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CLERK SUPREME COURT

In the Iowa Supreme Court

In the Matter of Ongoing Provisions For Coronavirus/COVID-19 Impact On Court Services	)))	**November 24, 2020**

The Iowa Judicial Branch continues to carefully monitor the public health situation relating to the COVID-19 pandemic, balancing the need to take measures to reduce the spread of the virus with its commitment to conducting business as necessary. Accordingly, the supreme court notes the current high rate of COVID-19 positive tests in the state and orders as follows pursuant to its available legal authority, including Article III, section 1 and Article V, sections 1 and 4 of the Iowa Constitution.

This order supplements other COVID-19-related supervisory orders currently in effect, including the orders dated:

- May 22, 2020
- July 9, 2020
- July 22, 2020
- July 29, 2020
- July 31, 2020
- September 1, 2020
- October 2, 2020
- November 10, 2020.

To the extent there is any conflict between this order and any of those orders, the provisions of this order prevail.

USE OF REMOTE TECHNOLOGY/SCHEDULING

1. **Strong encouragement to conduct civil court business other than jury trials using videoconference or telephone.** Courts, parties, and attorneys are strongly encouraged to conduct civil court business when feasible using videoconference or telephone.

2. **Trial court discretion to conduct nonjury trials or accept specific testimony by videoconference or telephone with the parties' consent**. District courts may conduct any nonjury trial by videoconference or telephone with the parties' consent. District courts may accept any testimony by videoconference or telephone with the parties' consent or when otherwise authorized by law.
3. **Scheduling**. Judicial districts shall schedule in-person hearings and trials so as to comply with safety protocols established by state court administration, e.g., required social distancing. For example, this may necessitate limits on the number of hearings scheduled in a given time period or the allocation of specific time slots.

PERSONAL PROTECTIVE EQUIPMENT

4. **Face masks**. Pursuant to CDC guidelines, courts shall require everyone entering court-controlled areas to wear disposable, surgical masks or cloth masks covering the nose and mouth, and to wear them correctly and consistently while in court-controlled areas. Face shields are no longer considered an appropriate substitute for a mask.

PROVISIONS SPECIFIC TO CRIMINAL CASES

5. **Initial appearances.** Through June 30, 2021, magistrates and other judicial officers may conduct initial appearances by videoconference or telephone. As before, the defendant may waive initial appearance by executing a written waiver that provides the information that the defendant is entitled to receive at the initial appearance. *See* Iowa R. Crim. P. 2.2(1)-(4)(*a*). Through June 30, 2021, written waivers of initial appearance need not be under oath.
6. **Preliminary hearing.** Through June 30, 2021, a defendant may waive the preliminary hearing over the telephone with the court, and the waiver

need not be electronically recorded or reported, so long as the court indicates in the court file that the hearing has been waived.

7. **Arraignment**. Through June 30, 2021, written waivers of arraignment need not be under oath.

8. **Written arraignment by defense counsel.** Through June 30, 2021, with the consent of the district court, defense counsel may execute a written arraignment pursuant to rule 2.8(1) on the defendant's behalf, provided that defense counsel has previously reviewed all terms of the arraignment form with the defendant and obtained the defendant's authority to execute the form on the defendant's behalf.

9. **Waiver of personal appearance.** Through June 30, 2021, for a proceeding other than trial and sentencing in which the defendant's personal appearance is required under normal circumstances, the defendant may execute a written waiver of appearance, with the consent of the court. For purposes of clarification, this paragraph refers to the situation where the defendant waives *any* type of appearance, both in-person and remote.

10. **Additional accommodation as to written waiver of personal appearance**. Through June 30, 2021, with the consent of the court, defense counsel may execute a written waiver of appearance on defendant's behalf under paragraph 8 above provided that defense counsel has previously reviewed defendant's right to be present with the defendant and obtained the defendant's authority to execute the waiver on the defendant's behalf.

11. **Pretrial release.** Judicial officers are encouraged to consider pretrial release options available under Iowa Code chapter 811.

12. **Bond reviews.** Through June 30, 2021, magistrates and other judicial officers may conduct bond reviews by videoconference or

telephone. Attorneys may waive the defendant's presence on the defendant's behalf and allow the court to make a bond determination on the defendant's motion for bond review and the response thereto. If the defendant's presence will be waived, this shall be stated in the motion or in a separate filing prior to the court's determination. Both the motion and the response may be supported by affidavits as well as statements of counsel.

