

IN THE SHAKER HEIGHTS MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

In re: )  
SUPPLEMENTAL ORDER OF COURT ) Judge K.J. Montgomery  
DURING JUDICIAL EMERGENCY )  
AND CONTINUITY OF OPERATIONS )  
REGARDING JURY TRIALS DUE TO ) Journal Entry  
COVID-19 )

On March 16, 2020, this Court declared a judicial emergency due to COVID-19. The Court declared that it would develop a continuum of flexible responses to protect the public, the Court community and the Court's employees while properly addressing Court proceedings.

There is a need to amend and supplement the Court's order during this time as the Court continues to operate in the state of "Open with Restrictions."

The Court finds the following facts:

1. Whereas, on April 27, 2020, Gov. Mike DeWine and Lt. Gov. John Husted announced the Responsible RestartOhio Plan which protects the health of employees, customers, and their families; supports community efforts to control the spread of the virus; and, responsibly gets Ohio back to work; and,
2. Whereas, on April 30, 2020, Dr. Amy Acton, Director of the Ohio Department of Health, signed the Director's Order that Reopens Businesses, with Exceptions, and Continues a Stay healthy and Safe at Home Order; and,
3. Whereas, the Ohio Public Health Advisory System was designed to supplement existing statewide orders through a data-driven framework to assess the degree of the virus' spread and to engage and empower individuals, businesses, communities, local governments, and others in their response and actions; and,
4. Whereas, on July 23, 2020, Lance Himes, Interim Director of the Ohio Department of Health, signed the Director's Order for Facial Coverings throughout the State of Ohio; and,
5. Whereas, this Court extends the Judicial Emergency Order until the pandemic subsides and an order declaring an end to the emergency is issued; and,
6. Whereas, to continue Court operations in a safe manner for the Court's employees, visitors to the Court, and citizens of this Courts' jurisdiction; and,
7. Whereas, the number of COVID-19 cases in Cuyahoga County has increased since the Court's last order. Specifically, the daily case count on April 28 was 73 and on July 28 was 168; and,
8. Whereas, jury trials present unique challenges. The Court recognizes that jury selection in this jurisdiction involves a jury venire which often consists of individuals in the categories identified by the Centers for Disease Control and Prevention as being particularly at risk, individuals involved in essential public functions, and

- individuals responsible for children unable to attend school or daycare due to the pandemic; and,
9. Whereas, based upon recommendations from the Cuyahoga County Board of Health, it will be a challenge to conduct jury trials while taking the necessary precautions to reduce the possibility of exposure to the disease, not only for jurors but other trial participants as well; and,
  10. Whereas, jury trials force close contact between attorneys who must communicate with clients and others during the course of the trial; and,
  11. Whereas, the Court has considered reasonable alternatives to conducting jury trials in areas other than the Shaker Heights Municipal Court, but none provide the level of safety or security required to properly convene and conduct civil or criminal jury trials;
  12. Whereas, the Court met with and received the recommendations of the Cuyahoga County Board of Health to ensure the utmost safety possible in Court and jury proceedings and, the Court has implemented those recommendations.

IT IS THEREFORE ORDERED:

1. If there is any discrepancy with this and previous orders, this order supersedes the March 16, 2020 and the June 5, 2020 order.
2. The local practices of the Court may be temporarily adapted to allow the Court flexibility within constitutional limits in response to the public health emergency.
3. The Court's security procedures may be temporarily amended or supplemented to protect public health while maintaining essential Court functions.
4. The Court's Personnel Policies and Procedures Handbook and other usual and customary human resources provisions may be temporarily adjusted to maintain essential Court operations and functions.
5. The Shaker Heights Municipal Court shall continue to function under current social distancing protocols as ordered by the Governor of Ohio. Should the Governor order further protective protocols, all individuals within the courthouse shall abide by said protocols. These protocols must be followed at all times including during jury trials.
6. The Court authorizes the use of audio-visual and telephonic devices and technologies for all actions and proceedings, except for a trial by jury unless particular appearances can be properly done via technology like zoom and are agreed to by all parties to the case and the judge. Other official proceedings may be held by the judge or a magistrate on the record and using audio-visual technology from the courtroom with parties appearing remotely as authorized by the Judge.
7. Jury trials require careful planning in order to provide maximum safety in these emergency times. The Cuyahoga County Board of Health has been consulted regarding the Shaker Heights Municipal Court's jury operations and with the safety of court visitors, jurors, staff and the public in mind, it provided to the Court important suggestions that have been implemented. The following is a partial list of some of the

