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2020 NOV 18 P 2:08

CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
CUYAHOGA COUNTY, OHIO

Complaint

BRENDAN J SHEEHAN
SD 20 078138

In Re:

UPDATED ORDER REGARDING CONTINUITY OF
OPERATIONS, INCLUDING JURY TRIALS,
DUE TO COVID-19 PANDEMIC

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JOURNAL ENTRY

The Judges of the Cuyahoga County Court of Common Pleas, General Division, make the following findings of fact:

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, the 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 Court issued its first order regarding continuity of operations to maximize social distancing due to COVID-19 pandemic on May 26, 2020; and,
4. Whereas the Court continued its stay on jury trials by order dated August 3, 2020; and
5. Whereas the Judges of the Jury Committee, chaired by Judge Cassandra Collier-Williams, provided significant insight and recommendation on the manner in which jury trials should be conducted; and,
6. Whereas community spread of COVID-19 continues at extremely high rates; and,
7. Whereas to continue court operations in a safe manner for the Court's employees and the citizens of Cuyahoga County;

IT IS THEREFORE ORDERED:

1. The prior Administrative Orders of the Court remain in full force and effect and are incorporated herein by reference. Where there is any discrepancy, this order supersedes any previous order. 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 resources 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, except for a trial by jury in a criminal matter. Any official proceeding held by a judge on the record and using audio-visual technology, will be held from the courtroom with all other parties appearing remotely unless otherwise authorized by the Administrative Judge;
5. Continued remote work will be encouraged when possible and feasible within the continued operations of the Court;
6. The following measures will be taken to reduce the community spread of COVID-19:
 - a. Personal Care:
 - i. Pursuant to this Court's April 28, 2020, order, all persons entering the Justice Center must wear a mask covering both their nose and mouth at all times except when they are alone in their designated work areas. Staff in the Justice Center may remove their face covering while in an enclosed, private work area;
 - ii. Staff shall maintain the recommended 6 foot distance from others, to the extent possible, while in the building;
 - iii. It is recommended that all staff wash their hands once per hour during the work day;
 - iv. Sanitizing wipes or hand sanitizer will be provided in high-traffic areas for staff and public use;
 - v. Health screening will continue at each Justice Center entrance which is open for employee or public use;
 - vi. Staff are encouraged to perform a daily symptom assessment, which includes monitoring for fever, coughing or trouble breathing.
 - vii. Any Court employee who exhibits signs of illness must notify his/her direct supervisor and the Deputy Court Administrator, Director of Human Resources, by telephone or email and shall not come into the Justice Center or report for duty. Any individual within the Justice Center who exhibits signs of illness will be directed to report to his/her direct supervisor, or, for public, non-Court/County employees, will be directed to leave the building immediately and seek medical advice before being permitted to re-enter the building at a later date.
 - viii. Any Court employee who is awaiting COVID-19 test results must notify the Deputy Court Administrator, Director of Human Resources, and shall not report for duty.
 - b. Building Care:
 - i. To comply with social distancing guidelines, the maximum occupancy for persons in an elevator is limited to two, with the exception of jurors being escorted to the courtrooms. Those people visiting the 1st through 4th floors must use the escalator, unless unable to do so;
 - ii. All individuals must follow signage to maintain proper 6 foot distancing and directional signage in hallways and/or high-traffic areas;

