

In the Fourth Judicial District Court in and for Utah, Wasatch, Juab, and Millard Counties

Emergency General Court Order – May 27, 2020

In Re: Pandemic Response Plan

WHEREAS, the World Health Organization has declared the COVID-19 outbreak to be a pandemic; the Governor of Utah, the Honorable Gary Herbert, has declared a state of emergency, and the Chief Justice of the Utah Supreme Court, the Honorable Matthew Durrant and the Utah Judicial Council have issued Administrative Orders dated March 12, March 13, and March 21, 2020, together with an Addendum dated April 23, 2020 (the "Prior Administrative Orders") activating the Utah State Courts Pandemic Response Plan ("Pandemic Response Plan") in order to protect the public, court staff and members of the judiciary; and

WHEREAS, the Chief Justice and the Judicial Council recently issued a new Administrative Order dated May 1, 2020, later modified by a superseding Amended Administrative Order dated May 11, 2020 (the "Current Administrative Order") (copy attached), which, by its terms, amends and entirely replaces the Prior Administrative Orders.

WHEREAS, the Current Administrative Order continues to direct Presiding Judges and Trial Court Executives to implement the provisions in both level "Yellow" and level "Red" of the Pandemic Response Plan, but announces the formation of working groups to formulate plans for court proceedings to be held in-person and for court personnel to return to work in the courthouses subject to approval of the Management Committee of the Judicial Council; and

WHEREAS, the Current Administrative Order authorizes presiding judges to issue supplemental orders furthering the implementation of the Current Administrative Order and the provisions of the Pandemic Response Plan, including whatever orders are necessary to facilitate remote transmission of court hearings;

NOW THEREFORE, it is hereby ORDERED, as follows:

1. **Jury Trials Suspended.** By its terms, ¶10 of the Current Administrative Order directs district court judges to suspend all criminal jury trials (whether the defendant is or is not in custody) and all civil jury trials pending further administrative orders. At the direction of the Management Committee of the Judicial Council, the Utah Board of District Court Judges has constituted a District Trial Workgroup to formulate procedures for conducting jury trials when they are re-initiated. In order to allow for the orderly formulation and implementation of these procedures, all criminal jury trials and all civil jury trials presently scheduled to begin on or before

July 31, 2020 are hereby suspended. Counsel, or, where applicable, self-represented parties, are instructed to contact the assigned judge's judicial assistant to schedule a telephonic status and scheduling conference for the purpose of rescheduling trial dates or further adjusting pretrial matters related to these suspended jury trials. This order should not be read as indicating that all jury trials scheduled to begin at times after the dates referred to above will in fact be held as scheduled. Further suspensions may need to be announced as more information becomes available or more direction is received from the Judicial Council or the Virtual Jury Workgroup. This order does not preclude assigned judges from rescheduling other jury trials, whether on their own motion or on the motion of a party. As for any jury trials presently scheduled to begin after July 31, 2020, counsel (or individual parties, if self-represented) should contact the assigned judge's judicial assistant to arrange a status and scheduling conference at least 30 days before the scheduled trial to determine if the trial will proceed as scheduled or will need to be rescheduled to a later date.

2. **Coordination Regarding In-Custody Defendants.** The presiding judge, associate presiding judge, or a designated representative will respond to requests from the county attorney and/or public defender's office related to release of inmates due to COVID-19 related issues. Except in emergency health-related circumstances, these releases will be subject to the prior approval of the judge assigned to the inmate's case. This order does not preclude individual judges from dealing with issues related to the custody status of defendants assigned to them.
3. **Courthouse Operations.** Under the provisions of the Pandemic Response Plan, court staff members are continuing to operate on schedules that comply with the Current Administrative Order to help avoid exposure and possible infection. All courthouses within the Fourth District remain open, but access may be limited by circumstances related to staff schedules.

All parties are encouraged to contact the courts by telephone or email for assistance, rather than coming to the court in person. Filings are being accepted by email from any unrepresented parties, while counsel is able to e-file any necessary pleadings. The courts within the Fourth District may be reached as set forth on the attached Exhibit A.

4. **Restrictions on Entrance into Courthouses.** Individuals may not enter courthouses within the Fourth Judicial District if they are:
 - a. Experiencing symptoms of COVID-19;
 - b. Have been exposed to someone diagnosed with COVID-19; or
 - c. Have been tested for COVID-19, and are awaiting those test results.

In order to ensure the safety of all courthouse staff and patrons, individuals may also be subject to having their temperature checked before entering the courthouse, and may be turned away if they have a temperature higher than 100.4 degrees.

