IN THE UTAH SUPREME COURT and UTAH JUDICIAL COUNCIL

Administrative Order for Court Operations During Pandemic

ADMINISTRATIVE ORDER
December 31, 2020

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Governor Gary Herbert has declared a state of emergency. In light of the Governor's declaration, and to protect the public and all court participants, the Utah judiciary continues to implement its Pandemic Response Plan.

The judiciary has monitored the Governor's declarations in deciding the risk phases for the courts, but the judiciary must follow the phases of its Pandemic Response Plan, which are Red, Yellow, and Green. This is because the courts are in the unique position of having the authority to compel individuals to appear at the court, and before that occurs the courts must be confident the health risks are low. A court will be in the Red phase whenever the COVID-19 transmission rate is accelerating. A court may move to the Yellow phase when the rate of transmission in the county has been consistently decelerating or is stabilized at levels that would not overwhelm the Utah health care system.

To bring uniformity to the operation of the courts during the COVID-19 pandemic, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, issued a March 13, 2020 Administrative Order. The purpose of the March 13, 2020 Administrative Order was to identify mission-critical functions of the judiciary at each court level, ensure that the courts remain open to perform those functions, and to do so in a manner that promotes the health of the public and all court participants.

Since the March 13, 2020 Administrative Order, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, has issued a series of updated administrative orders, each of which has entirely supplanted the preceding order. Today's Order entirely replaces all preceding administrative orders. This Order provides directives the courts must follow during Red and Yellow phases.

In the May 11, 2020 Administrative Order, a directive was issued for the creation of plans to guide courts as they return to conducting in-person proceedings. A Risk Phase Response Plan was created to provide that guidance. The Management Committee of the Judicial Council adopted the Risk Response Plan on June 17, 2020. This Order provides additional direction.

To the extent any provision of this Order conflicts with the Utah Code of Judicial Administration or a rule of procedure or evidence, the provision in this Order will govern. The provisions of this Order are therefore subject to the same types of challenges that could be raised against a rule of administration, procedure or evidence. Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial

Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.

IT IS HEREBY ORDERED:

Red Phase

General Orders

1. In accordance with page 6 of the Pandemic Response Plan, the Pandemic Response Plan is activated. Because the statewide rate of COVID-19 has been accelerating for the past two weeks, the judiciary remains at level Red in the plan and, except for the courts that have been approved for level Yellow, all members of the Judiciary are hereby instructed to continue implementing the provisions in level Red. A court in any county may submit a request to the Management Committee of the Judicial Council that they be allowed to move to the Yellow phase. The request may be granted if the Management Committee is satisfied the criteria for the Yellow phase as described in the Pandemic Response Plan are being met in that county. All court personnel should be provided access to the Pandemic Response Plan, the Continuity of Operations Plan, and the Risk Phase Response Plan. The Pandemic Response Plan remains operative. However, to the degree it is inconsistent with this Order and the Risk Phase Response Plan, this Order and the Risk Phase Response Plan supersede the Pandemic Response Plan.

2. The coronavirus response team formed by the Administrative Office of the Courts will continue to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary with information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.

3. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and should coordinate with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.

4. [Deleted]

5. Consistent with the Pandemic Response Plan, the coronavirus response team must help each court implement measures that will continue the mission-critical work of the judiciary while also protecting members of the judiciary and the general public.

Orders Applicable to All Court Levels

6. All courthouses shall remain open during regular business hours in a manner necessary to effectuate the mission of the courts, which may include being electronically or telephonically accessible. In accordance with the Risk Phase Response Plan, individuals who have been diagnosed with COVID-19 and have not recovered or who show symptoms of COVID-19, and anyone who has had sustained close contact with such individuals, may not enter the courthouse.

7. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails, and other communications. Individuals who do not have access to e-filing may file documents by email in any pending case. If an individual wishes to file a pleading to initiate a case or file a notice of appeal, the individual should contact the court by telephone to make arrangements for filing. Lawyers are encouraged to stipulate to extensions of time. Judges are directed to grant liberally motions for extensions of time. This Order does not extend filing deadlines. Any future extension of a specific deadline will be made by separate order.

8. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents "signed" consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.