- iii. All high-traffic areas will be thoroughly disinfected on a daily basis;
 - iv. All high-touch areas will be disinfected once per hour during the hours of 8:30 am to 4:30 pm;
 - v. Courtrooms will be sanitized between each hearing during the day and thoroughly cleaned in the evening;
 - vi. All break-rooms should not be used, except for access to the refrigerator and/or microwave;
 - vii. The 4th Floor outdoor patio will be closed until further notice;
 - viii. Restrooms will be limited to a maximum occupancy of one person at a time;
 - ix. Other than essential Court staff, no people are permitted to congregate in the "back hallways" near the Judicial Bailiff desk area. Parties must call bailiffs to handle all scheduling matters.
7. All persons entering the Justice Center will be required to submit to a COVID-19 health screening, having his/her temperature taken and answering a series of questions related to COVID-19 symptoms and exposure. The public will then be directed to the appropriate location using a COVID-19 Awareness Card.
- a. Because the Court is attempting to follow social distancing and in an effort to maintain the health and safety of all individuals and to limit community spread of COVID-19, persons whose appearance is not required by the Court should attempt to limit their visits to the Justice Center;
 - b. It is strongly encouraged that children wait outside of the Justice Center with another caregiver adult, unless the child is necessary to the hearing of a case;
 - c. Queues will be established using proper social distancing;
 - d. Persons accessing floors 1-4 will be directed to use the escalators, or for those persons needing an ADA accommodation, the lower level elevators may be used;
 - e. Elevators will be limited to two occupants per ride to accommodate social distancing;
 - f. Elevator access will be regulated by county/court employees to ensure 50% or less of maximum occupancy is maintained on each floor;
 - g. All persons accessing any floor after the first floor will be required to sign in so that a record is maintained for contact tracing purposes;
 - h. The Judicial Elevators will be limited to judges, magistrates, bailiffs, staff attorneys, courtroom assistants, IT, court administration, and prosecutors and public defenders reporting for court, between the hours of 8:00 am to 10:30 am. Employees whose offices are located on floors 3-10 must use the "red" elevators during these hours;
 - i. Attorneys will have priority access to the public elevators.
8. The Judges will continue limited operations in the Justice Center using the following rotation for cases assigned to his/her criminal docket. Limited operations contemplate that, until further notice, case management and hearings of criminal dockets will be conducted remotely in a manner determined by the assigned judge. A disposition docket for criminal cases may be conducted remotely with the consent of the parties. In-person dispositions will be conducted in the courtroom on the assigned rotation schedule:
- a. All "A" Courtrooms will operate a disposition docket on Mondays and Wednesdays;
 - b. All "B" Courtrooms will operate a disposition docket on Tuesdays and Thursdays;
 - c. All "C" Courtrooms will operate a disposition docket on Mondays and Wednesdays;
 - d. All "D" Courtrooms will operate a disposition docket on Tuesdays and Thursdays;

- e. On Fridays, the judges on each floor will work by agreement to choose one operational courtroom per floor, if necessary;
 - f. Probation Violation hearings and pleas of defendants in jail may be scheduled on any day. The scheduling court must give deference to those courts with disposition dockets on scheduled date.
 - g. Only one event per courtroom may be scheduled at a time to allow for proper social distancing on the courtroom floors;
 - h. Jail defendants must be scheduled no later than 4:00 pm on the day before the hearing;
 - i. Counsel in all cases will be provided 48 hours notice of any scheduled event;
 - j. All criminal cases will be set for an attorney conference between counsel, who will then submit a "Status Update and Pretrial Request Form" to the Court via email;
 - k. The court will set a pretrial with counsel, defendant's presence waived, by remote access as determined by the court to establish a case management schedule;
 - l. Appearance, either in-person or by remote access, of criminal defendants will only be required when it is necessary to conduct an on-the-record hearing. The court will determine whether an on-the-record appearance be in-person in the courtroom or remote with the consent of all parties;
 - m. Counsel with clients who fall into a vulnerable population as defined in the Ohio Department of Health Director's April 30 Stay Safe Ohio Order may request to be scheduled for the first available hearing time on the date in question;
 - n. Those judges who are on rotation (ex. "A" judges) will be available to handle matters for other judges by request or emergency motions. Priority for handling emergency matters will be determined beginning with the most senior judge;
 - o. All criminal matters set for the disposition docket must be journalized on the Court's docket;
 - p. If an event is calendared with an attorney who is already scheduled for an event in another courtroom, priority will be given to the event scheduled first in time. The other event will be canceled and rescheduled;
9. The Judges will continue responsible operations in the Justice Center using the above courtroom rotation for cases assigned to his/her civil docket. Responsible operations contemplate that case management and hearings of civil dockets may be conducted remotely in a manner determined by the assigned judge:
- a. The rotation identified above will determine which judge is in the court on any given day. Any civil matter that must be conducted in-person will be scheduled on the judge's disposition day;
 - b. Upon filing and service, all cases will be given a status conference or case management conference, and each pending case must have a future date assigned;
 - c. Events in civil cases may be held using remote technology, where possible;
 - d. Any case ripe for mediation may be referred for inclusion in the CMBA COVID-19 Bench Bar Taskforce Mediation Project;
10. Jury Trials:
- a. Jury trials are suspended until December 1, 2020. This date will be re-evaluated on an ongoing basis.
 - i. To accommodate trials and the effect of public health recommendations on trials, the period of the continuances implemented by this Order are excluded

under O.R.C. 2945.72 and Ohio Constitution I, Sec. 10. The Court specifically finds that the ends of justice served by ordering the continuances outweigh the interest of the public and any defendant's right to a speedy trial.

