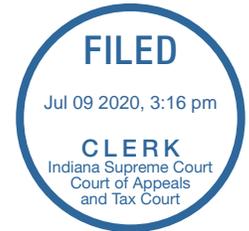


# In the Indiana Supreme Court

In the Matter of the Petition of the  
Clay County Courts for  
Administrative Rule 17 Emergency Relief.

Supreme Court Case No.  
20S-CB-176



## Order Approving Expansion of Operations Plan

By orders issued April 24 and May 13, 2020, this Court ordered trial courts statewide to submit plans for gradually resuming normal operations under limitations appropriate to the 2019 novel coronavirus (COVID-19) public health emergency. Pursuant to that order, the petitioning court(s) filed a second amended petition and plan (“Plan”) on July 8, 2020.

The Court finds that the Plan was made in coordination with appropriate local authorities and local justice system partners to account for local health conditions, facility readiness, and litigants’ needs; and that the Plan makes reasonable provisions for resuming normal staffing, providing public access to non-confidential proceedings, and resuming jury trials. A copy of the Plan is attached to this order and incorporated by reference.

Being duly advised, and pursuant to Indiana Administrative Rule 17 and this Court’s inherent authority to supervise the administration of all courts of this State, the Court ORDERS as follows:

1. All emergency relief previously granted to the petitioning court(s) under Administrative Rule 17 is deemed to expire as of the effective date of this order, except as provided by this Court’s “Order Extending Trial Courts’ Emergency Tolling Authority and Setting Expiration of Other Emergency Orders” issued May 29, 2020 in Case No. 20S-CB-123. However, this Court’s May 13, 2020 “Emergency Order Permitting Expanded Remote Hearings” and paragraph 3 of its May 13 “Order Extending Time for Expanding Trial Court Operations” in Case No. 20S-CB-123 (prohibiting jury trials before July 1 without prior approval of this Court) remain in full force and effect.
2. The Plan is approved, and the petitioning court(s) shall comply with its terms through its stated duration, subject to further order of this Court.

Done at Indianapolis, Indiana, on 7/9/2020, effective **May 29, 2020**.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush  
Chief Justice of Indiana

*AMENDED TRANSITION PLAN FOR GRADUALLY EXPANDING OPERATIONS***I. Administrative Rule 17 Components**

- A. In regard to the Circuit and Superior Court of Clay County, there will be a tolling through August 14, 2020 of all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings; public health and mental health matters; all judgments, support and other orders; and all other civil and criminal matters before the courts of Clay County. Further, no interest shall be due or charged during this tolling period. For purposes of Indiana Criminal Rule 4(A) and 4(C), and early-trial demands filed under Indiana Criminal Rule 4(B) before April 3, 2020, the tolled period shall be calculated from April 3, 2020 through August 14, 2020, and shall be further subject to congestion of the Court's calendar or local existing emergency conditions for good cause shown. For purposes of Indiana Criminal Rule 4(B) early trial motions filed after April 2, 2020 and before August 15, 2020, the motion shall be deemed to have been made on August 15, 2020 and shall be further subject to congestion of the Court's calendar or local existing emergency conditions for good cause shown.

In all other respects, the Courts of Clay County will adhere to the Indiana Supreme Court Order of May 29, 2020.

- B. The Court of Clay County shall continue to have discretion in regard to continuing jury trials. These continuances can be made on the Court's own motion or at the request of any party. Factors to be considered include the length of the trial (masks are mandatory); the number of high risk individuals summonsed for a given trial; the number of deferrals in regard to the COVID-19 questionnaire; high-risk lawyers, litigants, and witnesses. Any evidence of illness potentially related to COVID-19 as discovered through the screening process and/or self-reported by lawyers, litigants, witnesses, judges, staff; and the specific circumstances of the case indicating whether or not it needs to be resolved or it can be further delayed.
- C. The judges of the Clay Superior and Circuit Courts will be on a weekly basis reviewing the incarcerated inmates in the county jail for a potential pre-trial release either on bond reduction, own recognizance, pre-trial placement with community corrections, and/or day reporting especially in regard to non-violent inmates and juveniles in the detention facilities.
- D. The Courts of Clay County will continue the prohibition on issuing or serving writs of attachments, civil bench warrant, or body attachments pursuant to Trial Rule 64 until 12:01 a.m. on August 15, 2020.

