

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No.

Private Properties, LLC, a Pennsylvania Limited Liability Company, Chester Properties, LLC, a Pennsylvania Limited Liability Company, and the Pennsylvania Residential Owners Association, a Pennsylvania Non-Stock Non-Profit on Behalf of all Similarly Situated Parties,

Petitioners

v.

Tom Wolf, Governor of the Commonwealth of Pennsylvania and
Josh Shapiro, Attorney General of Commonwealth of Pennsylvania

Respondents

PETITION

Counsel for Petitioners:

Lee A. Stivale, Esq.
PA I. D. 46511
Stivale Law Offices, PLLC
1489 Baltimore Pike #103
Springfield, PA 19064
(610) 543-8800

Bradley S. Dornish, Esq.
PA I. D. 40990
Mary Elizabeth Dornish, Esq.
PA I. D. 200390
Dornish Law Offices, PC
2500 Brooktree Road, Suite 301
Wexford, PA 15090
(412) 765-2726

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PETITION

**PETITION FOR EXTRAORDINARY RELIEF PURSUANT TO
THE COURT'S KING'S BENCH JURISDICTION**

AND NOW, come the Petitioners, by and through their counsel, Bradley S. Dornish, Esquire, Mary Elizabeth Fischman, Esquire and Dornish Law Offices, PC and Lee A. Stivale, Esquire and Stivale Law Office, PLLC, and file their Petition in the Nature of an Application for Extraordinary Relief Under this Court's King's Bench Jurisdiction for the reasons which follow:

Introduction:

The Petitioners assert that the Governor's action on May 7, 2020, by Executive Order, effective May 7, 2020, impermissibly encroaches and intrudes upon this Court's authority to minister justice and manage the courts of this Commonwealth, as well as denies Petitioners, and similarly situated property owners, with important substantive due process rights under the Laws of this Commonwealth.

PETITION

Parties:

1. Petitioner, Private Properties, LLC, (hereinafter "Private Properties") is a Pennsylvania Limited Liability Company with its mailing address as c/o Dornish Law Offices, PC, 2500 Brooktree Road, Suite 301, Wexford, PA 15090, and is a Pennsylvania housing provider, engaged in the business of providing residential rental property to Pennsylvania residential tenants.

2. Chester Properties, LLC, is a Pennsylvania Limited Liability Company with its mailing address as P O Box 13, Wallingford, PA 19086, and is a Pennsylvania housing provider, engaged in the business of providing residential rental property to Pennsylvania residential tenants.

3. Pennsylvania Residential Owners Association (hereinafter "PROA") with its mailing address as 2205 Strawberry Square, Harrisburg, PA 17101, is a Pennsylvania non-profit association whose members include over 20 affiliated chapters throughout Pennsylvania, the individual members of which chapters own and operate thousands of residential rental homes and apartments in the Commonwealth.

4. The Respondent, Tom Wolf, is the Governor of Pennsylvania with offices at 508 Main Capitol Building, Harrisburg, PA 17101.

5. The Respondent, Josh Shapiro, is the Attorney General of Pennsylvania with offices at 16th Floor, Strawberry Square, Harrisburg, PA 17120.

Jurisdiction:

6. This Court has jurisdiction to hear this matter pursuant to its King's Bench authority as set forth in 41 Pa. Cons. Stat. § 502 and Pa. R.A.P. §3309 and its extraordinary jurisdiction pursuant to 42 Pa. Cons. Stat. §726.

7. The Pennsylvania Constitution provides that the Supreme Court "shall be the highest court of the Commonwealth and in this Court shall be reposed the supreme judicial power of the Commonwealth [and] shall have such jurisdiction as shall be provided by law." Pa. Const. Art. V, §2, The Judicial Code provides:

The Supreme Court of Pennsylvania...shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth.

42 Pa. Cons. Stat. § 501. The Code further provides:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, court or might do on May 22, 1722.

The Supreme Court shall also have and exercise the following powers:

- (1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.
- (2) The powers vested in it by statute, including the provisions of this title.

