

OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
COVID-19
EPISODE 97
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(Music)

CHIEF JUDGE MYERS: Good morning. I'm Don Myers, Chief Judge in the Ninth Judicial Circuit. I want to welcome you today to a special edition of Open Ninth. Typically, we invite guests to appear and discuss a topic that relates in some way or another to the administration of justice. Today, though, we find ourselves in a unique season of life for the courts.

In late 2019, a novel form of a coronavirus surfaced in a Chinese seafood and poultry market. That virus, now known as COVID-19, has spread to at least 171 countries, killing more than 38,000 people and sickening hundreds of thousands in just a matter of weeks.

On January the 21st of 2020, the first confirmed case of the coronavirus disease was found in the United States in Washington State. And on January 30th, the World Health Organization declared a Public Health Emergency.

In the two months since, the world has watched as thousands have been quarantined on cruise ships, international flights have been restricted, and entire hospital systems have been overrun by victims of the disease. In response, as major outbreaks have raced through cities and even countries, political leaders have imposed significant limitations on the size of gatherings of people, less than ten in a group currently, and mandated social distancing, a term I didn't even know existed until just a few weeks ago, hoping that by deliberately increasing the physical space between people, the spread of the disease could be curbed.

And most recently our local Mayor, our County Commission, and now the Governor have all entered Executive Stay-At-Home Orders in an effort to further prevent the spread of the disease. Those Executive Orders parse out essential from non-essential businesses and activities. Many businesses are simply closed. Others, however, remain open with limited services being

offered. The restrictions and limitations impact most everything we do, and life in our community has changed in ways that I can't recall ever happening during my lifetime.

Closest to home for me right now are the impacts here at the courthouses in the Ninth Judicial Circuit, and so we'll spend our time together today exploring life in those courthouses and the impacts on our community.

I'm joined today by Rob Bains, who I work closely together with in Court Administration. If you are a regular listener of the program, you might recognize his voice from the introductions to our regular podcasts. Rob has brought some questions from folks both inside and outside of the courthouses, and we're going to talk about some of the intersection of the coronavirus and those courthouses here in the Ninth Judicial Circuit.

Rob, thanks for joining me.

ROB BAINS: Thank you, Judge Myers. It's a pleasure to be part of this.

If you're ready, our first question is kind of an overview question. It's coming from Sandra, in Kissimmee. Sandra is asking, what is involved in shutting down or partially shutting down a circuit, and what does the chief judge have to consider in doing so?

CHIEF JUDGE MYERS: Well, you know, when we think about shutting down courthouses or the impact of the virus on the courthouses that causes us to have to consider shutdowns or partial shutdowns, the first thing that I think our mind runs to are the buildings.

And we are in a large circuit; the third largest circuit in the state. We've got eight courthouse facilities in the Ninth Circuit. Our largest courthouse here in Downtown Orlando, nearly a million square feet of space that is occupied on a nearly daily basis by the thousands from the community.

But the real and first and most important impact when we talk about the courts isn't the buildings. It's the people. It's the judges, it's our judicial assistants, the 238 Court Administration employees, it's the litigants, the parties, the lawyers, our clerks, our deputies, witnesses, folks who come into the courthouse for every manner or purpose every day. And any consideration or discussion we have when we talk about a potential impact on the courts and potential closures has to first take into account the safety and the well-being of the people that are here.

The idea of shutting down the courthouse is not unique. We, in Florida, have a regular Hurricane Season, and we know that several times in just the last couple of years we've been forced to courthouse closures. The difference, though, is that that was a physical impact to a building that caused people to have to stay away, and it was limited in time and scope. We've never really suffered a direct impact here perhaps like they have in the Panhandle.

So for us, the idea of considering a public health scare is different. We have to really be concerned about the idea of people occupying this building, being in close proximity with each other, worried about the types of cases that we handle. We throw around the term due process of constitutional protection as it relates to people and the types of cases that we handle. We have to be concerned about time frames, time constraints on handling certain issues and types of cases.

