

IN RE THE MATTER OF MODIFICATION OF CIRCUIT COURT  
AND MUNICIPAL ACCOMMODATIONS THAT WERE  
REQUIRED BECAUSE OF THE COVID-19 PANDEMIC

**FILED**

**MAY 21, 2021**

Sheila T. Reiff  
Clerk of Supreme Court  
Madison, WI

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You are hereby notified that the Court has issued the following order that supersedes the court's order of October 1, 2020:

WHEREAS the Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; In re Kading, 70 Wis. 2d 508, 519-20, 235 N.W.2d 409 (1976); and

WHEREAS the number of newly confirmed cases of COVID-19 has decreased significantly as the number of vaccinated individuals has increased in Wisconsin, and the United States Center for Disease Controls declared on May 16, 2021, that "[f]ully vaccinated people can resume activities without wearing a mask or physically distancing," thereby causing the Court to re-examine the restrictions that the Court has placed on court proceedings due to the pandemic. Furthermore, each county is facing different circumstances relative to COVID-19, and each circuit court and municipal court has different stakeholders with whom they must interact.

NOW THEREFORE, IT IS HEREBY ORDERED that, the Court no longer requires that personal masking, social distancing, and sanitizing court facilities be part of any plan for circuit court and municipal court proceedings approved by the chief judge of the applicable judicial district. Instead, circuit courts and municipal courts, with the approval of the applicable chief judge, shall make county-wide decisions about what is in the best interest of circuit court and

May 21, 2021

In re the Matter of Modification of Circuit Court and Municipal Court  
Accommodations That Were Required Because of the COVID-19 Pandemic

municipal court operations, respectively. This includes deciding whether or not to continue to require masking, social distancing, and sanitizing court facilities on a county by county basis.

IT IS FURTHER ORDERED that the State Bar of Wisconsin shall take all reasonable steps to notify its members of the contents of this order.

¶1 ANNETTE KINGSLAND ZIEGLER, C.J. (*concurring in part, dissenting in part*).

Today is good news—a return to local control. The court lifts its previous COVID-19 orders that imposed statewide restrictions and further returns local control to each county. The court now finally allows what should have been permitted for some time: local communities to have local control over what is necessary and proper to address the COVID-19 pandemic. As such, I concur with the court insofar as it almost completely terminates the previous COVID-19 orders<sup>1</sup> and now leaves no requirements for mandatory masking, social distancing, and sanitizing imposed by this court.

¶2 However, I dissent because the court still requires one final step of one COVID-19 order—obtaining chief judge approval. No other portion of any other COVID-19 order remains in effect. I would not require presiding judges to obtain chief judge approval. Nonetheless, after

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<sup>1</sup> Specifically, the court terminates the following orders today: (1) In re the Matter of Jury Trials During the COVID-19 Pandemic—Amended (S. Ct. Order issued March 22, 2020; Amended April 15, 2020); (2) In re the Matter of Filing of Court Documents in Circuit and Appellate Courts (Temporary Mailbox Rule) (S. Ct. Order issued April 13, 2020); (3) Interim Rule 20-02; and In re the Matter of the Extension of Orders and the Interim Rule Concerning Continuation of Jury Trials, Suspension of Statutory Deadlines for Non-Criminal Jury Trials, and Remote Hearings During the COVID-19 Pandemic (Amended Order) (S. Ct. Order issued October 1, 2020).

May 21, 2021

In re the Matter of Modification of Circuit Court and Municipal Court  
Accommodations That Were Required Because of the COVID-19 Pandemic

obtaining chief judge approval, no portion of any COVID-19 order has any force or effect. The court's COVID-19 orders should have already been terminated, leaving matters up to local control.

¶3 Despite the court's unnecessary exercise of its authority, I recognize that chief judge approval should not require much effort. Seemingly, a presiding judge could call or email the chief judge to obtain approval. Our order requires no formalized submission, approval, nor criteria necessary for approval. While I would require none of this, this is a step in the right direction—returning to local control.

¶4 I am authorized to state the Justice BRIAN K. HAGEDORN joins this writing.

¶1 REBECCA GRASSL BRADLEY, J. (*concurring in part, dissenting in part*). On March 22, 2020, the court issued an order "In re the Matter of Jury Trials During the COVID-19 Pandemic," which suspended all criminal and civil jury trials until after May 22, 2020. I dissented from that order because it violated the right to a speedy trial guaranteed by the United States Constitution and the Wisconsin Constitution.<sup>2</sup> On March 31, 2020, the court issued Interim Rule 20-02 "In the Matter of an Interim Rule re: Suspension of Deadlines for Non-Criminal Jury Trials Due to the COVID-19 Pandemic," which indefinitely suspended statutory deadlines for conducting non-criminal jury trials. I dissented from that order because the court exceeded its authority by infringing the substantive rights of litigants to have their cases tried within the timeframes established by the legislature.<sup>3</sup> On April 15, 2020, the court issued an amended order "In re the Matter of Remote Hearings During the COVID-19 Pandemic," which indefinitely suspended in-

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<sup>2</sup> See Rebecca Grassl Bradley, J., Dissent to In re the Matter of Jury Trials During the COVID-19 Pandemic (S. Ct. Order issued March 22, 2020).