42 Pa. Cons. Stat. § 502.

8. This Court has invoked its King's Bench jurisdiction previously to review the constitutional validity of a Governor's exercise of power. See Creamer v. Twelve Common Pleas Judges, 443 Pa. 484, 281 A.2d 57, 58 (Pa. 1971) (*per curiam*) (exercising King's Bench authority to determine whether the Governor's appointments to the judiciary fell within his constitutional authority under Article V, Section 13(b) of the Pennsylvania Constitution). Commonwealth v. Williams, 634 Pa. 290, 299, 129 A.3d 1199, 1204 (2015)

9. No dispute is pending in a lower court.

Order or Other Determination in Question Which Presents an Issue of Immediate Public Importance

10. Respondent, Governor Wolf’s Executive Order of May 7, 2020, a true and correct copy of which is attached hereto and incorporated herein as Exhibit “A” (“Executive Order”), in Section 2 thereof, ordered that eviction proceedings in the Commonwealth of Pennsylvania, “cannot commence for sixty (60) days until July 10, 2020”; and further ordered, “all eviction timelines must be computed with a state date of July 10, 2020, at which point all previously delivered *Landlord and Tenant Act of 1951* and *Manufactured Home Community Rights Act* Notices will be deemed delivered and any eviction proceedings may commence”.

This Executive Order was entered after recognizing in the preamble that “the Supreme Court of Pennsylvania issued orders that acted to prevent the judiciary from effectuating an eviction, ejection, or other displacement from a residence based upon a failure to make a monetary payment, but the statewide judicial suspension procedures related to the disposition of property extends only until May 11, 2020”.

11. In the Commonwealth of Pennsylvania, it is estimated that there are 1,592,966 rental households units; or 31.70% of all households are rental units as of year 2017¹.

¹ US Census ACS data (2017)

12. The rental property owners' right to access to the Courts of this Commonwealth are being impermissibly usurped by the Executive Order.

Exclusive Authority of the Supreme Court to Supervise and Administer the Court of this Commonwealth

13. Pennsylvania Constitution, Article V, s(10) provides in pertinent part:

(a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require...

14. This Court entered its per curiam Order dated April 28, 2020, at Numbers 531 and 532 in its Judicial Administration Docket, a true and correct copy of which is attached hereto and incorporated herein as Exhibit "B". Pursuant to Rule of Judicial Administration 1952(1) and this Court's constitutionally conferred general supervisory and administrative authority over all courts and magisterial district judges under Article V, Section 10(a) of the Pennsylvania Constitution, this

court extended by its April 28, 2020, Order its statewide judicial emergency order through June 1, 2020.

15. This Court's April 28, 2020 Order specifically provides that beginning May 4, 2020, Pennsylvania courts generally shall be open to conduct court business, and further specifically provided that this Court's prior order staying dispossession of property, including evictions, ejectments or other displacements from a residence based upon the failure to make a monetary payment through April 30, 2020, was extended through May 11, 2020, "at which time the statewide suspension of procedures related to dispossession of property shall cease". Exhibit "B".

The Executive Order of May 7, 2020 Violates the Separation of Powers Doctrine

16. Executive orders can be classified into three permissible types: (1) proclamations for ceremonial purposes; (2) directives to subordinate officials for the execution of executive branch duties; and (3) interpretation of statutory or other law. Markham v. Wolf, 647 Pa. 642, 190 A.3d 1175 (2018).

17. The Executive Order of May 7, 2020, Exhibit "A", involves the third type of Executive Order defined by the Court.

18. While the Governor may issue executive orders, he or she must not infringe upon the powers of the other two branches of our government...Markham, 647 at 656, 190 A.3d at 1183 (2018).

19. “[A]ny executive order that, in essence, creates law, is unconstitutional.” Id.

20. The Supreme Court is exclusively vested with authority to define access to the courts of the Commonwealth and Standing of party litigants.

21. Respondent Wolf’s Executive Order wrongfully denies rental property owners’ access to the Courts of the Commonwealth when it provides:

Commencing on May 11, 2020 the notice requirements mandated by the Landlord and Tenant Act of 1951 and the manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines for the initiation of eviction proceedings. All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020.”

22. The Executive Order, to the extent that it denies the ability to commence civil action, is unconstitutional and invalid and invades the exclusive power of this Court vested in the Constitution of the Commonwealth of Pennsylvania.

23. Previously, the courts of this Commonwealth have considered the role of executive orders to “which serve to implement or supplement the Constitution of statutes and which are offered by some constitutional or statutory provision either specifically or by way of necessary implication have the force of law, as opposed to executive orders which are intended for communication with subordinate official in

the nature of request or suggested direction for the execution of the executive branch or government”. Shapp v. Butera 22 PA Commw. 229, 348 A.2d 910 (1975).

