

Supreme Court of Kentucky

2020-40

ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY: EXPANSION OF COURT PROCEEDINGS

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that “[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

Considering the Governor’s new guidelines authorizing the phased reopening of Kentucky’s businesses and government offices, and the constitutional rights guaranteed to the people of this Commonwealth, this Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders as follows, effective June 1, 2020:

1. Jury trials shall be postponed and rescheduled for no sooner than August 1, 2020, with in-custody criminal trials taking priority over all other matters.
2. Grand jury proceedings may resume upon the effective date of this order.
3. A grand jury may be conducted remotely via available telephonic or video technology, subject to applicable Rules of Criminal Procedure. The indictment may be returned to the circuit judge using available technology. If a grand juror is unable to participate remotely, the chief circuit judge shall excuse that grand juror either temporarily or permanently and swear another grand juror from the current jury panel in place of the one excused.
4. Access to view the return of indictments pursuant to RCr 5.20 must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.

5. Any case where the 60-day period in RCr 5.22(3) or an extension thereof was tolled by operation of Administrative Order 2020-28 shall be presented to the grand jury on or before July 30, 2020. The Commonwealth's Attorney is encouraged to give priority to cases where the defendant is in custody and proceedings have been tolled by the Supreme Court's response to the COVID-19 emergency.
6. Existing grand jury panels may be extended at the discretion of the court, subject to the 20-day limitation set out in AP Part II, Sec. 19(3).
7. If an existing grand jury panel is unable to be extended, juror education shall be conducted by one of the following formats, as directed by the chief circuit judge:
 - a. Requiring jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or
 - b. Requiring jurors to attend a video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person jury orientation; or
 - c. Requiring jurors to report in person for orientation, but in no event can the number of persons present in the designated juror orientation area exceed 33% of its occupancy capacity. Jury panels shall be subdivided into smaller groups so that there is six feet distance between all jurors in the designated juror orientation area at all times. The Jury Management Program may be utilized for grouping.

The Chief Circuit Judge shall ensure that each designated juror orientation area is demarked with six-foot spacing to maintain appropriate social distancing and shall require jurors to report in smaller groups with staggered reporting times.

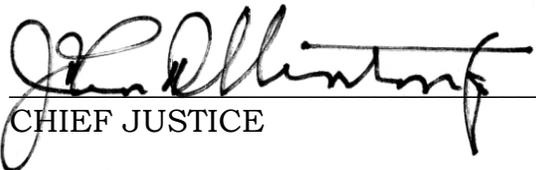
8. Jurors who are ill, caring for someone who is ill, or in a high-risk category shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.

9. Jurors who are unable to wear a facial covering because doing so would pose a serious threat to their health or safety shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.
10. Jurors who were laid off, became unemployed, or otherwise suffered an economic loss due to the COVID-19 pandemic, and who show they would suffer further economic loss as a result of jury service, shall be excused for undue hardship.
11. Juror qualification forms shall be reviewed prior to the first day of service and any jurors who meet the criteria under sections 8, 9, or 10 of this Order shall have their service postponed or be excused prior to reporting.
12. The following health and safety precautions for grand jury proceedings must be followed:
 - a. Proceedings must be conducted in a large ventilated space. If the designated area is not large enough, then grand jury proceedings shall be conducted in the courtroom. The number of persons present in the designated area shall not exceed 33% of its occupancy capacity.
 - b. All jurors will be required to wear facial coverings while inside the court facility.
 - c. The judge presiding over the grand jury and the Commonwealth Attorney shall ensure that each designated area is demarked with six-foot spacing to maintain appropriate social distancing.
 - d. Any common area in the court facility that cannot be configured to maintain appropriate social distancing must be closed.
 - e. The proceedings must be scheduled so as to reduce the number of individuals entering, exiting, or gathering at a certain time; and
 - f. At the conclusion of the proceedings, the presiding judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the COVID-19 Health and Safety Requirements for the Expansion of Operations for the Kentucky Court of Justice, Administrative Order 2020-39.

Each chief district and chief circuit judge is encouraged to develop a local plan and enter local court rules regarding any additional restrictions or changes in local procedure, consistent with this Order. Notwithstanding the requirement in SCR 1.040(3)(a) that proposed local rules be published and submitted to the local bar and circuit court clerk(s), any proposed local court orders or rules shall have binding effect if submitted with majority support of the judges and approved by the Chief Justice. Proposed local court orders or rules shall be submitted electronically by the chief district or chief circuit judge in Word format to localrules@kycourts.net for review. To the extent any Local Rules are inconsistent or otherwise conflict with this Order, this Order prevails.

This Order shall be effective June 1, 2020, and until further Order of this Court.

Entered this 19th day of May 2020.


CHIEF JUSTICE

All sitting; all concur.