

IR 2020.03.0125

**IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO**

MARY L. SWAIN
CLERK OF COURTS
MAR 19 2020
FILED in Common Pleas Court
BUTLER COUNTY, OHIO

In Re:

**ORDER DECLARING A JUDICIAL : JOURNAL ENTRY &
EMERGENCY AND CONTINUITY : ADMINISTRATIVE
OF OPERATIONS OF THE COURT : ORDER
BASED UPON COVID-19 PANDEMIC :**

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Preamble:

In *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 26-27, 25 S.Ct. 358, 49 L.Ed. 643 (1905), the Supreme Court of the United States of America stated: "the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. * * * Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."

While more than a century has passed since this learned passage was authored, the Court today is still instructed by how the words ring true in light of the global "pandemic" named coronavirus disease 2019 (COVID-19). Therefore, the Court of Common Pleas of Butler County, General Division herein does order and establish the following Order Declaring a Judicial Emergency.

Findings of Fact:

The Judges of the Butler County Court of Common Pleas; General Division make the following findings of fact:

1. The Center for Disease Control and Prevention (CDC) is responding to an outbreak of respiratory disease caused by a new coronavirus that was first detected in China and which has now been detected in more than 100 locations internationally, including in the United States. The virus has been named "SARS-CoV-2" and the disease it causes has been named coronavirus disease 2019 (abbreviated "COVID-19").

2. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak a "public health emergency of international concern". On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19. On March 11, 2020, WHO publicly characterized COVID-19 as a global "pandemic" requiring urgent and aggressive action to control the spread of the virus.

3. According to the CDC, more cases of COVID-19 are likely to be identified in the United States in the coming days, including more instances of community spread. It is likely that at some point, widespread transmission of COVID-19 in the United States will occur. Widespread transmission of COVID-19 would translate into large numbers of people needing medical care at the same time. Schools, childcare centers, and workplaces may experience more absenteeism. Mass gatherings may be sparsely attended or postponed. Public health and healthcare systems may become overloaded, with elevated rate of hospitalizations and deaths. Other critical infrastructure, such as law enforcement, emergency medical services, and sectors of the transportation industry may also be affected. Healthcare providers and hospitals may be overwhelmed. At this time, there is no vaccine to protect against COVID-19 and no medications approved to treat it. Non-pharmaceutical interventions would be the most important response strategy.

4. The United States Government has taken unprecedented steps to respond to the coronavirus and protect the health and safety of Americans. The U.S. Government has cautioned that Americans should be prepared for the possibility of a COVID-19 outbreak

in their community. The community can take measures to reduce the spread of COVID-19. As a vaccine or drug is not available for COVID-19, community-based interventions such as school dismissals, event cancellations, social distancing, and creating employee plans to work remotely can help slow the spread of COVID-19. Individuals can practice everyday prevention measures like frequent hand washing, staying home when sick, and covering coughs and sneezes. Decisions about the implementation of community measures will be made by local and state officials, in consultation with federal officials as appropriate, and based on the scope of the outbreak and the severity of illness. Implementation will require extensive community engagement, with ongoing and transparent public health communications.

5. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01 D, "Declaring a State of Emergency," in response to the growing COVID-19 public health crisis. Governor DeWine and public health officials urged people to avoid large indoor gatherings to minimize close contact and potential exposure to the coughs or sneezes of others. Many Ohio colleges are going to online learning and extending spring breaks to keep students out of classrooms. Governor DeWine has ordered that all Ohio schools take an extended three-week spring break beginning Monday, March 16, 2020. Sporting events have been canceled, including OHSAA, NBA, MLS, MLB, NCAA, and all Cincinnati, Cleveland, and Columbus professional sports teams. Many local attractions have closed, including concerts, shows, museums, and other events. On March 12, 2020, Governor DeWine and Ohio Department of Health Director Amy Acton, M.D., MPH, signed an order to prohibit mass gatherings in the state of Ohio. Mass gatherings are defined as any event or convening that brings together 100 or more persons in a single room or single space at the same time such as an auditorium, stadium, arena, large conference room, meeting hall, theater, or any other confined indoor or outdoor space. Subsequent to that action, bars and restaurants were ordered to essentially cease operations other than delivery and take-out service.

6. On March 15, the CDC provided additional guidance that mass gatherings of people larger than 50 should be canceled or postponed. Thereafter, on March 17, the ODH redefined mass gatherings to be 50 or more people and specifically prohibited such mass gatherings. ODH also strongly recommended against any gathering of 10 or more people, not from the same family. On that same date, the State of Ohio canceled the primary election.

7. The Common Pleas Court - General Division after consulting with and accepting guidance from many local and state agencies, and upon recommendations obtained from the foregoing, including the U.S. Government, hereby declares an emergency and makes the following orders regarding the continuity of operations of the Court.

8. Based upon these findings of fact, the Court of Common Pleas; General Division, has developed a continuum of flexible responses in case the public health crisis escalates, and to be in effect until such time as the response to the COVID- 19 local health crisis has resulted in control of the spread of the disease or otherwise until further order of the court. The continuum of responses is intended to protect public health, to maintain essential court functions, and to continue to protect the rights of all individuals subject to the authority of the court.

