



Florida Public Defender Association, Inc.

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Chief Justice Charles Canady
Supreme Court of Florida
500 S. Duval Street
Tallahassee, FL 32399-1925

Dear Chief Justice Canady:

Last year you acted quickly and decisively to mitigate the impact of COVID-19 on our judicial system. On March 13, 2020, the Supreme Court amended Judicial Rule of Administration 2.205 to grant you, as chief justice, new powers during a public health emergency. On that same day you entered the first in a series of administrative orders implementing temporary procedures intended to keep the courts operating to the fullest extent possible consistent with public health and safety. Anticipating, or at least hoping, that the impact of COVID-19 would be quickly contained, these early administrative orders were of short duration. Unfortunately, such was not to be the case. Now, after nearly 14 months, the impact of COVID-19 on public health is decreasing while its impact on the administration of justice continues to grow. The impact of the case backlog now poses a greater threat to the courts than does the public health risk. Today, the Florida Public Defender Association (FPDA) urges you to once again act quickly and decisively to protect our judicial system by revoking the “temporary remedial measures” that have hindered the ability of criminal justice stakeholders to dispose of cases.

When it became apparent that the pandemic would have a long-term impact on our court system you created the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19.¹ The Workgroup was tasked with developing findings and recommendations on the continuation of court operations and proceedings during four anticipated phases of the pandemic. Those phases were identified as: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare; b) limited in-person contact is authorized for certain purposes and/or requires use of protective measures; c) in-person contact is more broadly authorized and protective measures are relaxed; and d) COVID-19 no longer presents a significant risk to public health and safety. During its existence, the Workgroup has made numerous recommendations dealing with the court system’s progression through the phases of the pandemic. Those recommendations, like the phases themselves, were predicated on expectations of how the pandemic would progress. However, yesterday’s expectations must give way to today’s reality. When

¹ IN RE: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19, AOSC20-28 (April 21, 2020)

the expectation that protective measures could be relaxed before vaccines were available became unrealistic, Phase 3 was redefined as, “an effective vaccine is adequately available and in use and in-person contact is more broadly authorized.” The FDA respectfully suggests that today’s reality requires additional significant modifications to Administrative Orders 20-23 and 20-32.

Yesterday’s expectation was that after vaccines became available herd immunity could be achieved and the impact of COVID-19 on court operations and proceedings would be no greater than with other respiratory ailments. Today’s reality is that herd immunity may never be achieved.

Beginning April 5, 2021 all Floridians over the age of 16 have been eligible to receive COVID-19 vaccinations.² In recent weeks the daily average of first vaccinations has steadily decreased. In the first week of May there was a 43% decrease in the number of first doses administered compared to the last week of April.³ All across the state vaccination sites have closed and, of those that remain open, most do not require appointments. Lengthy waits in long lines are a thing of the past. Vaccine availability now exceeds demand. One fact is undeniable, everyone over the age of 16 who wants to be vaccinated has had ample opportunity to do so. Yet, less than 50% of eligible Floridians have received even the first shot.

Another fact is equally undeniable, our court system simply cannot sustain continued expansion of the current case backlog. Backlogs exist across all sectors of the justice system. In the criminal sector, public defender offices across the state are experiencing caseloads as much as 60% higher than at this time last year. New practices focused on reducing the case backlog must be implemented immediately.

During its recent regular session the legislature appropriated additional resources for the court system and state attorneys to address pandemic relief. The same cannot be said for other criminal justice stakeholders. The budgets of every public defender and regional counsel were reduced. But, the backlog was not caused by insufficient manpower or funding. The backlog was caused by the remedial measures which, no matter how well intentioned, restricted the courts ability to efficiently dispose of cases.

The expansion of remote proceedings has averted the collapse of the court system, at least temporarily. However, increased reliance on remote proceedings, while unquestionably a part of our future, is not a panacea for the criminal justice system. The usefulness of communication technology is dependent on a multitude of factors beyond the control of the judiciary. Local sheriffs or boards of county commissioners will determine what communication technology will be available in county jails. Each non-incarcerated defendant will determine what, if any, communication technology they will have available as well as the terms of service. Indigent defendants’ access to communication technology will be dependent, in part, on their economic circumstances. Internet service providers will determine which locations will have web-based technology available. Prosecutors will determine when they provide defendants with discovery and plea offers which will, in turn, determine if defense counsel will have the ability to

² State of Florida, Office of the Governor, Executive Order Number 21-79, March 26, 2021.

³ Florida Department of Health COVID-19: Florida Vaccine Summary

complete attorney-client conferences before scheduled remote proceedings. The list could go on and on.

Since May 21, 2020, when you first incorporated the recommendations of the Workgroup contained in its report titled *Requirements, Benchmarks, and Guidelines Governing the Transition to Limited In-Person Contact (Phase 2)* into AOSC20-32, one of the principles guiding the reopening of Florida courts has been that; “the requirements, benchmarks, or guidance should be no broader than necessary to protect public health and safety while fulfilling the system’s responsibilities for the administration of justice.”⁴ What began as *temporary* protective measures in Florida courthouses have finally been relaxed. Persons may now enter courthouses without temperature checks, health screenings, face masks, or social distancing. But, the mandate that participants in court proceedings “who have the capability of participating by electronic means in remote proceedings shall do so” remains and face masks and social distancing continue to be required during in-person court proceedings.⁵ As long as these requirements remain in place, the ability of our courts to administer justice will remain impaired.

If people coming to courthouses, including those compelled to attend, can appear in-person without face masks and social distancing in the hallways, restrooms, and elevators, why can’t they appear in-person and without face masks and social distancing for court proceedings? It is difficult for the public to understand the public health necessity for the distinction. It is equally difficult for public defenders, overburdened with excessive caseloads, to understand.

The FPDA respectfully requests that you rescind the restrictions on in-person proceedings and reinstate speedy trial procedures in accordance with the phased plan previously submitted.

Sincerely,



HOWARD L. “REX” DIMMIG, II
Public Defender, Tenth Circuit

⁴ IN RE: COVID-19 PUBLIC HEALTH AND SAFETY PRECAUTIONS FOR PHASE 2, AOSC20-32 (May 21, 2020).

⁵ Court Operations Subgroup Report, *Requirement, Benchmarks, and Guidelines Governing Operation Phase Transitions*, pp. 7-8, May 6, 2021