STATE OF MAINE JUDICIAL BRANCH
PANDEMIC MANAGEMENT ORDER
Order Issued July 29, 2020

Order Regarding Trial Court Remote Proceedings and Public Access

On March 13, 2020, the Supreme Judicial Court issued an Emergency Order reducing the number of people coming into state courthouses in light of the serious health risks posed by the novel coronavirus (COVID-19) pandemic. Thereafter, the Supreme Judicial Court issued a series of Pandemic Management Orders to address court proceedings during the pandemic and a Phased Management Plan ("the Plan"), which was issued on May 27, 2020. The Plan, which has since been amended, created a five-phase process for reopening Maine courts and established guidelines that were required to be met for each phase, including necessary staffing and the availability of technology.

Given the Court's ongoing concerns for the health of both Judicial Branch employees and members of the public, the Supreme Judicial Court has determined that almost all trial court proceedings must be conducted remotely—through video or telephonic formats—while the Plan is in effect. Therefore, effective immediately and until further Order of the Court, it is hereby ordered as follows:

PMO-SJC-7(A). PRESUMED FORMATS FOR COURT PROCEEDINGS

1. *Remote hearings and proceedings.* Unless listed below as an excepted proceeding or otherwise specifically ordered by a court, all proceedings in Maine's trial courts shall be conducted remotely, by video or telephone.

2. *Hearings and proceedings that may be held in person.* The following hearings and proceedings may be held in person:

    a. criminal jury trials;

b. criminal arraignments or first appearances, motions, and hearings, including matters involving probation revocation motions;

c. Title 22 protective custody hearings concerning jeopardy and termination of parental rights;

d. protection from abuse hearings;

e. protection from harassment hearings when the harassment alleged involves sexual assault or stalking;

f. motions for contempt

g. juvenile adjudication and dispositional hearings; and

h. forcible entry and detainer final hearings.

Any of these proceedings may be held remotely, should a court so decide. In determining whether to conduct any of these proceedings in person, the court must consider the health and safety of court staff, parties, and witnesses; the ability of parties to participate remotely; and the effect its decision will have on the availability to other parties of limited Judicial Branch resources, including courtroom space, technology assistance, and clerical assistance.

PMO-SJC-7(B). REQUEST OR COURT ORDER FOR ALTERNATIVE FORMAT FOR COURT PROCEEDINGS

1. *At the request of a party.* If a party asserts that special circumstances warrant conducting a proceeding in person, the party may file a motion for an in-person proceeding. Any such motion must explain with specificity the circumstances asserted and must be filed and served on the other party or parties no later than fourteen days before the scheduled hearing date, unless otherwise ordered by the court. If a party objects to the motion, the objecting party must file a written opposition no later than seven days after the motion is filed, unless otherwise ordered by

the court. The standard for granting a motion for alternative format for court proceedings is good cause shown. **However, before granting such a motion, the court must consider the health and safety of court staff, parties, and witnesses; the ability of parties to participate remotely; and the effect its decision will have on the availability to other parties of limited Judicial Branch resources, including courtroom space, technology assistance, and clerical assistance.**

2. *On the order of a court.* A trial court may, in its discretion, order that any court proceeding be held in person. **However, before issuing such an order, the court must consider the health and safety of court staff, parties, and witnesses; the ability of parties to participate remotely; and the effect its decision will have on the availability to other parties of limited Judicial Branch resources, including courtroom space, technology assistance, and clerical assistance.**

PMO-SJC-7(C). CONDUCTING REMOTE PROCEEDINGS

1. The trial court will initiate all video or telephone proceedings and will provide information and instructions to all parties for how to access the conference or hearing.

2. Invitations to video or telephonic conferences or hearings will be sent to the parties by the clerk's office. To ensure that the invitations are received, each party is required to provide to the court an email address to be used for official communications.

3. The official audio recording of a remote proceeding shall be created by the Judicial Branch's electronic recording system, For the Record ("FTR").

4. No later than seven days before any remote hearing, any party intending to offer any exhibits during the hearing must mark, copy, and exchange those exhibits with the other party or parties. The offering party must also file those exhibits with the court no later than seven days before the trial, unless the court orders a different time period. During a remote video hearing, the court

may permit rebuttal exhibits to be uploaded electronically to the video conference platform. Electronically filed exhibits must be in a standard, non-proprietary format: MP4 for video; MP3 or M4A for audio; PDF for documents; JPG for photographs. Exhibits in other electronic file formats may be filed only with leave of the court. Exhibits offered in rebuttal, if not previously filed with the court, must be filed within 3 days after the final hearing.

5. Self-represented litigants are held to the same standards as represented parties. A litigant will not be afforded any special consideration because of self-represented status. All court rules of procedure and process, including the rules of evidence, apply during remote hearings and conferences.

6. All parties are required to comport themselves as though the hearing or conference were occurring in person. Standards, including decorum, demeanor, and dress code, still apply. Those participating shall behave as if they were inside the courthouse.

7. Each witness must be alone in a quiet room while testifying, may not use a virtual background, and is ordered, subject to contempt of court, to turn off all electronic devices except for the device enabling participation in the hearing and to refrain from exchanging any electronic messages with anyone while testifying.

PMO-SJC-7(D). PUBLIC ACCESS TO IN-PERSON COURT PROCEEDINGS

1. Courtrooms in use for non-confidential proceedings shall remain open to the public during hours of operation. Any member of the public or media wishing to attend a non-confidential court proceeding may do so in person and subject to the required conditions set forth in the Plan.

2. Upon notice that public interest in attending a proceeding exceeds the capacity of the courtroom established in the Plan, the trial court may provide access by video streaming the proceeding to an additional location. **Before providing such access, however, the trial court must obtain permission from the chief of that court. All such decisions shall be made based on the**

availability of limited Judicial Branch resources, including courtroom space, technology assistance, security staff, and clerical assistance.

PMO-SJC-7(E). PUBLIC ACCESS TO REMOTE COURT PROCEEDINGS

1. JB-05-15 shall apply to media coverage of remote court proceedings during a pandemic. The Media Notification—Requested Coverage of Court Proceeding form, found on the Judicial Branch website at
   https://www.courts.maine.gov/rules_adminorders/adminorders/JB-05-15.html
   shall be the means for requests by members of the media for

   a. Direct access to cover a public but remote court proceeding being conducted solely by video or telephone; and

   b. Access to or recording of a live audio stream of a court proceeding.

2. The trial court retains discretion to approve, approve on conditions, or deny media coverage requests made pursuant to section E(1) above, or to allow access and coverage of remote court proceedings on its own or at the request of a party.

3. Members of the public who wish to observe or listen to remote court proceedings should contact the clerk of the court where the hearing is being held. A list of addresses and telephone numbers for each clerk's office is attached to this order.

Dated: July 29, 2020

For the Court:

/s/
Andrew M. Mead
Acting Chief Justice