- ii. Further, this Court finds that a continuance of trial which supersedes a defendant's speedy trial right is hereby considered permissible by all judges of the General Division 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 current pandemic levels.
- iii. Any continuance of a jury trial will be docketed with the COVID-19 Trial Continuance Order, as follows:
 1. "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 Justice Center, the Court, by Administrative Order dated November 18, 2020, has limited its operations and set parameters for the selection of cases for jury trial. The Administrative Order is intended to allow the court to safely and reasonably continue operations. The Court has considered reasonable alternative to conducting jury trials in areas other than the Justice Center. 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 [Red]. Further, on October 28, 2020, Chief Justice Maureen O'Connor provided guidance to the courts and stated, "Your first consideration as a judge is the health and safety of your employees and the public who enter the courthouse." She went on to state that, "Now that the numbers are on an upward trajectory, several courts have announced the cessation of jury trials for the time being. I regard that as a smart move given the current situation." 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 all judges of the General Division 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 teleconferenced 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."

- b. At such time that the judges determine that COVID-19 community spread has declined enough to resume jury trials, the following procedure will be used to determine which cases will be set for trial.
 - i. Each Monday, the bailiff and staff attorney for the judge will submit a list of cases that the assigned judge requests be set for trial three weeks from the date of the request.
 - ii. The Administrative Judge will use a criminal and civil trial decision matrix to determine the priority of cases for trial.
 - iii. If a case is not selected for the trial calendar, the assigned judge may enter an order indicating that the trial was not selected and will be resubmitted for review.
 - iv. The trial calendar will be distributed no later than 9:00 am each Thursday.
 - v. Prior to the commencement of trial, the assigned judge will journalize the location in which the trial will be held in order to maintain transparent and open proceedings.

11. Jury Trial Procedure:

- a. All petit jurors summoned for jury duty will report to the Global Center for Health Innovation. Once all jurors have arrived for service and juror orientation is complete, panels will be drawn for the assigned trials.
- b. Voir dire of jurors will be conducted in any of the following locations based upon the assigned judge's preference:
 - i. The Global Center for Health Innovation,
 - ii. The 4th Floor Jury Assembly area,
 - iii. The 1st Floor Multi-Purpose room,
 - iv. The 12th Floor Education Center,
 - v. The assigned judge's courtroom.
- c. The bailiff and/or staff attorney for the assigned judge will escort the jurors from the Global Center to the assigned location for trial.
- d. Jurors will be transported to the courtroom floors using the judicial elevators. Judicial elevator capacity will be limited to three people, including the jury bailiff.
- e. After a jury panel has been selected, during the start of each day of trial, jurors shall report directly to the trial courtroom and move to their assigned seats in the courtroom, unless instructed otherwise by the court.
- f. Once the jurors have arrived on the courtroom floor, they will remain there for the duration of the day, unless directed otherwise by the assigned judge.
- g. The jurors will be escorted to the trial courtroom. When the trial is ready to begin, jurors will be lined in the hallway by the assigned bailiff. All jurors must follow social distancing of 6 feet. Once the defendant and counsel are seated in the courtroom, the jurors will be seated in the courtroom for trial.
- h. Any open and available courtroom on the trial court floor will be used for juror breaks and lunch. During comfort breaks, jurors shall have no communication with anyone other than fellow jurors and will observe social distancing requirements. Additional procedures such as restroom protocol and other logistical matters shall be addressed during the trial as circumstances dictate. The court will encourage proper personal hygiene, including frequent washing of hands.

