

# NAVARRO COUNTY

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## JAMES LAGOMARSINO

JUDGE, 13TH JUDICIAL DISTRICT COURT

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April 28, 2020

RE: In The Supreme Court Of Texas (Misc. Docket No. 20-9059)  
Twelfth Emergency Order Regarding The COVID-19 State of Disaster

Dear Counsel and Litigants:

Please find attached the twelfth emergency order issued by the Texas Supreme Court on April 27, 2020. In addition, the Court has attached the most recent Court Operation Guidance from the Office of Court Administration. The Court Operation Guidance is updated periodically and can be accessed on their website.

Respectfully,

A handwritten signature in blue ink, appearing to read 'James Lagomarsino', is written over a large, sweeping blue line that extends across the page.

James Lagomarsino  
District Judge / Local Administrative Judge

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 20-9059

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## TWELFTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

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**ORDERED** that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order, except for paragraph 9, is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The following Emergency Orders are renewed as clarified and amended: the First Emergency Order (Misc. Dkt. No. 20-9042 and Court of Criminal Appeals of Texas Misc. Dkt. No. 20-007), as amended by the Third Emergency Order (Misc. Dkt. No. 20-9044 and Court of Criminal Appeals of Texas Misc. Dkt. No. 20-008) and the Eighth Emergency Order (Misc. Dkt. No. 20-9051); the Second Emergency Order (Misc. Dkt. No. 20-9043); the Fifth Emergency Order (Misc. Dkt. No. 20-9046); the Seventh Emergency Order (Misc. Dkt. No. 20-9050); the Ninth Emergency Order (Misc. Dkt. No. 20-9052); and the Eleventh Emergency Order (Misc. Dkt. No. 20-9055).

3. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

a. Modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, specifically including those in Section 263.401 of the Family Code and in all proceedings under Subtitle E, Title 5, of the Family Code, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted;

b. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court

reporter, or grand juror, but not including a petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

c. Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

d. Conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;

e. Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has, COVID-19 or flu-like symptoms, or a fever, cough or sneezing;

f. Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

4. Courts must not conduct in-person proceedings contrary to guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions. Courts should use all reasonable efforts to conduct proceedings remotely.

5. Any deadline for the filing or service of any civil case that falls on a day between March 13, 2020, and June 1, 2020, is extended until July 15, 2020. This does not include deadlines for perfecting appeal or for other appellate proceedings, requests for relief from which should be directed to the court involved and should be generously granted.

6. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.

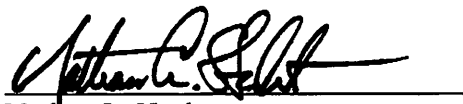
7. In any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure:

- a. No trial, hearing, or other proceeding may be conducted, and all deadlines are tolled, until after May 18, 2020;
  - b. A writ of possession may issue, but the posting of the written warning required by § 24.0061(d)(1) of the Property Code and the execution of the writ of possession may not occur until after May 25, 2020, and the deadlines in Rules 510.8(d)(1)-(d)(2) are suspended while this Order remains in effect; and
  - c. New filings may be accepted, but the time period in Rule 510.4(a)(10) is suspended, and issuance and service of citation may not occur until after May 18, 2020.
8. A case covered by Paragraph 7 may nevertheless proceed and a writ of possession may issue if, but only if:
- a. The plaintiff files a “Sworn Complaint for Forcible Detainer for Threat to Person or For Cause”;
  - b. The court determines that the facts and grounds for eviction stated in the Complaint, under oath with personal knowledge, taken as true, show that the actions of the tenant, or the tenant’s household members or guests, have threatened or pose an imminent threat of (i) physical harm to the plaintiff, the plaintiff’s employees, or other tenants, or (ii) criminal activity; and
  - c. The court signs an order stating procedures for the case to proceed.
9. All deadlines, whether prescribed by statute, rule, or order, that expired or would have expired between March 13, 2020, and June 1, 2020, are extended until July 15, 2020:
- a. in attorney professional disciplinary and disability proceedings; and
  - b. relating to the issuance or renewal of certifications, licenses, or registrations issued by the Judicial Branch Certification Commission, or for fulfilling mandatory continuing education.
10. This order is effective immediately and expires June 1, 2020, except as otherwise stated herein, and unless extended by the Chief Justice of the Supreme Court.
11. The Clerk of the Supreme Court is directed to:
- a. post a copy of this Order on [www.txcourts.gov](http://www.txcourts.gov);

- b. file a copy of this Order with the Secretary of State; and
- c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

12. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: April 27, 2020



Nathan L. Hecht  
Chief Justice

# Media

## CORONAVIRUS (COVID-19) COURT OPERATION GUIDANCE

### Court Operation Guidance

**Issued 4/27/2020**

#### Chief Justice Issues New Emergency Order Renewing, Clarifying and Amending Previous Emergency Orders

Today Chief Justice Nathan L. Hecht issued the Twelfth Emergency Order  Regarding the COVID-19 State of Disaster, effective immediately and expiring June 1, except as noted below. The Emergency Order renews as clarified and amends the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Emergency Orders, as follows (**key changes noted in bold**):

- Extends the ability or the requirement (to avoid risk to court staff, parties, attorneys, jurors, and the public) of judges – in all case types – and without a participant’s consent to:
  - Modify or suspend deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted;
  - Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind – including but not limited to a party, attorney, witness, court reporter, **or grand juror**, but not including a petit juror – to participate remotely, such as by teleconferencing, videoconferencing, or other means;
  - Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;
  - Conduct proceedings away from the court’s usual location with reasonable notice and access to the participants and the public;
  - Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has, COVID-19 or flu-like symptoms, or a fever, cough or sneezing;
  - Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.
- Prohibits courts from conducting **any in-person proceeding contrary to guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions.**
- **Requires courts to use all reasonable efforts to conduct proceedings remotely.**
- Extends the statute of limitations deadlines in civil cases for deadlines that fall between March 13 and June 1 to **July 15** (not including appellate deadlines, requests for relief from which must be made to the court and should be generously granted).
- Extends the order clarifying that existing trial court orders control when determining a person’s right to possession of and access to a child in a Suit Affecting the Parent-Child Relationship and that possession of and access to a child is not affected by any shelter-in-

place order or other order restricting movement issued by a government entity. Extends the order clarifying that the original published school schedule controls with regard to possession and access to a child. Permits parties to alter possession by agreement if allowed by the court order(s) and courts to modify their orders on an emergency basis or otherwise.