24. In this Court’s recent decision in Friends of DeVito v. Wolf, 2020 Pa. LEXIS 1987 (2020), Justice Donohue writing for the majority carefully considered the balance of the Governor’s powers under the Emergency Management Services code, 35 PA C.S.A. section 7101 et seq, applicable sections of the Administrative Code 71 PS Section 532; 71 PS Section 1403 (1) and the Disease Prevention and Control Law, 35 P.S. Section 521.1-521.25.

25. The opinion of Justice Donohue in DeVito found that petition presented an issue of immense public concern regarding the closure of businesses and this Court accepted that the DeVito petition was appropriate for exercise of this Court’s King’s Bench and Extraordinary Jurisdiction as a result of the issues of immediate and immense public importance impacting Pennsylvanians and thousands of Pennsylvania businesses.

26. This court in DeVito acknowledged that the Governor derives broad authority from our Constitution as it vests him with, “Supreme executive power” and directs him to “take care that the laws be faithfully executed”, PA Constitution, Article 4, Section 2. DeVito carefully considered the respondent Wolf’s statutory authority to issue the executive order therein questioned.

27. However, Respondent Wolf's May 7th Executive Order, by contrast, is not grounded in the broad powers granted to the Governor in the Commonwealth's Police Power.

28. Instead, Respondent Wolf's May 7th Executive Order challenges and usurps this Court's authority as a separate and coequal branch of government under Article 5 of the Pennsylvania Constitution as quoted above to administer the operation of the courts.

29. The Respondent's Executive Order conflicts with this Court's Emergency Order of April 28, 2020, Exhibit "B".

**The Executive Order of May 7, 2020 Violates the Property Owners'
Right to Substantive Due Process**

30. In summary, upon the declaration of a disaster emergency, the Emergency Code vests with the Governor specific, defined and limited emergency management powers, including, inter alia, to "[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the others, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency;" to "[u]tilize all available resources of the Commonwealth Government and each political subdivision of this Commonwealth as reasonably necessary to cope with the disaster emergency;" to "[t]ransfer the direction, personnel or functions of

Commonwealth agencies or units thereof for the purpose of performing or facilitating emergency services;” to “[d]irect and compel the evacuation of all or part of the population from any stricken or threatened area within this Commonwealth if this action is necessary for the preservation of life or other disaster mitigation, response or recovery;” to “[c]ontrol ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;” and to “[s]uspend or limit the sale, dispensing or transportation or alcoholic beverages, firearms, explosives and combustibles.” See *35 Pa.C.S. §§ 73019f)(1),(2),(3),(7),(8)*.

31. The Emergency Code does not authorize Respondent Wolf to modify or amend, or suspend the substantive rights of Property owners contained in the *Landlord and Tenant Act of 1951*.

32. Section 501 of the *Landlord and Tenant Act of 1951* imposes a standing requirement which is waivable and provides in pertinent part:

(a) A landlord desirous of repossessing real property from a tenant except real property which is a mobile home space as defined in the act of November 24, 1976, (P.L. 1176, No. 261), known as the “Mobile Home Park Rights Act,” may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely (1) upon the termination of a term of tenant, (2) or upon forfeiture of the lease for breach of its conditions, (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.

(b) The notice above provided for may be for lesser time or may be waived by the tenant if the lease so provides.

(c) The notice provided for in this section may be served personally on the tenant, or by leaving the same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.

33. In essence, the Executive Order legislates a restriction upon the affirmative terms of the *Landlord and Tenant Act of 1951* and as previously stated, this Court has held that: “any executive order that, in essence, creates law, is unconstitutional.” Markham, 647 at 656, 190 A.3d at 1183.

34. The Respondent Wolf’s executive Order constitutes an attempt at legislation, which is the exclusive province of the legislative branch of government. (“Foundationally, the legislature creates the laws, Pa. Const. art. II, § 1”). Markham, 647 at 646, 190 A.3d 1177.

35. As recognized by this Court in its attached order of April 28, 2020, Article 5, Section 10 of the Constitution of the Commonwealth of Pennsylvania provides in pertinent parts “(a) the Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace from one court or district to another as it deems appropriate...(c) the Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace... and the administration of all court and supervision of all offices of the judicial branch, if

such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant nor effect the right of the general assembly to determine the jurisdiction of any court or justice of the peace, nor suspend alter any statute of limitation or repose”.