- i. The secured back hallway may also be used for juror breaks. All other members of the public, including counsel, shall be restricted from those areas.
- j. Jurors may use the restrooms located in the juror deliberation rooms for the trial courtrooms.
- k. The court will provide lunch for the jurors on the first day of service. Any juror, including those with dietary restrictions, may bring his or her own lunch each day.
- l. An exhibit table will be provided to each trial courtroom. Counsel are encouraged to limit the use of demonstrative evidence that must be passed from person to person, and are encouraged to use courtroom technology where possible. The jury will be provided gloves to handle the evidence during deliberations.
- m. At the beginning of trial, jurors will be reminded by the judges to follow social distancing guidelines and to wear face coverings, i.e. masks, unless directed otherwise by the court;
- n. A request for jury view should be made at least two weeks in advance of trial, as the court will arrange for transport of jurors in accordance with social distancing.
- o. Sidebar conferences will be held in the judge's chambers or another area outside of the courtroom and presence of the jury.
- p. At the conclusion of trial, the jury will deliberate in the trial courtroom. Sheriff's Department personnel will secure the courtroom for deliberations.
- q. If a case resolves prior to the start of trial, but after a panel is drawn, those jurors will have completed their jury service to the court;
- r. Jurors who are not selected on a panel will be excused and will have completed their service to the court.

12. Arraignment Docket:

- a. The judges will preside in the arraignment room by a daily rotation;
- b. Jail First Appearances and arraignments will continue to be held in the 12th Floor arraignment room each day beginning at 8:30 am;
- c. Bail First Appearances are suspended until further notice;
- d. Bail arraignments will be held Monday through Friday at 1:00 pm;
- e. Arraignments will be held on Saturdays at 8:30 am as necessary;
- f. For any person placed on Court Supervised Release, necessary contact information will be obtained, the assigned Probation Officer contact information will be provided, and the initial instruction of the rules of CSR will be completed before that person leaves the Justice Center;
- g. All persons appearing for arraignment will be provided a form to opt-in to the Court's text messaging service for future court appearances;
- h. A Uniform Waiver of Appearance will be created and provided to counsel with instructions for use;
- i. Within 10 days of arraignment, or as otherwise directed by the court, state and defense counsel will confer with each other, commence discovery and submit a pretrial status to the court via email; status should include the status of discovery, any pending motions, any anticipated issues and the status of any plea negotiations.

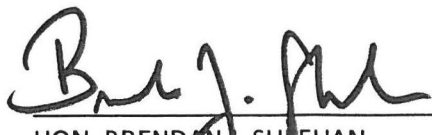
13. Civil Stalking Protection Orders (CSPO):

- a. Ex parte CSPO hearings will be conducted by the assigned judge or by the magistrate on rotation;

- b. If the assigned judge or magistrate is unavailable, the arraignment room judge will conduct any ex-parte CSPO hearing;
 - c. Full CSPO hearings will be conducted by either the assigned judge or a magistrate on the disposition date of the assigned judge.
- 14. The Court Psychiatric Clinic will continue to conduct evaluations, with a priority on incarcerated defendants.
- 15. The Dispute Resolution Department will conduct mediations utilizing audio-visual devices and technologies, and may conduct mediations in person using appropriate social distancing. Mediations may be held in the Justice Center or in the Global Center for Health Innovation. Arbitrations will be held in the Global Center for Health Innovation.
- 16. Court Staff:
 - a. Magistrate Department staff will continue to work as directed by the Chief Foreclosure Magistrate.
 - b. Bailiffs must report to the Justice Center for the disposition docket, and will then work at the direction of the assigned Judge;
 - c. Staff attorneys are expected to report to the Justice center for the disposition docket or at the direction of the assigned Judge;
 - d. Court Reporters will continue to work as directed by the Chief Reporter, but will be available on a daily basis by rotation both in person and remotely;
 - e. Courtroom Assistants will be available each day on a rotation, and may be rotated amongst the court floors;
 - f. The Probation Department will work as directed by the Chief Probation Officer.
- 17. This Order shall be provided to the Supreme Court of Ohio, Ohio Judicial Conference, Municipal Courts in Cuyahoga County, Cuyahoga County Clerk of Courts, Cuyahoga County Adult Probation Department, Cleveland Metropolitan Bar Association, Cuyahoga County Prosecutor's Office, Cuyahoga County Public Defender's Office, Cuyahoga County Sheriff, Cuyahoga County Board of Health, Cuyahoga County Executive, Cuyahoga County Council, the website of this Court, and distributed to the media.

IT IS SO ORDERED.

CUYAHOGA COUNTY COMMON PLEAS COURT, GENERAL DIVISION



HON. BRENDAN J. SHEEHAN
ADMINISTRATIVE & PRESIDING JUDGE

11/18/2020

DATED