- Extends the suspension of residential evictions proceedings under Chapter 24 of the Texas Property Code and Rule 510 of the Rules of Civil Procedure as follows:
  - **Prohibits a trial, hearing, or other proceeding in an eviction, and tolls all deadlines, until after May 18.**
  - Prohibits the posting of the written warning required by Sec. 24.0061(d)(1) of the Property Code and the execution of a writ of possession until after **May 25**, and the deadlines in Rule 510.8(d)(1)-(d)(2) are suspended while the Emergency Order remains in effect.
  - Permits new filings of eviction cases and suspends the time period in Rule 510.4(a)(10), but prohibits issuance and service of citation until after **May 18**.
  - Permits one of these proceedings to proceed only if the following three actions are met:
    - the plaintiff files a "sworn complaint for forcible detainer for threat to person or for cause";
    - the court determines the facts and grounds for eviction stated in the complaint, under oath with personal knowledge, taken as true, show that the actions of the tenant, or the tenant's household members or guests, pose an imminent threat of (i) physical harm to the plaintiff, the plaintiff's employees, or other tenants, or (ii) criminal activity; and
    - the court signs an order stating procedure for the case to proceed.
- Extends all deadlines, whether prescribed by statute, rule, or order, that expired or would have expired between March 13 and June 1 to **July 15** in:
  - Attorney professional disciplinary and disability proceedings; and
  - Relating to the issuance or renewal of certifications, licenses, or registrations issued by the Judicial Branch Certification Commission, or for fulfilling mandatory continuing education.

#### **Guidance on Conducting Court Proceedings (UNCHANGED FROM LAST WEEK)**

The Twelfth Emergency Order Regarding the COVID-19 State of Disaster prohibits courts from conducting any in-person proceedings contrary to guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions. It also requires courts to use all reasonable efforts to conduct proceedings remotely.

The following guidance is provided for all courts:

- **In-person proceedings** of any size should be delayed until **at least June 1**.
- Essential proceedings should occur in-person only if holding the proceeding remotely is not possible or feasible.
- If essential proceedings must be held in-person, the court should ensure that:
  - No more than 10 persons are gathered in the courtroom or in areas around the courtroom (see EXCEPTION below);

- **Participants wear face coverings where possible; and**
- Participants in the courtroom are separated consistent with social distancing and other precautions.
- **EXCEPTION:** Essential proceedings may occur in-person in excess of the 10-person maximum if the law requires more than 10 persons for the proceedings, such as grand jury deliberations. **Participants should be separated consistent with social distancing and should wear face coverings where possible. (Note: Emergency Order 12 permits, but does not require, grand jurors to meet remotely).**
- No non-essential proceedings should be held in-person.
- With the introduction of the remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no limitations on those remote proceedings so long as reasonable notice and access is provided to the participants and the public.

OCA has been consulting with the state health experts on guidelines for permitting in-person proceedings in the future and anticipates releasing updated guidance later this week.

#### **Governor Abbott issues new Executive Order related to Opening Texas**

Today Governor Greg Abbott issued Executive Order GA-18 , effective immediately through May 15, relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster. The Executive Order does the following:

- Maintains the requirement that every person in Texas, except where necessary to provide or obtain **essential services** or **reopened services**, minimize social gatherings and minimize in-person contact with people who are not in the same household;
- Continues the prohibition on people visiting nursing homes, state supported living centers, assisted living centers, or long-term care facilities except for limited exceptions;
- Strongly encourages people over 65 to stay home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation;
- “Essential services” remain mostly unchanged, except that there is an updated version of the Guidance on the Essential Critical Infrastructure Workforce  that clarifies the description of a small number of essential services and adds functions to the list;
- Religious service guidance is unchanged;
- “Reopened services” are expanded on May 1 from just retail to-go to also include the following, so long as they operate at 25% of occupancy:
  - In-store retail services;
  - movie theaters;
  - dine-in restaurants (with less than 51% of their gross receipts from the sale of alcohol);
  - shopping malls (no food courts, play areas, or interactive displays); and
  - museums and libraries, except for any interactive exhibits and child play areas (local governments can choose when local public museums and local public libraries may operate);
- “Reopened services” also include:
  - services provided by an individual working alone in an office;
  - golf course operations; and



- county and municipal government operations relating to permitting, recordation, and document-filing services, as determined by the local government;
- Reopened services in counties with 5 or fewer COVID-19 cases that have filed with the Department of State Health Services (DSHS) an attestation form  promulgated by DSHS may operate at 50% of occupancy in the “reopened services” areas;
- The Executive Order permits the Governor to identify additional services to be reopened or to identify counties in which reopened services are thereafter prohibited (should an increase in COVID-19 transmission, hospitalization, or fatalities occur);
- People and businesses that are permitted to operate are required to follow the minimum health protocols recommended by DSHS, and should implement social distancing, work from home if possible, and practice good hygiene, environmental cleanliness, and sanitation; and follow the Guidelines from the President and the CDC; and
- Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.

### **Supreme Court Opinion Issued in Mandamus Proceeding in Case Challenging GA-13**

Last week, the Supreme Court issued an opinion  in *In Re Greg Abbott and Ken Paxton* (20-0291), a mandamus proceeding regarding the temporary restraining order issued on April 10 restraining the enforcement of Executive Order GA-13  (relating to detention in county and municipal jails during the COVID-19 disaster) as it applies to judges. The Supreme Court conditionally granted the mandamus relief and directed the trial court to withdraw the temporary restraining order after finding that the judge plaintiffs in the original suit requesting the temporary restraining order lacked standing and that the trial court therefore lacked subject-matter jurisdiction to issue a temporary restraining order in their favor. The opinion states in part:

*“Our standing jurisprudence ensures that the executive and judicial branches resolve matters of public importance through the adversary system of justice in particular cases involving parties who are genuinely, personally affected. Petitions from one set of judges to another do not fit this mold. That does not mean that the issues raised in this lawsuit are unimportant or cannot be litigated. If a defendant in a bail hearing contends that the executive order is unconstitutional and the suspended statutes should continue to provide the rule of decision, the judge has a duty to rule on that issue, and the losing side can challenge that rule.*

*Neither branch may short-circuit this process. As discussed [in the opinion], the executive branch cannot criminally prosecute judges for deciding cases based on what they understand the law to be. We appeal judicial decisions we don’t like; we don’t jail the judges. Nor can one judge file a lawsuit against the executive branch that asks another judge to clarify the rule of decision the plaintiff judge should apply in his or her courtroom.*

...