36. Respondent Wolf's Executive Order also seeks to amend the *Pennsylvania Landlord Tenant Act of 1951*, and thereby invades the province of the legislature, the third coequal branch of government in Pennsylvania, the legislature being charged with the power to pass laws under PA Constitution Article 2, Section 1.

WHEREFORE, Petitioners respectfully requests this Honorable Court Grant the Petition, and upon hearing and response, invalidate those portions of Executive Order of May 7, 2020, which thereby restrict, delay and suspend the notice requirements under the *Landlord and Tenant Act of 1951* and restrict, delay and deny access to the Courts for real property eviction proceedings under the *Landlord and Tenant Act of 1951*.

Respectfully submitted,



Bradley S. Dornish, Esquire
PA I. D. 40999
Mary Elizabeth Fischman, Esquire
PA I. D. 200390
Dornish Law Offices, PC



Lee A. Stivale, Esquire
PA I. D. 46511
Stivale Law Offices, PLLC



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR

**ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
FOR STAYING THE NOTICE REQUIREMENTS FOR CERTAIN ACTIONS
RELATED TO THE DISPOSSESSION OF PROPERTY**

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared a novel coronavirus ("COVID-19") a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and

WHEREAS, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and

WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania and its residents that result from disasters. 35 Pa. C.S. § 7301(a); and

WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and

WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein. 35 Pa. C.S. § 7301(f); and

WHEREAS, I am authorized to issue regulations to temporarily suspend or modify for a period not to exceed 60 days any public health, safety, zoning, transportation (within or across this Commonwealth) or other requirement of statute or regulation within this Commonwealth for which I deem the suspension or modification essential to provide temporary housing for disaster victims. 35 Pa. C.S. § 7302(a); and

WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. § 1403(a); and

WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5; and

WHEREAS, I previously issued an Order directing "Individuals to Stay at Home" on April 1, 2020, as subsequently amended; and

WHEREAS, the Supreme Court of Pennsylvania issued Orders that acted to prevent the Judiciary from effectuating an eviction, ejection or other displacement from a residence based upon a failure to make a monetary payment, but this statewide judicial suspension of procedures related to the dispossession of property extends only until May 11, 2020; and



WHEREAS, certain filings, charges and acts relating to the dispossession of property remain subject to temporary restraints on account of other directives, including provisions of the federal Coronavirus Aid, Relief and Economic Security Act (CARES Act, P.L. 116-136; See also 15 U.S.C. § 9058), or Orders issued by local courts (e.g., Order No. 31 of 2020 of the First Judicial District of Pennsylvania, Administrative Governing Board of the First Judicial District of Pennsylvania, In re: Continuation of Judicial Emergency which directs that "The issuance of residential writs of possession, and the execution or enforcement of residential writs of possession issued by the Court of Common Pleas Office of Judicial Records before this date, remain STAYED until June 1, 2020 or until further order of court. Relief from the stay provided by this Order may be sought by filing an Emergency Petition setting forth the reason(s) for such relief."); and

WHEREAS, the CARES Act and other existing federal law and rules involving consumer protections related to single-family mortgages and certain multifamily dwellings creates confusion and uncertainty for the residents of the Commonwealth as to who has eviction and foreclosure protections related to COVID-19 remediation; and

WHEREAS, Pennsylvania law, the Loan Interest and Protection Law, 41 P.S. §101 et. seq. (Act 6) and the Homeowners Emergency Assistance Act, 35 P.S. § 1680.41 et. seq. (Act 91) requires that notice be provided to debtors for each and every foreclosure action that is initiated; and

WHEREAS, the Act 91 mandates that a mortgagor have a face-to-face meeting with a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise and face-to-face meetings create a public health danger; and

WHEREAS, the Landlord and Tenant Act of 1951, 68 P.S. §250.101 et. seq., and the Manufactured Home Community Rights Act, 68 P.S. §398.1 et. seq., require that notice be provided to tenants and/or lessees when a landlord or manufactured home community owner intends to evict the tenant and/or lessee for nonpayment of rent; and

WHEREAS, the movement and/or displacement of individuals residing in Pennsylvania from their homes or residences during the current stage of the disaster emergency constitutes a public health danger to the Commonwealth in the form of unnecessary movement that increases the risk of community spread of COVID-19; and

WHEREAS, as of May 7, 2020, the Commonwealth of Pennsylvania has 52,915 persons who have tested positive or meet the requirements as probable cases for COVID-19 in all sixty-seven counties and reports 3,416 deaths from the virus.

NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

Section 1:

Commencing on May 11, 2020, the notice requirements mandated by Act 6 and Act 91 are stayed for 60 days, thereby tolling the ability to commence the timelines and necessary Act 6 and Act 91 compliance that must be satisfied prior to the initiation of foreclosure actions. All foreclosures requiring compliance with Act 6 and Act 91 cannot commence for 60 days until July 10, 2020. All foreclosure timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Act 6 and Act 91 notices will be deemed delivered and any foreclosure process may commence. The foreclosure actions requiring Act 6 and 91 compliance may proceed from that point forward in the normal course of action.

Section 2:

Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings. All eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act cannot commence for 60 days until July 10, 2020. All eviction timelines must be computed with a start date of July 10, 2020, at which point any previously delivered Landlord and Tenant Act of 1951 and Manufactured Home Community Rights Act notices will be deemed delivered and any eviction proceedings may commence. The eviction proceedings requiring compliance with the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act may proceed from that point forward in the normal course of action.

Section 3: Effective Date and Duration

This order is effective immediately and will remain in effect until July 10, 2020.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this seventh day of May two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

Tom Wolf
TOM WOLF
Governor

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

IN RE: GENERAL STATEWIDE JUDICIAL EMERGENCY : Nos. 531 and 532 Judicial
: Administration Docket
:

***EMERGENCY ORDER OF STATEWIDE JUDICIAL ADMINISTRATION
APPLICABLE FROM MAY 1, 2020, THROUGH JUNE 1, 2020***

PER CURIAM

AND NOW, this 28th day of April, 2020, pursuant to Rule of Judicial Administration 1952(A) and the Pennsylvania Supreme Court's constitutionally-conferred general supervisory and administrative authority over all courts and magisterial district judges, *see* PA. CONST. art. V, §10(a), this Court DIRECTS that the general, statewide judicial emergency declared in this Court's Order of March 16, 2020, IS EXTENDED through June 1, 2020.

From the time of the Court's Order of March 16, 2020, Pennsylvania's courts have remained operational, albeit with significant limitations due to the current pandemic, including restricted public access to court facilities. Beginning May 4, 2020, unless otherwise provided by a local emergency order, Pennsylvania courts generally SHALL BE OPEN to conduct all court business. However, all IN-PERSON ACCESS AND PROCEEDINGS SHALL BE STRICTLY LIMITED according to the terms of this Order or a more restrictive order issued by a local court under its authorized emergency powers.



The courts' priorities SHALL REMAIN CENTERED on their critical functions;¹ however, courts SHALL PUT FORWARD THEIR BEST EFFORTS to accomplish the timely administration of justice in all other matters, subject to the constraints and safety considerations set forth below.

This Order prospectively replaces the Second Supplemental Order of April 1, 2020, issued at the above dockets, which SHALL REMAIN IN EFFECT until that Order expires on its own terms. The explanatory background information set forth in that Order, as well as the Order of March 18, 2020, is incorporated here by reference.

The Court further explains and DIRECTS as follows:

I. Background

Per the request of the Commonwealth's Secretary of Health, Pennsylvania courts have been generally closed to the public for over one month, subject to a series of general and specific directives and exceptions centered on the continuous performance of the courts' most critical functions. The Secretary's concern -- shared by all Justices of this Court -- is with safeguarding the health and safety of court personnel, court users, and members of the public in light of the risks posed by the COVID-19 virus. In view of the ongoing public health crisis, this Court finds that a further extension of the statewide judicial emergency is necessary.

¹ As reflected below, the present Order employs the term "critical functions" to include the tasks referred to in prior orders as "essential" ones. This approach recognizes that - - since the prevailing circumstances have required several extensions of this Court's emergency declaration -- it has now become incumbent upon the courts to undertake a broader range of functions to assure the proper administration of justice.

Some local courts have utilized the procedures specified in Rule of Judicial Administration 1952 and/or this Court's prior orders to declare local emergencies. Such local emergencies REMAIN IN FULL FORCE AND EFFECT, empowering President Judges in those districts to continue to exercise emergency powers under Rule 1952(B)(2). Extant local emergency orders and directives, including any provisions of these affecting time calculations or deadlines, SHALL REMAIN IN FULL FORCE AND EFFECT until they expire or are rescinded locally.