We also have to recognize too that we are a part of a State Court System. This is not something that is entirely local in the decision-making process. And so as a Chief Judge, I have a certain scope of authority and can make certain decisions, but ultimately the authority that I have derives from our Florida Supreme Court and the rules that they impose upon us. And so we're always in close communication with the Chief Justice and the other Justices of the

Supreme Court as we talk about the impacts that a disease like this might have on court operations, on buildings, but ultimately and most importantly on the people.

ROB BAINS: Okay. And is -- part of that is, obviously, when we have a shut-down, then we also still are statutorily required to hear certain cases and hearings. And that brings us to Cedric's question, out of Apopka. Cedric's asking, at the very least, what proceedings are always going to be heard, and where is the Ninth Circuit on that matter right now? Where are we as far as a closure for the essential cases?

CHIEF JUDGE MYERS: Those are -- that's a great question. Obviously, when we talk about scaling back the court operations, we have to look and define those things that are essential and non-essential, and the Supreme Court helps us with that. And the way that they communicate those types of cases that are defined as essential is through Administrative Orders.

And early on in this process for us, the Chief Justice issued an Administrative Order defining those things that are essential proceedings for us. Those things include things like first appearances for criminal defendants who are required to be seen within 24 hours from the time that they are detained, criminal arraignments as necessary, hearings on motions to set or to modify bond or bail for people who are in custody.

It also includes juvenile dependency shelter hearings. Those are children that have been picked up by the Department of Children and Families because the child has been abused, abandoned or neglected. Juvenile delinquency detention hearings; minors who've been arrested for committing offenses.

Hearings on petitions for domestic violence, also an important due process function of the court. In addition we talk about petitions for the appointment of an emergency temporary guardian. Life doesn't stop simply because of the virus, and we recognize that there are many

who are vulnerable in our community who will continue to need access to the courts, so emergency temporary guardianships.

Hearings to determine whether an individual should be involuntarily committed under the Baker Act or the Marchman Act. Baker Act; those people who are determined to be a potential risk of harm to themselves or to others. And the Marchman Act; those people who are unable to properly make decisions for themselves because of some addiction, drug or alcohol-type problem that they're suffering.

And of course there are certain extraordinary writs, legal proceedings that are necessary to protect constitutional rights in a time of a virus or pandemic like the one that we're suffering now. We don't think about this often because we don't find ourselves in this time, but there will be orders for people to be quarantined, for example. And if somebody is quarantined and believe they're being held under quarantine improperly, that person has a right to access the courts and have the court make a legal decision about whether their quarantine and holding or detention is justified under the law.

So those are the essential types of proceedings that the court is most concerned with, and that's our primary focus during this time.

In addition to that, the Court has given us permission to handle some non-essential matters, and those would be all of the things that don't fall inside of essential matters. And so the court continues, day by day, to add to the services that it is able to provide, certain non-essential types of hearings.

We do -- for example, we take pleas from criminal defendants who determine that they're ready to resolve their case and move on with whatever their sentencing terms or conditions might be. So we will continue to add non-essential services, but the Supreme Court has limited the

manner in which we are able to handle those non-essential matters by limiting face-to-face hearings or contact, and that's where the use of technology comes in.

And I know we're going to have a chance to talk about the available technology at this point. But you wrapped up your question with this idea of where are we. And the answer is, we are providing all of those essential services.

In addition, we are providing many non-essential services. There are certain types of family law issues that are being decided. There are certainly civil cases of higher importance that we're able to decide using remote access technology, whether it be teleconferencing or videoconferencing involving multiple parties. We're able to accomplish those things on a regular basis.

ROB BAINS: Okay. And some of the issues, obviously, the common citizens of Orange and Osceola County are questioning now, are somewhat of a result of the COVID crisis. And we've got Amy who is actually a little concerned about eviction proceedings, and this is specifically -- she's in Osceola County. So the question is, what is the status of eviction proceedings in Osceola County?