*When faced with apparently inconsistent legal authority, the judge remains tasked with deciding which authority is dominant. This is the case for GA-13, just as it would be the case for any change in the law affecting judicial decisions in individual cases.”*

**Issued 4/17/2020**

**Governor Abbott issues 3 new executive orders**

Today Governor Greg Abbott issued three executive orders meant to begin the process of lifting restrictions that have been in place due to the pandemic. Executive Order GA-15 [\[1\]](#) (relating to hospital capacity) loosens the restriction on healthcare procedures to permit procedures that would not deplete the hospital capacity or personal protective equipment needed and would ensure sufficient capacity of those items. Executive Order GA-17 [\[2\]](#) establishes the Governor's Strike Force to Open Texas, which will be responsible for advising the Governor on safely and strategically restarting and revitalizing all aspects of Texas. Executive Order GA-16 [\[3\]](#) relates to the safe, strategic reopening of select services and states the following:

- Maintains the requirements of the previously-issued stay-at-home executive order issued as GA-14 [\[4\]](#), except as noted below.
- Maintains the requirement that every person in Texas, except where necessary to provide or obtain essential *or reopened services*, minimize social gatherings and minimize in-person contact with people who are not in the same household;
- "Reopened services" consist of retail services that are not essential services but that may be provided through pickup, delivery by mail, or delivery to the customer's doorstep;
  - Reopened retail services are required to comply with the Guidance for Employers, Employees, and Customers of Reopened Retail Services, which require such things as employee screening for symptoms, employee face coverings, employee separation of 6 feet or more, and customers not entering the establishment.
- Reopened services are required to be provided through remote teleworking unless they cannot be provided through remote teleworking;
- Closes in-person instruction at schools for the remainder of the 2019-2020 school year;
- Supersedes any conflicting order issued by local official but only to the extent that such a local order restricts essential services or reopened services allowed by GA-16 or allows gatherings prohibited by GA-16; suspends certain statutes to the extent necessary to ensure local officials do not impose restrictions inconsistent with GA-16.

#### **UPDATED - Guidance on Conducting Court Proceedings**

Based upon the Guidelines for Opening Up America Again unveiled yesterday by President Donald Trump and the White House Coronavirus Task Force and Governor Abbott's executive orders, the following updated guidance is provided for all courts:

- The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. The limitation on group size would apply the local stay-at-home or shelter in place order standards to court proceedings.
- **In-person proceedings** of any size should be delayed until **at least June 1**.
- Essential proceedings should occur in-person only if holding the proceeding remotely is not possible or feasible.
- If essential proceedings must be held in-person, the court should ensure that:
  - No more than 10 persons are gathered in the courtroom or in areas around the courtroom (see exception below);
  - **Participants wear face coverings where possible**; and
  - Participants in the courtroom are separated consistent with social distancing and other precautions.

- **EXCEPTION:** Essential proceedings may occur in-person in excess of the 10-person maximum if the law requires more than 10 persons for the proceedings, such as grand jury deliberations. **Participants should be separated consistent with social distancing and should wear face coverings where possible.**
- No non-essential proceedings should be held in-person.
- With the introduction of the remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no limitations on those remote proceedings so long as reasonable notice and access is provided to the participants and the public.

We will be issuing updated and detailed guidance soon regarding if and how courts should consider bringing teleworking staff back to the courthouse and how in-person proceedings should be handled when the orders allow that to occur.

### **Reminder on Livestreaming and Deleting Livestreamed Proceedings**

As a reminder, there may be certain portions of hearings that may be inappropriate for livestreaming to the public just as they would be inappropriate for public access in a physical courtroom. Examples may include proceedings involving sensitive testimony or graphic photographs. In these situations, please be aware of the Background and Legal Standards [\[link\]](#) for public access to remote hearings and the Benchcard [\[link\]](#) meant to assist you regarding how you might limit the public access to the livestream of the proceeding.

In addition, please remember that OCA recommends that judges take down the recording of the livestreamed proceedings from YouTube immediately after the conclusion of the hearing. Instructions [\[link\]](#) for how to do this are available. In addition, if the proceeding is unable to be immediately deleted (sometimes YouTube may delay your ability to delete the proceeding), please be aware that you can follow steps 1-4 in the "How to Delete a YouTube Video after Livestreaming" section and change the "Visibility" to "Private," which will restrict the public's ability to access the video from your YouTube channel.

### **Vehicle Registration Waiver Reminder**


The Texas Department of Motor Vehicles (TxDMV) has received numerous phone calls from motorists who have received citations from law enforcement for registration violations. TxDMV has sent out this communication to law enforcement officials [\[link\]](#) in order to provide clarification regarding Governor Abbott's waivers pertaining to vehicle registration. TxDMV has asked that judges ensure local law enforcement agencies are aware of the vehicle registration waiver.

### **Issued 4/9/2020**

#### **New Emergency Orders Issued by Supreme Court**

Please be aware of the emergency order issued since our last guidance:

- Ninth Emergency Order [\[link\]](#) (Issued April 6) – Extends Emergency Order 4, prohibiting a trial, hearing, or other proceeding in an eviction to recover possession of residential property under Chapter 24 of the Property Code and Rule 510 of the Texas Rules of Civil Procedure until after April 30, 2020.
- Tenth Emergency Order [\[link\]](#) (Issued April 9) – Suspends actions to collect consumer debt cases as defined by Texas Finance Code Section 392.001(2) as follows:

- Writs of garnishment under Rule 658 of the Texas Rules of Civil Procedure can be issued, but service of the writs of garnishment cannot occur until after May 7, 2020;
  - Receivers appointed under Chapter 31 of the Texas Rules of Civil Practice & Remedies Code can remain active but must not freeze any accounts at financial institutions as defined by Texas Finance Code Section 59.001(5) while the order is in effect;
  - For accounts that are currently garnished, the parties are strongly encouraged to reach an agreement on the garnishment, and courts are encouraged to aid and facilitate a quick adjudication;
  - Requests for default judgments may be filed, but no hearings shall be set, and the time to respond or file an answer is tolled until April 30, 2020; and
  - No court shall dismiss a case for want of prosecution while the order remains in effect.
  - Order expires April 30, except for the first sub-bullet that expires May 7, unless extended by the Chief Justice of the Supreme Court.
- Eleventh Emergency Order  (Issued April 9; retroactive to March 13) – Extends deadlines related to the issuance or renewal of certifications, licenses, or registrations issued by the Judicial Branch Certification Commission (certified guardians, court reporters, licensed court interpreters, private process servers), including deadlines for fulfilling mandatory continuing education to May 31, 2020, unless extended by the Chief Justice of the Supreme Court.

