

## Remarks and Q&A / Chief Justice Maureen O'Connor / March 19, 2020

This is a verbatim transcript of the Ohio Channel Broadcast of Gov. Mike DeWine's coronavirus news conference.

Gov DeWine speaks.

Chief Justice O'Connor is introduced by Gov. DeWine at [00:05:56]

Thank you. Thank you very much, Governor.

Thank you for the invitation to participate this afternoon. I want to thank you also for your courageous leadership on this subject. I think that you have set Ohio as an example for the rest of the nation. And we're proud.

This is an unprecedented time. Undoubtedly, a time during which the judiciary of Ohio, as well as the bar, the state and local leaders, must come together to guarantee the vital and continued operation of the state's judicial system and the public's access to justice. Both command and thank Ohio's judiciary for taking action, issuing orders and considering the health and safety of the public as well as their staff. All the while, mindful of the structure and dictates of our constitution and our laws.

My intent today is to let everyone know what the courts are doing, and my expectation of what they should be doing to continue operating in a manner consistent with the state's public health strategy.

Last Friday, I met with the state's judicial leadership to discuss the judiciary's response to this pandemic. After that meeting, I sent a lengthy email to all judges in Ohio. In the email, I emphasized several key points that I want to highlight today:

Courts must open. They must be open to address emergency and time-sensitive matters. Indiscriminate closure of the courts with no plan for these issues is not an option.

Judges across each county must cooperate among themselves to issue orders and establish procedures necessary to continue essential court functions in this rapidly developing situation. And in light of the further directives of Governor DeWine and health officials, the need for uniform buy-in and consistency among judges is paramount.

Further, judges need to consult and collaborate with local leaders to develop a plan to ensure essential access to the courts. That will continue. This collaborative, this collaboration needs to include all stakeholders, clerks of court, health and law enforcement officials, attorneys, treatment providers, children's services and others. These are all essential members of the operation.

Total closure of the courts and the clerks of courts offices presents an access to justice issue. Measures can be taken to ensure access to justice while safeguarding the health of employees. By limiting but not eliminating access, the courts can be closed to the public for non-essential purposes. I've asked judges to prioritize their workload, to reduce the need for jury pools and the level of public traffic in courthouses. I encourage them to maximize technology and to modify their orders to reduce the need for face to face interaction. I urge them to consider lowering bonds and using summonses instead of arrests to help minimize jail populations.

I noted some creative local solutions to these problems and urge courts to use their authority and their initiative to employ similar solutions. Courts all over the state have responded by issuing orders that do just that. I might add that the website of the Ohio Judicial Conference, which can be accessed from our Web site [sc.ohio.gov](http://sc.ohio.gov), that's SC dot Ohio dot gov, contains the orders issued by the local courts. If you access it, you will note the response by our judiciary.

For example, courts in Cuyahoga County have suspended all non-time-sensitive civil and criminal jury type trials and they've implemented a jury call-in system so that jurors would not have to appear unnecessarily. Also, when possible, hearings are being conducted by video to reduce person-to-person contact. Foreclosure actions and sheriff's sales are stayed for 60 days. This will ensure that individuals are not forced out of their home during the public health crisis.

Jackson County has leverage their existing statutory authority under the Ohio revised code to extend speedy trial time in criminal cases on the grounds of the governor's emergency declaration. As I've advised, Ohio revised code twenty-nine forty-five point seven two states -- the time within which an accused may be brought to trial or in the case of a felony to preliminary hearing and trial may be extended during the period by any court for the period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused own motion. This allows for continuances upon reasonable grounds. Judges can and should employ that provision where appropriate and issue orders detailing the reasonable grounds for the continuance.

And Franklin County Municipal Court has authorized the use of recognizance bonds for nonviolent misdemeanors and traffic cases.

But there's still more work to be done today. I want to encourage local courts to continue using their own authority and initiative to address common issues that we see across the state.

For example, I urge all judges to grant continuances or use alternate methods for non-essential court appearances to ensure that the clerk's office remains open and are accessible to the public temporarily. Stay appropriate evictions and foreclosure proceedings and temporarily refrain from issuing warrants for failure to appear for traffic violations, minor misdemeanor and nonviolent misdemeanor offenses.

