

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
THE STATE OF FLORIDA**

ADMINISTRATIVE ORDER: A-2020-43

**ADMINISTRATIVE ORDER AUTHORIZING LIMITED ADDITIONAL
“IN-PERSON” TRIAL COURT CRIMINAL PROCEEDINGS IN PHASE 2**

WHEREAS, the declared public health emergency in response to the COVID-19 pandemic is continuing, and;

WHEREAS, it is and remains the goal of the Fifth Judicial Circuit’s judges and court staff to protect the public and participants involved in our justice system and provide safe and effective access for those seeking justice through our court system, and;

WHEREAS, on April 21, 2020, Chief Justice Charles T. Canady issued AOSC 20-28 “*Workgroup on The Continuity of Court Operations and Proceedings During and After COVID-19.*” Part of this workgroup’s task is to make findings and recommendations and to develop a plan for the Florida Court system to return to full operation, and;

WHEREAS, Chief Justice Charles T. Canady has issued AOSC20-23, as amended (*most current version being “Amendment 7”, dated October 2, 2020*), and sets forth certain findings and recommendations of said Workgroup, and;

WHEREAS, on May 21, 2020, Chief Justice Charles T. Canady issued AOSC20-32 *In Re: COVID-19 Public Health and Safety Precautions for Phase 2; Memorandum regarding COVID-19 Public Health and Safety Precautions for Phase 2; and Memorandum regarding Proceeding Priority When Limited In-Person Contact is Authorized in Phase 2*; and

WHEREAS, AOSC20-32 *In Re: Covid-19 Public Health and Safety Precautions for Phase 2*, has subsequently been amended, and;

DBM/JN

WHEREAS, the Florida Supreme Court has identified four phases of the pandemic relating to court operation and judicial proceedings:

Phase 1 – In-person contact is inadvisable, court facilities are effectively closed to the public, and in-person judicial proceedings are rare;

Phase 2 – Limited in-person contact is authorized for certain purposes and requires use of protective measures;

Phase 3 – In-person contact is more broadly authorized and protective measures are relaxed; and

Phase 4 – COVID-19 no longer present a significant risk to public health and safety, and;

WHEREAS, the Fifth Judicial Circuit has transitioned to Phase 2, and the Florida Supreme Court administrative orders and the *Recommendations for the Priority in which to Resume Certain In-Person Trial Court Proceedings*, contain guidelines that allow a presiding judge to make a specific determination that remote conduct of the proceeding is either:

- A. Inconsistent with the United States or Florida Constitution, a statute, or a court rule that has not been suspended by administrative order; or
- B. Infeasible because a participant in the proceeding lacks the technological resources necessary to conduct the proceeding or, for reasons directly related to the public health emergency, lacks the staff resources necessary to conduct the proceeding.

WHEREAS, the basic constitutional rights of freedom from unlawful searches and seizures, right to remain silent and against self-incrimination, fundamental liberty interests, the right to be free of restriction of liberty without due process of law, are implicated by hearings referenced and authorized below; and in accordance with AOSC 20-23, as amended, permitting the Chief Judge to approve additional court proceedings or events that are required in the interest of justice; and

DBMJR

WHEREAS, Pursuant to Article V, Section 2(d) of the Florida Constitution, and Section 43.26, Florida Statutes, the Chief Judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice, and in consideration of the interests of justice and the certainty of an impending judicial backlog of criminal cases as a result of the pandemic, and;

WHEREAS, Florida Rule of Judicial Administration 2.215(b)(3) states the Chief Judge "shall, considering available resources, ensure the efficient and proper administration of all courts within this circuit," due consideration having been given all Florida Supreme Court Administrative Orders related to the pandemic, as amended, and Workgroup Court Operations Subgroup Report(s), as adopted and amended, and in an effort to continue mitigating the effects of COVID-19 on the courts, court participants, and other stakeholders:

IT IS THEREFORE,

ORDERED and **ADJUDGED** as follows:

1. The following additional "in-person" criminal proceedings are authorized to be heard by a presiding Circuit or County Judge, should he or she make the determination that remote conduct of the proceeding is either: A) contrary to the United States Constitution or the Florida Constitution; or B) it is infeasible because a participant in the proceeding lacks the resources necessary to conduct the proceeding or, for reasons directly related to the public health emergency, lacks the staff resources necessary to conduct the proceeding.
 - i. Hearing(s) on motion(s) to suppress statement(s) and evidence and, if such motion be dispositive, priority thereto versus any such non-dispositive motions;
 - ii. Hearings pursuant to Chapter 776, Florida Statutes
 - iii. Out of custody pleas as already previously authorized by local administrative order
 - iv. Sentencing hearings
 - v. Violation of parole, community control or probation hearings
 - vi. Pre-trial hearings and conferences immediately next preceding scheduled jury trial (for example, a pre-trial hearing during the week prior to a jury trial scheduled for the following Monday or week).

2. The additional “in-person” criminal proceedings authorized in Paragraph 1 above may commence and be heard beginning October 15, 2020, in Marion and Hernando Counties, and beginning October 23, 2020, in Lake, Citrus, and Sumter Counties. Said hearings shall continue to be conducted in compliance with all other safety and sanitary protocols previously set forth by prior local and Florida Supreme Court administrative order(s), including protective measures and requirements of social distancing, staggering of hearing and witness times, sanitizing stations, face coverings, limitations on number of individuals allowed into the courtroom, use of hybrid “in-person” and audio-visual hearing where reasonable, etc.

3. *The Chief Judge and Court Administration shall continue to monitor the pandemic related public health data as required by Florida Supreme Court Administrative Order AOSC20-32, Amendment 3. The public health data continues to remain fluid. As such, this order and the dates of commencement referenced above are subject to amendment as any deteriorating public health data may require and as may be necessitated by required Florida Supreme Court modification(s) of the Circuit’s Operational Plan and/or Phase reversion in a respective individual county within the Circuit in such event. Therefore, any scheduling of such additional in-person criminal hearings as authorized herein may be subject to later cancellation and/or continuance as the circumstances may require and the parties, attorneys, and witnesses should be made aware of such contingency when scheduling.*

4. All other trial court proceedings are to be conducted as outlined in Florida Supreme Court AOSC-20-23, as amended.

DONE and **ORDERED** in Chambers at Brooksville, Hernando County, Florida this 9th of October 2020.



The Honorable Daniel B. Merritt, Jr.
Chief Judge, Fifth Judicial Circuit