#### **Zoom Privacy and Security Concerns Addressed in Account Settings**

You may have seen articles in the press or advisories from state and federal government agencies regarding privacy and security concerns associated with Zoom accounts. Most of the privacy and security concerns that have been raised are issues on accounts without security and privacy settings. OCA takes these concerns seriously and has reviewed the security settings of all OCA-issued Zoom accounts to ensure that the appropriate settings are in place to protect proceedings occurring in those accounts. Here are a few examples of steps OCA has taken to address the concerns:

- “Zoombombing” or other people entering Zoom meetings to display inappropriate content – OCA has the default settings to have separate meeting IDs assigned to each new meeting rather than using the same meeting ID. OCA has advised users not to publish the meeting IDs in a public forum. In addition, OCA enabled the “Waiting Room” function to permit judges/hosts to admit to the meeting only those participants who are expected in the hearing.
- End-to-end encryption – OCA’s Zoom account uses transport encryption, meaning that the data is encrypted as it is transmitted to prevent unauthorized access. This is the same type of encryption used by online banking transactions, email, web browsers, and other typical online applications.
- Malicious links being sent in chat – OCA has configured the settings to require the judge/host to admit only expected participants. In addition, OCA has limited the types of files that can be transmitted via chat to those that do not pose a significant risk of containing malicious content.
- Zoom has zero-day flaws in it that allow others to control your camera, microphone, computer – This type of attack requires the “hacker” to have physical access to the computer. OCA does not anticipate that this is an issue with OCA-issued accounts.



- Zoom uses servers in China – Zoom has confirmed that OCA's accounts are not routed through data centers in China; only accounts from China are routed through Chinese data servers.
- Zoom leaking user email addresses and profile photos to strangers – OCA has turned off the feature that allows this to occur.
- Zoom sending data to Facebook without user permission – OCA has recommended that users create accounts with an email and password and log in to the account via Facebook; Zoom has also removed this function from its application.

Zoom continues to update its application to improve security and privacy features, and users should allow the application to update as the new versions are released. To ensure that you have the latest version that will contain the most recent security and privacy features, please make sure that you accept the updates as they are presented to you. To ensure that you have the latest update (currently version 4.6.10):

- Once the Zoom Meetings Client is launched, click on your user icon (picture or letter with your initial) on the top right.
- From the drop down menu click 'Check for Updates.'
- If new updates are available, a message will appear that says 'Update Available'. Click on 'Update' to install.

#### **Texas Courts YouTube Channel Directory Updated to Show “Live Now”**

In the past two weeks, Texas judges have held almost 5,000 court proceedings through OCA-issued Zoom licenses, and with judges scheduling multiple cases per proceeding, it is anticipated that well over 10,000 hearings have occurred remotely. Judges have collectively spent 22,700 hours in hearings with almost 51,000 participants. This week, OCA released a video highlighting the work of the Texas courts' transition to virtual hearings, and the Supreme Court of Texas became the first nine-member state supreme court to have virtual oral arguments when it heard three cases yesterday and streamed them live via YouTube.

Earlier this week, OCA distributed a “Background and Legal Standards ” document and “Bench Card ” to judges regarding the need to provide the public with live access to virtual hearings. To assist the public in locating court hearings that are being streamed live, OCA has updated the YouTube Court Channel Directory to display when a court's YouTube channel is live. If your court's YouTube channel is not listed, please send the web address of the channel to [zoomhelp@txcourts.gov](mailto:zoomhelp@txcourts.gov).

#### **Guidance on Conducting Proceedings – Unchanged from Previous Week's Guidance**

This Guidance does not change the guidance that was previously provided regarding conducting proceedings:

- The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. The limitation on group size would apply the local stay-at-home or shelter in place order standards to court proceedings.
- OCA recommends that you **delay in-person proceedings** of any size until **at least May 8**.

- Essential proceedings should occur in-person only if:
  - Holding the proceeding remotely is not possible or feasible;
  - No more than 10 persons are gathered in the courtroom or in areas around the courtroom (see exception below); and
  - Participants in the courtroom are separated consistent with social distancing and other precautions.
- EXCEPTION: Essential proceedings may occur in-person in excess of the 10-person maximum if the law requires more than 10 persons for the proceedings, such as grand jury deliberations.
- No non-essential proceedings should be held in-person.
- With the introduction of the new remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no limitations on those remote proceedings so long as reasonable notice and access is provided to the participants and the public.

### **Governor Temporarily Suspends Certain Statutes to Allow Appearance Before Notaries Via Videoconference**

On April 9, Governor Abbott suspended certain statutes that required appearance before a notary public to execute a self-proved will, a durable power of attorney, a medical power of attorney, a directive to a physician, or an oath of an executor, administrator, or guardian. The suspension allows for appearance before a notary public via videoconference when executing the documents. Certain identification requirements are necessary under the suspension.


### **Texas Ethics Commission Extends Personal Financial Statement Deadline to July 31**

The Texas Ethics Commission this week announced  that it has automatically extended the due date for annual 2020 Personal Financial Statements required by Chapter 572 of the Texas Government Code to July 31, 2020.


### **Issued 4/2/2020**

#### **New Emergency Order Issued by Supreme Court**

Please be aware of the emergency order issued since our last guidance:

- Eighth Emergency Order  (Issued April 1) – amends the First Emergency Order to delay all deadlines regarding service and statute-of-limitations in civil cases that fall from March 13 through June 1 until June 1. The order does not affect deadlines for filing appeals or other appellate proceedings, but the order notes that requests for any such relief from those deadlines should be generously granted by the particular court.

#### **Court of Criminal Appeals suspends Rules of Judicial Education to permit online education**

The Court of Criminal Appeals issued an emergency order  on March 30 that suspends all sections of the Rules of Judicial Education that require live, continuous hours of judicial education that would in any way prevent a judge from completing the required number of judicial education hours during this disaster. The order permits judges to obtain education hours by electronic means, including on-demand/online webinars and audio or video recorded from live

seminars.

