IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

ADMINISTRATIVE ORDER NO. 2020-21

RE: COVID-19 PHASE II TRANSITION PLAN FOR THE FIRST JUDICIAL CIRCUIT

As a result of the Coronavirus Disease 2019 (COVID-19) pandemic, the State Surgeon General and State Health Officer on March 1, 2020, declared that a public health emergency exists in Florida, and the Governor on March 9, 2020, declared a State of Emergency for the entire state. The Florida state courts have taken measures to mitigate the effects of this public health emergency upon the judicial branch and its participants. To that end, the Supreme Court of Florida has issued administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic.[1] The overarching intent of those orders has been to mitigate the impact of COVID-19, while keeping the courts operating to the fullest extent consistent with public safety.

On May 21, 2020, the Supreme Court of Florida issued Administrative Order No. AOSC20-23, *Amendment 2*, which provides directives for each judicial circuit to transition to

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[1] The chief judge of the First Judicial Circuit has issued several administrative orders to effectuate and carry out the intent of the administrative orders and directives issued by the Florida Supreme Court. To date, the Florida Supreme Court has issued the following: *In re: COVID-19 Emergency Procedures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-13 (March 13, 2020); *In re: COVID-19 Essential and Critical Trial Court Proceedings*, Fla. Admin. Order No. AOSC20-15 (March 17, 2020); *In re: COVID-19 Emergency Procedures for the Administering of Oaths via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16 (March 18, 2020); *In re: COVID-19 Emergency Measures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-17 (March 24, 2020); *In re: COVID-19 Emergency Procedures in Relation to Visitation for Children Under the Protective Supervision of the Department of Children and Families*, Fla. Admin Order No. AOSC20-18 (March 27, 2020); and *In re: COVID-19 Emergency Procedures for Speedy Trial in Noncriminal Traffic Infraction Court Proceedings*; Fla. Admin. Order No. AOSC 20-19 (March 30, 2020).

optimal operations in a manner that protects the public's health and safety during each of the following anticipated phases of the pandemic:

a) Phase 1 - in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare;
b) Phase 2 - limited in-person contact is authorized for certain purposes and/or requires use of protective measures;
c) Phase 3 - in-person contact is more broadly authorized and protective measures are relaxed; and
d) Phase 4 - COVID-19 no longer presents a significant risk to public health and safety.

On May 21, 2020, the Supreme Court of Florida also issued AOSC20-32, which incorporates by reference the requirements, guidelines, and recommendations of the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 (the "Workgroup"). Florida Supreme Court Administrative Order No. AOSC20-32 provides that in order for each judicial circuit to transition to Phase 2 and expand in-person activities, each judicial circuit must have met five benchmark criteria, and must have developed an operational plan, addressing, at a minimum, implementation of the requirements identified in the COVID-19 Workgroup Report.

I. PHASE TWO TRANSITION

Based on the following, the undersigned finds that the First Judicial Circuit has met the five enumerated benchmark criteria required in order to successfully transition from Phase 1 to Phase 2. It is anticipated that Escambia, Santa Rosa, and Walton Counties will transition to Phase 2 beginning June 8, 2020. Okaloosa County will transition to Phase 2 beginning June 15, 2020.

BENCHMARK CRITERIA

A. No confirmed or suspected cases of COVID-19 in the courthouse/court facilities within 14 days.

Within the past 14 days, there has been one confirmed COVID-19 case reported in Okaloosa County relevant to a non-court employee. That employee has not been in any court facility since May 21.

This factor weighs in favor of the First Judicial Circuit transitioning to Phase 2.

B. Rescission of local and state restrictive movement and/or stay at home orders.

Rescissions of local or state-level orders have occurred. On May 1, 2020, Governor Ron DeSantis announced limited reopening of recreational trails and beaches. All four counties in the First Judicial Circuit have numerous recreational trails and beaches. All recreational trails and beaches in the First Judicial Circuit have reopened. Most local restaurants and retail establishments are now open with enhanced safety protocols. On May 28, 2020, it was announced that federal grand jury proceedings have resumed in the Northern District of Florida. The Northern District of Florida includes Pensacola, Florida, which is located in the First Judicial Circuit.

This factor weighs in favor of the First Judicial Circuit transitioning to Phase 2.

C. Improving COVID-19 health conditions over a 14-day period in the community.

In the First Judicial Circuit, the COVID-19 health conditions have improved over a 14-day period. The following factors have been considered and weighed in reaching this conclusion:

i. The number of confirmed COVID-19 cases and related deaths in relation to the community's population density.