Find ways to provide remote and yet meaningful treatment options for those with substance abuse disorder. Change probation and community control and pretrial supervision meetings to phone or video reporting.

Finally, I urge judges to use their discretion to release people held in jail and release incarcerated individuals who are in a high-risk category for being infected with the virus.

Looking ahead, we will be working with the governor and the General Assembly on a legislative proposal which will provide more uniformity and continuity in our judicial systems response to emergencies such as this. I must also mention the work of the Supreme Court staff itself. We continue to consider and decide cases, although we have taken common sense measures consistent with the governor's guidance to reduce risk.

The court remains open. We have essential staff performing their duties on an off site. We will continue to accept case filings, provide support for judges, for local court staff and for attorneys.

Finally, I understand that many local courts lack the technology and resources needed to implement many of these suggestions to meet that demand. The Supreme Court will release funds in the form of grants to local courts to obtain video conferencing equipment. It is my hope that by pushing out this funding on an emergency basis, we can assist the local courts in a quick implementation of video conferencing for arraignments and other conferencing needs. I expect to announce the process for those grants tomorrow. We've decided on an amount of \$4 million that will be taken from my budget and dispersed to the local courts for this purpose.

Now, before I take your questions, I'd like to say that I have personally been in touch with many judges. The Bar Association's leadership and in constant conversation with the director of the Ohio Judicial Conference, Paul Pfeifer. We are working together in this ever- changing environment and we are so pleased to continue to do so.

Thank you. Now we'll take any questions that you might have.

[00:14:02] Kevin LANDERS, WBNS 10 TV. Can you explain a little bit more about releasing prisoners who are in the high-risk category of attracting the virus? Thank you.

[00:14:12] There obviously are many different ages and health conditions of prisoners in our jails, and an assessment should be done to determine whether or not they can safely be released given the fact of their age and maybe other health conditions that they might have that they have to deal with. This is twofold. One, to safeguard the folks that are in jail and also to offer the individual who may be at risk the opportunity to be isolated outside of the jail environment. This is up to the local courts to do. This is and in conjunction, obviously, with the sheriffs who run the jails. But this is something that I've asked them to consider.

[00:15:01] Chief Justice, this is Molly Martinez with Spectrum News. I'm wondering if there's any push to sort of clear out low-level offenders and sort of make more room in the prisons during this pandemic?

[00:15:11] Well, I don't speak for the prisons. I'm talking about the jails when I make this recommendation. Will there be any leniency with the jails and who is incarcerated? Well, that's what I mentioned, that the judges should review their bail. And in the circumstances of which, they have people detained in the jails and prioritize releases based on that.

[00:15:35] Thank you, Chief, Jim Provance with the Toledo Blade. There were two justices who have recused themselves from the Election Day lawsuit. Could you tell us how you're going to replace them and considering this case? And if you can. Could you comment on the fact that you yourself are being sued over your Election Day morning decision?

[00:15:53] Well, first of all, I'm not going to comment on pending cases. I will tell you, in general, when cases are not orally argued, there is no need for a visiting judge to sit on a case. We need four justices to create a majority, as you well know. And as long as we have four justices that are in unison, there's no need to deal with the fact that we don't have four justices. If we did have a problem with four justices, then there would be a need to supplement with visiting judges, but not at this time.

[00:16:27] Thank you, Chief, Andrew Welsh-Huggins with the Associated Press. In terms of the recommendations that you've made that you'd like to see judges and courts undertake. Can you explain whether you have the ability to ramp that up at all and make an actual judicial order? And depending on your answer to that, is that something that you would take advantage of? In other words, instead of making recommendations, do you have any way to issue a directive in order to judges to actually do these things?

[00:17:02] Thanks for that question. You know, there's two different types of judicial systems in the 50 states that we have in our country. One is called a unified system and one is what we have here in Ohio, which is a non-unified system. The Supreme Court, and the chief justice, has that type of power that you just described and can issue directives not just for emergency situations, but many other situations that present themselves in the course of managing, you know, the judicial system in the state. We don't have that in Ohio. We have Superintendence Rule 14, which is a declaration of a judicial emergency. This does not go as far as what you were suggesting, that there would be a pronouncement from the chief justice that would be binding on all judges. At least that's my interpretation of Rule 14 at this time. When I mentioned that we are looking at legislation, that's exactly what we're looking at to create legislation that would under very, very limited and specialized circumstances such as what we are experiencing here, should there be a need, the opportunity for the chief justice to make those type of orders that would be binding on the judiciary?