### **Statewide Stay Home Order Issued by Governor Abbott**

On March 31, Governor Abbott issued Executive Order GA-14 [\[1\]](#), effective at 12:01 am on April 2 through April 30, which requires that every person in Texas, except where necessary to provide or obtain essential services, minimize social gatherings and minimize in-person contact with people who are not in the same household. The order defines "essential services" to include everything in the U.S. Department of Homeland Security's Guidance on Essential Critical Infrastructure Workforce [\[2\]](#), plus religious services conducted in churches, congregations, and houses of worship or any other essential service added to the list with the approval of the Texas Division of Emergency Management. You should know that "workers supporting the operations of the judicial system" are listed in the federal guidance as an essential service.

As we stated last week, judges, clerks, and court staff should lead by example by working in ways that, for themselves, staff, litigants, and others, allow social distancing, avoid groups larger than permitted by local and state authorities, and encourage hand-washing and sanitary practices throughout the workplace. Judges, clerks, and court staff should consider alternatives to in-person meetings, should telework and require staff to telework whenever possible, and should minimize office operations. Judges, clerks, and court staff should not engage in activities merely for convenience or personal preference when other means, such as telephone, tele- or video-conferencing, and online proceedings, are available.

### **Guidance on Conducting Proceedings**

While the Governor's Executive Order GA-14 extends stay home provisions to all counties, the order does not change the guidance that was provided last week regarding conducting proceedings:

- The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. The limitation on group size would apply the local stay-at-home or shelter in place order standards to court proceedings.
- OCA recommends that you **delay in-person proceedings** of any size until **at least May 8**.
- Essential proceedings should occur in-person only if:
  - Holding the proceeding remotely is not possible or feasible;
  - No more than 10 persons are gathered in the courtroom or in areas around the courtroom (see exception below); and
  - Participants in the courtroom are separated consistent with social distancing and other precautions.
- **EXCEPTION:** Essential proceedings may occur in-person in excess of the 10-person maximum if the law requires more than 10 persons for the proceedings, such as grand jury deliberations.
- No non-essential proceedings should be held in-person.
- With the introduction of the new remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no

limitations on those remote proceedings so long as reasonable notice and access is provided to the participants and the public.

### **Recommendations & Tips on Holding Zoom Virtual Hearings**

OCA continues to provision licenses to courts for Zoom, and almost 1,050 judges are already registered. In the past week, judges have conducted almost 1,900 separate court proceedings through Zoom with nearly 14,000 participants. You can view many courts' livestreams by checking out our YouTube Channel Directory. Once you submit the request for a new account, you should receive an account in no more than 24 hours, as well as instructions on how to proceed with set up. To assist judges, clerks, and court staff with conducting remote proceedings, OCA has set up a resource page that is continuously being updated with resources.

The Conference of Chief Justices-Conference of State Court Administrators' Rapid Response Team will present a primer on implementing remote judicial hearings next Tuesday, April 7, at 2 pm (3 pm Eastern). You can read more about this free webinar and register here.

**IMPORTANT SETTING NEEDED FOR YOUTUBE CHANNELS:** YouTube may block certain channels if the content is deemed inappropriate for children and the settings on the YouTube channel indicate that the content on the channel is "made for kids." All court YouTube channels should be set to "Not Made for Children." Instructions for ensuring this setting is properly made can be found here [☐](#).

Here are several recommendations & tips from judges who have been using Zoom for remote hearings:


1. Hardwired internet connection is better than wifi, if it's available to you.
2. Sign into studio.youtube.com from another device while you're streaming, and you can edit the streaming video description to include whatever admonishments you want. Keep the admonishments in a text file on your desktop (don't record, etc), and as soon as you start the stream, paste them into the description.
3. Add a "Do Not Record" Watermark to your YouTube channel. You can do this once, and it will automatically show up in all future livestreams. Instructions are available here [☐](#).
4. Witnesses need to be on their own devices in their own rooms. Sharing one microphone is not ideal because some devices will only transmit sound from one person and not the other person sitting right next to them. Also, two devices in the same room causes feedback, echoing, and screeching. Also, don't forget to admonish a witness who is moved out of the virtual courtroom under "the rule" not to view the livestream.
5. If witnesses cycle through a chair at a lawyer's office, for instance, you can rename by clicking on the Participant List, and clicking "rename."
6. Silence notifications on your computer. You need to have the volume up on your device to use Zoom, which means you need to silence Outlook or other notifications without muting everything. Go into Outlook and set mail notifications and calendar notifications to silent – it's two different settings inside Outlook...or just exit out of Outlook or the application causing the notifications.
7. At the creation of a meeting on Zoom, send the interpreter an email for Spanish language interpretation. That opens 2 channels, one in English and one in Spanish, and individuals



are given the option of listening to the proceedings in English or Spanish. If you're having technical difficulties with the language interpretation features, 90% of the time it's because someone isn't on the right channel. There are 3 channels – English, Spanish, and Off. Somehow, people will end up on the "Off" channel and things won't work right. Fix it by telling everyone to make sure they're on either English or Spanish.


8. Breakout rooms are private – the main room can't hear what's said in the breakout room. Breakout room can't hear the main room. Participants know when you go into or out of a breakout room – there's no sneaking.
9. To publish an audio or video recording with sound: Share screen, select the video or audio window, and check the SHARE SOUND option on the bottom left of the share window.
10. Co-hosts: Add multiple staff members as 'co-hosts' to admit people from the waiting room, monitor screen activity, send offensive screens into the waiting room, mute and unmute people, etc.
11. Hit 'Mute All': When there is unwanted noise, sound, reverberations, or echoes, hit mute all and give people the option to unmute themselves. Sounds elementary, but we've seen several users not employ that option.
12. My introductory script: "Welcome to \_\_\_\_\_ Court. The time is now 9am. Court is now in session. The proceedings are official, on the record, and are being recorded. Counsel and all present are instructed to act as though you were in court; and all parties are instructed not to record these proceedings. Only the court reporter can provide the official record. If necessary, the Court will provide only the court reporter with the audio and/or video file – but only in the event that it is necessary and only to supplement her record in an unavoidable event such as loss of internet connection or poor audio quality. As with all proceedings, violation of these instructions are subject to contempt proceedings. Accordingly, please exercise proper courtroom decorum at all times."

### **Best Practices for Courts in Virtual Hearings involving Self-Represented Litigants**

Courts that have hearings involving self-represented litigants should pay special attention to the needs of those litigants in the virtual environment. To assist judges, clerks, and court staff who may have hearings involving self-represented litigants, the Texas Access to Justice Commission (TAJC) has produced a set of Best Practices for Courts in Virtual Hearings Involving Self-Represented Litigants . TAJC is working on a set of best practices that can be provided directly to self-represented litigants to assist them in interacting with the courts in the virtual environment. That will be distributed once it is completed.