Should other President Judges deem it prudent to exercise emergency powers above and beyond the authority and latitude provided in this Order, they may file a declaration of an emergency in their districts with the Supreme Court Prothonotary in the Eastern, Western, or Middle District Office, as appropriate for the particular local judicial district. Such a declaration generally SHALL BE SELF-EFFECTUATING subject to any subsequent order by this Court or the local court, with the understanding that the temporary suspension or modification of any statewide court rules other than those addressed in this Order shall first require an application to this Court pursuant to Rule of Judicial Administration 1952(B)(2)(m).

In the jurisdictions with prevailing local emergencies, self-effectuating extensions may be filed. However, any declaration extending a local emergency beyond June 1, 2020, should provide supporting reasoning.²

² If a docket number has been assigned to the judicial district for emergency purposes, any further order concerning administrative directives or other matters associated with the local judicial emergency should be captioned so as to indicate that docket number. For convenience, declarations of emergency and associated local orders may be transmitted via electronic mail to: Irene.Bizzoso@pacourts.us.

II. The Safety of Judges, Court Staff, Court Users, and Others

To the extent they are not already in place, all court leaders **MUST IMPLEMENT AND MAINTAIN** procedures that restrict potential COVID-19 exposure which could result from interactions of judges, court staff, and county agency staff among themselves and with or among members of the public present at court facilities. Among other measures, President Judges may restrict access to court facilities so that appropriate social distancing can be maintained. To the degree practicable in light of the necessity for some in-person appearances and proceedings, safety measures should be employed that are as consistent as possible with the federal and state executive guidance associated with countering the spread of the COVID-19 virus. To the extent that hearings and conferences can be held in the presence of counsel only, the courts **SHALL PERMIT** the parties' physical presence to be excused. In all events, any necessary in-person proceedings **SHALL BE HELD** in courtrooms designated by the individual courts of common pleas to minimize person-to-person contact.

Consistent with the previous guidance, and subject to the direction of President Judges, all courts -- including magisterial district courts -- are encouraged to consider deciding matters on the papers and/or to conduct court proceedings through the use of advanced communication technologies,³ to the extent that constitutional requirements

³ Advanced communication technology includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail. See Pa.R.J.A. No. 1952(A)(2)(e) & comment (citing Rule of Criminal Procedure 103 for the definition of advanced communication technology).

can be satisfied. Any state or local rule that impedes a judge's ability to utilize available technologies to limit in-person contact is suspended through June 1, 2020.

The Administrative Office of Pennsylvania Courts stands ready to provide guidance to courts concerning local implementation of technological resources. In the absence of a certification as provided in Part III of this Order, no proceeding should be delayed solely on account of the present public health crisis that could reasonably be conducted using available advanced communication technologies in a manner that is consistent with constitutional requirements.

III. Court Filings and Time Limitations and Deadlines

The suspensions of time calculations and deadlines indicated in this Court's previous orders and in any order of an intermediate or local court SHALL REMAIN IN EFFECT for the time specified in those orders. In all events, legal papers or pleadings (other than commencement of actions where statutes of limitations may be in issue) which are required to be filed between March 19, 2020, and May 8, 2020, generally SHALL BE DEEMED to have been filed timely if they are filed by close of business on May 11, 2020. Upon adequate notice, however, President Judges or presiding judges may enforce deadlines prior to May 11, 2020, in the critical-functions arena.

President Judges are HEREBY INVESTED with substantial discretion in connection with the enforcement of time deadlines and are DIRECTED to ensure that the enforcement of any deadline does not create an unreasonable risk to the health or safety of court personnel, attorneys, court users, or the general public.

Should any attorney or *pro se* litigant believe that the enforcement of a time deadline or participation in any proceeding poses a significant danger to the health of

one or more persons, or that compliance or participation is unreasonable or impossible in light of restrictions arising out of the Governor's prevailing orders and directives, he or she may file a certification detailing the reasons with the court having jurisdiction over the litigation. Upon receipt of such a certification, the presiding judge SHALL SET a deadline for responses and provide a reasonable opportunity to be heard to all parties.

All courts SHALL PROVIDE FOR COURT FILINGS BY MEANS OTHER THAN IN-PERSON DELIVERY WHENEVER POSSIBLE. Any state or local rule that impedes such alternative means of filing is suspended through June 1, 2020.

