

MEMO

To: District 3, Members of the Bar

From: Chief Judge Jennifer Dorow

Re: Importance of Keeping the Courthouse Open

Date: March 22, 2020

We are in unusual and unprecedented times. Each County of the 3rd Judicial District has entered orders or directives limiting the cases being heard and we are taking all precautions we can in light of our constitutional and statutory responsibilities. I am frequently asked to consider closing the Courthouses. Courthouse closure is not possible for the time of this emergency.

Section 757.14 of the Wisconsin Statutes requires that all sittings of Court "...shall be public and every citizen may freely attend the same, except if otherwise expressly provided by law." In addition to that provision, the 6th Amendment of the United States Constitution requires that trials be public.

The phrase "trials" has been held to extend to all hearings in criminal cases. Violation of that provision has been held to invalidate the entire proceeding regardless of intent of the Court in closing the process. *See State v. Vanness*, 2007 WI App 195.

To close the entire courthouse, means that no case could be heard. The practical effects of that decision are the following as identified by the judiciary.

In Criminal cases: Citizens arrested would have no access to the Courts for bond/bail hearings, their 10 day preliminary hearing rights, and the ability to go to plea and sentencing if they want so they can be released from the jail. This would cause the jail populations at this critical time to swell meaning more could be infected.

In Family cases: Citizens whose children are being held by the other parent, would lack someone to enforce their rights. Citizens in failing marital relationships would lack the ability to seek orders to protect themselves, physically and financially.

In Juvenile cases: Juveniles would be stuck in detention without any review and those in out of home placements would not be able to go home.

In Mental Commitment and Guardianship cases: Citizens would be either be held without due process, or would be unable to get the needed orders to provide the needed medical care.

In Civil cases: Restraining orders and emergency injunctive relief would be not be possible. There would be no effective check on the executive branch, with writs of mandamus, writs of habeas corpus, and writs of certiorari.

The Court system is trying to limit the number of cases that are being heard and to be as safe as possible by allowing telephonic or other alternative appearances and adjourning those cases which need not be heard. I recognize that history can be a fickle judge. Presidents Abraham Lincoln and Franklin Delano Roosevelt both thought they were saving lives in moments of great peril, when they made decisions which were later held to violate the constitutional rights of our citizens. Those decisions, historically, were not approved of.

If you see areas where we can improve implementing the CDC guidelines in light of our responsibilities addressed above, please let me or the judge assigned to your matter know.

This is a reminder to all of us to continue to follow the Center for Disease Control and Prevention (CDC) guidelines and to contact your physician if you are not feeling well. To review those guidelines and symptoms of COVID-19 you may follow the links below:

Handwashing: <https://www.cdc.gov/handwashing/index.html>

Symptoms: <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>

Stay safe. And thank you to my fellow Chief Judge Jason Rossell who put all of this together and graciously allowed me to use it as my own.

Judge Dorow