



# Tennessee Defense Lawyers Association

## *NEWSLETTER*

### **TN Supreme Court Order**

## **SUPREME COURT EXTENDS JUDICIAL EMERGENCY AND EASES COURT RESTRICTIONS**

May 27, 2020

The Tennessee Supreme Court today issued an Order that extends the judicial state of emergency and eases restrictions imposed by previous court orders. These changes include allowing jury trials to begin after July 3 with strict protocols; allows eviction cases to be heard beginning June 1; ends deadline extensions; and allows local judicial districts to continue operating under their approved plans for expanded in-person proceedings. The Order continues to encourage remote proceedings via video or audio conference whenever possible.

Today's Order allows jury trials to begin after July 3, 2020, if strict social distancing and capacity protocols can be met and CDC guidelines are followed. The Order also provides for six-person juries in civil cases unless a twelve-person jury is specifically requested by a party.

Deadlines in court rules, statutes, and administrative rules that were previously extended until May 31 are extended only until June 5. After this date, the Supreme Court does not anticipate any further extension of deadlines. "The point of extending deadlines was to give judges, attorneys, and litigants time to adjust to this new normal and weather this storm a bit," Chief Justice Bivins said. "But, extensions cannot go on indefinitely. Judges, of course, can extend deadlines on an individual basis when permissible."

The Order also lifts the broad restrictions on evictions. As of June 1, eviction cases may be heard if the landlord states under penalty of perjury that the action is not subject to the federal Coronavirus Aid, Relief, and Economic Security Act (CARES) Act.

The Supreme Court issued an order on April 24 that allowed judicial districts to expand in-person proceedings if the Supreme Court approved a plan submitted by the district addressing such issues as social distancing, limiting access to the courtroom, and other strategies designed to limit the spread of Covid-19 as much as possible. The majority of judicial districts are now operating under those approved plans, which are available on the TNCourts.gov website. Judicial districts that did not submit a plan are continuing to operate under the parameters set forth in the March 25 Order.

# SUPREME COURT EXTENDS JUDICIAL EMERGENCY AND EASES COURT RESTRICTIONS (Cont.)

“For now, each court will continue to operate under their approved plan or the March 25 Order,” Chief Justice Jeff Bivins said. “Our top priority throughout the pandemic has been ensuring courts remain open and accessible for Tennesseans. We have worked diligently with local officials to ensure that emergency orders of protection, bond hearings, custody hearings, and other critical matters can be heard promptly. We have had to balance access to the courts with the health and safety of all participants and workers in the judicial system.

Over the past ten weeks, courts across Tennessee have continued to utilize technology to keep courts open and accessible. Dozens of courts have held their first remote proceedings via video conference, and proceedings have been live-streamed to YouTube for the first time. For example, the Tennessee Supreme Court held oral arguments via video conference twice, including a live-stream, the Court of Appeals held oral arguments via video conference, and the 20<sup>th</sup> Judicial District Chancery Court conducted hearings in a school voucher case via video conference over multiple days. In total, over 700 video proceedings have taken place on Zoom licenses managed by the Administrative Office of the Courts since the middle of April. Some counties and individual judges have also purchased their own video conferencing tools that are not managed by the AOC.

“While there certainly are some challenges, many judges are finding a lot of efficiencies and advantages to deploying remote proceedings in certain circumstances,” Chief Justice Bivins said. “Sometimes great innovation comes out of crisis and that is what is happening across the Tennessee judiciary.”

As with the previous Orders related to Covid-19, today’s Order applies to all state and local courts across Tennessee, including state circuit and chancery courts, general sessions courts, juvenile courts, and municipal courts.

[The Order is available here.](#)

## **\*\*\* TDLA Membership Renewals \*\*\***

As a reminder, TDLA membership runs from July 1 to June 30. Regular memberships are only \$200/ year and young lawyer memberships are only \$100/ year. Renewal invoices will be emailed at the beginning of June.

# *TDLA Upcoming Events & News*

June 10, 2020 - TDLA Free CLE Webinar “**Pandemic Depositions: Using Zoom Effectively**” - TDLA members **Christina Hadaway** and **Dylan Gillespie** with *Hickman, Goza and Spragins* will present the next TDLA Free CLE webinar. The discussion will concern the process of remote swearing in of witnesses, difficulties/pitfalls from the use of Zoom technology, sharing exhibits prior to and during depositions, and potential benefits to the plaintiff. **To Register:** [Click here](#)

September 2-4, 2020 - **TDLA Annual Meeting** this fall in downtown Nashville! Join us in Music City for networking and 6 hours of CLE. The Annual Meeting will be held at the Doubletree Downtown Nashville.

**Amicus Requests** - Do you know of legislation in Tennessee that may be favorable for TDLA to file an Amicus Brief? Let Us Know! Contact [office@tdla.net](mailto:office@tdla.net)

## ***Recent TDLA Amicus Summary:***

Thank you to the TDLA Professional Negligence & Healthcare section chair **Chris Vrettos** with *Gideon, Cooper, and Essary PLC* for the TDLA Amicus Brief on this case culminating in a favorable result. Please see summary and opinions below. The Supreme Court just released its opinion in ***Martin v. Rolling Hills Hospital***, a pre-suit notice case involving deficiencies in the HIPAA authorization. The Supreme Court’s decision resulted in a reinstatement of the dismissal originally granted to the Defendants by the trial court. Just as importantly, the Supreme Court addressed some questions—particular to HIPAA authorization deficiency cases—that up until now had been answered inconsistently by various Courts. In summary:

- Defendants wishing to challenge a Plaintiff’s compliance with the pre-suit notice statute should show how Plaintiff’s noncompliance frustrated the purpose of the statute, or denied the defendants a benefit conferred by the statute.
- One way to do this is to show that the HIPAA authorization accompanying the notice lacked one or more of the 6 core elements required by federal regulations.
- While Defendants must still explain how they were prejudiced by Plaintiff’s noncompliance, they need not attempt to “test” a deficient HIPAA authorization.
- Once Defendants have met the burden described above, the burden shifts back to Plaintiffs to show substantial compliance with, or extraordinary cause for failure to comply with, pre-suit notice requirements.
- Notably, prejudice is relevant to the question of substantial compliance, but it is not its own analytical element in ruling upon a Rule 12.06 motion regarding Plaintiff’s failure to comply with pre-suit notice requirements.

**Majority Opinion:** [click here](#)

**Separate Opinion:** [click here](#)



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