THEREFORE, IT IS HEREBY ORDERED:

1. The local rules of court for the General Division may be temporarily adapted to allow court flexibility, within constitutional limits, in response to the public health emergency.

2. The Court's security policies may be temporarily amended or supplemented to protect public health while maintaining essential court functions.

3. The Court's Personnel Policies and Procedures Handbook and other usual and customary human resource provisions may be temporarily adjusted to maintain essential court operations and functions.

4. The Court authorizes the use of audio-visual devices and technologies for all actions and proceedings. Decision to utilize said devices will be made by the assigned judge.

5. This public health emergency may be considered a finding of "just cause" for continuances deemed necessary by assigned judges on a case-by-case basis. See, 2020 Op. Att'y Gen. No. 2020-02.

6. The Court will have the lawful authority, within constitutional limits, to do and direct to be done all things necessary to ensure the orderly and efficient administration of justice for the duration of the declared public health emergency.

7. Pursuant to the above lawful authority, all criminal and civil jury trials are suspended for a period of 30 days. With regard to criminal matters, due to the effect of the above public health recommendations on the availability of counsel and court staff to be present in the courtroom, and the Court's reduced ability to obtain the adequate spectrum of jurors, the continuances implemented by this Administrative Order, are subject to R.C. 2945.72(H), "Extension of Time for Hearing or Trial." The Court specifically finds the public health interests are paramount and the ends of justice are best served by the Order.

However, any criminal case that may implicate a constitutional "speedy trial" issue for which a waiver from the defendant has not been obtained is not expressly incorporated in the 30 days as laid out in this order. In those circumstances, any party to a case may motion the court for a continuance, or the Court may *sua sponte*, and for good cause shown, order a continuance, even if "speedy trial" issues exist. Reasons for any requested continuance during the pendency of this order may include the global pandemic COVID-19. The ultimate decision whether to grant or deny the motion will be made by the assigned judge. The assigned judge also maintains complete authority, and autonomy, to require the parties to appear for a hearing, on the record, as to any continuances. See, *generally*, 2002 Op. Att'y Gen. No. 2002-02.

8. For any criminal case that must proceed, jurors will be instructed to utilize a "call-in" system to determine the necessity of their appearance.

9. Criminal arraignments may be held by video from the Butler County Jail, Resolutions, any institution of the Ohio Department of Rehabilitation and Correction, and any other facility deemed appropriate by the assigned judge.

10. Further, all criminal proceedings will be reviewed on a case-by-case basis, with an emphasis on expediting those cases involving incarcerated individuals.

11. All in-person civil proceedings, except emergency actions, are suspended for a period of 30 days, from the date of the filing of this Order. Civil proceedings may be conducted via telephone at the discretion of each individual judge. Any person who is unable to access e-filing can either utilize regular United States mail or hand-deliver any filing to the Clerk of Courts.

12. All Sheriffs sales are suspended for 60 days. The Sheriff is ordered to return the order of sale without execution in all Sheriffs sales cases on the following dates: March 26, April 2; 9, 16, 23, 30, May 7 and 14, 2020. All private selling officer sales are suspended as well and the private selling officer shall return the orders of sale. If any sales were to take place exclusively by an online only auction, a motion to the individual judge may be filed, asking for a limited exception to this order.

13. Further, the Court herein expressly reserves the right and full authority to further extend the time suspensions set forth herein, for a greater period of time, to include the duration of the public health crisis and public emergency.

14. All individuals, including Court judicial officers and personnel, desiring to enter the courthouse may be subject to available health screening or testing and excluded from admission based upon the results of such screening or testing.

15. Any Court employee who exhibits signs of illness must notify their direct supervisor by telephone or e-mail and shall not come into the courthouse, probation department, or location so required of them to report for duty. Any individual within the courthouse who exhibits signs of illness shall be directed to leave the building immediately and seek medical advice before being permitted to re-enter the building at a later date.

16. The Court shall attempt to minimize the social interaction of litigants, attorneys, witnesses, jurors, law enforcement personnel, and judicial personnel by continuing non-

essential proceedings or conducting proceedings, to the extent practicable, by remote video, telephonic or other available technological means.

17. Judicial officers may file all orders electronically (e-filing), serve orders by email notification, and use video and telephone conferencing in an effort to reduce the number of people who come into the courthouse each day.

18. In the event that a proceeding was conducted electronically, where a formal record of proceedings is desired or necessary, and was unable to be recorded in the normal practice of the court, the Court and parties shall jointly craft a statement in lieu of a transcript of the proceedings in accordance with the appellate rules.

19. Employees of the Court not on duty in the courthouse shall work, to the extent possible, remotely, and in accordance with the directives and expectations of their department head and/or supervisor.

20. When the emergency subsides, the Court will enter an order declaring an end to the emergency and a resumption of normal operations.

21. This "Temporary Order" is ordered to be served on the Supreme Court of Ohio, Ohio Judicial Conference, Municipal Courts in Butler County, Area Courts in Butler County, Butler County Clerk of Courts, Butler County Adult Probation Department, Butler County Bar Association, Butler County Prosecutor's Office, Butler County Public Defender's Office, Butler County Sheriff, Butler County Board of Health, Butler County Commissioners, the website of this Court, and distributed to the media.

IT IS SO ORDERED.



Michael A. Oster, Jr.

Administrative Judge



DATED