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Indiana Supreme Court
Court of Appeals
and Tax Court

In the Indiana Supreme Court

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

Supreme Court Case No. 20S-CB-143

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 expansion of operations plan ("Plan") on June 15, 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 6/17/2020, **effective May 29, 2020.**

Loretta H. Rush
Chief Justice of Indiana

SHELBY COUNTY COURTS COVID-19 STANDARD OPERATING GUIDELINES (SOG) AND COURT TRANSITION PLANS.

For the foreseeable future, post Covid-19 operations will be different than pre-Covid-19 operations. The goal is to resume operations in a manner that mitigates risk of transmission of pathogens to employees, litigants, and members of the public while at the same time providing justice fairly and efficiently. In reaching this goal, everyone involved may likely need to readjust their expectations based upon past practices. This guidance is not intended to cover every situation, but to give a basic map for the journey we are about to take. Deviations are expected as conditions warrant.

1. Existing Emergency Rules*

Shelby County Courts request the following modifications to the Supreme Court's Order 20S-CF-143 issued March 18, 2020 and amendments and extensions thereto:

1. The Court authorizes the tolling of all matters, consistent with the order issued May 29, 2020 at 2:10 pm under 20S-CB-123 and amendments thereof.

2. Through August 14, 2020, this Court authorizes suspension of speedy trial demands consistent with the order issued May 29, 2020 at 2:10 pm under 20S-CB-123. Jury trials may resume after July 6, 2020. When appropriate, requests to continue jury trials will be granted.

3. Through July 6, 2020, this Court authorizes the courts to continue all pre-trial conference and non-essential hearings, hold hearings by counsel only whenever possible, and allow counsel to appear remotely while they begin to return to more normal operations. From now on and without limitation, the courts shall be permitted to use remote appearances as provided under Administrative Rule 14 as modified by the Supreme Court's order of May 13, 2020 and as provided under 20S-CB-123.

4. The courts may consider (a) the existence of any symptoms of illness or contagion in any attorney, self-represented litigant, or witness expected to testify; or (b) exposure of such individuals to anyone who has or may have an illness or contagion; to constitute "good cause" to either appear remotely or continue a court setting, to the extent possible without violating constitutional rights.

5. The courts as always, are authorized to reduce the number of court staff members working at the courthouse and/or to permit working remotely from home or other locations if feasible whenever the courts deem it necessary to do so; provided, however, that the courts shall maintain sufficient operations to handle the business before the court.

6. Until the Governor of the State of Indiana declares an end to the social distancing requirements, the courts are authorized, in their discretion and subject to applicable Constitutional limitations, to limit spectators (other than parties to the litigation and their attorneys) in courtrooms and the courthouse to the extent necessary to provide adequate social distancing.

7. The courts shall continue work with the State, defense counsel, and the Shelby County Jail to identify individuals who might be appropriate for early or modified release.

8. Writs of attachment will not be issued before August 15, 2020 at 12:01 am.

*To the extent that this section may be in conflict with 20S-CB-123 recently issued May 29, 2020 at 2:10 pm, this court incorporates by reference 20S-CB-123 which being an order of the Supreme Court overrules any conflicting portions of our proposed plan.

2. **Planning**--Meetings and consultations with the local health administrator, the Director of Shelby County Emergency Management, Courthouse maintenance, the three Commissioners, the Sheriff, the County Clerk, the Chief Public Defender, the President of the County Council, and the Prosecutor occurred in developing this plan. Meetings will continue as we re-evaluate our response.