safeguards and procedures now in place. The following list *is not exclusive* and subject to change by the Court from time to time:

- a. Visitors to the Court shall have temperatures taken and shall not be permitted to enter with a fever of 100 degrees or more.
- b. Visitors shall be asked (verbally/by written form) about symptoms such as:
  1. Have you felt feverish?
  2. Have you had a fever of 100 degrees or more in the last few days?
  3. Have you lost your sense of taste or smell?
  4. Are you feeling ill today?
  5. Have you been in isolation or quarantining? (If either is affirmative, an *asymptomatic* person may be admitted wearing a mask.)

Any affirmative responses shall be reason to refuse admission to the building and initiate postponement of the person's business with the Court.

- c. Visitors shall be specifically directed to locations and shall not be permitted to roam freely in the public spaces. Court visitors shall be limited to those with Court business. Public areas shall be marked with places to wait in line when and if necessary to wait in any sort of line in the public areas.
- d. In the courtrooms, social distanced seating will be marked. For jury trials, the courtrooms will be marked with seating for jurors and others. The venire shall be limited to 10 participants in each courtroom. The sworn jury shall be positioned in Courtroom I throughout the room with their location assigned for the duration of the trial. For matters not involving the jury during a trial, others like the judge and parties to the trial shall leave Courtroom I and convene out of the presence of the jury in Courtroom II. Proceedings in both courtrooms shall be recorded pursuant to law. The jury shall deliberate in Courtroom I.
- f. Plexiglass partitions shall be set up by the city of Shaker Heights as agreed by the court and city. Partitions shall be placed on such places as trial tables and between the witness box, judge and bailiff box.
- g. Hand sanitizer shall be available throughout the building and city staff shall disinfect and wipe surfaces and areas throughout the day when trials are in session. Hand sanitizer shall be available to jurors personally to use for the passing of exhibits, etc.
- h. All in attendance shall be instructed to wear masks covering nose and mouth, to not touch their faces, remain socially distanced and to frequently wash and sanitize their hands.
- i. Jurors shall be directed to use restrooms containing paper products and sanitizing products. A trash can shall be placed by restroom doors in order to allow handles to be accessed with paper towel then disposed into the receptacles. Instructional postings will remind jurors to practice safe and sanitary procedures.
- j. No eating shall occur in either courtroom or the public Court spaces during a trial.
- k. Should media request Court access, the Court will endeavor to accommodate those requests by permitting unmanned audio/video equipment to be placed in the


Court. These requests will be accommodated to the best of the Court's abilities balancing the public's right and the safety of persons required to be at Court.

