IN THE TRIAL COURTS FOR THE STATE OF ALASKA

In the Matter of:	)
	)
RELAXATION AND SUSPENSION OF VARIOUS COURT RULES BASED ON THE COVID-19 PANDEMIC	)
	)

AMENDED[1] SECOND UPDATED PRESIDING JUDGES' STATEWIDE ADMINISTRATIVE ORDER GOVERNING RELAXATION AND SUSPENSION OF VARIOUS COURT RULES BASED ON THE COVID-19 PANDEMIC

April 24, 2020[2]

1. In response to the public health emergency caused by coronavirus pandemic, the Alaska Supreme Court issued Order No. 1957 and the Chief Justice issued Special Order No. 8131. These orders direct that various court rules be relaxed or suspended so that the trial court operations can be conducted in a manner that both protects the rights and liberties of the parties and ensures the safety of court personnel, litigants, and the public. In addition, the presiding judges are authorized to issue further orders consistent with these Orders.

2. The chief justice suspended all superior court and district court proceedings through April 3, 2020, except the following priority hearings:[3]

[1] The Amended Order adds language to paragraph 11 to reflect Special Order of the Chief Justice Order No. 8135, to paragraph 22 regarding Criminal Rule 45, and to paragraph 26 regarding video and ERP hearings.

[2] This version includes revisions to paragraphs 4, 5.a, 5.b, 13, 15.1, 21, 26, 28, 28.1, 29, 31, and 33. The revisions are italicized. Deletions are not identified.

[3] This list is construed in paragraph 5, below.

a. Arraignments;
b. Felony first appearances;
c. Bail hearings;
d. Change of plea and sentencing hearings;
e. Adjudication and disposition hearings on petitions to revoke probation;
f. Habeas corpus applications;
g. CINA temporary custody and permanency hearings;
h. CINA hearings for review of secure residential psychiatric placement;
i. Mental health evaluation, involuntary commitment, and psychotropic medication proceedings;
j. Domestic violence proceedings;
k. Alcohol and drug commitment proceedings;
l. Quarantine and isolation proceedings;
m. Juvenile delinquency arraignment and detention hearings;
n. Search warrant and arrest warrant proceedings; and
o. Temporary guardianship and conservatorship proceedings.

Presiding Judge Authority

3. The presiding judges seek to provide uniform guidance to the public, litigants, counsel, and court staff throughout the state. The presiding judges are mindful of the growing backlog of cases and the benefits to be gained by allowing some additional matters to proceed by telephonic hearings or written stipulations, especially if dispositive orders are possible, in order to reduce the number of cases that must be reactivated later. We are also mindful of the stress placed upon the reduced court staff by additional hearings.

In anticipation of continuing developments, the presiding judges will review this order at least every two weeks.

Pursuant to Alaska Supreme Court Order No. 1957, Special Order No. 8131 of the Chief Justice, any subsequent amendments to it, and any superseding Special Orders,

IT IS HEREBY ORDERED:

Suspension of Superior Court and District Court Proceedings

4. All trial court proceedings are suspended through **May 31, 2020**, except those priority hearings identified in the Special Order of the Chief Justice *and those hearings expressly permitted in this Order or that meet the criteria of paragraph 33. However, the judge must always take into consideration the impact the hearing will have on the available court staff, attorneys, and litigants. Unanticipated staffing shortages or participant unavailability may require that a hearing be canceled on short notice.*

5. The presiding judges construe the Special Order of the Chief Justice to mean that the list of priority hearings includes the following:

a. arraignments includes those on a petition to revoke felony *or misdemeanor* probation, but not those for failure to comply with community work service or programs such as ASAP;

b. among the permitted CINA hearings are placement review hearings, *hearings to extend custody*, and the registration and confirmation of tribal court orders under CINA Rule 24 and expedited enforcement of tribal court orders under CINA Rule 25;

c. domestic violence hearings include those for stalking and sexual assault protective orders and for elder fraud protective orders. Tribal court domestic violence orders will be registered during any suspension;

d. permitted criminal hearings include telephonic competency hearings.

Appearances

6. **Civil cases.** All attorneys, parties, witnesses, and other participants shall appear by telephone or videoconference. In all civil cases, parties may appear through their attorney.

7. **Criminal cases.** Attorneys, witnesses, and other participants are required to appear by telephone or videoconference. Defendants are also required to appear by telephone or videoconferencing for all proceedings, except sentencings. Defendants may consent to appear by telephone or videoconference for sentencings.

8. **Victims.** Persons who qualify as "victims" under Alaska statue and a reasonable number of family and/or other supporters may attend court proceedings in the related case by telephone or videoconference. If the defendant attends a sentencing in person, then persons who qualify as "victims" under Alaska statue and a reasonable number of family and/or other supporters may attend in person.

9. **Seating.** The judicial officer presiding over a hearing with persons present in the courtroom shall assure that proper social distancing is observed.

