



DEPARTMENT OF PUBLIC ADVOCACY

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Kentucky's Public Defenders are Concerned about a Premature Return to Open Court Proceedings

FRANKFORT, Ky. (May 26, 2020) - As a precaution to protect participants from possible exposure and spread of COVID-19, most criminal court proceedings have been suspended since March, but that is about to change and public defender leaders are worried about what they may mean for the health of their attorneys and others in the system.

On May 15, the Supreme Court of Kentucky issued an order that trial courts in June could “resume hearing civil and criminal matters using available telephonic and video technology to conduct all proceedings remotely.” In the days since the order was issued, however, some trial courts have announced an intention to resume hearings as early as June 1 with all parties physically present in the courtroom, not appearing through remote means as ordered by the Supreme Court. A few courts have already scheduled dockets for early June with hundreds of cases scheduled to be heard in-person each day.

According to the leaders of the Department of Public Advocacy (DPA), which is responsible for providing hundreds of public defenders to represent clients before every criminal court in the Commonwealth, those trial courts may be going too far too quickly. Public Advocate Damon Preston said, “The Supreme Court announced a careful plan for a temporary transition stage as a bridge from the period of presumptive court closure that has been in place since March and a future period when courts can return to some degree of normal proceedings. We believe all courts should follow this gradual approach, which begins with online remote hearings.”

According to Deputy Public Advocate B. Scott West, DPA leaders are concerned about the safety of its employees and clients if in-person court proceedings resume in June. “Even if safety precautions are

enforced, an in-person docket means that defenders and others will be exposed to dozens or hundreds of people over the course of several hours as people continuously rotate throughout the courthouse and courtrooms. Any one of those could bring COVID-19 to all the people in the courtroom, endangering their health and requiring an extended shutdown of the court system once the exposure is discovered. Courts should resume as the Chief Justice ordered, through electronic means, not in a courtroom,” says West. As to a trial court’s decision to set hearings in person, West added that, while the Supreme Court order does allow a judge to determine, in his or her discretion, that “a matter” may require in-person attendance, the requirement of an in-court hearing in every case is not the exercise of discretion and nothing in the current order authorizes a court to disregard video proceedings entirely in favor of mass in-person dockets.

Over the past two months, most courts have used online video platforms such as Skype, Zoom, Vidyo, or Chime to hold court hearings with all participants appearing through a phone, tablet, or computer. DPA Trial Division Director Samuel Cox says he believes that these platforms are adequate during the pandemic for routine court appearances that need to be scheduled in June, July, and August. Cox said, “While some cases, some hearings, and some clients will require in-person proceedings, we believe that every case should first be scheduled for a safe remote appearance. In-person hearings in June or July should be reserved for circumstances where video is not sufficient.” If a party cannot or does not participate in a video hearing, then Director Cox recommends that an in-person hearing should be scheduled for August or later. “We believe that in-court proceedings are the best practice and we look forward to returning in the future to where all court takes place in the courtroom, but for now, limited video hearings are the best and safest route to getting the court system moving again,” Cox concluded.

In light of the continued risk of the spread of COVID-19, Public Advocate Preston believes it is too soon for courtrooms to be reopened for non-emergency hearings. “We are asking all trial courts to adopt plans to conduct June and July dockets by video through an online platform. With the thousands of cases currently pending, orderly video dockets are an efficient method of resolving and advancing cases without any of the risks or safety requirements of in-person hearings.”

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