As of May 28, 2020, the number of daily confirmed COVID-19 cases has decreased over the preceding 14 days in the First Judicial Circuit. On May 14, 2020, there were 1,096 reported cases of COVID-19 in the First Judicial Circuit. In the 14-day period preceding May 14, 2020, daily reported COVID-19 cases increased at a rate of 14 cases per day. In the following 14 days, that number decreased to 12 reported cases per day. In the First Judicial Circuit, there are relatively few reported COVID-19 cases, which diminishes the ability of this Circuit to demonstrate a downward trajectory of any magnitude. For example, Walton County is situated in the First Judicial Circuit, and has 109 cases. Given the relatively small number of COVID-19 cases in Walton County, one would

expect the numbers to stagnate at such low levels over the foreseeable future. Given the variety of circumstances applicable to the many counties in the state of Florida, there is no bright-line test that can be applied when analyzing the benchmark criteria. As of May 28, 2020, in the First Judicial Circuit, there have been only 1,329 reported COVID-19 cases, and there have been 50 reported deaths as a result of the COVID-19 pandemic. It is noteworthy that a *great majority* of the COVID-19 related deaths in the First Judicial Circuit have occurred in nursing homes and prisons. There are approximately 800,000 people who reside in the First Judicial Circuit. Therefore, the numbers of COVID-19 related infections and deaths in the First Judicial Circuit are low in relation to the population density of the First Judicial Circuit. The First Judicial Circuit will continue to closely monitor the emerging data, and will remain able to adjust operations as necessary.

ii. Downward trajectory of positive tests as a percent of total tests.

As noted previously, this factor is difficult to evaluate since the number of COVID-19 cases in the First Judicial Circuit is so low. The Escambia and Okaloosa County Health Departments have both indicated in written responses to the undersigned that the low number of cases in the area makes a trend difficult to evaluate.

iii. Size of particularly vulnerable populations.

Most of the COVID-19 cases and deaths in the First Judicial Circuit have occurred in prisons and assisted living facilities. Otherwise, there is no evidence that the citizens who reside in the First Judicial Circuit, in particular those who would have contact with the Circuit's court system, are particularly vulnerable to the COVID-19 pandemic.

iv. Availability of medical facilities including emergency and intensive care capacity.

All medical facilities in the First Judicial Circuit have adequate capacity at this point.

This factor weighs in favor of the First Judicial Circuit transitioning to Phase 2.

D. Adequate testing programs in place, increased availability of COVID-19 tests, and emerging antibody testing.

In the First Judicial Circuit, adequate testing programs are in place and there is an increased availability of COVID-19 tests. Furthermore, the State of Florida recently

distributed 40,000 test collection kits to the 67 counties two weeks ago. It is anticipated that the State of Florida will distribute an additional 600,000 test kits in June 2020.

This factor weighs in favor of the First Judicial Circuit transitioning to Phase 2.

E. Consultation with other building occupants and justice system partners.

The administration of the First Judicial Circuit has consulted with the Office of the State Attorney, the Office of the Public Defender, the Escambia County Clerk of Court, the Santa Rosa County Clerk of Court, the Okaloosa County Clerk of Court, the Walton County Clerk of Court, the Escambia County Sheriff's Office, the Santa Rosa County Sheriff's Office, the Okaloosa County Sheriff's Office, the Walton County Sheriff's Office, the Office of Criminal Conflict and Civil Regional Counsel, the Department of Corrections, the Department of Children and Families, the County Administrators for Escambia, Santa Rosa, Okaloosa and Walton Counties, the Guardian ad Litem, and Child Welfare Legal Services. The Circuit has also consulted with the health departments of the counties comprising the First Judicial Circuit, as well as the Escambia/Santa Rosa Bar Association.

Recommendations and input from these entities have been considered and implemented, and coordination with all stakeholders is ongoing.

This factor weighs in favor of the First Judicial Circuit transitioning to Phase 2.

II. OPERATIONAL PLAN AND CONTINUITY OF OPERATIONS

In addition to meeting the five benchmark criteria as stated above, each Judicial Circuit must develop an operational plan, addressing, at a minimum, implementation of the requirements identified in the COVID-19 Workgroup Report. The First Judicial Circuit will adopt all recommendations and directives as contained in the COVID-19 Workgroup Report, as incorporated into Florida Supreme Court AOSC20-32, dated May 21, 2020.

In accordance with the authority vested in the Chief Judge by Article V, Section 2(d) of the Florida Constitution, § 43.26, Florida Statutes, and Florida Rule of Judicial Administration 2.215, IT IS ORDERED as follows:

The Operational Plan, established in Administrative Order 2020-22 is hereby adopted and incorporated by reference into this Administrative Order. All judges and court staff are hereby ordered to comply with the guidelines and directives stated in the Operational Plan. The following requirements remain in place.