<sup>3</sup> See Rebecca Grassl Bradley, J., Dissent to Interim Rule 20-02 In the Matter of an Interim Rule re: Suspension of Deadlines for Non-Criminal Jury Trials Due to the COVID-19 Pandemic (March 31, 2020).

May 21, 2021

In re the Matter of Modification of Circuit Court and Municipal Court  
Accommodations That Were Required Because of the COVID-19 Pandemic

person proceedings in appellate and circuit courts. I dissented from that order because it did not provide an end date.<sup>4</sup> The original order, issued on March 22, 2020, suspended in-person court proceedings through April 30, 2020 only. On May 22, 2020, the court issued an order "In re the Matter of the Extension of Orders and Interim Rule Concerning Continuation of Jury Trials, Suspension of Statutory Deadlines for Non-Criminal Jury Trials, and Remote Hearings During the COVID-19 Pandemic." I dissented from that order because it continued the indefinite suspension of criminal and civil jury trials, with no consideration of the constitutional or statutory rights of litigants.<sup>5</sup>

¶2 On October 1, 2020, the court issued an order "In re the Matter of the Extension of Orders and the Interim Rule Concerning Continuation of Jury Trials, Suspension of Deadlines for Non-Criminal Jury Trials, and Remote Hearings During the COVID-19 Pandemic (Amended Order)." That order amended the court's May 22, 2020 order. I dissented from that amended order because the manner of conducting circuit and municipal court proceedings should have been left to the good judgment of the circuit and municipal court judges and the amended order continued to indefinitely suspend criminal and civil jury trials, in violation of the constitutional and statutory rights of litigants.<sup>6</sup>

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<sup>4</sup> See Rebecca Grassl Bradley, J., Dissent to In re the Matter of Jury Trials During the COVID-19 Pandemic—Amended (S. Ct. Order issued March 22, 2020; Amended April 15, 2020).

<sup>5</sup> See Rebecca Grassl Bradley, J., Dissent to In re the Matter of the Extension of Orders and Interim Rule Concerning Continuation of Jury Trials, Suspension of Statutory Deadlines for Non-Criminal Jury Trials, and Remote Hearings During the COVID-19 Pandemic (S. Ct. Order issued May 22, 2020).

<sup>6</sup> See Rebecca Grassl Bradley, J., Dissent to In re the Matter of the Extension of Orders and the Interim Rule Concerning Continuation of Jury Trials, Suspension of Statutory Deadlines for Non-Criminal Jury Trials, and Remote Hearings During the COVID-19 Pandemic (Amended Order) (S. Ct. Order issued October 1, 2020).

May 21, 2021

In re the Matter of Modification of Circuit Court and Municipal Court  
Accommodations That Were Required Because of the COVID-19 Pandemic

¶3 I concur with the court's current order insofar as it terminates mandatory masking, social distancing, and sanitizing as a requirement imposed by this court. I also concur with that portion of this order terminating the court's April 15, 2020 order (which amended the March 22, 2020 order); Interim Rule 20-02; the court's April 13, 2020 order; and the court's October 1, 2020 order (which amended the court's May 22, 2020 order). I dissent from that portion of the court's current order which requires circuit and municipal courts to obtain the approval of the applicable chief judge for the decisions of the circuit and municipal court judges "about what is in the best interest of circuit court and municipal court operations." I would leave the manner of conducting court proceedings to the individual circuit and municipal court judges, which was the ordinary course pre-pandemic. Wisconsin's two largest counties, Milwaukee and Dane, have announced the expiration of all COVID-19 public health restrictions effective June 1, 2021 and June 2, 2021 respectively, while most other counties in the state never imposed such restrictions at all.<sup>7</sup> It is time for this court to allow Wisconsin's circuit and municipal court judges to control the operation of their own courts once again.

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<sup>7</sup> Riley Vetterkind, Most Wisconsin county, city mask requirements nonexistent or expiring, Wisconsin State Journal (May 19, 2021), [https://madison.com/wsj/news/local/govt-and-politics/most-wisconsin-county-city-mask-requirements-nonexistent-or-expiring/article\\_4be79b69-ff3f-546a-933b-9f6c3aaa285e.html](https://madison.com/wsj/news/local/govt-and-politics/most-wisconsin-county-city-mask-requirements-nonexistent-or-expiring/article_4be79b69-ff3f-546a-933b-9f6c3aaa285e.html).