13. **Extension of deadline for filing pretrial motions**. Unless otherwise ordered by the court, for any case in which the defendant has been arraigned before February 1, 2021, the deadline for filing motions shall be 30 days before trial.

14. **Written guilty pleas.** Through June 30, 2021, district courts may accept written guilty pleas in felony cases in the same manner as in serious and aggravated misdemeanor cases. *See* Iowa R. Crim. P. 2.8(2)(b) (last paragraph).

15. **Presentence investigation reports.** To facilitate sentencing without the personal presence of the defendant in the courtroom, through June 30, 2021, notwithstanding Iowa Code section 901.4, presentence investigation reports may be shared with defendants in advance of sentencing subject to reasonable safeguards.

16. **Sentencing procedures by remote appearance.** Notwithstanding paragraph 9, for felony or misdemeanor sentencing hearings through June 30, 2021, courts may allow any party (the prosecutor, defense counsel, defendant, victims and witnesses) to appear by videoconference or telephone with that party's consent. To appear by videoconference or telephone, the defendant shall either (a) execute a written waiver or (b) make a waiver on the record. Other parties need not execute a waiver.

17. **Sentencing in felony matters by written agreement with court approval.** Through June 30, 2021, where the prosecutor and the defendant have reached an agreement as to sentence, and the agreement is accepted by the court, the court has the discretion to pronounce judgment and sentence by written order without the parties appearing by videoconference or telephone, provided the following conditions are met: (a) the defendant and defense counsel each must waive in writing the defendant's presence and right of allocution (the defendant may of course submit a written statement), (b) the prosecutor must submit a written statement waiving presence and verifying that there are no victims who want to be heard in person, and (c) the agreement as to sentence must be signed by the defendant and both the agreement and the court's approval must be made a part of the court file.

JUVENILE LAW

18. **Delinquency matters.** Juvenile delinquency proceedings shall be subject to any of the foregoing criminal proceeding directives that by their nature would apply to juvenile delinquency cases.

19. **Judicial Discretion Regarding Remote Technology in Certain Juvenile Proceedings.** Through June 30, 2021, juvenile courts may order that any proceeding under Iowa Code chapters 232, 232D and 600A may be conducted with the parties or participants appearing remotely by videoconference or telephone. This includes child-in-need-of-assistance adjudications, dispositional hearings, and terminations of parental rights. Any order directing a proceeding by videoconference or telephone may be entered over the objection of a party, but only after that party has an opportunity to be heard. If the juvenile court proposes a proceeding by videoconference or telephone, the presumption shall be in favor of going forth in that manner. Attorneys and self-represented litigants shall

articulate in their objections the reasons constituting good cause for an in-person proceeding. Notwithstanding the foregoing, juvenile delinquency adjudication proceedings may be held by videoconference or telephone only by consent of the parties.

APPELLATE PROCEEDINGS

20. **Appellate oral arguments.** At the appellate court's discretion, oral arguments may be conducted using videoconference or telephone through June 30, 2021. Additionally, at the court's discretion, cases previously scheduled for oral argument may be submitted nonorally. *See* Iowa R. App. P. 6.908(2).

ELECTRONIC SIGNATURES

21. **Signature on civil court documents—Iowa Rule of Electronic Procedure 16.305(3).** The court temporarily modifies rule 16.305(3) of the Iowa Rules of Electronic Procedure to allow a person to sign a civil court document electronically with "/s/" followed by the person's typed full name or with "/person's name/" through June 30, 2021. If the document is a civil court form that includes the signature block of identifying information, including the person's address, telephone number, and email address, that information must be provided with the electronic signature. See Comment to Iowa Ct. R. 16.305(4).

Attorneys are permitted through June 30, 2021 to sign civil court documents for their clients with "/s/" if the attorney has received oral verification from the client that (a) the client desires to sign the document, (b) the client authorizes the attorney to sign on the client's behalf, and (c) the client understands that the signature will bind the client as if the client signed the document personally. This temporary permission also applies to notices of appeal in termination-of-parental-rights and child-in-need-of-assistance cases. *See* Iowa Ct. R. 6.102(1)(a).

A notary public signature cannot be electronic "/s/" or "/person's name/." Notaries public are encouraged to follow the Iowa Secretary of State's March 25, 2020 media release and any updated releases since that date. This temporary amendment of rule 16.305(3) is limited to civil matters only, including notice of appeal filings brought under chapter 232.

FAMILY LAW

22. **Judicial Discretion Regarding Video Conferencing in Non-Custodial Family Law Trials.** Non-custodial family law trials may be conducted by video conference, but not by telephone, over the objection of a party, after an opportunity to be heard. Attorneys and self-represented litigants shall articulate in their objections the reasons constituting good cause for an in-person trial.