A. GUIDING PRINCIPLES

1. The presiding judge in all cases must consider the constitutional rights of crime victims and criminal defendants and the public's constitutional right of access to the courts.
2. To maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all necessary steps to facilitate conducting proceedings with the use of technology.
3. Nothing in this order is intended to limit a chief judge's authority to conduct court business or to approve additional court proceedings or events (except for grand jury proceedings, jury selection proceedings, and criminal and civil jury trials, all of which are suspended) that are required in the interest of justice, if doing so is consistent with protecting the health of the participants and the public health.
4. Judges and court personnel who can effectively conduct court and judicial branch business from a remote location shall do so. Participants who have the capability of participating by electronic means in remote court proceedings shall do so.

B. COURT PROCEEDINGS

1. **Jury Proceedings and Jury Trials.** All grand jury proceedings, jury selection proceedings, and criminal and civil jury trials shall remain suspended through July 2, 2020.

2. **Essential and Critical Trial Court Proceedings.** Essential and critical trial court proceedings should continue to be conducted remotely or, if necessary, in person.

a. All circuit and county courts shall continue to perform essential court proceedings, including but not limited to: first appearance; criminal arraignments; hearings on motions to set or modify monetary bail for individuals who are in custody; juvenile dependency shelter hearings; juvenile delinquency detention hearings; hearings on petitions for injunctions relating to safety of an individual; hearings on petitions for risk protection orders; hearings on petitions for the appointment of an emergency temporary guardian; hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act; and hearings on petitions for extraordinary writs as necessary to protect constitutional rights.

b. In addition to essential proceedings, all circuit and county courts shall perform, as necessary and applicable, critical proceedings 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.

c. It is recognized that certain essential or critical trial court proceedings in some jurisdictions may in extraordinary, limited circumstances be unavoidably delayed due to the exigencies of the ongoing emergency. When this occurs, chief judges are required to take all steps feasible to minimize the delay.

d. In conducting essential proceedings and proceedings critical to the state of emergency or the public health emergency, circuit and county courts shall employ all methods feasible to minimize risk of COVID-19 exposure to individuals involved in the proceedings or the general public.

3. **Non-Essential and Non-critical Court Proceedings.** The chief judge shall continue to review cases and court events and the communications technology resources

available to the circuit, each county, and each judge. The following proceedings are amenable to being conducted remotely:

(a) Alternative dispute resolution proceedings;

(b) Status, case management, and pretrial conferences in all case types;

(c) Non-evidentiary and evidentiary motion hearings in all case types;

(d) Pleas in absentia in county court misdemeanor cases;

(e) Hearings in juvenile delinquency cases;

(f) Hearings in noncriminal traffic infraction cases;

(g) Hearings in involuntary commitment of sexually violent predator cases;

(h) Problem-solving court staffings, hearings, and wellness checks; and

(i) Non-jury trials in all case types, except for:

- Criminal cases unless the parties in such case agree to the remote conduct of a non-jury trial; or
- Termination of parental rights or juvenile delinquency cases, unless the chief judge or the presiding judge in the case determines that the non-jury trial should proceed remotely.

It is hereby ordered that each of the above-listed proceedings shall be conducted using telephonic or other electronic means available in the subject jurisdiction unless a judge determines that one of the following exceptions applies:

- Remote conduct of the proceeding is inconsistent with the United States or Florida Constitution, a statute, or a rule of court that has not been suspended by administrative order; or
- Remote conduct of the proceeding would be infeasible because the court, the clerk, or other participant in the proceeding lacks the technological resources necessary to successfully conduct the proceeding or, for reasons directly related to the state of emergency or the public health emergency, lacks the staff resources necessary to conduct the proceeding.

The Chief Judge shall take all necessary steps to ensure that the above-listed proceedings are conducted to the fullest extent possible, consistent with the guidance established in this section.

4. **Limits on In-Person Hearings.** No proceedings or other court events other than essential proceedings and proceedings critical to the state of emergency or the public health emergency shall be conducted through in-person hearings. However, non-essential and non-critical court proceedings that cannot be conducted remotely because one of the exceptions under B.3. applies, may be conducted in-person in a manner consistent with the circuit's operational plan.

C. CIVIL PROCEEDINGS

The following civil proceedings may be conducted in-person if one of the exceptions under B.3. applies:

1. Petitions to determine incapacity and other guardianship matters;
2. Authorized *ex parte* matters, e.g., administrative, emergency, or settlement matters;
3. Cases in which a statutory timeframe may soon expire;
4. Actions subject to summary procedure under Chapter 51, Florida Statutes;
5. Claims of exemption from a garnishment of wages; and
6. Approval of settlements, structured settlements (e.g., annuities), and transfers of structured settlement payment rights.