## II. Planning

In preparation of this petition and transmission plan, the Courts have consulted with the Clay County Commissioners, Clay County Emergency Management, Clay County Health Department, Clay County Sheriff's Department, Clay County Prosecutor's Office, the local Department of Child Services, Clay County Community Corrections, Clay County Probation, CASA, and local members of the Clay County BAR Association in Clay County, Indiana

## III. Employment Procedures

- A. The Commissioners of Clay County have ordered all county employees to work all day every day. It is the intention of the Courts of Clay County to work all day every day. It is the intention of the Clay Circuit and Clay Superior Court, as a general rule, to follow that directive. Consistent with the opinion of the Staff Attorney of the Indiana Supreme Court in regard to Court employees being under the direction of the judge, and not necessarily the commissioners, the Courts, if the circumstances warrant it, may have certain employees work remotely from home when feasible under the circumstances. There are only a few high-risk individuals. The Circuit Court and Superior Court reserves the right to have any high-risk individual work remotely when feasible under the circumstances. Quite frankly, each employee of the Courts have their own office and may remove their masks unless and until they are required to interact with the public, litigants, or lawyers.
- B. Employee Screening. Employees who have had recent contact with someone who has COVID-19 shall not return to work until after a period of self-quarantine and remaining symptom free for fourteen (14) days.  
Employees are required to monitor their health and shall not report to work if, in the prior three (3) days, they have experienced: fever of 100.4 or greater; chills; muscle and body aches; headache; sore throat; cough; chest tightness, or shortness of breath; or any new loss of taste or smell. If onset of symptoms occurs at work, employees shall report and go home.  
Employees must report if anyone living in their household has tested positive for COVID-19 within the last 14 days.
- C. Employees are required to wear masks when interacting with visitors, staff, attorneys and members of the public, and are required to maintain a distance of at least six (6) feet from others.
- D. Employees are required to practice a frequent schedule of hygiene, including hand washing with soap and water, or using an alcohol-based sanitizer; avoid touching the face; sneezing or coughing into a tissue or the arm; and frequent disinfection of used items and surfaces.

Any equipment that is shared such as a copier shall be disinfected after each use. Although it is the duty of the custodians to regularly sanitize the courthouse itself,

- court staff will sanitize seats, chairs, desks, and relevant portions of the courtroom.
- E. Judges, staff, attorneys, litigants, or members of the general public who have a fever of 100.4 degrees or higher will not be allowed in to the courtroom and will be escorted by security from the courthouse, as necessary.
- Persons having trouble breathing and/or a dry unproductive cough should not be allowed in the courthouse or the courtrooms until medically cleared. Persons who have tested positive for COVID-19 should not be allowed in the courthouse and certainly would not be allowed in the courtrooms until after fourteen (14) days of isolation with no additional contact.

#### **IV. Courthouse Facilities Plan**

- A. All persons entering the courthouse are required to wear face coverings while in the courthouse. The Commissioners have ordered same; however, they require the public to buy their own masks. In regard to courtroom litigants, witnesses, attorneys, and other necessary parties, masks will be provided free of charge. Masks shall remain in place during the entire stay. A safe social distance of six (6) feet shall also be maintained. If an employee is not interacting with others, the mask may be removed while a social distance of six (6) feet is maintained at their workstation. To facilitate communications and a good record, judges, attorneys, parties and witnesses may remove their masks during testimony or argument while maintaining a social distance of six (6) feet.
- B. All hard surfaces, i.e. tables, chairs, door handles, etc. shall be disinfected after each hearing and, for common doors and areas, at least three times during the day and more frequently depending on use/traffic.
- C. Hand sanitizer dispensers shall be available at various locations around the courthouse, including every office.
- D. When necessary, plexiglass partitions may be installed when a six (6) feet distance cannot maintained due to the public's interaction with a court employee.