Courts and clerks who wish to refer low-income families and individuals for legal assistance should be aware that legal aid providers have set up a toll-free assistance hotline at 800-504-7030 to connect with legal service providers.

### **Families First Coronavirus Response Act Application to State and Local Government**

As you may have heard, the Families First Coronavirus Response Act (FFCRA) went into effect on April 1. It provides paid sick leave and expands family and medical leave for certain reasons related to COVID-19. The FFCRA applies to state and local governments. The law requires you to post this poster  in a prominent place. Sending it by email or regular mail to all of your

employees will satisfy the posting requirement. The Department of Labor has many resources that explain the new law and temporary rule. A recorded webinar discussing the new law/rule will be posted to the site on Friday, April 3rd.

### **Governor Abbott Issues Executive Order Relating to Release on Personal Bond**

You should know that on March 29 Governor Greg Abbott issued Executive Order GA-13  relating to the release on a personal bond of inmates in jail who have previously been convicted of a crime that involves physical violence or the threat of physical violence or of any person currently arrested for such a crime that is supported by probable cause.

The order states the following, effectively immediately:

- Article 17.03, Code of Criminal Procedure, and all other relevant statutes and rules relating to personal bonds, are hereby suspended to the extent necessary to preclude the release on personal bond of any person previously convicted of a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause; and no authority should release on personal bond any person previously convicted of a crime that involves physical violence or the threat of physical violence, or any person currently arrested for such a crime that is supported by probable cause;
- Article 17.151 of the Texas Code of Criminal Procedure is suspended to the extent necessary to prevent any person's automatic release on personal bond because the State is not ready for trial;
- Article 15.21 of the Texas Code of Criminal Procedure is suspended to the extent necessary to prevent any person's automatic release because the jail of the county where the offense is alleged to have been committed does not take charge of the arrested person before the 11<sup>th</sup> day after the date the person is committed to the jail of the county in which the person is arrested;
- Article 42.032 of the Texas Code of Criminal Procedure, and all other relevant statutes and rules, are suspended to the extent necessary to preclude the grant of commutation of time for good conduct, industry, and obedience to achieve the release of any person who has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence; and no authority should grant the commutation of time for good conduct, industry, and obedience to achieve the release of any person who has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence; the accumulation of credit for good conduct, industry, and obedience during the pendency of the executive order is not precluded;
- Article 42.035 of the Texas Code of Criminal Procedure is suspended to the extent necessary to preclude any release of a person to an electronic monitoring program, rather than being confined in jail, if the person has previously been convicted of or is currently serving a sentence for a crime that involves physical violence or the threat of physical violence;
- Sections 418.1015(b) and 418.108 of the Texas Government Code are hereby suspended to the extent necessary to preclude any county judge or mayor of a municipality, or any

emergency management director, from releasing persons under any circumstances inconsistent with this order;

- Provides that nothing in the order prevents the lawful exercise of authority by a county criminal court judge, district judge, or appellate judge in considering release on an individualized basis for health or medical reasons, provided that proper notice is given to the district attorney and an opportunity for hearing is given.

As referenced in the Executive Order, OCA released the following guidance on setting and reviewing bail in our Guidance #4 issued last Thursday:

The Texas Judicial Council has long recommended that judges should use all available information, including a pretrial risk assessment, if available, to consider the risk to the community and the victim of releasing the arrestee and the risk of flight and that judges should set bail appropriately so that individuals who do not pose a significant risk to the community/victim or a significant risk of flight are not detained. On the other hand, the Council has also recommended that individuals who do pose a significant risk to the community/victim or of flight should be detained. Such determinations must be made on an individual basis considering all information available about the arrestee, his/her criminal history and current charge, and other relevant factors. Especially in this pandemic, with the health risks to arrestees and their families and communities, and the burdens on communities from increased detentions due to necessarily suspended jury trials and court proceedings, judges considering bail decisions on new arrests and reviewing bail decisions on incarcerated pretrial inmates must:

- Set bail and review it (subject to certain limitations if set by another judge) throughout the pendency of the case, subject, of course, to statutory provisions such as Art. 17.091, Code of Criminal Procedure, which requires that before a judge or magistrate reduces the amount of bail set for a defendant charged with an offense under Arts. 42A.054, 62.001(5), Code of Criminal Procedure, or under Section 20A.03, Penal Code, the judge or magistrate is to provide reasonable notice of the proposed bail reduction to the prosecutor and, on the request of the prosecutor, the defendant, or the defendant's counsel, an opportunity for a hearing on the bail reduction.
- Determine bail on an individualized determination for each defendant considering the factors set out in statute. Art. 17.15, Code of Criminal Procedure, sets out the considerations for setting the amount of bail, as follows:
  - The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
  - The power to require bail is not to be so used as to make it an instrument of oppression.
  - The nature of the offense and the circumstances under which it was committed are to be considered.
  - The ability to make bail is to be regarded, and proof may be taken upon this point.
  - The future safety of a victim of the alleged offense and the community shall be considered.
  - Detain no person longer than necessary as determined by the statutory factors.

### **Issued 3/26/2020**

Since my last update, the number of presumptive positive COVID-19 cases reported by the Department of State Health Services (DSHS) in the state has risen from 143 to 1,396 (as of 11 am). Texas has been able to test 21,424 individuals so far, up from 2,335 as of last week. You

can follow updated statistics on Texas cases on a newly established DSHS website. DSHS continues to anticipate that the number of cases will increase, and more cases will be identified as testing expands. Since the last guidance issued last week, many cities and counties have issued “Stay Home – Stay Safe” or shelter in place orders restricting movement of residents. This impacts court proceedings and court participants, which is discussed below.

**New Emergency Orders Issued by Supreme Court (All orders expire May 8, 2020, unless extended by the Chief Justice of the Supreme Court)**

Please be aware of the emergency orders issued since our last guidance:

- Fifth Emergency Order  (Issued March 20) – tolls all deadlines, whether prescribed by statute, rule, or order, related to attorney professional disciplinary and disability proceedings (retroactive to March 13)
- Sixth Emergency Order  (Issued March 22) – requiring online only election for the 2020 elections for president-elect and directors of the State Bar of Texas and Texas Young Lawyers Association; extending voting period to May 29, 2020, at 5:00 pm.
- Seventh Emergency Order  (Issued March 24) – clarifies that existing trial court orders control when determining a person’s right to possession of and access to a child in a Suit Affecting the Parent-Child Relationship and that possession of and access to a child is not affected by any shelter-in-place order or other order restricting movement issued by a government entity. Permits parties to alter possession by agreement if allowed by the court order(s) and courts to modify their orders on an emergency basis or otherwise.