D. FAMILY COURT PROCEEDINGS

The following family court matters may be conducted in-person if one of the exceptions under B.3. applies:

1. Termination of parental rights trials, advisory hearings, and dependency arraignment hearings;
2. Juvenile delinquency trials;
3. Child support contempt hearings; and

4. Other family court hearings that do not use mass calendar docketing, e.g., final judgments for dissolution of marriage, name changes, adoptions, or other evidentiary hearings.

E. CRIMINAL PROCEEDINGS

The following criminal proceedings may be conducted in-person if one of the exceptions under B.3. applies:

1. Motions to dismiss;
2. Motions related to custody, e.g., pretrial detention, non-adversarial probable cause, adversarial preliminary hearings, 33-day motions (or post-trial release);
3. Motions to suppress;
4. Motions related to evidence, e.g., *Williams* Rule, sex crimes, motions in limine, or *Daubert* issues;
5. Stand Your Ground hearings;
6. Motions and hearings related to incompetence, mental health experts, intellectual disability, or insanity;
7. Motions relating to indigency for costs or to appoint mitigation experts;
8. Pleas, including out-of-custody pleas;
9. Jimmy Ryce Act proceedings (except for trial proceedings);
10. Sentencings or violation of probation or violation of community control hearings;
11. *Nelson/Faretta* hearings;
12. Discovery related motions;
13. Problem-solving court staffings, hearings, and wellness checks;
14. Motions to withdraw plea;
15. Motions for furlough;
16. Motions for new trial or in arrest of judgment;
17. Motions for early termination of probation;
18. Motions to consolidate, sever, or join;
19. Motions for change of venue;
20. Motions for the return of property;
21. Motions to seal and expunge;
22. Post-conviction motions, e.g., Rules 3.800(b) or (c), 3.850, 3.851, or jail credit, juvenile sentencing review; DNA testing, or *Brady* issues; and
23. Contempt hearings.

All judges are encouraged to consider the guidance contained in the Workgroup Report for prioritization of in-person trial court proceedings which fall under one of the exceptions in B.3 of this order. The priority recommendations are contained in the Memorandum from Chief

Justice Charles T. Canady dated May 21, 2020. A copy of the Memorandum is attached hereto as Exhibit "A".

All judges shall comply with all other provisions of Florida Supreme Court AOSC20-23, *Amendment 2*, relating to use of technology, administering of oaths, suspension of time periods in certain rules of criminal procedure, defendants arrested on warrant or capias from another Florida jurisdiction, speedy trial procedure and non-criminal traffic court proceedings, suspension of time periods in certain small claims rules, writs of possession, family law forms, and visitation for children under the protective supervision of the Department of Children and Families.

Additional orders extending or modifying these measures will be issued as warranted by changing circumstances during the public health emergency.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, on this 4 day of June, 2020.

JOHN L. MILLER
Chief Judge

Copies furnished to:
All Judges, First Judicial Circuit
All Clerks, First Judicial Circuit
William Eddins, State Attorney, First Judicial Circuit
Bruce Miller, Public Defender, First Judicial Circuit
All Sheriffs, First Judicial Circuit
Robin Wright, Trial Court Administrator
Elizabeth Miller, Child Welfare Legal Services
Bryan Carter, Guardian Ad Litem
Mark Jones, Family First Network

Julie Gaither, Department of Corrections
Paul Wallis, Florida Department of Juvenile Justice
Justice Administrative Commission
Candice Brower, Office of Criminal Conflict Counsel
Craig Waters, Florida Supreme Court
For Broadcast by: Escambia-Santa Rosa Bar Association
For Broadcast by: Okaloosa County Bar Association
For Broadcast by: Walton County Bar Association
For Posting at www.FirstJudicialCircuit.org

Supreme Court of Florida

500 South Duval Street
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MEMORANDUM

TO: Chief Judges of the Trial Courts
Trial Court Administrators

FROM: Chief Justice Charles T. Canady

DATE: May 21, 2020

SUBJECT: Proceeding Priority When Limited In-Person Contact is Authorized in Phase 2

The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 has considered the priority in which proceedings should resume in person if the proceedings cannot be remotely conducted when the court has transitioned to Phase 2 of the pandemic because an exception applies.[1] Courts are encouraged to consider the guidance in the attached Workgroup report.