Filings by Email, Electronic Signatures, Notarization, and Electronic Service

10. Parties are authorized to file documents by email or mail in all case types. If email is unavailable at a court location or for a particular case type, then filing by fax or mail is permitted. Attorneys and self-represented persons are authorized to sign a document by typing "s/[name]/" on the signature line. Parties may supply necessary notarized documents at a later time.

11. All filing should be made electronically to the greatest degree practical. The clerks of court shall distribute and publish the appropriate email filing addresses as necessary to facilitate email filing. *On April 20, 2020 the chief justice issued Special Order of the Chief Justice Order No. 8135 which permits a party to commence an action by email or fax except in small claims cases and will deposits.*

If electronic filing is not practical or not permitted by the rule *or special order*, then in person court filing is permitted. The clerks of court may establish drop box filing systems or other transactional safeguards to reduce personal interaction.

12. Civil Rule 5 service should be made electronically, without the necessity of the consent of a party. All parties with an operational email address must provide that address to the court and to the opposing party for purposes of service and distribution. If a party has no functioning email address, then service and distribution by mail is permitted.

Extended Deadlines

13. Filing deadlines in all cases are extended to **May 1, 2020** in pending suspended cases. Litigants may file in advance of deadlines. *With the expiration of the extension of the filing deadlines parties should assume that they have the same amount of time left to make a responsive filing as they had as of March 23, 2020, the date the extension was imposed. If a filing was made between March 23, 2020 and May 1,2020, then the party who is to respond or reply shall have the amount of time available to file as if the other party made its filing on May 1, 2020.*

The extension was issued in order to allow parties and counsel to adjust to the dislocations brought about by the pandemic. The extension has been allowed to expire in order to have parties resume their litigation to the extent that is possible without an imposed global revision of deadlines. It is expected that parties may need to revise specific deadlines because of continuing dislocations caused by the pandemic. Parties should attempt to stipulate to new deadlines that reflect realities that are case specific. If parties cannot agree on revised schedules, then a party may seek relief from the assigned judicial officer.

Criminal Cases Generally

14. In-custody defendant transports are restricted to in-person court appearances as defined in paragraph 7, above. Presiding judges may authorize transport if telephonic or video conferencing capacity is unavailable.

15. Criminal hearings proceeding by way of telephone or video conference, to the greatest degree practical, must include a procedure by which the defendant may confer with the defense attorney in private. If such a conference is necessary, but not possible, the hearing shall be continued, unless the defendant consents to proceeding.

15.1 In addition to priority hearings that must proceed, trial courts may hold telephonic hearings to address the status of criminal cases, including the status of discovery, the responsiveness of counsel to settlement offers, competency matters, representation matters, and other issues the resolution of which will enable the case to be

tried more quickly once jury trials are resumed. Telephonic pre-meetings and telephonic court sessions with defendants in therapeutic courts may also proceed.

Grand Jury and Preliminary Hearings in Felony Criminal Cases

16. Grand juries are suspended through **May 31, 2020.** Criminal Rule 5(e)(4) is tolled during any suspension or limitations of grand juries. When the suspension or limitation is lifted, Criminal Rule 5(e)(4) is tolled for at least an additional 30 days to permit an orderly transition and scheduling. Rule 5(e)(4) will be further tolled for a reasonable time thereafter as necessary to accommodate the availability of witnesses, counsel, the court, and jurors in consideration of the accumulated backlog.

Jury Trials in Criminal Cases

17. Jury trials are suspended through **May 31, 2020.**

18. Criminal Rule 45 is tolled during any suspension or limitations on jury trials. When the suspension or limitation is lifted, Criminal Rule 45 is tolled for at least an additional 30 days to permit an orderly transition and scheduling. Rule 45 will be further tolled for a reasonable time thereafter as necessary to accommodate the availability of witnesses, counsel, the court, and jurors in consideration of the accumulated backlog.

Petitions to Revoke Probation

19. At an arraignment on a petition to revoke probation permitted by paragraph 2.e. above, the defendant may enter a denial before any judicial officer. If the petition is based upon an alleged new crime, then no further proceedings will be scheduled on the

merits of the petition until the new offense is resolved, except for bail hearings or as specifically ordered by the trial court judge for good cause shown.

Search and Arrest Warrant Applications

20. Search and arrest warrant applications shall continue during any suspension. All warrant applications should be made by written affidavit to the greatest degree practicable. Applications by telephone are also acceptable as necessary. The use of in-person warrant applications is discouraged, but not prohibited. Officers seeking a warrant by email application and affidavit should provide a telephone number where the officer may be reached if the judicial officer has questions about the application.

Juvenile Proceedings

21. Juvenile detention hearings will be held according to the time standards established by statute. Dispositions and stipulated adjudications may take place by telephone or video conference. Juvenile cases are subject to the same general rules as adult criminal trials, *including permissive hearings set forth in paragraph 15.1 and the suspension of jury trials through May 31, 2020.*

Minor Offenses

22. Minor offense hearings are suspended through **May 31, 2020**. *Criminal Rule 45 is tolled as set forth in paragraph 18.*

Mental and Alcohol Commitments

23. Title 47 involuntary commitment and medication petitions and alcohol commitment petitions will be heard according to time standards set by statute. However, there will be no jury trials.