CHIEF JUDGE MYERS: Well, right now, eviction proceedings are not considered an essential service of the court by the Supreme Court's definition. And so the status of evictions in the court at this point is that it has taken a very low priority. And we're simply focused on providing those essential services and beginning to add non-essentials.

I recognize that evictions have impacts on both landlords and tenants. And I'm sure during this time, as the economy is impacted by the virus, that the concerns of both landlords and tenants have escalated. Everybody is in a heightened state of anxiety. There is a tremendous amount of fear ongoing, and much of it is driven by economic fear, the idea that I don't have the

money to make my rent payment, or if I don't receive my rent payment from my tenant I may not be able to pay my mortgage. And so we try to recognize those things but also recognize that the court system, under these circumstances, isn't able at this point to facilitate the types of hearings and things that might be necessary in an eviction. So while an eviction case may be filed, there may even be service of certain notices on the tenant, at this point the court is not holding any hearings with respect to eviction proceedings in Osceola County or in Orange County.

ROB BAINS: Okay. One of the other areas that citizens participate often with the courts is in jury service. And we've got Cindy from Ocoee saying that she had received a jury summons to appear on May 4th. She's asking, do I need to report for jury duty, or will the courts be holding jury trials at all?

CHIEF JUDGE MYERS: That's a great question. I wish I had the crystal ball. And my sense of optimism and hope says I hope that we are. In reality, we don't know the answer to that yet. That's still a little far out. We continue to receive information.

And I want to emphasize this as we talk about the status of the court operations. The decisions that we make with respect to the court and the services that we provide and the manner in which we provide those is always going to be driven by science, by data, by quality information. As judges, that's the type of information we look to rely on in cases, and it's the type of information that we look to when we're making important decisions about the safety and health of the people involved in the court system and hearings.

We know that our jurors, when they come here to the courthouse, are typically required to be involved in large group functions. When you come here as -- reporting for jury duty, for example, you may find yourself here with two, three, four hundred other people who've been called to report as well. That's contrary to the CDC guidelines and the President's guidance that

we should limit group gatherings to ten people or less. Until that guideline is lifted, we're not going to be in a place where we can continue with jury trials.

Nevertheless, as a circuit, we're compelled to continue to send out jury summons because we have to be prepared for the time when these restrictions are lifted and we're able to proceed with trials. And so what I would tell anybody who has been summonsed for jury duty is, right now, any summonses through mid-April, you are excused from your performance. You do not need to come down here for jury service.

I fully anticipate there will be an extension of that order, at least through the end of April. And we'll be making an announcement at the time that it is extended, that if you have received a summons from mid-April to the end of April that you are excused from your jury service. And we'll continue to keep the public informed through our website, which is www.ninthcircuit.org, or through our social media connections, that's Facebook, Instagram, Twitter, and the handle is @ninthcircuitfl. Any of those places are great resources for data and information for jurors.

In addition, you have a telephone number, as a juror, that comes on your summons; you can always call that. And very soon, we'll be releasing our own Alexa app that will have juror information for you as well, so you'll be able to access that through the Alexa.

ROB BAINS: Okay. And understanding from your answer, it's a lot based on science and what our leaders in our community is [sic] faced with. But Rick in Winter Park -- and this kind of follows up to that. With what you know now, and knowing that we're somewhat at the beginning of this crisis here in Central Florida still, what are some of the hurdles you see the State Courts facing as we continue to move further into this crisis?

CHIEF JUDGE MYERS: Well, that's a big question. There are an awful lot of hurdles that I can foresee us confronting as we continue to move through the crisis and then when we find ourselves on the other side of all of this.

Every day in our court system there are hundreds of cases that are filed. Many of those cases require very urgent or quick-set hearings. We're not able to accomplish much of that work right now. And so every day that passes, we are continuing to accumulate more and more unheard cases that are going to require hearings and ultimately trials. So I think the number one hurdle or impact that we're going to see is a significant backlog of casework.

