

Society of the Criminal Defense Bar

The Pensacola Chapter of FACDL

July 8, 2020

Hon. John L. Miller
Chief Judge, First Judicial Circuit
Escambia County Courthouse
190 W. Government Street
Pensacola, FL 32502

Re: Current COVID-19 Status of Escambia and Santa Rosa County Courthouses

Dear Judge Miller,

On behalf of the Society of the Criminal Defense Bar, the Pensacola chapter of the Florida Association of Criminal Defense Lawyers, we write to provide you with our concerns about the current pandemic conditions in our area as they relate to ongoing courthouse activity, as well as to provide our suggestions regarding future steps to keep dockets moving forward.

As you are aware, on July 2, 2020, Chief Justice Canady amended administrative order AOSC20-32. The relevant language from the amended administrative order reads as follows:

While operating in Phase 2 or Phase 3, the chief judge *shall* monitor applicable public health data *at least weekly* to determine if a modification to operations, or a change in phases, is necessary. If the county health department or local health expert advises, or data establishes, that local health conditions have deteriorated *to the point that the court no longer meets the phase requirements, the court must revert to a previous phase of operations or significantly modify operations within the current phase to comply with health and safety requirements.*

On that same date, Chief Justice Canady also amended AOSC20-23. As explained in the July 2, 2020, press release, the “amended order...sets out new criteria for local courts to follow if local pandemic conditions worsen and they need to revert to Phase 1 – the period when local courts must conduct the majority of court proceedings using remote technology.” It is our understanding that there are some concerns that any administrative order regarding our current operational status would have to apply to all four counties within the circuit. However, the language in Section X of the amended AOSC20-23 clearly states that a reversion to a previous phase can be done on a county-by-county basis. (“If a *circuit or a county within the circuit* reverts to a previous phase, as addressed in Fla. Admin. Order No. AOSC20-32, the following provisions govern.”)

In *In Re: COVID-19 Transition Plan for the First Judicial Circuit*, Escambia Co. Admin. Order 2020-21 (June 4, 2020), you identified the five benchmarks that must be met for a county or circuit to operate within Phase 2 and explained how, as of late May, the First Judicial Circuit met those

benchmarks. Based upon the current data it appears to our membership that Escambia and Santa Rosa no longer continue to meet the benchmarks for Phase 2 operation:

1. No confirmed or suspected cases of COVID-19 in the courthouse/court facilities within 14 days.

It is our understanding that at least one member of the judiciary in Escambia county is currently self-isolating due to direct exposure to the coronavirus. It is also our understanding that at least two assistant state attorneys in Escambia County are currently self-isolating due to direct exposure to the coronavirus. One of these prosecutors did not realize that she had been exposed until after attending an in-person docket. We can confirm that at least one of our members, who has been present for many of the in-person dockets over the past few weeks, tested positive for coronavirus this week, and is currently hospitalized. Over the past few week several of our members have had to self-isolate due to exposure to positive clients or family members, or because they developed COVID related symptoms. We do not represent that we are fully aware of the health of all employees in the courthouse. There have been no updates or notifications from the Courts regarding whether or not COVID-19 has been present, or has been suspected to be present, in the courthouse or court facilities.

2. Rescission of local and state restrictive movement and/or stay at home orders.

As we discussed in our letter to you dated June 26, 2020, on that date the State of Florida moved backwards and again shut down all bars statewide. The same day the City of Pensacola and the City of Gulf Breeze issued administrative orders mandating the wearing of masks inside local businesses due to the dramatic increase in known COVID-19 cases, in the percentage of positive cases, and hospitalizations. While we understand that these measures are the not the equivalent of stay at home orders, they do represent restrictions on freedom imposed by both state and local governments due to COVID-19.

3. Improving COVID-19 health conditions over a 14-day period in the community.

- a. The number of confirmed COVID-19 cases and related deaths in relation to the community's population density.