- l. Regarding the number of people permitted in the courtrooms, although non-essential functions like parties are to be limited to 10; this limit is not placed upon essential infrastructure like the legal system or government buildings. Rather, the number of people is tempered by the requirements of social distancing, mask wearing, cleaning products, etc.
  - m. Other guidelines shall be implemented from time to time to improve the Court's procedures as needed.
8. To accommodate trials and public health recommendations regarding trials, the period of the continuances implemented by this Order are excluded under O.R.C. 2945.72 and Ohio Constitution 1, Sec. 10. The Court specifically finds that the ends of justice served by ordering the continuances outweighs the interest of the public and any defendant's right to a speedy trial.
  9. Further, this Court finds that a continuance of trial which supersedes a defendant's speedy trial right is hereby considered permissible in the Shaker Heights Municipal Court under the Ohio Constitution and O.R.C. 2945.72(H) as a "reasonable continuance granted other than upon the accused's own motion", due to the current pandemic levels.
  10. Due to these emergency circumstances and based upon the foregoing reasons, the Court may reset trials from time to time on its own motion.
  11. Any continuance of a jury trial will be docketed with the COVID-19 Trial Continuance Order, as follows:
    - a. "The trial of this matter is continued to a future date. This continuance is required for the administration of justice. Due to the continued risk of community spread of the COVID-19 virus, and in order to maintain the safety of the public, Court employees, litigants, attorneys, and others whose business is at the Shaker Heights Municipal Court, the Court, by Supplemental Judicial Emergency Order dated September 2, 2020, has limited its operations and set parameters for the selection of cases for jury trials. The Supplemental Judicial Emergency Order is intended to allow the Court to safely and responsibly continue operations. The Court has considered reasonable alternatives to conducting jury trials in areas other than the courthouse. However, the serious threat to the public health is good cause to continue this jury trial. Cases of COVID-19 continue to remain at high levels, placing Cuyahoga County in the Public Alert Level of Yellow. Further, on July 13, 2020, Chief Justice Maureen O'Connor provided guidance to the courts and stated, "We must be cautious about who we require to appear, and we should require in-person appearance only in cases with immediate need. We must remember those vulnerable populations and their risk to appear." This order considers both the Defendant's statutory and constitutional rights to a speedy jury trial, and determines that a continuance of trial which supersedes a defendant's speedy trial right is hereby considered permissible by the Shaker Heights Municipal Court under the Ohio Constitution and O.R.C. 2945.72 (H) as a

“reasonable continuance granted other than upon the accused’s own motion.”  
Based upon the foregoing, and for good cause shown, 1) if a trial date has been journalized, the time between the journalized trial date through the day before the next scheduled trial date will not be counted when calculating defendant’s speedy trial time, or 2) if a trial date has not previously been journalized, the time between the date of the last journalized pre-trial, including a video-conferenced or telephonic pre-trial, or any other pre-trial hearing through the day before the next scheduled trial date will not be counted when calculating defendant’s speedy trial time.”

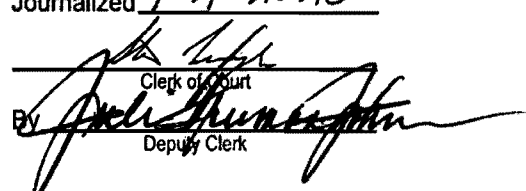
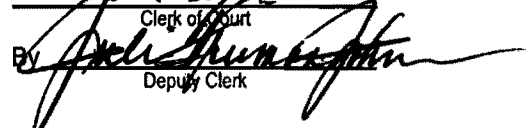
12. Criminal Jury Trials
  - a. Jury trials will not commence until **September 24, 2020**.
  - b. The use of video conferenced and teleconferenced criminal proceedings shall continue. If necessary, in-person criminal proceedings will be limited to the number of people that permits the observance of the social distancing requirement of six feet spacing.
13. Civil Jury Trials:
  - a. Jury trials in civil cases will not commence until **September 24, 2020**.
  - b. The use of video conference and teleconference in civil proceedings will continue. If necessary, in-person court proceedings and in-person chamber proceedings will be limited to the number of people that permits the observance of social distancing requirements of 6 feet spacing.
14. Bench Trials:
  - a. Bench trials are permitted, however proper protocols must be in place to accommodate social distancing standards for the safety of all parties.
15. The effect of this order is retroactive to June 5, 2020, and shall remain in effect until further order of the Court.
16. This Order shall be provided to the Supreme Court of Ohio, Ohio Judicial Conference, Municipal Courts in Cuyahoga County, Cleveland Metropolitan Bar Association, the website of this Court, and distributed to the media.

**IT IS SO ORDERED.**

  
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Judge K.J. Montgomery

9.2.2020  
Date

Journalized 9-2-2020

  
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Clerk of Court  
BY   
Deputy Clerk