We recognize that people have important financial interests in cases, important liberty interests in cases, and so our desire is to maintain progress on as many of those cases as we can during the crisis. But inevitably we're going to see a significant backlog.

We continue to face the challenges of just access for our citizens. We've done everything we can to limit access to the courthouse in a safe manner. But unfortunately that means that there are cases that are not being decided. And so the limited court access is a concern and a hurdle for us as we move forward.

We want our citizens and our community to know that the courthouse is open for business, and it is to a limited degree. Much of it is electronic at this point. So if somebody needs to file a case, they can file a case without coming to the courthouse. They can use the e-Portal that the State runs for the filing of a case. It's not necessary to come to the courthouse or to deliver paper here. You can file online. You can pay your fees online. And you can receive electronic notices to your email account immediately through the e-Portal, so we strongly encourage people to do that. But that, nevertheless, is a limitation, and we recognize that.

There are folks who have outstanding obligations, and they're unclear and uncertain about what we're doing and whether they'll be able to get answers to their questions. I want you to know if your case has been assigned to a judge, you can contact that judge's office, speak to the judicial assistant. Now, while they cannot give you legal advice, they are able to give you procedural information. They can tell you about process, they can tell you about timing.

Right now we're in an indefinite stay. We just don't know when this is going to end. But we are able to tell you that when it ends, you're going to receive notice. No action is going to be taken against anybody in their case without some notice and an opportunity to be heard about that action. So everybody can be reassured that you're going to receive notice.

Now, that may come through the mail if you're not registered in the e-Portal, or it can come instantaneously by email if you are registered in the e-Portal. So I strongly encourage you to go to the State of Florida e-Portal website; there's a link to that on the Ninth Circuit's website and there's a link to that on our Clerk's website that can take you there, allow you to register and make sure you're getting the most current, the fastest and most efficient method of delivery of notices.

ROB BAINS: Okay. And another question directly related to the situation at hand with the COVID crisis comes from Jill in Winter Garden. Jill is asking, most parenting plans don't have provisions for the pandemic. What are parties who are engaged in parenting plans supposed to be doing?

CHIEF JUDGE MYERS: So for our listeners who've not been involved in a domestic case, one of the court's primary concerns is ensuring that children have substantial contact with their parents, meaningful contact, but contact that is in the best interest of the child. And those are magic words in the court system, the best interest of the child.

What I would suggest to you is -- you're probably correct, most parenting plans simply did not contemplate the occurrence of a pandemic. But the decision-making with respect to children should always be made under -- in the eyes of the law with shared parenting in mind, meaning both parents are involved in a conversation, whether it's voice-to-voice or text or email, in communication about what is genuinely in the child's best interest.

The court has issued an Administrative Order, which you can again find on our website, that addresses parenting plan issues during the pandemic. I obviously can't get involved in any specific case or give legal advice in this context. But I think it's important to note that the court's expectation generally is that parents will work together in good faith to determine what is in their child's best interest and cooperate to make that happen with the belief and understanding that both parents should have a voice into and be able to speak into their children's lives.

So I encourage you to visit the website, take a look at that Administrative Order that addresses parenting plan issues during the course of the pandemic, and then, if necessary, consult with a lawyer about what your rights are.

ROB BAINS: Okay. And we've had a couple of different questions, but I'm going to take one from Robert regarding small claims. Robert's saying that he has a small claims court initial hearing that was canceled. He's asking, what happens now, and will I have a remote hearing or will it be postponed until the courthouse reopens?

