



TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
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MICHAEL T. MCHUGH
CHIEF JUDGE

SCOTT WILSKER
COURT ADMINISTRATOR

MEMORANDUM

TO: All Judges in the Twentieth Judicial Circuit
Amira Fox, State Attorney
Kathleen A. Smith, Public Defender
Ita Neymotin, Regional Counsel
Clerk of Courts of Lee, Collier, Charlotte, Hendry, and Glades Counties
Sheriffs of Lee, Collier, Charlotte, Hendry, and Glades Counties
County Managers of Lee, Collier, Charlotte, Hendry, and Glades Counties
Scott Wilsker, Trial Court Administrator

FROM: Michael T. McHugh, Chief Judge, Twentieth Judicial Circuit *MTM*

DATE: April 16, 2020

RE: COVID-19 – Courts Remain Open with Limitations to Mitigate effects of COVID-19
AMENDED¹

In response to the outbreak of the Coronavirus Disease 2019 (COVID-19), the Governor of Florida has declared that a state of emergency exists and the Surgeon General and State Health Officer have declared that a public health emergency exists.

In AOSC20-12 (issued March 11, 2020) and AOSC20-13 (issued March 16, 2020), the Florida Supreme Court expressed that preparing for the impact of COVID-19 on court operations is a high priority for the Florida State Court System, and directed that all chief judges of the circuit courts take such mitigating measures as may be necessary to address the effects of the COVID-19 outbreak on their respective courts, while keeping the courts open to the fullest extent consistent with public safety. In AOSC20-13, the Florida Supreme Court specifically suspended grand jury proceedings, jury selection proceedings, and criminal and civil jury trials, and temporarily suspended all time periods involving the speedy trial procedure, in criminal and juvenile court proceedings.

On March 17, 2020, the Florida Supreme Court issued AOSC20-15, which: (1) required that all circuit and county courts continue to perform specifically designated essential court proceedings and proceedings critical to the state of emergency or the public health emergency, and permitted the chief judge to determine that additional proceedings are essential or critical to the state of emergency or the public health emergency; (2) required circuits to employ all methods practicable to minimize the risk of COVID-19 exposure to individuals involved in essential court proceedings and proceedings critical to the state of emergency or the

¹ The memorandum dated March 27, 2020 is hereby amended for the purpose of adding certain criminal proceedings to the list of non-essential and non-critical proceedings that MAY be conducted remotely on page 3.

public health emergency, or the general public; and (3) directed that all non-essential and non-critical court proceedings and events be rescheduled, postponed, or cancelled unless the chief judge determines that such other specific proceedings or events can be effectively conducted remotely using telephonic or other electronic means available without the necessity of in-person court appearances.

On March 18, 2020, the Florida Supreme Court issued AOSC20-16, which relaxed the requirements for oaths and permitted parties and witnesses to be sworn in remotely.

On March 18, 2020, in response to the prior Florida Supreme Court Administrative Orders, I, as Chief Judge entered local Administrative Order 2.39 to establish essential and critical court proceedings and the manner in which to handle them, preferably remotely, but, if not possible, in person with precautions taken. Also, in accordance with the prior Florida Supreme Court Administrative Orders, local Administrative Order 2.39 directed that all non-essential and non-critical court proceedings be suspended, unless the matter could effectively be conducted remotely using communication equipment and with the approval of the Chief Judge.

On March 24, 2020 the Florida Supreme Court issued AOSC20-17, which was intended to combine and extend the temporary measures implemented in the previous Administrative Orders involving COVID-19, specifically AOSC20-13, AOSC20-15, and AOSC20-16. In AOSC-17, the Florida Supreme Court included a section entitled "MAINTAINING WORKFLOW AS FEASIBLE," which stated that "[t]o maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all possible steps to facilitate conducting proceedings with the use of technology," and further stating that "[t]hese emergency measures are necessary to ensure public health and safety during this unprecedented pandemic; however, the constitutional right of access to the courts by the public must be considered by the presiding judge in all cases." (emphasis added)

It is noted that, at any time, the Board of County Commissioners of one or more of any of the five (5) counties of the Twentieth Judicial Circuit, may pass a "Stay-At-Home" or "Shelter-In-Place" Resolution (or similar resolution regardless of name), which in some manner effectively directs that citizens of that county stay at home but for "essential" or "emergency" purposes.