9. Except as provided below, absent exigent circumstances, all hearings shall be conducted on the papers, or through remote transmission, such as by telephone or video conferencing. If an in-person hearing is necessary due to exigent circumstances, the court shall conduct the hearing consistent with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. A judge must obtain approval from the presiding judge before conducting an in-person hearing based on exigent circumstances. A person who appears at the courthouse in response to a summons or citation, or pursuant to a promise to appear shall be given a new date to appear or provided with instructions on how their case may be handled through remote transmission, and the court or clerk may address summary matters and matters that should not be postponed to another date because the person would not have the technology necessary to participate.

10. (a) Except as provided below, district court and justice court judges are not to conduct any criminal jury trials (whether the defendant is or is not in custody) or civil jury trials during the Red phase. If a defendant is in custody on a class B or C misdemeanor offense, the assigned judge must reconsider the defendant's custody status and is encouraged to release the defendant subject to appropriate conditions.

(b) A court may not issue a warrant solely for a person's failure to appear for a remote hearing or comply in a class B or C misdemeanor or infraction case unless the court makes particularized findings that the failure to appear or comply was willful. Warrants issued for a person's failure to attend a remote hearing may only require a promise to appear.

(c) The Management Committee is authorized to approve one or more pilot projects for jury trials in the Red phase. The Management Committee will consider the input and advice of health officials in determining whether pilot projects can be safely conducted. The Management Committee will establish the criteria for the pilot projects. The Management Committee may authorize courts to deviate from the Risk Response Plan to the extent necessary to complete the pilot project.

(d) The Supreme Court adopts the following temporary rule modifications:

> (i) Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following: (a)(4) In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. "Trial participants" is defined to include the judge and testifying witnesses. The defendant's waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.
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> (ii) Rule 17(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial pilot project, all felony cases must be tried by jury unless the defendant waives a jury on the record. The prosecution's consent is not required for a Red phase jury trial.
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> (iii) Rule 17.5(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial pilot project and for good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if (1) the defendant is the party calling the witness, or (2) the defendant waives any right to confront the witness in person. In the event the prosecution is the party calling the witness and the defendant does not waive any right to confront the witness in person, the court may nevertheless permit such testimony if the court (1) finds the witness has COVID-19, is exhibiting symptoms consistent with COVID-19, or has a health or other condition that places the witness at increased risk of harm if the witness contracts COVID-19, and (2) sets forth the reasons for its findings on the record.
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> (iv) The following paragraph is added as Rule 18(h) of the Utah Rules of Criminal Procedure: In all cases tried during a Red phase jury trial pilot project, jury selection must occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each

group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless of the number of alternative jurors selected and regardless of the number of prospective juror groups that are created.

(v) The following paragraph is added as Rule 47(t) of the Utah Rules of Civil Procedure: In all cases tried during a Red phase jury trial pilot project, jury selection must occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless of the number of alternative jurors selected and regardless of the number of prospective juror groups that are created.

(e) The Judicial Council adopts the following temporary rule modifications:

(i) The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.

(ii) Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.

(iiI) The following paragraph is added as rule 4-405(3)(E): During a Red phase jury trial pilot project a court may provide meals to jurors allowing them to remain in the protected environment of the courthouse during the course of a trial.

11. Presiding judges shall issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order. Any order issued by a presiding judge or individual judge before or after the effective date of this Order is superseded to the extent the order is inconsistent with this Order.

Orders Applicable to Appellate Courts

12. Briefs shall be forwarded to the appellate courts by a PDF attachment to an email, with paper copies filed later upon the direction of the Clerk of Court.

13. Pending further notice, the appellate courts will determine which cases to set for oral argument. In general, except where oral argument would not facilitate the decisional process, oral

arguments will be conducted in cases such as child custody, juvenile detention, child-welfare adjudications and dispositions, and other hearings involving child safety, in-custody defendants, and election matters.

14. Oral arguments shall be conducted by remote transmission.

15. Cases not set for oral arguments may be decided on the briefs.

Orders Applicable to District Courts

Criminal Cases

16. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, first appearances, appearances mandated by statute, preliminary hearings, and sentencing hearings.

17. District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

Civil Cases

18. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions. As used here, mission critical functions include, but are not necessarily limited to, protective order hearings, stalking injunction hearings, temporary restraining order hearings, guardianship hearings where the minor or incapacitated person is at risk of harm, involuntary commitment hearings, and hearings related to enforcement of custody and parent-time orders.