**“Stay Home – Stay Safe” and Shelter in Place Orders**

With many counties and cities issuing stay-at-home or shelter-in-place orders, courts and clerks have inquired how the orders apply to them. Most, if not all, of these orders provide an exception for **essential governmental functions**, which includes the operation of courts and clerks’ offices. Judges, clerks, and court staff should lead by example by working in ways that, for themselves, staff, litigants, and others, allow social distancing, avoid groups larger than permitted by local and state authorities, and encourage hand-washing and sanitary practices throughout the workplace. Judges, clerks, and court staff should consider alternatives to in-person meetings, should telework and require staff to telework whenever possible, and should minimize office operations. Judges, clerks, and court staff should not engage in activities merely for convenience or personal preference when other means, such as telephone, tele- or video-conferencing, and online proceedings, are available.

But judges, clerks, and court staff must also be permitted to conduct court proceedings free from local stay-at-home orders and other restrictions on travel and business practices. Judges, clerks, and court staff may travel and engage in activities reasonably necessary to conduct court proceedings as permitted for other essential services. Judges, clerks, and court staff may travel to and attend court proceedings and perform other related court and clerk operations. Stay-at-home and similar orders do not prohibit such travel and activities involved in these duties as long as every effort is made to avoid risks to the public health.

Similar guidance and a travel authorization letter has been issued today by the Office of Court Administration for lawyers and their staff.

**Guidance on Conducting Proceedings**

- The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. The limitation on group size would apply the local stay-at-home or shelter in place order standards to court proceedings.
- OCA recommends that you **delay in-person proceedings** of any size until **at least May 8**.
- Essential proceedings should occur in-person only if:
  - Holding the proceeding remotely is not possible or feasible;
  - No more than 10 persons are gathered in the courtroom or in areas around the courtroom (see exception below); and
  - Participants in the courtroom are separated consistent with social distancing and other precautions.
- **EXCEPTION:** Essential proceedings may occur in-person in excess of the 10 person maximum if the law requires more than 10 persons for the proceedings, such as grand jury deliberations.
- No non-essential proceedings should be held in-person.
- With the introduction of the new remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no limitations on those proceedings so long as reasonable notice and access is provided to the participants and the public.

#### **Additional Duties Assigned to Regional Presiding Judges During Pendency of Emergency Orders**

On Monday, Chief Justice Nathan L. Hecht assigned to the 11 Regional Presiding Judges of the Administrative Judicial Regions , pursuant to Section 74.046 of the Texas Government Code, additional duties as follows:

- Ensure that all courts in each region are operating consistent with executive directives and in full compliance with the Courts' Orders;
- Ensure that all trial court judges in each region, including justices of the peace and municipal court judges, do not conduct in-person hearings inconsistent with the Courts' Orders or the latest guidance for limiting court proceedings issued by the Office of Court Administration;
- Assist the trial court judges in each region in determining what proceedings are essential and admonish those who are not in compliance with the Courts' Orders or executive directives;
- Report to [his] office any proceedings that are being conducted in the regions – and the court in which the proceedings are being conducted – that are inconsistent with the Courts' Orders and executive directives; and

Assist each region's local governments and courts to ensure that courts have the ability to conduct essential business at the courthouse or other locations.

#### **Open Courts & Public Trial Requirement of the U.S. and Texas Constitutions**

Please remember that court proceedings are required to be open to the public (Art. 1, Section 13, Texas Constitution) and that in criminal proceedings, defendants are entitled to a public trial (6<sup>th</sup> Amendment, U.S. Constitution; Art. 1, Section 10, Texas Constitution). Therefore, courts

should ensure that all proceedings are accessible to the public during the proceedings unless the judge closes the courtroom to the public pursuant to relevant statutory provisions and caselaw providing guidance on closing courtrooms to the public.

If a court is holding proceedings remotely, the “virtual courtroom” is subject to the same provisions as physical courtrooms. Courts considering closing courtrooms, either physical or virtual, should:

- Close the courtroom to the public only to the degree necessary;
- Make specific findings (on the record in a court of record) regarding the need for closing the courtroom; and
- Make specific findings that there is no less restrictive alternative than closing the courtroom.

Note: The Zoom application provides the capability to livestream proceedings on YouTube (recommended) and Facebook. See Court Guidance No. 3 issued March 19, 2020, below for more information regarding Zoom.

### **Remote Proceedings Capability Available Using Free Tool from OCA**

OCA continues to provision licenses to courts for Zoom, and almost 800 judges are already registered. Just this week, judges have conducted over 1,000 separate court proceedings through Zoom with over 7,000 participants. You can view many courts' livestreams by checking out our YouTube Channel Directory. Once you submit the request for a new account, you should receive an account in no more than 24 hours, as well as instructions on how to proceed with set up.

To assist judges, clerks, and court staff with conducting remote proceedings, OCA has set up a resource page. The resource page provides access to a recording of a webinar delivered earlier this week, written instructions, video tutorials, and other information to assist you.

### **Child Protection Visitation**

Many courts handling CPS cases have suspended hearings, procedures, deadlines, and notably in person family visitation. Most, if not all, orders issued so far require the Department of Family and Protective Services (DFPS) to provide family and sibling visitation by alternate methods such as Skype, FaceTime, or the like.

When considering what virtual communication options are most accessible to the parties in a CPS case, judges should refrain from ordering that such contact occur via a specific type of technology. Computer-based options may be less available to parents than to professionals and foster parents with access to laptops, tablets, and/or Wi-Fi. Judges may also consider whether virtual visits could increase in duration or frequency since children may not see their parents in person for an extended period of time. Contact with and communication from parents may help children in foster care address their fears about what is happening in their lives such as school closures and disruptions in routine.

### **Email Service and Notice**

Because of uncertainty regarding the feasibility of accessing documents delivered by mail, commercial delivery service, fax, or such other similar methods during the COVID-19 pandemic--particularly as so-called shelter-in-place orders take effect and large numbers of people are

working from home--email service should be used, whenever feasible, as an additional or alternative method of service. Courts are also advised to use email as an additional or alternative method of notifying parties of orders, judgments, and the like, when possible.