#### **V. Screening Procedures for the Public**

- A. Screening of persons entering the courthouse shall be conducted by courthouse security under the authority of the Clay County Commissioners and the Sheriff of Clay County. It is recommended to the Commissioners and to the Sheriff by the Courts that temperatures be taken and screening questions be answered before admittance to the courthouse. Facial covering shall be required.
- B. Screening questions shall include:
1. Are you experiencing fever, cough or shortness of breath, or have been recently diagnosed with COVID- 19;

2. Have you been in close contact with someone confirmed to have, or who is being evaluated for COVID-19;
3. Have you recently visited an area that is subject to quarantine as a result of COVID-19.

With only one courthouse security officer, the Courts are concerned as to whether or not this can actually be accomplished, so the Courts themselves have initiated their own screening process for anyone wishing to actually enter the courtroom or court offices will have their temperatures taken and anyone with a fever of 100.4 or greater; chills, muscle and body aches; headaches, sore throat, cough, chest tightness; or shortness of breath; or any loss of taste or smell would be denied entry.

Persons answering "yes" to any of the above questions will be denied access. Persons who exhibit symptoms of illness potentially indicating COVID-19 will be denied access. Those denied access will be provided information regarding the appropriate entity to contact.

## VI. Resuming Non-Emergency Hearings

- A. The Courts have already begun to resume in-person hearings subject to scheduling that allows for social distancing in the courtrooms and minimizing the number of people coming into, and congregating in, the courtroom on the 2<sup>nd</sup> or the 3<sup>rd</sup> floor and in the rotunda. Admittance to the courtroom will be on a first come first serve basis for the general public. All in attendance shall adhere to facial coverings and social distancing requirements.
- B. When live hearings are held attorneys, parties and witnesses will be required to wear masks unless speaking or testifying and maintaining a social distancing requirement. Attorneys, parties, and witnesses must arrive timely and depart promptly upon conclusion of the case at hand.
- C. Courts shall stagger their dockets to limit the number of hearings per hour in order to minimize contact and provide for social distancing. The Courts shall consider any motion for continuance when the attorney, litigant, or necessary witness is either over the age of sixty-five (65) or a "high-risk" person. The Courts will further consider, where possible and practicable, when witnesses will be allowed to testify remotely. The Courts will continue to hold remote hearings in regard to:
  1. Initial hearings in criminal cases;
  2. Bond reductions in criminal cases when the only witness is the defendant;
  3. All pre-trial conferences or status conferences in civil or criminal cases with the exception of the final pre-trial conference prior to the jury call;

4. Initial hearings, status hearings or uncontested review or permanency hearings in juvenile delinquency cases, when it appears to the Court that a personal appearance is not necessary  
Clay County has now been authorized to have a ZOOM account, in addition to telephonic remote hearings which hold up to 17 people. Clay County has also been approved for a grant to purchase Cisco WebEx within the next 30 days.
5. Attorneys to appear remotely or desiring a litigant or attorney to appear remotely, are to file a notice of remote appearance in the Court in which the matter is heard. Any litigant or material witness, especially a high-risk or vulnerable person, would be allowed to appear remotely for such non-emergency hearings.

## VII. Jury Trials

- A. Jury trials shall not resume before July 1, 2020.
- B. The Courts of Clay County are open to the litigants and the public with the exception of the continuation of certain remote hearings as outlined above. The public would be allowed to enter the courtroom subject to PPE requirements and social distancing on a first-come first-serve basis in regard to available seating. The Clay County Courthouse is old and huge and seats 90-100 people; however, with social distancing this number would be significantly reduced and seating has been marked at a 6-foot interval. The Clay Circuit Court with social distancing can seat 28 individuals in the gallery of the courtroom and at least 6 litigants and attorneys. The Clay Superior Court can seat approximately 26 individuals in their gallery and up to 6 litigants and their attorneys. With social distancing, the jury rooms would be able to hold a maximum of 14 people in Circuit Court and 14 people in Superior Court. The Circuit Court cannot use the jury box. Superior Court may be able to use the jury box on a 6-person jury.
- C. Summoned jurors will be asked the relevant health questions by court staff and have their temperature taken, and if appropriate subject to exclusion. Most of the county offices are located on the first floor of the courthouse. On the second floor of the courthouse is the Superior Court, the Clerk's Office, and Emergency Management, with a large rotunda with adequate seating outside the courtroom. On the third floor is the Clay Circuit Court, Juvenile Probation, CASA, and the Prosecutor's Office. The Circuit Court has a large rotunda outside of the courtroom capable of seating at least 28 people with social distancing. Superior Court could seat even more in the rotunda. Even though the Commissioners have required people to bring their own masks into the courthouse, in the event that a litigant, witness, attorney, or juror is without face-coverings, one will be provided by the Court.