3. **Employees**
   - A. Judges and the Chief Probation Officer will staff their offices to accomplish the tasks for the day with consideration to allowing employees to work remotely.
   - B. Employees reporting to work may use the north rear door to access the courthouse during normal working hours and when there is a line at the public entrance.
     - i. Employees shall not report to work if they show any signs or symptoms of illness. Employees shall Stay home/go home if have any one (1) symptom:
       - a. Fever of 100.4 or higher
       - b. Cough
       - c. Shortness of breath
     - ii. Stay home/go home if have two (2) or more symptoms:
       - a. Runny Nose
       - b. Chills
       - c. Sore throat
       - d. Diarrhea
       - e. Nausea
       - f. Vomiting
       - g. Repeated Shaking

h. Muscle aches
i. Abdominal pain
j. Loss of taste or smell

iii. If meet criteria under (a) or (b), stay home for at least 7 days from onset of symptoms and report your situation to your judge. You may not return to work until you have been asymptomatic without fever reducers for at least 72 hours.

iv. Close Encounters. If you are in close contact (within 6 feet for at least 10 minutes) with another person has a confirmed case of Covid-19 during that persons infectious period, you may continue to work from home but should quarantine for 14 days.

v. Employees in chambers shall use personal protective equipment (PPE) if directed to do so by their respective judges. Personal protective equipment may include but is not limited to masks, respirators, gloves, gowns, shields, etc. Employees may wear appropriate PPE even if not required by their respective Judge if the employee feels it is appropriate for them to do so.

vi. Employees working in the courtroom shall wear PPE as directed by the court. Employees are responsible for disinfecting their courtroom workstations with appropriate cleaning products before and after their shift. Employees shall assist the court in making sure social distancing is kept in the courtroom.

vii. Employees feeling undue stress or depression are urged to use the medical resources available to them including the County Clinic. Employees may also request accommodations with their respective judges.

viii. Judges and the Chief Probation Officer may alter employee working hours, location, and type of work to run the court and probation as fairly and efficiently as possible. Employees shall be prepared to be flexible and not rely upon all past practices as a future guide.

4. <u>Courthouse Facility Plan</u>

A. The courthouse facility plan was reached after consulting with the Commissioners, the Health Department, Probation, Prosecutors, and courthouse janitorial staff.

B. Entrance—Shall continue to be staffed by Courthouse security. Security will limit entry into the courthouse to those that are litigants and such members of the public for whom there is room given social distancing. Courthouse security will screen visitors by verbal questions, observations, and remote temperature sensing. Courthouse security will provide masks for those who do not have masks.

C. Public Areas—Seating in the courtroom and outside the courtroom will be marked for social distancing or otherwise will be made inaccessible. Seating will be

cleaned by Courthouse maintenance daily with supplemental cleaning as necessary by Court employees.

D. Courtroom—

i. Courtrooms will be kept locked and inaccessible to the public except during hearings. Litigants and spectators will be admitted to the courtroom shortly before the hearing and will be expected to leave shortly after the hearings. Hand sanitizers and you-keep pencils will be provided.

ii. No admittance to chambers or court's office space will be allowed for attorneys or litigants absent express invitation by the court. Litigants and their attorneys and witnesses will be expected to use self-provided PPE as appropriate and to practice social distancing. Courtroom seating will be construed to allow for social distancing.

iii. Frequently touched surfaces will be sprayed with disinfectant each morning and afternoon by court staff. Court staff will also disinfect shared equipment before switching and court personnel will wear masks in the courtroom. To satisfy the open and public requirement, there will be adequate seating in each courtroom to allow a minimum of two spectators. No Court anticipates utilizing the broadcasting permissions but may use it if appropriate or necessary.

iv. General Hearings-

a. Counsel and their clients will be seated at counsel table. Counsel and client may practice social distancing. They shall don appropriate PPE. Counsel and clients shall remain at their tables unless permission is granted otherwise.

b. Witness will testify from the witness stand from either behind clear barriers or with a clear face shield unless it is agreed otherwise.

c. Exhibits shall be e-filed ahead of time if possible as proposed exhibits. When practical, if the exhibits are not e-filed, sufficient copies should be made to for each litigant and the court so that the exhibit will not have to be passed from person to person.

d. Funding is being sought to reopen the balcony in the Circuit Court courtroom to expand capacity for social distancing.