Quarantine Hearings

24. Testing, isolation, and quarantine petitions pursuant to AS 18.15. 375 and .385 will be heard according to time standards set by statute.

Guardianship and Conservatorship Cases

25. Emergency guardianship and conservatorship cases will be heard according to time standards set by statute. Any applicable time standards set by court rule are enlarged, consistent with the welfare of the respondent.

Child Custody and Domestic Relations Cases

26. *In addition to priority hearings that must proceed, in child custody and domestic relations cases trial courts may hold telephonic* or video *hearings to resolve motions for interim orders and may conduct any telephonic or video uncontested hearings. By telephone or video, the court may hold Early Resolution Program (ERP) hearings as well as informal divorce and custody trials pursuant to Civil Rule 16.2.* Any requirement for an in-person parenting class is suspended and replaced by the requirement that the parent attend an equivalent on line parenting class.

27. In response to inquiries from judges and members of the family law practitioners the presiding judges adopt the following general guidelines for child custody cases affected by the current public health emergency:

a. Many custodial schedules are tied to the school year. Now that schools have been indefinitely suspended, parties should maintain the school schedule, unless they can agree upon a new schedule. The triggering of what would be the summer schedule will depend upon whether the school year is resumed during part of the normal summer.

b. If a parent is self-quarantined with the children, the parties should follow the existing schedule unless they agree to a new schedule.

c. If a parent is quarantined at a time when the children are with the other parent, then the children will remain with the non-quarantined parent until the quarantined parent is released from the quarantine. The formerly quarantined parent would then be entitled to a day-for-day make up period.

d. If a parent has tested positive for the virus, then the parties should follow the advice of their health care providers concerning the custody of any children.

e. Parents should avoid traveling out of state because of a possible quarantine upon the return to Alaska. Parents should avoid taking the children out of Alaska.

f. Parents may not make unilateral changes in the custody and visitation schedule.

However, **it should be emphasized that this is merely guidance. Parents are encouraged to resolve their own unique problems.** They should write down any agreements in an email or text to avoid confusion about the terms. If individuals need a judge to make a decision, they must expect abnormal delays in the response to motions or the scheduling of hearings.

Civil Cases and Appeals

28. *In addition to priority hearings that must proceed, the following additional telephonic hearings may also take place:*

a. default judgment hearings;
b. uncontested adoptions;
c. name changes;
d. settlements;
e. oral argument on motions for summary judgment or to dismiss; and
f. scheduling and status conferences.

28.1 Subject to local orders, civil marriage ceremonies may take place as long as there is compliance with physical distancing practices and the number of attendees is no greater than allowed by current pandemic orders.

Evictions

29. *Telephonic eviction hearings may be held as long as they are consistent with sec. 21, ch. 10, SLA 20 and the federal CARES Act.*

30. Trial court judges may find good cause to stay an outstanding eviction order based on the current public health emergency. If a tenant is subject to a quarantine order or is self-quarantined pursuant to public health guideline or doctor's recommendation, then the eviction should be stayed.

Child in Need of Aid Cases

31. In CINA cases hearings concerning temporary custody, *the extension of custody*, permanency, placement review, review of secure residential psychiatric placement, *stipulated adjudications, and stipulated dispositions* shall proceed according to statutory timelines. Parties are encouraged to resolve issues by stipulation or motions without hearings.

32. Registration and confirmation of tribal court orders under CINA Rule 24 and expedited enforcement of tribal court orders under CINA Rule 25 shall proceed. Rule 24 and 25 petitions shall be filed by email. Service and distribution by a court or the tribe may be by email.

Emergency Exceptions

33. The assigned trial court judge may hold a telephonic hearing that is not on the list of priority hearings in paragraphs 2 and 5 or hearings permitted under this Order to address an emergency that requires an immediate decision. When requesting an emergency hearing the party must identify and show proof of the alleged emergency by motion. However, the judge must always take into consideration the impact the hearing will have on the available court staff attorneys, and litigants. Unanticipated staffing shortages or participant unavailability may require that a hearing be canceled on short notice.

Effect of Prior Statewide, District, and Local Pandemic Orders

34. This Order supersedes all prior statewide, district, and local pandemic orders of presiding or deputy presiding judges.

Future District Pandemic Orders

35. The presiding judge of a district may issue district and local orders that address unique or limited circumstances.

Termination Date

36. This Order will remain in effect until terminated by order of the presiding judges, the Chief Justice, or the Alaska Supreme Court.

Nunc pro tunc to April 24, 2020.

Dated at Ketchikan, Alaska this 27 day of April 2020.

Trevor N. Stephens
Presiding Judge First Judicial District

Dated at Kotzebue, Alaska this 27 day of April 2020.

Paul A. Roetman
Presiding Judge Second Judicial District

Dated at Anchorage, Alaska this 27 day of April 2020.

William F. Morse
Presiding Judge Third Judicial District

Dated at Fairbanks, Alaska this 27 day of April 2020.

Michael MacDonald
Presiding Judge Fourth Judicial District

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