CHIEF JUDGE MYERS: As we evaluate those essential and non-essential functions of the court, we continue to work through all of the different types of cases that we're handling. What I can tell folks in Robert's situation right now is that no small claims hearings are occurring at this point. We don't have the ability to bring folks into the courthouse to conduct or participate in that mediation conference that is the first step of any small claims case, and

therefore don't have the ability to have them here if they're unsuccessful in mediation to conduct that initial hearing. Nor are we able at this point to conduct evidentiary hearings where evidence is taken, testimony is received, documents are received, through the means of technology that we have available to us.

So what I would tell someone in Robert's situation is that you will receive notice from the court. If we get to a place in our assessment of non-essential proceedings that we think there are some things we can do through remote technology related to small claims cases, then we'll notify folks to have a chance to participate in that by telephone or by videoconferencing and their case will be able to go forward. If we determine we're not able to accomplish that, then we'll -- they'll receive notice of a reset date when the courthouse is open for all access.

ROB BAINS: Okay. And another question that we commonly get in-house from both potential jurors as well as litigants is, what should I do if I'm experiencing flu-like symptoms but haven't been summoned to appear for -- in court for an emergency proceeding -- I'm sorry -- but have been -- but I've been summoned -- in other words, they're saying they've got some flu-like symptoms, they've received a summons, they're compelled to come in or should they report in and say that they don't feel well. How should they handle that?

CHIEF JUDGE MYERS: The very most important thing during this pandemic -- and this is the advice and counsel from the Center for Disease Control -- says if you are sick, stay home, consult with your doctor. Please do not come to the courthouse if you are exuding flu-like symptoms. If you've been summoned to appear for an emergency hearing and you're suffering those symptoms, please contact the judge through their judicial assistant to let them know that you're suffering those symptoms and that you're in communication with the doctor. The hearing

will be reset and we'll be able to address the issues at another time. There is nothing more important than people's health, safety and well-being through this time.

ROB BAINS: Okay. And all of our staff, obviously, have been following your lead in how we are to proceed and continue working and/or be at home during this time. So one of our staff actually submitted a question to you personally to say, what has surprised you in the Ninth Circuit's ability to adapt and respond to the crisis, and the fact that you have to balance service to the community with public safety?

CHIEF JUDGE MYERS: I have just been incredibly impressed with the creativity and work ethic of our judges, our staff, our Court Administration through this entire process. We are, I think, considered in the country among those that are the most technologically advanced. As a circuit, we do many things already with technology -- or did, before this pandemic, with technology. But the users are limited. The folks that we interact with sometimes are limited.

We recognize not everybody has a computer with a camera and audio to be able to participate in videoconferencing, and yet our judges have found ways to engage the parties to cases and their lawyers in every type of case, whether it's civil, domestic, criminal, juvenile, probate and guardianship. It really has just astonished me at how well we have done this transition.

It also excites me tremendously at what we're going to look like on the other end of all of this. I think that we have seen just some incredible organizational skill come out of our judges to create dockets of the types of cases that can be handled electronically, some remotely, some are occurring not even here from the courthouse. Others are occurring out in the community, in judges' homes, through electronic technology where we have recording capabilities, we have videoconferencing, and cases are moving. And that's a tremendous testimony to the quality of

the people that serve here in the Ninth Judicial Circuit, and it's one of the things that I've been -- I can't say surprised, but I have most certainly been impressed and inspired by.

ROB BAINS: All right. Well, that brings us to a question from an attorney, Maria, out of St. Cloud, and it kind of plays into what you just said. But what do you think, Judge Myers, this pandemic and what the courts are forced to do in response to it, how do you think that could change for the better how our courts operate in the future?

CHIEF JUDGE MYERS: You know, I think we have really gained a full appreciation for the efficiency, economy and safety of technology, and the reliability. Our technology has really shined throughout this process. And I think we would be hard-pressed to come out of this and say, well, that was that period, now let's go back to the way we did things. I think we're going to look at a lot of the things we're doing now and apply those to the opportunities and challenges that we find in the future.

