SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE

JOSEPH M. ARMSTRONG
ADMINISTRATIVE DIRECTOR
PHONE: 304-558-0145
FAX: 304-558-1212

BUILDING 1, ROOM E-100
1900 KANAWHA BOULEVARD, E.
CHARLESTON, WV 25305-0145
WWW.COURTSWV.GOV

TO: **Circuit Court Judges, Family Court Judges, Magistrates**

FROM: **Lisa Tackett, Director of Court Services**

DATE: **April 3, 2020**

RE: **Guidance Regarding Amended Judicial Emergency Order**

Federal and state health officials recommend continuing strict social distancing until at least through April 30, 2020. To support these efforts, the Supreme Court of Appeals of West Virginia ("the Court") is extending its prior March 22, 2020 Order declaring a Judicial Emergency. Under the Amended Order, the judicial emergency is now in effect until May 1, 2020.

To highlight some additional provisions:

1. Abuse and neglect hearings can now include a non-contested final disposition where family reunification is anticipated;
2. Certain non-emergency hearings are now permitted in limited circumstances.

<u>Non-Emergency Hearings</u>

The Court acknowledges that, because of the need to take extraordinary measures and inhibit the spread of COVID-19, the Courts now face new challenges in managing their dockets in a timely and efficient manner. The Amended Order now allows circuit and family courts to remotely conduct certain non-emergency proceedings. Specifically, the Amended Order states:

> It is furthered ORDERED that circuit court judges and family court judges may conduct time-sensitive hearings via telephone or video conference in non-emergency matters if the judicial officer determines action is required to avoid a serious harm that would likely result if the matter was not resolved during this period of judicial emergency. A hearing may only occur with the mutual consent of the parties, which shall not be unreasonably withheld.

Please note that this is not intended to lessen the Court's commitment to supporting public health efforts. COVID-19 mitigation efforts must continue to take precedence, and the Court fully supports protecting the health of our citizens and encouraging West Virginians to abide by the

Governor's Executive Orders. Therefore, these hearings should only occur where all parties, witnesses, and counsel can appear remotely without violating the Governor's Executive Orders limiting travel and encouraging people to stay home. The judicial officer must also insure an appropriate record is created. Routine matters should still wait until after the period of judicial emergency ends. Hearings on residential evictions absent extraordinary circumstances should not occur.

If a party objects or does not consent to the hearing, the judicial officer may inquire as to the grounds for withholding consent. If the reason for the objection relates to a lack of needed technology; constraints on parties, witnesses, or attorneys due to ongoing public health mitigation efforts that limit an attorney, member of the attorney's staff, party, or witness, from leaving home to meet with a client or to prepare materials for a hearing; or due to a party's concern that a telephonic or video hearing would not adequately address a matter's unique circumstances, then the hearing should not take place. A party simply wanting to maintain the status quo or avoid an adverse ruling is not a reasonable ground to object to a remote hearing.

If a hearing on a non-emergency matter requires court staff to be physically present without adequate social distancing measures, then these matters should not occur. A judge may still utilize his or her courtroom in person for a hearing if no one else is present.

Term Rule Questions

The current prohibition regarding jury trials has also created questions and concerns regarding the term rules for criminal cases. The various statutory term rules, including the "three-term rule" set forth in W. Va. Code § 62-3-2, are methods of guaranteeing defendants the constitutional right to a speedy trial found in the Sixth Amendment to the U.S. Constitution and Article III, Section 14 of the West Virginia Constitution. The Order and Amended Order specifically stayed "all proceedings and court deadlines, except the emergency proceedings described herein, directed to take place or any act required to be done on any day falling within this period of judicial emergency" along with "[a]ll jury trials." The original and Amended Order, in effect, also tolls the "three-term" speedy trial requirement, because the State is unable to empanel a jury or try a criminal defendant during the period of judicial emergency.

The Court cannot provide specific guidance on these cases, as each specific case could eventually come before the Court on appeal. However, the Administrative Office recommends that any judge faced with a term issue should make rulings consistent with the applicable statute, case law, and the Court's March 22, 2020 and April 3, 2020 Orders. Trial courts should also consider the "*Baker*" factors set forth in Syllabus Point 2 of *State v. Foddrell*, 171 W. Va. 54, 297 S.E.2d 829 (1982), and enter orders when appropriate with sufficient findings of fact and conclusions of law to support the continuance of criminal matters beyond the current term of the courts.