v. Initial hearings/Proceedings Supplemental—Where large numbers of people have been summoned to court, court security and court staff will monitor the number of people in the courtroom and areas immediately outside the courtroom. When it appears that space is not sufficient to practice social distancing, individuals will be asked to exit the courthouse to return at a later time when space becomes available.

vi. Jury Trials- Where appropriate, in cases that require a large dip in the pool of potential jurors, jury selection will take place at the Strand Theater, with the trial itself to be held in the Courthouse. Otherwise, juror selection will occur in waves in the courtrooms practicing social

distancing. Jury selection via video may also be considered if the parties agree to it. Given the size of the courtrooms, it may become necessary for the Judges to switch courtrooms temporarily for certain jury trials. Jury deliberation may occur in the courtroom with the Judge and counsel finding other locations for arguments out of the presence of the jury. Alternatively, jury deliberation may also take place in the commissioner's room or other suitably large spaces on the governmental campus.

E. Additional Courtroom--Currently, Shelby County has 4 judicial officers but only 3 courtrooms. We are seeking funding to construct a 4th courtroom to spread out caseloads to enhance social distancing efforts.

F. Probation—Access to probation will be limited to those that have appointments and appoints shall be scheduled so as to limit crowding in the waiting room. The probation waiting room will be configured to allow for social distancing while seated. Individual probation officers will sanitize their spaces before and after every visit from a probationer.

G. All visitors will be expected to leave the courthouse once their business has been concluded. Persons will not be allowed to dawdle, linger, dally, or otherwise delay their exit from the Courthouse at the conclusion of their business.

H. Mail will be opened by employees who either wear gloves or who will promptly wash their hands after they are finished opening the mail. Mail may also be left undisturbed for a period of time to allow any pathogens to die a natural death.

5. <u>Screening Procedures for the Public</u>

A. Screening procedures for the Public were developed after consulting with the Health Department, Commissioners, and Court security.

B. <u>Generally.</u> Other than employees, all individuals entering the courthouse shall be screened for security and for health and shall be required to wear a mask. Health screenings may include but not limited to questioning and remote temperature sensing. Public access to the courthouse will be at the rear entrance. The public will keep proper social distancing as they wait to be processed. If they do not have masks, one will be provided.

C. Litigants.

i. Until social distancing is no longer appropriate, the litigants shall be prepared to show identification so that their names can be compared to those on the docket for the morning.

ii. Litigants shall be admitted to the courthouse within 30 minutes of their scheduled hearing. Litigants include those named as a party to the lawsuit and their attorneys. Attorneys may bring only either one staff member or one other attorney with them as well. Litigants do not include family or friends or associates not named in the lawsuit or legal matter. Litigants and their attorneys shall leave the courthouse promptly after the conclusion of their hearing. Victims of crimes of violence or sex

offenses or those seeking protective orders may bring one support person with them.

D. Voters.

i. Shall be admitted to the courthouse at the rear entrance after going through security. Voters shall be encouraged to wear masks but may not be denied entry based upon a lack of PPE.

ii. A voter path with appropriate social distancing marks shall be placed in the courthouse. Voters may not stray from the path. Voters outside the courthouse shall remain socially distant. It may be necessary for voters to be given a time to report back to alleviate crowds at the entrance.

E. Spectators and Media. Courthouse security shall allow at least two spectators for any non-confidential hearing in any court. If more than two spectators wish to be present at a given hearing, security determine if there is room for more than two (2). Spectators will be admitted on a first come first served basis with other spectators being allowed entry as space permits. Media will be allowed in the courtroom as space allows, with admission being first come first served.

6. <u>Resuming Non-Emergency Hearings</u>

A. Each court will resume more normal operations as their individual caseloads and personnel permit. We will address the following areas:

i. Reduce trips to the Courthouse.

a. Use remote appearances. The courts plan to take advantage of the increased permissions under Admin Rule 14 in allowing remote appearances.

b. Adjust scheduling. For example, Superior Court 2 has eliminated pre-trials in misdemeanor cases where the Defendant is represented by counsel. Now, those cases are just set for bench trial. First pre-trials were rarely productive as far as disposing of cases. They were just an opportunity to negotiate with the prosecutor. Plea agreements, esp. on time served and probationary cases will be increasingly done remotely.

c. Prioritize Cases. As we resume more normal operations priority will be given to pre-Covid-19 defendants in jail on a pre-trial basis.

d. Encourage the use of summons instead of warrants where appropriate.

ii. Screen litigants and witnesses for symptoms and signs of illness.