I suspect that videoconferencing for hearings is going to become a whole lot more popular. We have the technology. It will be well-tested and the kinks worked out, and it will be a very easy thing for lawyers to appear, and litigants, who have the technology -- this is not complicated, this can be done on a smartphone -- to appear through videoconference at a hearing to have the full chance to see what's going on, to argue the merits of a case, and to have resolution.

I'm excited about what that means for us. Because that means in a courthouse of our size, or courthouses of our size, where we now insist that folks come down here to the courthouse for a hearing, we're going to be able to say to them, you don't have to spend half of your day or your whole day carved out to come down here. Instead, you can participate in the 15-minute hearing that you have through remote technology and continue to work that day.

And we know how important work has become. As many people have lost their jobs through this pandemic, when we come out of this, folks are going to be seeking new jobs. They're going to be looking to recover. It's tough to move into a new job and say, well, I've got to go take this day off and show up at the courthouse to deal with my traffic ticket. That shouldn't be necessary any longer. When we're all done with this, I think that will be able to be handled during a 15-minute break from the technology that's available to you on your telephone.

ROB BAINS: Well, Judge Myers, these are just a few of the questions we've received and the few that we have time for. But obviously we want to encourage all listeners to continue sending in questions through social media, and we'll make sure to get responses to them at that point.

But at this time, I'll turn it over to you and move forward.

CHIEF JUDGE MYERS: Well, thanks so much for spending the time with me today and to gather those questions from folks in the community and here in the courthouse. We really want to communicate with folks. We want them to know that there is information available to them. And so I want to wrap up by summarizing, I think, the things that we have going on here at the courthouse and the places where folks can get information.

During this crisis no proceedings or court events other than those that are essential and critical to the State of Emergency or the Public Health Emergency are being conducted in person at the courthouse. All non-emergency hearings will either be rescheduled or they'll be conducted remotely, and you'll be given notice of that.

All of the proceedings in our outlying courts, that's Apopka, Ocoee and Winter Park, have been canceled and they will be reset at a later time. So if you've got -- received a civil traffic citation, for example, that will be reset. And that's anything that was scheduled between

now and April the 17th. Again, I think that deadline is going to be continued probably to the end of April.

We do conduct essential, critical proceedings here at the courthouse. Some of those require people to appear here. So if you are seeking, for example, an injunction for protection -- domestic violence, sexual violence, dating violence, stalking -- you are permitted under the Stay-At-Home Orders to come here to the courthouse personally to file and seek those injunctions. Additionally, if you have a scheduled hearing on an injunction between now and April 17th, you will need to come to the courthouse here to participate in that.

Evidentiary hearings just can't be considered through technology means at this point.

If you have an emergency shelter hearing, you can show up at the courthouse, whether it's Orange, Osceola, or at our Juvenile Courthouses. If there's a Baker Act that needs to be filed, you are more than welcome to come here to the courthouse. The courthouse is open for those essential functions.

If you have been summonsed as a juror to appear anytime between now and April the 17th, you do not need to appear. You are excused from your jury service and you will not be recalled for at least another year to participate in jury service.

And then finally, in terms of information, we have a COVID-19 page, an information page, on the website. It is at www.ninthcircuit.org, where you can obtain additional information about orders that have been entered by the court, operations of things that are happening here at the courthouse, and any information that you need for contact for judicial assistants or judges you'll find there on the Circuit's web page.

Additionally, we continue to push out information on Twitter, Facebook and Instagram, again, @ninthcircuitfl.

I just want to say to our community during this time how critical it is that you understand we are doing everything we can to continue to meet the essential needs of our community during this pandemic. This is a unique and unusual season of life in the court. But we will find ourselves on the other side of this, and I think that we will experience many benefits as a result of it. And we're looking forward to being able to open the doors fully and to continue the service that we have for the community.

So I want to thank our listeners, wish you all well. Please be safe during this time. For yourselves and for the people around you, stay at home, do the things that are required of you. And we look forward to seeing you on the other side of all of this.

Thank you.

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