In *In Re: COVID-19 Transition Plan for the First Judicial Circuit*, Escambia Co. Admin. Order 2020-21 (June 4, 2020), your Honor explained that “[i]n the First Judicial Circuit, there are relatively few reported COVID-19 cases, which diminishes the ability of this Circuit to demonstrate a downward trajectory of any magnitude.” Certainly, this is no longer the case. In just *the past 14 days* Escambia and Santa Rosa counties have seen a surge of confirmed COVID-19 cases. According to the Florida Department of Health data, during the last 14 days, Escambia saw an increase of 1,665 confirmed cases in Florida residents.¹ Santa Rosa saw an increase of 619 confirmed cases in Florida residents in that same 14-

¹ http://ww11.doh.state.fl.us/comm/partners/covid19_report_archive/county_reports_latest.pdf

day period.² According to DOH data and the Pensacola News Journal, as of today's date, the current total of confirmed cases between the two counties is 4,365.³ According to the Florida Department of Health, in the past 48 hours Escambia had 5 new deaths and Santa Rosa had one new death. One of these deaths was a 24-year old male. These are not improving health conditions.

b. Downward trajectory of positive tests as a percent of total tests.

In *In Re: COVID-19 Transition Plan for the First Judicial Circuit*, Escambia Co. Admin. Order 2020-21 (June 4, 2020), your Honor wrote: "As noted previously, this factor is difficult to evaluate since the number of COVID-19 cases in the First Judicial Circuit is so low." Again, this certainly can no longer be the case. For example, in Escambia County, each of the last 14-days has returned percentage positive results over 10%, with a high of 19.6% being reported just days ago on July 1. Three days ago, the percentage of positive cases was 17%.⁴

c. Size of particularly vulnerable populations.

Your Honor noted in Admin. Order 2020-21 that "[m]ost of the COVID-19 cases and deaths in the First Judicial Circuit have occurred in prisons and assisted living facilities." It is no longer the case that confirmed COVID-19 cases are primarily limited to prisons or assisted living facilities – citizens from every segment of Escambia and Santa Rosa counties are testing positive for the virus at record rates. While this week it was confirmed that there has been an outbreak of COVID-19 in the Escambia County jail, those cases make up only a small fraction of the cases that have been confirmed in the past 14 days. The previous administrative order simply stated "there is no evidence that the citizens who reside in the First Judicial Circuit, in particular those who would have contact with the Circuit's court system, are particularly vulnerable to the COVID-19 pandemic." No evidence, such as county health statistics, was offered to support this conclusion.

d. Availability of medical facilities including emergency intensive care capacity.

According to the Pensacola News Journal on July 8, 2020, "[t]he number of people with COVID-19 admitted into Escambia County's three hospitals increased Wednesday *by more than 10% over the previous day*...The number of COVID-19 hospitalizations in Pensacola hospitals has increased steadily since the first of the

² http://ww11.doh.state.fl.us/comm/partners/covid19_report_archive/county_reports_latest.pdf

³ <https://www.pnj.com/story/news/2020/07/09/covid-19-florida-escambia-santa-rosa-add-184-cases-1-new-death-escambia/5405077002/>

⁴ http://ww11.doh.state.fl.us/comm/partners/covid19_report_archive/county_reports_latest.pdf

month – *surging nearly 78% from July 1 to July 8.*”⁵ As of July 9, 2020, only 6 of the 118 adult ICU beds in Escambia County were available.⁶

4. Adequate testing programs in place, increased availability of COVID-19 tests, and emerging antibody testing.

COVID-19 testing is widely available now in our area. However, many of us have personally been tested and had to wait up to 6 or 7 days for results of the testing. During the week-long wait for test results our attorneys are not permitted entry into either of the courthouses. This presents logistical difficulties for criminal defense lawyer during the self-isolation period, especially in light of the fact that the court system is still requiring in-person hearings in many of our cases.

Overall, it is our impression that Escambia and Santa Rosa no longer meet the benchmarks for Phase 2 operation. We recognize that we do not have all the data or information and that we may be incorrect. We respectfully request that the Court provide the public with an analysis of where Escambia and Santa Rosa counties currently stand regarding the five benchmarks, similar to the break down contained in the June 4, 2020 administrative order.