Attorneys are encouraged to conduct depositions remotely, via telephone, videoconference, or similar means. Absent articulable and specific concerns about reliability or other relevant considerations, court reporters need not be present in the same locations as witnesses and/or counsel.

Depositions of and required appearances for doctors, nurses, or other healthcare professionals who are substantially involved in responding to the COVID-19 public health emergency ARE SUSPENDED for the duration of this Order.

IV. Priorities

The performance of critical court functions, ensuring that parties' rights are protected, remains of the highest priority. Consistent with this Court's previous Orders, such functions include:

A. Intermediate Courts

- a. Election matters;
- b. Children's Fast-Track matters;
- c. Matters credibly labeled as emergency filings; and
- d. Any other function deemed by a President Judge to be critical consistent with constitutional limitations.

B. Courts of Common Pleas

- a. Election matters;
- b. Emergency bail review and habeas corpus hearings;
- c. Gagnon I hearings;
- d. Bench warrant hearings pursuant to Rule of Criminal Procedure 150;
- e. Juvenile delinquency detention;
- f. Juvenile shelter, adjudication and disposition, and permanency hearings;
- g. Temporary protection from abuse hearings;
- h. Emergency petitions for child custody or pursuant to any provision of the Juvenile Act;
- i. Emergency petitions for guardianship;
- j. Civil mental health reviews, *see* 50 P.S. §7302;
- k. Emergency equity civil matters (injunctions and stays);
- l. Any pleading or motion relating to public health concerns and *involving immediate and irreparable harm*;

- m. Commencement of a civil action, by *praecipe* for a writ of summons, for purposes of tolling a statute of limitations;⁴
 - n. Any other function deemed by a President Judge to be critical consistent with constitutional requirements.
- C. Magisterial District Courts, Philadelphia Municipal Court, Philadelphia Arraignment Court Magistrates and Pittsburgh Municipal Court, Arraignment Division**
- a. Preliminary arraignments (bail setting) for bailable cases;
 - b. Criminal case filings and subsequent processing;
 - c. Preliminary hearings for incarcerated persons only;
 - d. Issuance of search warrants;
 - e. Emergency protection from abuse petitions; and
 - f. Any other function deemed by a President Judge to be critical consistent with constitutional limitations.

V. Open Courts

In proceedings as to which a right to public and press access would otherwise exist, provision must be made to ensure some reasonable means of access. For example, with respect to a proceeding conducted using audio-visual means, such public access may be effectuated during the proceeding by providing live-stream access, or by making a recording available as soon as possible after the proceeding has been concluded.

⁴ If a court of original jurisdiction is closed to filings, the alternative mechanism for filing of an emergency *praecipe* in the Superior Court shall remain in place, as set forth in the March 24, 2020 Order.

VI. Jury Trials

Jury trials, both criminal and civil, remain **SUSPENDED** and will be scheduled for a date in the future by the courts. Local court leaders **SHALL ASSESS** options for resumption of jury trials consistent with prevailing health-and-safety norms.

VII. Payments

Per the Orders of March 18 and April 1, 2020, in-person payments to Magisterial District Courts were suspended, but payments could be accepted by mail, electronically (online), or by telephone as permitted in the Magisterial District Court receiving the payment. The effect of that Order is extended until May 11, 2020. To the extent that a payor was or is entitled to a payment determination hearing under these Orders or the extension provided herein, a missed payment or default **SHALL NOT RESULT** in the issuance of an arrest warrant for failure to make payment, nor shall the non-payment result in driving privileges being suspended, prior to such hearing.

On and after May 11, 2020, payments should be accepted by mail, electronically (online), or by telephone as may be permissible in the court receiving the payment, and the use of such means is strongly encouraged. Payments may be made in person, however, if other means are not available to the payor, as may be permissible in the Magisterial District Court receiving the payment pursuant to authorization by the President Judge.

VIII. Prompt Trial

Rule of Criminal Procedure 600(C) remains **SUSPENDED** in all judicial districts through at least June 1, 2020. The purport of this directive is that the time period of the statewide judicial emergency continuing through at least June 1, 2020, **SHALL BE EXCLUDED** from the time calculation under Rule 600(C). Nothing in this Order,

however, or its local implementation, shall affect a criminal defendant's right to a speedy trial under the United States and Pennsylvania Constitutions – albeit that the circumstances giving rise to this Order and the suspension may be relevant to the constitutional analysis.