In accordance with the directives of the Chief Justice of the Supreme Court of Florida and in compliance with the goal of implementing policies to mitigate the impact of COVID-19, while still maintaining judicial workflow as feasible, I, as Chief Judge of the Twentieth Judicial Circuit, hereby direct that:

To the Extent that Court Personnel and other Governmental Employees are deemed Essential, the Courts of the Twentieth Judicial Circuit remain open with the prior restrictions imposed by previously issued local Memoranda and local Administrative Order 2.39²

In sum, the following court proceedings are to be considered ESSENTIAL or CRITICAL and allow for in-person court appearances as long as all available methods of "social distancing" are being taken to minimize risk of COVID-19 exposure to individuals involved in the proceedings or the general public. In-person court appearances are limited to attorneys, parties, necessary witnesses, and the media in the courtroom. Alternatively, all necessary persons may choose to effectively appear remotely using communication equipment.

- a) First appearance hearings;
- b) Criminal arraignments, as necessary for in-custody defendants;
- c) Hearings on motions to set or modify monetary bail for individuals who are in custody;
- d) Juvenile dependency shelter and arraignment hearings, including shelter reviews;
- e) Juvenile delinquency detention and arraignment hearings, as necessary;
- f) Hearings on petitions for temporary injunctions relating to safety of an individual;

² This memorandum will continue to be in effect in all five (5) counties of the Twentieth Judicial Circuit, along with local Administrative Order 2.39, regardless of whether any county's BOCC passes or declines to pass a Stay-At-Home or Shelter-In-Place Resolution.

- g) Hearings on petitions for risk protection orders;
- h) Hearings on petitions for the appointment of an emergency temporary guardian;
- i) Hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act;
- j) Hearings on petitions for extraordinary writs as necessary to protect constitutional rights;
- k) Hearings on petitions for judicial waiver of notice pursuant to section 390.01114(4), Florida Statutes;
- l) Hearings related to the state of emergency or the public health emergency, including but not limited to proceedings related to violation of quarantine or isolation, violation of orders to limit travel, violation of orders to close public or private buildings, and enforcement of curfew orders; and
- m) For Jail Management Purposes:
 - In-custody change of plea hearings that may result in a release from incarceration.
 - In-custody hearings on motions to modify a sentence that may result in a release from incarceration.
 - In-custody VOP Advisement hearings that may result in a plea and release from incarceration.

The following non-essential and non-critical proceedings SHALL be conducted remotely utilizing communication equipment (no live participation), without the necessity of obtaining further permission from the Chief Judge:

- a) All non-evidentiary hearings in civil cases.
- b) All non-evidentiary hearings in family law cases.

An exemption can only be made by the Administrative Judge of the division or the county upon a finding that a remote hearing utilizing communication equipment is not possible or would cause a violation of a party's right to due process.

The following non-essential and non-critical proceedings MAY be conducted remotely utilizing communication equipment (no live participation), without the necessity of obtaining further permission from the Chief Judge, as long as the judicial or quasi-judicial officer finds that holding the hearing remotely would not cause a violation of a party's right to due process:

- a) Evidentiary hearings in civil cases.
- b) Evidentiary hearings in family law cases
- c) Non-evidentiary hearings or VOP status hearings in criminal cases where the defendant's presence has been waived AND all counsel of record have agreed that the hearing shall be placed on the judicial docket.
- d) In-custody plea hearings in criminal cases where the defendant is to appear remotely AND a negotiated plea agreement has been made regardless of whether it may result in a release from custody.

Presiding Judges are authorized to use any reasonable means necessary for the purpose of implementing this directive, including, but not limited to, the requirement that attorneys, parties and witnesses appear telephonically utilizing the services of CourtCall™ (www.courtcall.com or 888-882-6878) or CourtScribes™ (www.courtscribes.com or 833-727-4237) or Zoom™ (www.zoom.us or 1-888-799-9666).

Attorneys, parties and witnesses with upcoming trials or hearings are advised to contact the appropriate judicial office with any questions.

Local Administrative Order 2.39 along with this directive shall be in effect until further notice or until superseded by further order of this Court or the Florida Supreme Court.