Assuming that Escambia and Santa Rosa counties no longer meet Phase 2 requirements, it is our position that we should return to Phase 1 operations and handle only essential activities. On June 26, 2020, we wrote to the Court requesting that during Phase 2 out-of-custody non-adversarial hearings, such as docket days and plea days, be held remotely in order to limit our appearances in court. We received no response to our request and mandatory in-person court appearances for non-adversarial hearings have continued right up to today’s date. There are now outbreaks of COVID-19 cases in the Escambia County Jail, the Santa Rosa County Jail, and the Walton County Jail. Without defendants appearing in court the majority, if not all, adversarial or evidentiary hearings cannot be held. Bench trials cannot be held. There are currently no jury trials. Short of a plea, little is being done on a case at docket days and plea days. Practically speaking, at this point we are only handling essential proceedings on our cases, yet we are constantly being called into courtrooms throughout both counties for non-essential proceedings. Based upon the current surge of COVID-19 cases in our community and in our jails, we respectfully recommend a return to Phase 1 operations until this surge subsides. We would not be the first county in the State of Florida to make such a decision.

While the July 2, 2020 Supreme Court order also allows counties to “significantly modify operations within the current phase to comply with health and safety requirements,” it is unclear what additional significant health and safety measures could be put in place to address the current COVID-19 surge. The courthouses have already instituted a COVID questionnaire, temperature checks, social distancing requirements, and face mask requirements. Inmates have not been transported to court. Only parties to a case are admitted into the courthouse. We are already urged by the judges to waive our out-of-custody clients’ appearance for court. Short of the judges in this

⁵ <https://www.pnj.com/story/news/2020/07/08/florida-doh-4-more-covid-19-deaths-reported-escambia-santa-rosa/5397376002/>

⁶ <https://www.pnj.com/story/news/2020/07/09/covid-19-florida-escambia-santa-rosa-add-184-cases-1-new-death-escambia/5405077002/>

circuit making greater use of available remote technology for non-adversarial hearings, there does not appear to be any significant safety modifications that could be made in response to this new crisis. Should the Court decline to re-enter Phase 1, we propose that docket days, mini docket days, plea days, and final plea days be continued until this surge settles down. Certainly, in-person hearings for civil citations requiring court appearance should be set off to a later date. In the meantime, criminal defense attorneys and prosecutors will continue working up their cases and can notify the courts when plea agreements are reached.

For roughly two months our members operated in Phase 1 out of concern that there would be a surge of COVID-19 cases in Escambia and Santa Rosa. We were all working together in order to avoid the worst-case-scenario. During those two months our caseloads stagnated and many of us suffered financially. We say this to let you know that our proposal to return to Phase 1 is done with a heavy heart. We are asking to return to Phase 1 for our safety, the safety of our clients, and the safety of the public at large. Unfortunately, COVID-19 is spreading like wildfire in our neighborhoods, our communities, and our jails, and we need to address it head on.

As we stated in our June 26, 2020, letter, we appreciate all of the hard work that has gone into getting things moving again. The current surge of COVID-19 in our area was unexpected. However, that does not change the fact that it is here. As members of the bar that are being required to attend non-essential in-person court hearings during this coronavirus surge, we would appreciate being involved in any discussions moving forward, as well being provided weekly updates following your Honor's mandated weekly review of our circuit's current COVID-19 situation.

Thank you for your time and consideration in this matter.

Sincerely,

/s/ Jason Cromey
Jason Cromey, Esq.
President

/s/ Trey Parnell
Trey Parnell, Esq
Vice-President

/s/ Ryan Cardoso
Ryan Cardoso, Esq.
Treasurer

/s/ Chris Kotz
Chris Klotz, Esq.
Ex Officio President

/s/ Eric Stevenson
Eric Stevenson, Esq.
Member at Large

Cc:

Hon. Jan Shackelford
Administrative Judge, Escambia County
Escambia County Courthouse
190 W. Government Street
Pensacola, FL 32502

judge.shackelford@flcourts1.gov

Hon. John Simon
Administrative Judge, Santa Rosa County
6865 Caroline Street
Milton, Florida 32570
judge.simon@flcourts1.gov

Hon. Bill Eddins
State Attorney, First Judicial Circuit
Escambia County Courthouse
190 W. Government Street
Pensacola, FL 32502
beddins@osa1.org

Hon. Bruce Miller
Public Defender, First Judicial Circuit
Escambia County Courthouse
190 W. Government Street
Pensacola, FL 32502
bruce_miller@pd1.fl.gov