IN THE UTAH SUPREME COURT and UTAH JUDICIAL COUNCIL

Administrative Order for Court Operations During Pandemic

ADMINISTRATIVE ORDER
May 11, 2020
(Amended)

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Governor Herbert has declared a state of emergency, but has recently declared that the state is moving from the "high risk" phase to the "moderate risk" phase. To protect the public and all court participants the Utah judiciary continues to implement its Pandemic Response Plan.

To bring uniformity to the operation of the courts during the COVID-19 pandemic, the Chief Justice 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.

The March 13, 2020 Administrative Order was entirely replaced by an Administrative Order effective March 21, 2020. An Addendum was issued on April 23, 2020. The March 21, 2020 Administrative Order and the April 23, 2020 Addendum were entirely replaced by an Administrative Order effective May 1, 2020. This Order amends and entirely replaces the May 1, 2020 Administrative Order.

IT IS HEREBY ORDERED:

General Orders

1. In accordance with page 6 of the Pandemic Response Plan, the Pandemic Response Plan is activated. The judiciary remains at level "Red" in the plan and all members of the Judiciary are hereby instructed to continue implementing the provisions in both level "Yellow" and level "Red". All court personnel should be provided access to the Pandemic Response Plan as well as the Continuity of Operations Plan. The pandemic response plan remains operative. However, to the degree it is inconsistent with this Order, this Order supersedes the plan.

2. The coronavirus response team formed by the Administrative Office of the Courts is authorized 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. Managers must act in accordance with the Pandemic Response Plan by developing alternate work schedules, permitting or requiring telework, and cancelling in-person meetings and conferences, or conducting them remotely when possible.

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. A working group is also hereby created to formulate plans for court proceedings to be held in-person and for court personnel to return to work in the courthouses. The working group will consist of seven members: one appellate court judge, two district court judges, two juvenile court judges, and two justice court judges. The members will be selected by their respective boards of judges. The boards of the trial courts are each directed to select one judge from an urban area and one judge from a rural area. The Office of General Counsel is directed to coordinate the efforts of the working group. The working group is directed to seek input from the boards of judges, presiding judges, trial court executives, and clerks of court in formulating plans. The plans must be formulated for the entire judiciary, but may include provisions for staggered implementation based on a local community and court's status. The plans may not be implemented until approved by the Management Committee. Except as otherwise provided in this order, a court may not resume in-person proceedings until approved by the Management Committee.

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. Individuals who have been diagnosed with COVID-19 and have not recovered or who show symptoms of COVID-19, and anyone who has been exposed to 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. 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, and the Court's Pandemic Response Plan. A person who appears at the courthouse in response to a summons 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.

10. (a) 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 pending further administrative orders. If a defendant is in-custody on class B or C misdemeanor offense(s), 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 for a person's failure to appear 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.

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 and the Court's Pandemic Response Plan. A bench trial by remote transmission requires the consent of all parties. The court may proceed without a party's consent if the court determines consent has been unreasonably withheld, provided the other criteria are met.

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. 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 and the Court's Pandemic Response Plan. A bench trial by remote transmission requires the consent of all parties. The court may proceed without a party's consent if the court determines consent has been unreasonably withheld, provided the other criteria are met.

Orders Applicable to Juvenile Courts

20. Juvenile court judges are directed to conduct the following hearings pursuant to paragraph 22(a): shelter hearings, child welfare adjudication and disposition hearings, detention hearings, in-

custody delinquency adjudication and disposition hearings, detention reviews, protective orders, and any other hearing involving a child being at imminent risk of abuse, neglect, or dependency.

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

22. (a) For hearings covered under paragraph 20, the parties are encouraged to resolve all matters by written motion. If a matter cannot be resolved by written motion, all hearings shall be held remotely in accordance with paragraph 9. 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 must explain in detail the exigent circumstances requiring an in-court hearing.

    (b) Any other hearing, matter or request, not covered in paragraph 20, may be heard by the court in accordance with paragraph 9, either: (a) on the court's own motion; or (b) by written petition or motion submitted to the court. The courts and parties are encouraged to resolve all matters by written motion. For any matter covered under this paragraph, if a party desires either a remote hearing or an in-court hearing, the party must make their request in writing with an explanation as to why such a hearing is necessary and, if an in-court hearing is requested, explain in detail the exigent circumstances requiring an in-court hearing.

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 safely be 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]

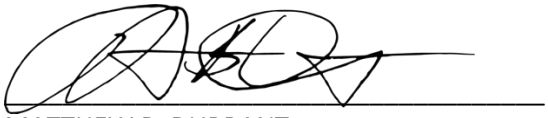
27. Justice court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders and the Court's Pandemic Response Plan. A bench trial by remote transmission requires the consent of all parties. The court may proceed without a party's consent if the court determines consent has been unreasonably withheld, provided the other criteria are met.

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.

Order Subject to Amendment

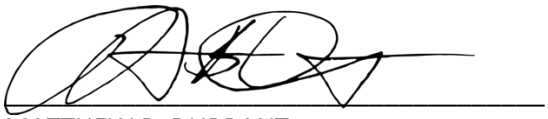
29. This Order may be amended at any time to respond to changed conditions.

DATED this 11th day of May 2020.



MATTHEW B. DURRANT
Chief Justice, Utah Supreme Court

DATED this 11th day of May 2020.



MATTHEW B. DURRANT
Presiding Officer, Utah Judicial Council