[00:18:24] (Welsh-Huggins following up): Real quickly, the legislature is actually meeting next week. Are you looking at a at a fix that quickly when you're talking about that type of legislation?

[00:18:32] In an ideal world, that's the way it would happen. But we're not in an ideal world. So we'll see.

[00:18:39] Thanks, Chief Justice. This is Jake Zuckerman from Ohio Capital Journal. I want to ask about your decision against any moratorium on evictions. Is it prudent to allow the eviction process to continue in this pandemic? Would you repeat your question, please? I thought I heard you say that there was no moratorium on evictions. Could you clarify that for one? And is it prudent to continue to allow the eviction process to continue in this pandemic?

[00:19:02] Well, that's an interesting question. Most people think that evictions are just for mere non-payment of your rent or whatever the situation. But there are certain types of evictions that may be, for example, domestic violence and trying to get someone evicted from the home because they present a danger to the other members living in that home. So it's up to the courts to deal with that and to figure out, yes, if there is an eviction that is in process, or going to be in process, they could have a moratorium on filing of evictions and foreclosures in the same way. They can do that. But then again, they have to have the flexibility that if someone needs to be removed through the eviction process because there is a domestic violence perpetrator, that should be allowable on the local courts' judgment and their initiative. So, you know, Ohio has 88 different counties, over 700 judges, over 350 courts in this state. And we are not, as I said, a unified state. But there's a reason I think, maybe, for that. It's because we have such a variety of communities and court systems and resources. So, I am in favor of the solutions coming from the locals and being implemented by the local courts and local community leaders and officials, of course. And as a last resort, I would resort to, you know, the contents of the legislation that I just

described. Now, different mayors in in the state that I'm aware of have urged that evictions be stayed, that any utilities be reinstated or the process to terminate, be suspended. And those are good practices and those are practices that I definitely would urge.

[00:21:03] Thank you. Hello. Chief Justice Paul Teasley with Hanna. I'm told I'm your last question today. Apparently, a Hamilton County judge has asked you to issue a uniform order, a uniform guidance in keeping with your power to, quote, do all things necessary to ensure the orderly and efficient administration of justice. And then related to that. Can you speak to any equal protection concerns for potential jurors or witnesses in different counties under varying code with 19 orders to appear or not appear in court? OK.

[00:21:38] Would you repeat what the judge from Hamilton County would? For what purpose?

[00:21:43] Oh, you know, based on a Cleveland.com article, apparently they're quoting him. He is asking you to issue a uniform order for all courts based on your power, quote, to do all things necessary to ensure the orderly and efficient administration of justice. In other words, that would be your legal authority to do so. Now, I know you've addressed Ohio. Be non-uniform. I didn't hear you address that precise phrase. I don't know where it appears right now. And then the related question again, what equal protection concerns are there for jurors and witnesses in different counties under different COVID-19 orders?

[00:22:21] OK. If there was a need, if our local judges and local leadership were not addressing the issues that presented themselves, maybe I would have to take a look at intervening in some way. But that's not the case that we have here today. You know, as I said, there's orders. You can take a look at them on the Web site and you can see for yourself the type of measures that are being taken in the individuals courts. And there's many, many, many of these measures that are taken in the courts to address this. And they address all kinds of situations. Primarily, they're concerned about jury pools, which points to your second question and not having jury trials because of the health risk that that imposes, and the fact that you may have difficulty even having jurors report. So, if the court employs the appropriate statutory authority to continue cases, there's where your authority is. And that's how those trials can be continued.

[00:23:31] (Teasley follows up): Yes. And as the state's chief legal mind, as it were. Can you address the equal protection question between counties?

[00:23:40] OK, well, I'm not going to address an equal protection question. First of all, there's not one before us. And secondly, if there was, I'd have to consult with my colleagues because it would be a case in front of us. And I don't speculate on cases either when they're being filed or when they're potentially. So with that, if there are no other questions.

[00:24:00] Thank you very much.

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