

The Supreme Court of Ohio Disqualifies a Trial Court Judge for Failure to Implement COVID-19 Safety Measures

“During this public-health emergency, a judge’s priority must be the health and safety of court employees, trial participants, jurors, and members of the public entering the courthouse”

– Supreme Court of Ohio

By Chris Cotter

An Ohio attorney recently sought to disqualify an Ohio trial Judge in [two cases](#) that were scheduled for jury trials in December 2020. In an affidavit submitted with the request, the attorney explained that the Judge had failed to implement precautions to protect against the spread of the coronavirus in his courtroom. The Judge was conducting all hearings in person rather than by remote technology and he was not mandating facial coverings. The attorney argued the Judge’s procedures risk trial participants’ health, violate the Ohio governor’s statewide mask order, and ignore recommendations from the Chief Justice of the Ohio Supreme Court.

Given the recent increase in COVID-19 cases in Ohio, and in the particular county where the trials were to take place, the attorney believed that contagious individuals would attend the December trials and that the risk of infection was unreasonable. The attorney was also concerned with his own health, stating that because of his age, if he contracts the virus, he is at higher risk for serious complications and that his clients are worried that during trial, he may become distracted with his own health concerns.

The trial Judge dismissed the attorney’s objections, stating that the recommendations were not mandatory and that his large courtroom allowed for social distancing. He also explained how many of the courtroom-safety measures mentioned in the attorney’s affidavit are “recommendations, not rules or orders.” The Judge said he believes that he and the jurors are essential employees and that trials and hearings “must continue to proceed in order to keep our system of government intact.”

The Supreme Court of Ohio disqualified the Judge from the two lawsuits. The Court explained how “we are approaching what could be the height of the COVID-19 pandemic,” and the “daily numbers of confirmed COVID-19 cases, hospitalizations, and deaths have significantly increased.” Because the “entire state is under curfew,” there is “very high exposure and spread,” of the coronavirus in the county.

The Supreme Court of Ohio also offered guidance to Judges and attorneys in the state:

During this public-health emergency, a judge’s priority must be the health and safety of court employees, trial participants, jurors, and members of the public entering the courthouse. Attorneys and the public have a right to know what steps a court is taking to keep them safe while the court continues conducting essential business. If attorneys or litigants believe that judges are not taking seriously recommendations from this court, the governor, or other public-health officials, and that as a result the health of trial participants, jurors, or the public is at risk, the judge’s disqualification may

be sought. If a judge cannot prove that he or she has taken steps to protect the safety of individuals in the courtroom, the judge may be disqualified, especially if the judge cannot also articulate the necessity of proceeding with jury trials during this dangerous stage of the pandemic.

When in-person hearings or trials cannot be avoided, “judges must ensure that scrupulous safety practices are followed, and they must effectively communicate those practices to all participants.” Should a Judge fail to follow the Ohio Department of Health and Governor Mike DeWine’s directives, “a judge endangers the health of those who enter the courthouse and their families, etc.” A judge’s noncompliance “whittles away at the public’s trust and confidence in the judiciary.”

This decision from Ohio’s highest court is reassuring and helps attorneys and their clients navigate the Ohio Court system during these unique times. If you have any questions or concerns, please reach out to any of the listed attorneys.

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