B. Witnesses

i. Court expects witnesses to use PPE as appropriate and to practice social distancing.

ii. Exhibits – that appear to be unsanitary shall not be admitted or admitted in an alternative format. When practical, Courts will expect exhibits to be e-filed in advance.

C. Budget. Court will seek out funding and grants for all Covid-19 related expenses.

i. AV equipment for remote hearings.
ii. Costs associated with jury selection at alternative venues.

D. Senior Judges- In order to assist in remedying the backlog of trials and hearings created by this crisis, the Shelby Circuit Court, Superior Court 1 and Superior Court 2 each request and are granted ten (10) additional Senior Judge days for the remainder of the 2020 calendar year to use as necessary.

7. <u>Jury Trials</u>

A. Jury trials may resume after July 6, 2020 while recognizing the tolling provisions authorized by 20S-CB-123. The courts will employ a variety of measures to lower the risk of exposure to pathogens including but not limited to :
   i. Jury selection in appropriately sized rooms for social distancing.
   ii. Shifts of jury selection.
   iii. Use of appropriate PPE. The court will make appropriate PPE available.
   iv. Provide supplemental notice to prospective juror panels regarding Covid-19 and the precautions the court will taking.

B. Will prioritize those in custody before the health emergency and then others in custody. Civil jury trials will likely be delayed if they cannot agree to alternative measures.

C. When drawing a panel literature will be sent to the panel informing them of steps being taken to reduce their risk and to allow the jurors to express particular concerns they may have regarding any pathogens.

D. As discussed above, juror selection will be in one of three methods, 1. Larger venue, 2. Multiple panels, or 3. Some form of remote selection if agreed to by all parties.

E. Deferrals will be judiciously granted and larger panels will be drawn to accommodate for anticipated non-compliance and deferral requests.

F. Meals will be individually packed for each juror from local restaurants.

G. Expenses will go up as it relates to increased number of jurors call and for any remote venues.

H. Deliberations will take place in larger rooms to allow for social distancing. Examples include but are not limited to, using the actual courtroom for deliberations, or using a commissioner meeting room.

I. The resumptions of jury trials was discussed with members of the health department, Sheriff's Department, Commissioner's, members of the defense bar, and prosecutor's office.

8. <u>Court Supervised Services</u>

A. Probation
   i. Probation is located in the courthouse, and therefore all probationers will be screened at the entrance by security for symptoms of illness. Probationers will also be provided with a mask.

ii. Probation officers will schedule appointments in a staggering fashion so as to limit the number of people in the waiting room.
iii. Probation officers will wear masks and will move to larger rooms in the probation department if necessary to maintain appropriate social distancing.
iv. Probation officers will appear remotely in court when practical and Constitutionally permissible to do so.
v. Probation officers will continue to use remote reporting tools like call-in services, kiosks, and remote video conferences.

B. Community Corrections

i. Community Corrections is housed in a standalone building. Visitors will be screened by questions and temperature before being allowed to enter. Home visits by compliance officers will continued to be conducted outside the residence following social distance standards.
ii. Remote reporting tools like kiosk check-in will be used. Community Corrections witnesses will be allowed to participate in hearings remotely consistent with Constitutional limitations.
iii. Visitors to Shelby County Community Corrections will be required to wear masks and staff interacting will also be required to wear masks. Visits will be conducted with either a barrier between or outside.
iv. Drug screening will resume on or about June 1, with proper PPE for everyone involved. They will be screened for illness prior to providing a sample.
v. To date, cash money has not been accepted at Community Corrections to help reduce exposure. They anticipate resuming cash shortly.