5. **Out-of-Custody Defendants with Currently-Scheduled Hearings.** Out-of-custody pro se defendants in criminal cases who appear at the courthouse for a scheduled court date will be directed to the clerks' desk, where the following procedure will occur:

- a. The Defendant will be provided with a promise to appear for a date beginning in September, 2020, on a rolling basis.
- b. The Defendant will be asked to complete a short form requesting the following information:
 - i. an email address and telephone number, to assist the court in contacting him/her with updated information about his/her case.
 - ii. Whether the defendant has the technology available to participate in hearings by video, and is willing to do so in order to get a court date earlier than September.
- c. The Defendant will be asked if he/she would like the Court to consider appointing a public defender to represent him/her.
 - i. If the answer to this question is affirmative, the clerk will provide the Defendant with the required paperwork for the Court to make that decision.
 - ii. The Defendant will be instructed to leave the courthouse to complete the paperwork, and to return it to the security officer at the courthouse security entrance once it is completed.
 - iii. The Court will review any paperwork that is turned in and will determine whether the Defendant qualifies for the appointment of a public defender. Notice of the Court's decision will be forwarded to the Defendant, the prosecutor, and the public defender's office.
- d. If the case involves alleged domestic violence, the Defendant should be provided with instructions about how to contact the assigned judge's clerk to schedule an earlier date if they wish to do so. In order for the hearing to be scheduled earlier, the defendant must consent to proceeding via WebEx and must provide the Court with contact information listed above to provide instructions about how to do so.
- e. In cases that do not involve alleged domestic violence, a defendant may still request a bench trial, entry of plea or other hearing prior to September 2020. In order to facilitate these hearings, the defendant should contact the judge's

clerk and request a court date. In order for a hearing to be scheduled, a defendant must also consent to proceeding via WebEx and must provide the Court with the appropriate contact information, including a valid email address. Once the court's clerk has received this information, he or she will coordinate with the assigned judge in setting the hearing and notifying all parties involved.

6. **Mission Critical Hearings to Proceed via WebEx When Possible.** Under Paragraph 18 of the Current Administrative Order, the district court is directed to continue to perform all mission critical functions including, but not limited to, the matters referred to in Paragraph 18 of the Current Administrative Order. In addition to the matters listed therein, hearings related to Motions for Temporary Orders are included as mission critical functions. Until further order, hearings on motions for temporary orders, which are held before the domestic commissioners, will proceed by remote transmission as directed by the assigned commissioner.
7. **Protocol Order for Mission Critical Functions with Physical Hearing.** For mission critical functions that require a physical hearing, the Court has adopted a uniform protocol order, explaining the guidelines and safety precautions that must be followed by each participant at the hearing. A copy of that protocol order is attached as Exhibit B.
8. **Expansion of WebEx Hearings.** Each judge and commissioner within the Fourth District is encouraged to expand the types of cases for which hearings are being conducted beyond those identified as mission critical. These hearings shall only be held via telephone or WebEx, if judicial staff support is available, and all other conditions of the Current Administrative Order are followed. If the Court believes a matter can proceed forward via WebEx or telephone, the judge's clerk will contact the parties or counsel, as appropriate, and schedule an electronic hearing. If the parties believe a matter can be heard, they should contact the judge's clerk and request the matter to be scheduled for hearing. In a hearing scheduled by the Court, if a pro se party is unable to participate in the hearing via WebEx or telephone, they should immediately contact the judge's clerk to reschedule the hearing. If a hearing is requested by the parties, they are consenting to the hearing being conducted via WebEx.
9. **Consent of Parties.** Consistent with the Current Administrative Order, consent of the parties, or their counsel, is not required for hearings (other than bench trials) to be conducted remotely at the direction of the assigned judge or commissioner. Consistent with Paragraphs 17 and 19 of the Current Administrative Order, the court

may proceed with bench trials without a party's consent if the court determines consent has been unreasonably withheld, provided court staff is available and the proceeding comply with all applicable government and public health orders and the Court's Pandemic Response Plan.

10. **Trustee Sales.** Until further order, trustee sales and sheriff sales, including those that are required to take place at courthouses within the Fourth District pursuant to Utah Code §§ 57-1-25 and 27 and Utah R. Civ. P. 69B, shall not be held inside a courthouse. Sales may be held outside, on the courthouse grounds, in a location designated by courthouse security or, if no location is designated, in a location that permits participants to maintain the recommended distance from each other and does not interfere with courthouse operations. To promote the safety of those entering or leaving a courthouse, a sale shall not be conducted within 25 feet of a courthouse entrance or exit.

DATED this 27th day of May, 2020.


Jennifer A. Brown
Presiding District Court Judge