IX. Children's Fast Track Appeals

This Court's "Order Regarding Alternative Filing Procedure for Children's Fast Track Appeals," dated March 27, 2020, SHALL REMAIN IN FULL FORCE AND EFFECT through at least June 1, 2020. This Order approved the Superior Court's provision for filing children's fast track appeals upon a certification that filing in the court of original jurisdiction is impractical due to the closure of court facilities.

X. Guidance to Legal Professionals

To the degree necessary, attorneys should counsel their clients that the public health emergency can in no way be used to secure strategic advantage in litigation, including by means of dilatory conduct. In such instances, it may be useful to explain that the duties of a lawyer as advocate continue during the COVID-19 crisis, including the duty to expedite litigation (Rule 3.2 of the Rules of Professional Conduct), the duty of candor toward the tribunal (Rule 3.3 of the Rules of Professional Conduct), and the duty of fairness to opposing party and counsel (Rule 3.4 of the Rules of Professional Conduct).

As previously prescribed with respect to Courts of Common Pleas, the Court continues to AUTHORIZE AND ENCOURAGE use by legal professionals of advanced communication technology to the greatest extent possible. In addition, updated guidance has been provided by the executive branch explaining that:

[A]lthough law offices remain generally closed and lawyers and staff should continue to perform all work remotely to the extent possible, lawyers and staff may access physical offices on a limited basis as necessary to render legal services that cannot practically be completed through the use of advanced communication technology, and which are being rendered to comply with a court directive or deadline, or to meet client needs that are critical to the client's health or safety, including, but not limited to, matters of healthcare, incompetence, incapacitation, end-of-life decision making, government benefits necessary to sustain life and access healthcare and income, or legal functions necessary for the operation of government at all levels. Any in-person activity shall be subject to the Orders of Secretary of Health providing for building safety measures (issued April 5, 2020) and business safety measures (issued April 15, 2020), including any amendments, and related Department of Health guidance.

INDUSTRY OPERATION GUIDANCE, *Uploaded by Governor Tom Wolf*,
<https://www.scribd.com/document/452553026/UPDATED-4-30pm-April-27-2020-Industry-Operation-Guidance> (last visited April 28, 2020).⁵

Lawyers accessing their offices for the purposes set forth above are expected to comply with the Secretary's Orders concerning building and worker safety. *See supra* note 5.

⁵ The referenced Orders of the Secretary of Health are as follows: ORDER OF THE SECRETARY OF THE PA. DEP'T OF HEALTH DIRECTING BUILDING SAFETY MEASURES (April 5, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200405-SOH-Building-Safety-Measures.pdf> (last visited April 28, 2020); and ORDER OF THE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF HEALTH DIRECTING PUBLIC HEALTH SAFETY MEASURES FOR BUSINESSES PERMITTED TO MAINTAIN IN-PERSON OPERATIONS (April 15, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf> (last visited April 28, 2020).

XI. Dispossession of Property

Per this Court's Orders of March 18 and April 1, 2020 -- in view of the economic effects of the COVID-19 pandemic -- no officer, official, or other person employed by the Pennsylvania Judiciary at any level is authorized to effectuate an eviction, ejection, or other displacement from a residence based upon the failure to make a monetary payment through April 30, 2020. All terms of those Orders related to dispossession of residences ARE EXTENDED until May 11, 2020, at which time the statewide suspension of procedures related to dispossession of property SHALL CEASE. The Court takes judicial notice that certain filings, charges, and acts relating to dispossession will remain subject to temporary restraints on account of other directives, including provisions of the federal Coronavirus Aid, Relief, and Economic Security Act. See 15 U.S.C. §9058.

A True Copy Patricia Nicola
As Of 04/28/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

CERTIFICATE OF SERVICE

I hereby certify that this day I filed the foregoing Petition with the Court's PAC File System such that the following persons should receive service automatically:

Hon. Tom Wolfe
Governor of Pennsylvania
508 Main Capitol Building
Harrisburg, PA 17101

Josh Shapiro, Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Date: May 12, 2020



Mary Elizabeth Fischman, Esquire
PA ID #200390
Dornish Law Offices, P.C.
2500 Brooktree Road, Suite 301
Wexford, PA 15090
Tel: (412) 765-2726
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents.

Submitted by: Petitioner

Signature:

A handwritten signature in black ink, appearing to read 'B. S. Dornish', written over a horizontal line.

Name: Bradley S. Dornish

Attorney No. (if applicable): 40990