19. (a) District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

    (b) Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule

55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

20. Juvenile court judges may hold any hearing remotely.

21. Any child welfare, delinquency, or protective order timeline may be extended by the court.

22. (a) If a party desires an in-court hearing, a written request must be filed with an explanation as to why such a hearing is necessary and permitted under paragraph 9 and must explain in detail the exigent circumstances requiring an in-court hearing.

    (b) Subject to paragraph 9, any remote or in-court hearing may be set by the court on its own motion.

23. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

Orders Applicable to Justice Courts

24. In accordance with paragraph 9 above, justice courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, arraignments, appearances mandated by statute, and sentencing hearings.

25. [Deleted]

26. [Deleted]

27. Justice court judges may conduct any proceedings by remote transmission, including bench trials and small claims hearings, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

28. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Yellow Phase

General Orders and Orders Applicable to All Courts

29. Except for sections 4, 9, and 10, courts must continue to follow the General Orders and Orders Applicable to All Courts from the Red phase. In accordance with the Risk Phase Response Plan, courts are encouraged to continue conducting proceedings through remote transmission as much as possible.

30. District court and justice court judges may conduct criminal and civil jury trials in accordance with the conditions in the Risk Phase Response Plan.

31. A court may not issue a warrant solely for a person's failure to appear for a remote hearing or comply in a class B or C misdemeanor or infraction unless the court makes particularized findings that the failure to appear or comply was willful.

Orders Applicable to Appellate Court

32. Briefs must be forwarded to the appellate courts by a PDF attachment to an email, with paper copies filed later upon the direction of the Clerk of Court.

33. Pending further notice, the appellate courts will determine which cases to set for oral argument. In general, except where oral argument would not facilitate the decisional process, oral arguments will be conducted in cases such as child custody, juvenile detention, child-welfare adjudications and dispositions, and other hearings involving child safety, in-custody defendants, and election matters.

34. Oral arguments will be conducted by remote transmission.

35. Cases not set for oral arguments may be decided on the briefs.

Orders Applicable to District Courts

Criminal Cases

36. District courts may conduct any proceedings and must continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, first appearances, appearances mandated by statute, preliminary hearings, and sentencing hearings.

37. District court judges may conduct proceedings in person or by remote transmission, including bench and jury trials, if the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Court's Risk Phase Response Plan.

Civil Cases

38. District courts may conduct any proceedings and must continue to perform all mission-critical functions. As used here, mission critical functions include, but are not necessarily limited to, protective order hearings, stalking injunction hearings, temporary restraining order hearings, guardianship hearings where the minor or incapacitated person is at risk of harm, involuntary commitment hearings, and hearings related to enforcement of custody and parent-time orders.

39. (a) District court judges may conduct proceedings in person or by remote transmission, including bench and jury trials, if the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Court's Risk Phase Response Plan.

    (b) Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

40. Juvenile court judges may hold any hearing remotely or in-person provided the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Court's Risk Phase Response Plan.

41. Any child welfare, delinquency, or protective order timeline may be extended by the court.

42. Any remote or in-court hearing may be set by the court on its own motion.

43. With respect to any court hearings or reports, any persons who provide information to the court must obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot safely be obtained in this manner, the court must continue that hearing until the information can be safely obtained.

Orders Applicable to Justice Courts

44. Justice courts may conduct any proceedings, including small claims proceedings, and must continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, arraignments, appearances mandated by statute, and sentencing hearings.

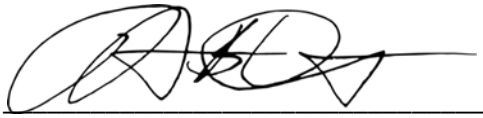
45. Justice court judges may conduct proceedings in-person or by remote transmission, including bench and jury trials, if the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Court's Risk Phase Response Plan.

46. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Order Subject to Amendment

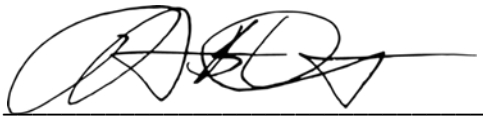
47. This Order may be amended at any time to respond to changed conditions.

DATED this 31st day of December, 2020.



MATTHEW B. DURRANT
Chief Justice, Utah Supreme Court

DATED this 31st day of December, 2020.



MATTHEW B. DURRANT
Presiding Officer, Utah Judicial Council