It is the experience of the Court's that depending on the case approximately 30 persons would be required to be summonsed on a civil case or on a Level 6 Felony case or below. It is the experience of the Court's that approximately 75

jurors would have to be summonsed for a Level 5 Felony or above. Of these people summonsed, typically several people request deferrals, and some people simply do not show up. With the new COVID-19 jury questionnaire, as well as the COVID-19 letter to potential jurors, it is anticipated by the Courts that somewhere close to double the numbers of jurors will be required to be summonsed. It is anticipated that there will be a great many request of deferrals in regard to any jury trial. In order to maintain a safe social distance, jurors will be called to the Court in stages so that safe social distancing can be maintained in the courtroom and the rotunda areas at all times. For a 6-person jury, 26-28 people will be called at 9:00 a.m. and 26-28 additional jurors would be called at 10:30 a.m. This pattern of calling the jury in stages would continue on the higher level felonies with 26-28 people called every 1½ hours until a jury can be selected.

This may greatly limit or eliminate the ability of members of the general public to attend the trial during Voir Dire especially in a case of a Level 5 Felony or above. In a civil case or a Level 6 Felony or below, the jury box may only be used if only six (6) potential jurors are questioned at one time (Superior Court); however, most likely in all cases the jury will be selected from the gallery with Court improvements to be made to allow Voir Dire to be recorded. The Courts have concluded that the jury rooms can be used for a maximum of 14 people, however if additional alternates are needed, the courtroom will become the jury room to allow for social distancing. Except for side-bars, all matters to be heard outside of the presence of the jurors, shall be conducted in the Judge's chambers and shall be recorded.

- C. Recesses and deliberations shall be conducted in the courtroom. During these times, the court room will be locked.
- D. Automatic deferrals shall be granted for jurors who are "essential workers"; jurors with "high-risk" health conditions; jurors who have been exposed to COVID-19 and who have not been in quarantine and symptom free for the fourteen (14) days prior to jury service; jurors who are just returning to work after having been furloughed; and jurors exhibiting symptoms occurring upon reporting for jury service.

### **VIII. Court Supervised Services**

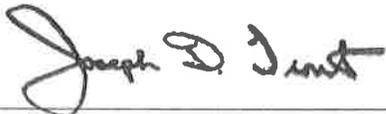
- A. All of the Courts' directives are contained in the Indiana Supreme Courts previous orders and dependent upon the Supreme Court's ruling on the Amended Petition for Emergency Relief. The Courts will abide by the Indiana Supreme Court's decision and will proceed accordingly.
- B. In regard to the Courts Supervised Services, Clay County Community Corrections and Clay County Probation each have implemented their own procedures and have resumed services in regard to pre-trial and post-conviction supervision. They have obtained all necessary PPE for staff in regard to services

to be provided. Clay County Community Corrections has resumed pre-trial and post-conviction electronic home detention including: registration; hookups; home checks; and meaningful hearing IRAS evaluations. Probation has assumed operations in full with the exception that home checks are done on an as warranted basis. Adult Probation is also participating in IRAS evaluations for meaningful initial hearings. CASA has resumed operations and is participating in court proceedings. CASA interactions in Child in Need of Services cases are either in person or conducted remotely as warranted the circumstances by any given case. CASA is adhering to the policy of wearing a mask in public and maintaining social distancing.

#### IX. Mental Health Services

Mental Health Services for Court personnel can be provided by Hamilton Center, Murphy Urban & Associates, and Be Well Indiana.

Respectfully submitted this 7<sup>th</sup> day of July, 2020.



HON. JOSEPH D. TROUT  
CLAY CIRCUIT COURT



HON. ROBERT A. PELL  
CLAY SUPERIOR COURT