23. **Judicial Discretion Regarding Video Conferencing in Custodial Family Law Trials.** Custody trials may be held by video conference by consent of the parties. In addition, when the best interests of the child require court action regarding a time-sensitive issue (e.g. determination of a school district for a child's enrollment where there is no agreement between the parents) the court shall have discretion to hold a hearing by video-conference over a party's objection after an opportunity to be heard.

24. **Online courses.** District courts may approve attendance at an online course for purposes of compliance with Iowa Code section 598.15 (required course for cases involving child custody or visitation) through June 30, 2021.

25. **Child custody, care, or visitation.** For purposes of determining a parent's right of physical custody, care, or visitation to a child under a previously entered court order, any custody, visitation or care schedule that is related to a school schedule shall be uniformly interpreted to refer to the school schedule for the school where the child attends that was in

place prior to any school closure or suspension caused by the COVID-19 virus. Custody, care, or visitation of a child shall follow a schedule as if school is in session and shall not be impacted or modified by the school closure. A school closure caused by the COVID-19 virus does not extend or modify a parent's custody, care, or visitation beyond any period designated in a prior court order. A school closure caused by the COVID-19 virus does not amount to an extension of a holiday, winter, spring, or summer break.

Nothing contained in this order prevents both parents of a minor child from mutually agreeing to modify a previous court order. Nothing contained in this order prevents a court from altering, amending, modifying, clarifying, or enforcing court orders within its sound discretion and consistent with the law of this State. Further, this order does not limit the ability of the court to hear and address emergency matters on a case-by-case basis in the discretion of the court.

OFFICE OF PROFESSIONAL REGULATION

26. **Electronic complaint submissions.** Complaints against attorneys pursuant to Rule 35.2, claims of the unauthorized practice of law pursuant to Rule 38.5, and claims for reimbursement from the Client Security Commission pursuant to Rules 39.9 and Chapter 40, may be made through June 30, 2021 using an electronic submission form, which will be available on the court's website.

27. **Remote hearings.** Hearings set forth in Chapters 31, 34, 35, 36, 42, 46, and 47 shall be held through June 30, 2021 by videoconference or telephone. However, upon request of the respondent, Chapter 36 hearings shall be held in person.

28. **Electronic filing.** All parties to Grievance Commission proceedings shall participate in the electronic filing option set forth in Rule 36.6

through June 30, 2021. This includes matters that are currently in litigation.

29. **Client Security Commission.** The Client Security Commission is hereby authorized through June 30, 2021 to be appointed as a trustee under Rule 34.17 and Rule 34.18 without need for supreme court confirmation. Upon termination of a Rule 34.17 or Rule 34.18 trusteeship or upon the request of the Client Security Commission, all remaining attorney files may be ordered immediately destroyed.

FORCIBLE ENTRY AND DETAINER PROVISIONS

30. **Forcible entry and detainer proceedings.** The court is continuing to monitor issues concerning the CARES Act and the CDC Evictions order regarding the potential need for a further order updating existing supervisory order provisions.

TEMPORARY AUTHORIZATION OF EMAIL FILING BY CERTAIN PERSONS

31. **Temporary authorization of filing by email for certain nonregistered self-represented and exempt persons.** Through June 30, 2021, the court temporarily authorizes filing by email (a) for all self-represented persons who have not already registered for EDMS and (b) for all persons excused from the EDMS registration and electronic filing requirements pursuant to rule 16.302(3) who have not already registered for EDMS filing. Persons who are already registered EDMS filers must continue to file all court documents through the EDMS system as usual. To file by email, the self-represented or exempt person must first contact the appropriate clerk of court to get the appropriate email address to receive the filing. The self-represented or exempt person must then email the filing to the clerk in PDF format, who will then file the document.

The document should not be considered filed until the self-represented or exempt person receives a confirmatory email from the clerk that the filing has been made. The clerk's acceptance of such emailed documents does not waive the filer's obligation to comply with court rules regarding appropriate redaction and service of the emailed documents. Notwithstanding any provision of chapter 16 of the Iowa Court Rules, small claims actions may be filed in paper (not only EDMS) through June 30, 2021.

32. The court temporarily suspends the operation of any Iowa Court Rules to the extent they are contrary to any provisions of this order.

33. The court will monitor circumstances and update this order as necessary.

THE IOWA SUPREME COURT

By

Susan Larson Christensen, Chief Justice

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