

20S-CB-218

IN THE DAVIESS CIRCUIT AND SUPERIOR COURTS
WASHINGTON, INDIANA

STATE OF INDIANA)
) SS:
COUNTY OF DAVIESS)

CAUSE NO. 14C01-2003-CB-000190

IN THE MATTER OF THE PETITION OF THE CIRCUIT AND SUPERIOR
COURTS OF DAVIESS COUNTY, INDIANA, FOR EMERGENCY-RELIEF
UNDER INDIANA ADMINISTRATIVE RULE 17

PETITION FOR RELIEF UNDER INDIANA ADMINISTRATIVE RULE 17

Come now the Judges of the Circuit and Superior Courts of Daviess County, Indiana, *en banc*, and petition the Indiana Supreme Court for relief under Indiana Administrative Rule 17. In support of this Petition, the undersigned judicial officers are providing the following information and requests to the Indiana Supreme Court:

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of coronavirus disease 2019 (COVID-19) to be a "public health emergency of international concern."

1. On March 6, 2020, Governor Eric Holcomb signed Executive Order 20-02, declaring an emergency related to COVID-19.
2. On March 11, 2020, the World Health Organization announced that COVID-19 is a pandemic.
3. On March 12, 2020, Governor Holcomb announced that non-essential gatherings were to be limited to no more than 250 people and that school corporations would be given a 20-day waiver of the required 180 instructional days for use as needed for the remainder of the 2019-2020 academic year.
4. On March 13, 2020, United States President Donald Trump declared a National Emergency as a result of the COVID-19 outbreak.
5. On March 16, 2020, Governor Holcomb called for the institution of a variety of additional restrictions as a result of the significant threat posed to the public by COVID-19, including, *inter alia*, the closure of bars, nightclubs, and restaurants to in-person patrons through the end of March 2020. Governor Holcomb also recommended that there be no in-person events consisting of more than 50 people.
6. On March 16, 2020, the White House called for Americans to avoid gathering in groups of more than 10 people and asked for them to stay away from bars and restaurants.
7. On March 19, 2020 Governor Holcomb directed a moratorium on eviction and foreclosure actions.

8. The Centers for Disease Control and Prevention (CDC) are recommending "social distancing" to limit the spread of COVID-19.
9. The operations of the Circuit and Superior Courts of Daviess County together with the other County offices often lead to a significantly larger number of individuals entering the Daviess County Courthouse on a given day.
10. The Courts have received numerous inquiries about **the** health and safety of litigants, counsel, members of the public, and the staff of court offices and other offices that are affiliated with the Courts.
11. The mitigation of the spread of COVID-19 is of the utmost importance for the protection of the citizens of Daviess County.
12. On March 16, 2020, the two (2) undersigned judicial officers issued an Administrative Order to restrict access to the Courthouse and have also posted notice at public entry points to judicial facilities advising individuals not to enter the building if they meet the criteria as set forth in the Indiana Supreme Court Order of 3-16-2020.
13. Courthouse security officers limit entrance to one entrance and screen the individuals, as well as limit the number of persons appearing for Court attendance.
14. Judges Gregory A. Smith and Dean A. Sobecki have communicated with the Daviess County Board of Commissioners, received information from the Daviess County Health Department, and further conferred with the Daviess County Clerk, Daviess County Prosecuting Attorney, advised the Daviess County Auditor of changes in employment policies related to Court and related department staff to allow social distancing, including the Chief Probation Officer of the Daviess County Probation Department, the Director of the Daviess County Community Corrections Program, the Director of the Daviess County CASA Program, staff members of the Daviess County Circuit and Superior Courts, and gave notice to the defense bar of Daviess County concerning steps being taken to minimize exposure, enforce social distancing and the need to continue matters deemed non-essential for health and safety purposes with respect to the COVID-19 situation and the threats posed by it.
15. On March 18, 2020, the Daviess County Attorney, acting on behalf of the Daviess County Board of Commissioners, issued an email to Daviess County Courts and press, notifying them that "until further notice" the Daviess County Courthouse will remain open to the general public. The Commissioners' press release also concurred in the Courts' screening protocols being applied to all persons entering the Courthouse.
16. The undersigned judicial officers request that the Indiana Supreme Court declare that an emergency exists in Daviess County pursuant to Indiana Administrative Rule 17 and make appropriate emergency orders for Daviess County, directing and allowing the Courts and Clerk of the Daviess County Circuit and Superior Courts to alter, modify, and suspend necessary procedures as provided for in the emergency plan set forth in Paragraph 16, below, in order to appropriately address this emergency.

EMERGENCY PLAN

The Daviess Circuit and Superior Courts' Emergency Plan, which shall take effect from March 20, 2020, and shall run through May 25, 2020, or as extended or reduced following review and notice to the Supreme Court (unless otherwise noted below) is as follows:

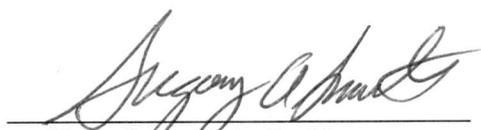
- I. There shall be a tolling, effective on March 16, 2020, and continuing through May 25, 2020, of all laws, rules and procedures setting time limits for speedy trials in criminal and juvenile proceedings, public health, mental health, and appellate matters; all judgments, support and other orders; and in all other civil and criminal matters before the Circuit and Superior Courts of Daviess County, Indiana. Further, no interest shall be due or charged during the tolled period.
- II. Criminal and civil jury trials shall be rescheduled to take place after May 25, 2020 (subject in criminal cases to the Constitutional right to speedy trial and the Constitutional protection against double jeopardy).
- III. All non-essential (i.e., non-adjudicatory, non-detention) hearings (excluding emergency matters, domestic violence hearings, and evidentiary hearings in criminal cases, juvenile detention hearings in JD, JM, JS or JC causes) shall be continued to take place on a date after April 6, 2020.
- IV. The Courts shall permit the use of telephone and/or videoconferencing in lieu of in-person appearances to the greatest extent possible, unless a litigant's due process rights would be violated.
- V. The Judges of the Daviess Circuit and Superior Courts have long had a policy permitting them to exercise general jurisdiction over any and all cases in each other's courts. That policy hereby is reaffirmed and shall continue during the period of this emergency.
- VI. To the extent that it is reasonable, orders to show cause shall be issued in civil cases in lieu of body attachments, including Title IV-D cases.
- VII. The Courts shall consider: (i) the existence of flu or flu-like symptoms in any attorney, self-represented litigant or witness expected to testify; (ii) exposure of such individuals to anyone who has or may have COVID-19; or (iii) status of such individuals in a high-risk category; to constitute "good cause" to either appear remotely or for the continuance of a hearing or trial setting, to the extent possible without violating statutory or constitutional rights.
- VIII. Any attorney or party wishing to appear remotely (e.g., via telephone or video conferencing) for any status conference or non-evidentiary hearing may do so without further leave of Court or filing of a motion upon notifying the Court of his or her desire to appear remotely in that fashion.
- IX. The Court may conduct hearings that involve agreed issues by conference call and will allow attorney only conferences wherever possible without the requirement of a motion.

- X. Any individual who has a hearing or trial and who is ill, or caring for someone who is ill or who is in a high-risk category may contact the Daviess County Clerk and/or the Courts via telephone to request a continuance or the opportunity to participate via telephone.
- XI. Approve the Courts' Administrative Order dated March 16, 2020, which limits admittance to the Daviess County Courthouse to parties, counsel and statutorily contemplated attendees and those with legitimate business with an office in the Courthouse with others requested to wait outside, in their vehicles or at home.
- XII. Consistent with the Indiana Supreme Court's Order of March 16, 2020, signs have been posted at the entrance to the Daviess County Courthouse advising individuals not to enter the Courthouse if they have:
 - A. Visited China, Iran, South Korea, any European countries, or any other high-risk country identified by the CDC in the previous 14 days;
 - B. Resided with or been in close contact with someone who has been in any of those countries within the previous 14 days;
 - C. Traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
 - D. Been asked to self-quarantine by any doctor, hospital, or health agency;
 - E. Been diagnosed with or had contact with anyone who has been diagnosed with COVID-19; or
 - F. A fever, cough or shortness of breath.
 - G. That Court security officers be directed to deny entrance to individuals who fall within any of the categories described in any of the subparagraphs of paragraph XII above.
- XIII. Additionally, litigants will be requested to attend Court, when possible, only with their attorney and any witnesses whom they need to call during their hearing or trial. Excess witnesses will be directed to wait outside until called.
- XIV. Members of the media shall be permitted access to any court proceedings to which they would normally be permitted access.
- XV. Those who are attending court hearings and trials will be encouraged to exercise "social distancing" both outside and inside the courtroom.
- XVI. To the extent that adequate sanitation materials (such as hand sanitizer and bleach wipes) are available, they shall be made available in each courtroom.

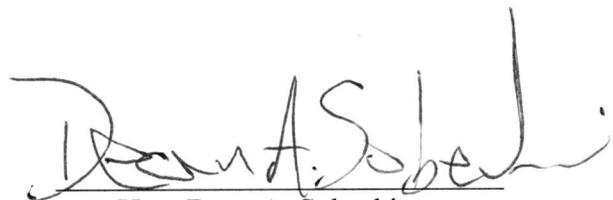
- XVII. To the greatest extent possible, certified mail service will be employed instead of sheriff service.
- XVIII. All cases deemed non-essential with in-court hearings shall be continued past May 25, 2020.
- XIX. In civil proceedings, protective orders regarding family or domestic violence, stalking, or a sex offense, civil commitments for mental health, emergency guardianships, juvenile detention, CHINS emergency proceedings and/or detentions, and emergency custody or parenting time, shall be deemed essential.
- XX. In criminal proceedings, bond hearings, arraignments/initial hearings of inmates shall be deemed essential proceedings.
- XXI. Either Judge, or the Referee, or any Special Judge, Senior Judge or Temporary Judge may, in his or her discretion, schedule and hold a hearing in any case not deemed essential.
- XXII. The Courts shall have the authority to limit spectators or other persons gathering in the hall ways or courtrooms.
- XXIII. The Courts shall set a review date of April 17, 2020, to determine if the emergency persists and then update the Indiana Supreme Court with that finding.
- XXIV. The postponement of any juvenile court proceeding or CHINS case shall not count against any time limit.
- XXV. The provisions of CR 4 shall be suspended during this emergency.

WHEREFORE, the undersigned judicial officers have hereunto set their hands this 20th day of March, 2020, and pray that the Indiana Supreme Court will grant the relief requested herein above.

Respectfully submitted,



Hon. Gregory A. Smith
Judge, Daviess Circuit Court



Hon. Dean A. Sobecki
Judge, Daviess Superior Court