scheduling. Thus, each scheduled trial will have at least a primary and secondary case assigned to it. Cases that are first shown on the schedule as a secondary or tertiary case will be shown on the schedule at a later date as a primary case. The schedules will be structured such that if the primary case goes to trial, then the secondary case will go to trial on the date it's shown as a primary case. If, however, the primary case settles or results in a guilty plea, then the secondary case will be the one the jury hears. If the secondary case settles or results in a guilty plea, then the tertiary case will be the one the jury hears. **The bottom line is**

secondary and tertiary cases must be ready to go to trial at the time of jury selection. Unavailability of counsel or witnesses will not be reasons to continue those cases.

7. Pretrial conferences, dispositive motions, omnibus pretrial motions, motions in limine, continuance motions, etc. shall be scheduled and heard in the 60-day period between the issuance of the trial schedule and the beginning of the trial month. The Court will endeavor to hear the matter and immediately rule on it so that trial is not delayed.
8. The April criminal call of the list will require the appearance of counsel only. Defendants should not appear unless they are unrepresented. Counsel will report whether the case is to be continued, scheduled for a guilty plea, or scheduled for trial. If the case is to be scheduled for trial, counsel shall report the number of days needed, including time for jury selection.

The Court recognizes this plan is ambitious; it certainly will place considerable burden on counsel, parties, witnesses, etc. It will place considerable burden on the Court, it's staff, and resources too. Nonetheless, this is the position in which the Covid-19 pandemic has placed us. As we grind through what promises to be a long summer, the Court encourages everyone to look toward the autumn and, hopefully, a return to normalcy.