CTC:aqj

Attachment

cc: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19

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[1] The conditions for transitioning to Phase 2 are specified in AOSC20-32 and the authorization for certain limited in-person proceedings is provided in AOSC20-23, Amendment 2.

COVID-19 WORKGROUP

CONTINUITY OF COURT OPERATIONS & PROCEEDINGS DURING AND AFTER

PHASE 2

Recommendations for the Priority in Which to Resume Certain In-Person Trial Court Proceedings

May 19, 2020

Introduction

This guide provides recommendations for the priority in which trial courts may wish to conduct in-person, non-essential court proceedings, which cannot be conducted remotely, for civil, criminal, and family cases when limited, in-person proceedings become authorized in Phase 2. See Florida Supreme Court Administrative Order 20-23, 2nd Amended (AOSC20-23, 2nd Amended), for the conditions that must be met to conduct in-person, non-essential proceedings during Phase 2.

Civil

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential civil proceedings when authorized by AOSC20-23, 2nd Amended:

1. Petitions to determine incapacity and other guardianship matters
2. Authorized ex parte matters, e.g., administrative, emergency, or settlement matters
3. Cases in which a statutory timeframe may soon expire
4. Actions subject to summary procedure under Chapter 51, Florida Statutes
5. Claims of exemption from a garnishment of wages
6. Approvals of settlements, structured settlements (e.g., annuities), and transfers of structured settlement payment rights

Family/Unified Family Court

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential family and Unified Family Court proceedings when authorized by AOSC20-23, 2nd Amended:

1. Termination of parental rights trials, advisory hearings, and dependency arraignment hearings
   - The presiding judge should be given discretion as to the order in which the cases are tried with considerations that include, but are not limited to, the length of time the child has been in care, the age of the child, or the number of people involved in the case.

2. Juvenile delinquency trials

- The presiding judge should have discretion as to the order in which the cases are tried.

3. Child Support Contempt Hearings
   - Efforts should be made to limit the number of cases that are set for each docket with the appropriate amount of time set between each hearing in order to limit congestion in the courtroom or hallways.

4. Other family court hearings that do not use mass calendar docketing, e.g., final judgments for dissolution of marriage, name changes, adoptions, or evidentiary hearings

Criminal

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential criminal proceedings when authorized by AOSC20-23, 2nd Amended. Priorities were assigned based on the following scale:

- Priority One means highest importance.
- Priority Two means medium importance.
- Priority Three means lowest importance.[1]

1. Priority One Proceedings
   - Motions to dismiss (e.g., C4, double jeopardy, or defect)
   - Motions related to custody (e.g., pretrial detention, non-adversarial probable cause, adversarial preliminary hearings, 33-day motions, or post-trial release)
   - Motions to suppress if dispositive
   - Motions related to evidence if dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
   - Stand Your Ground hearings
   - Motions and hearings (except status hearings) related to incompetence, mental health experts, intellectual disability, or insanity
   - Motions relating to indigent for costs or to appoint mitigation experts
   - Pleas, including out-of-custody pleas
   - Jimmy Ryce Act proceedings (except for trial proceedings)
   - Sentencings or violation of probation or violation of community control hearings

[1] The Workgroup notes, however, that each criminal case is often unique on its own facts and similarly, that each of the proceedings listed may be qualitatively different from one case to the next. For these reasons, the priority in any given case may be dictated by factors including, but not limited to, the nature of the underlying charge, the stage of the case, or the potential consequences based on the outcome of the proceeding.

2. Priority Two Proceedings
   - Nelson/Faretta hearings
   - Discovery-related motions (e.g., orders to show cause, subpoenas for medical records, protective orders, or motions relating to the perpetuation of testimony or fingerprint, DNA, or handwriting issues)
   - Motions to suppress if not dispositive
   - Motions related to evidence if not dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
   - Problem-solving court staffings, hearings, and wellness checks
   - Motions to withdraw plea
   - Motions for furlough
   - Motions for new trial or in arrest of judgment (however, may wish to assign as Priority One if the motion may result in release)
   - Motions for early termination of probation

3. Priority Three Proceedings
   - Status hearings related to incompetence, mental health experts, intellectual disability, or insanity
   - Motions to consolidate, sever, or join
   - Motions for a change of venue
   - Motions for the return of property (however, may wish to assign a higher priority based on the nature of the property)
   - Motions to seal and expunge
   - Post-conviction motions (e.g., Fla. R. Crim. P. 3.800(b) or (c), 3.850, or 3.851 or jail credit, juvenile sentencing review, DNA testing, or Brady issues) (however, may wish to assign as Priority Two if the motion may result in release)
   - Contempt hearings