

Supreme Court of Florida

No. AOSC20-109¹

IN RE: COMPREHENSIVE COVID-19 EMERGENCY
 MEASURES FOR FLORIDA APPELLATE COURTS

ADMINISTRATIVE ORDER

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, I have issued several administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic.² The overarching intent

1. This administrative order is issued to separately address emergency measures for the Supreme Court of Florida and the five district courts of appeal. Prior to this order, measures for the district courts of appeal were included in *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts* Fla. Admin. Order No. AOSC20-23, Amendment 7 (October 2, 2020).

2. *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*

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.

It is the intent of the judicial branch to transition to 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 – in-person contact is authorized for certain purposes but requires use of protective measures;
- c) Phase 3 – an effective vaccine is adequately available and in use and in-person contact is more broadly authorized; and
- d) Phase 4 – COVID-19 no longer presents a significant risk to public health and safety.

This order extends, refines, and strengthens previously enacted temporary remedial measures. The measures shall remain in effect until *In re: COVID-19 Public Health and Safety Precautions for Operational Phase Transitions*, Fla.

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. AOSC20-19 (March 30, 2020).

Admin. Order No. AOSC20-32, as amended, is terminated or as may be provided by subsequent order.

Under the administrative authority conferred upon me by article V, section 2(b) of the Florida Constitution, by Florida Rules of Judicial Administration 2.205(a)(2)(B)(iv) and 2.205(a)(2)(B)(v), and by Rule Regulating the Florida Bar 1-12.1(j),

IT IS ORDERED that:

I. GUIDING PRINCIPLES

A. Justices and district courts of appeal judges 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.

B. To maintain judicial workflow to the maximum extent feasible, the Chief Justice and the chief judge of each district court of appeal shall take all necessary steps to support the remote conduct of proceedings with the use of technology, in accordance with this administrative order and other applicable standards and guidance as may be adopted by the Chief Justice or supreme court. For purposes of this administrative order, "remote conduct" or "conducted remotely" means the conduct, in part or in whole, of a court proceeding using telephonic or other electronic means.

C. Nothing in this order is intended to limit the Chief Justice's or a district court of appeal chief judge's authority to conduct court business or to approve additional court proceedings or events that are required in the interest of justice, if doing so is consistent with this administrative order and protecting the health of the participants and the public.

D. Justices, district courts of appeal judges, and appellate 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.

E. It is recognized that certain appellate proceedings in some jurisdictions may, in limited circumstances, be unavoidably delayed due to the exigencies of the ongoing emergency. When this occurs, the Chief Justice and the chief judge of each district court of appeal are required to take all steps feasible to minimize the delay.

II. USE OF TECHNOLOGY

A. All rules of procedure, court orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for the remote conduct of proceedings shall remain suspended.³

3. This measure initially went into effect at the close of business on March 13, 2020. (AOSC20-13).

B. The Chief Justice and the chief judge of each district court of appeal remain authorized to establish procedures for the use, to the maximum extent feasible, of communication equipment for the remote conduct of proceedings, as are necessary in their respective court due to the public health emergency.⁴

C. Administering of Oaths

(1) Notaries and other persons qualified to administer an oath in the State of Florida may swear in new attorneys to The Florida Bar remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the new attorney.

(2) For purposes of the provisions regarding the administering of oaths, the term “positively identify” means that the notary or other qualified person can both see and hear the new attorney via audio-video communications equipment for purposes of readily identifying the new attorney.

D. Law School Practice Programs.

(1) A supervising attorney in a law school practice program, under Rule 11-1.2(b) of the Rules Regulating The Florida Bar, may utilize audio-video communication technology to remotely supervise the law student in satisfaction of the requirement that the supervising attorney be physically present. The

4. This measure initially went into effect on Friday, March 13, 2020. (AOSC20-13).

supervising attorney and law student must maintain a separate, confidential communication channel during the proceedings.

(2) In a law school practice program, the requirement in Rule 11-1.2(b) of the Rules Regulating The Florida Bar that an indigent person and the supervising attorney must consent in writing to representation by a supervised law student may be satisfied by the justice or judge receiving the consent verbally under oath.

III. APPELLATE COURT PROCEEDINGS

The following provisions govern the conduct of appellate court proceedings, during Phases 1 through 3, except as modified by Section IV., addressing reversions to a previous phase by an appellate court.

A. Oral Argument and Other Proceedings.

(1) In Phase 1 and Phase 2, oral argument and other proceedings shall be conducted remotely.

(2) In Phase 3, oral argument and other proceedings may be conducted in person, provided that the oral argument or other proceeding is conducted in a manner that is consistent with the appellate court's operational plan required by Fla. Admin. Order No AOSC20-32, as amended.

IV. REVERSION TO A PREVIOUS PHASE

If local conditions deteriorate, or resources become strained, it may be necessary for the supreme court or a district court of appeal to revert to a previous

phase or adjust how it is operating in its current phase to meet the current public health situation or the needs of the court. Criteria regarding reverting to and returning from a previous operational phase are specified in Fla. Admin. Order No. AOSC20-32, as amended.

* * *

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

DONE AND ORDERED at Tallahassee, Florida, on November 23, 2020.

Char. T. Canady

Chief Justice Charles T. Canady

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ATTEST:

John A. Tomasino

John A. Tomasino, Clerk of Court

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