### **Setting and Reviewing Bail**

Earlier this week, the U.S. Centers for Disease Control and Prevention issued "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities." In addition to recommending that jail officials "coordinate with court officials to identify lawful alternatives to in-person court appearances, such as virtual court...to reduce the risk of COVID-19 transmission," the guidance details the increased risks of transmission of COVID-19 in jail and detention facilities and provides other recommendations to reduce risk of transmission in an effort to "ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors."

The Texas Judicial Council has long recommended that judges should use all available information, including a pretrial risk assessment, if available, to consider the risk to the community and the victim of releasing the arrestee and the risk of flight and that judges should set bail appropriately so that individuals who do not pose a significant risk to the community/victim or a significant risk of flight are not detained. On the other hand, the Council has also recommended that individuals who do pose a significant risk to the community/victim or of flight should be detained. Such determinations must be made on an individual basis considering all information available about the arrestee, his/her criminal history and current charge, and other relevant factors. Especially in this pandemic, with the health risks to arrestees and their families and communities, and the burdens on communities from increased detentions due to necessarily suspended jury trials and court proceedings, judges considering bail decisions on new arrests and reviewing bail decisions on incarcerated pretrial inmates must:

- Set bail and review it (subject to certain limitations if set by another judge) throughout the pendency of the case, subject, of course, to statutory provisions such as Art. 17.091, Code of Criminal Procedure, which requires that before a judge or magistrate reduces the amount of bail set for a defendant charged with an offense under Arts. 42A.054, 62.001(5), Code of Criminal Procedure, or under Section 20A.03, Penal Code, the judge or magistrate is to provide reasonable notice of the proposed bail reduction to the prosecutor and, on the request of the prosecutor, the defendant, or the defendant's counsel, an opportunity for a hearing on the bail reduction.
- Determine bail on an individualized determination for each defendant considering the factors set out in statute. Art. 17.15, Code of Criminal Procedure, sets out the considerations for setting the amount of bail, as follows:
  - The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
  - The power to require bail is not to be so used as to make it an instrument of oppression.
  - The nature of the offense and the circumstances under which it was committed are to be considered.
  - The ability to make bail is to be regarded, and proof may be taken upon this point.
  - The future safety of a victim of the alleged offense and the community shall be considered.
- Detain no person longer than necessary as determined by the statutory factors.

Thank you for your continued efforts during this challenging time. As I said earlier this week, I

couldn't be prouder to be a part of the Texas Judicial Branch than I am right now.

### **Issued 3/19/2020**

Since the last update, the number of presumptive positive COVID-19 cases reported by the Department of State Health Services (DSHS) in the state has risen from 25 to 143 (as of noon). Texas has been able to test 2,335 individuals so far. DSHS continues to anticipate that the number of cases will increase and more cases will be identified as testing expands. Today, Governor Abbott and DSHS Commissioner Hellerstedt declared a public health disaster, and Governor Abbott issued executive orders directing every person in Texas to avoid social gatherings of more than 10 people; to avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors; prohibiting visiting nursing homes or retirement or long-term care facilities; and closing all schools temporarily. The executive orders are effective at midnight tomorrow and continue through April 3, unless extended.



### **New Emergency Orders Issued by Supreme Court and Court of Criminal Appeals (All orders expire May 8, 2020, unless extended by the Chief Justice of the Supreme Court)**

Please be aware of the emergency orders issued since our last guidance:

- First Emergency Order  (Issued March 13) – Permits all judges in the state at their discretion, and requires all judges “to avoid risk to court staff, parties, attorneys, jurors, and the public”, without a participant’s consent:
  - To modify or suspend any and all deadlines and procedures prescribed by statute, rule, or order for a stated period ending no later than 30 days after the Governor’s State of Disaster has been lifted. NOTE: The Third Emergency Order (see below) clarified that this applies to all proceedings under Subtitle E, Title 5, of the Family Code (Child Abuse and Neglect Cases), and specifically to deadlines in Section 263.401 (dismissal deadlines in termination cases filed by the government).
  - Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind – including a party, attorney, witness, or court reporter, but not a juror – to participate remotely, such as by teleconferencing, videoconferencing, or other means (see below on OCA-provided tool).
  - Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means.
  - Conduct proceedings away from the court’s usual location, ~~but in the county of venue~~, and only with reasonable notice and access to the participants and the public. NOTE: Third Emergency Order strikes the requirement that the proceeding must be conducted in the county of venue but still requires notice and public access.
  - Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has, COVID-19 or flu-like symptoms, or a fever, cough, or sneezing.
  - Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.
  - Permitting judges to extend the statute of limitations in any civil case for a period ending no later than 30 days after the Governor’s state of disaster has been lifted.
- Second Emergency Order  (Issued March 17) – Clarifies that child possession schedules establishing access to a child under a court-ordered possession schedule are not affected



by the school's closure that arises from an epidemic or pandemic and that the original published school schedule controls.

- Third Emergency Order  (Issued March 18)
  - Modifies First Emergency Order as described above.
  - Prohibits judges from conducting non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum group size.
    - Governor Abbott's Executive Order limits groups to 10 or less, so **courts should not schedule any in person proceedings that would cause more than 10 people to gather in a courtroom or area in the courthouse.** Proceedings that are conducted remotely have no limit.
    - Examples of essential functions include: criminal magistration proceedings, CPS removal hearings, temporary restraining orders/temporary injunctions, juvenile detention hearings, family violence protective orders. If you want to inquire whether you believe a proceeding is an essential function, please feel free to email (see below).
  
- Fourth Emergency Order  (Issued March 18)
  - **Prohibits a trial, hearing, or other proceeding in an eviction** to recover possession of residential property under Chapter 24 of the Property Code and Rule 510 of the Texas Rules of Civil Procedure until after April 19, 2020.
  - Prohibits the posting of the written warning required by Sec. 24.0061(d)(1) of the Property Code and the execution of a writ of possession until after April 26, 2020.
  - Permits new filings of eviction cases, but prohibits issuance and service of citation until after April 19, 2020.
  - Permits one of these proceedings to proceed only if the following three actions are met:
    - the plaintiff files a "sworn complaint for forcible detainer for threat to person or for cause";
    - the court determines the facts and grounds for eviction stated in the complaint, under oath with personal knowledge, taken as true, show that the actions of the tenant, or the tenant's household members or guests, pose an imminent threat of (i) physical harm to the plaintiff, the plaintiff's employees, or other tenants, or (ii) criminal activity; and
    - the court signs an order stating procedure for the case to proceed.

#### **Recommendations on Delaying Proceedings**

- Previous guidance had been to delay non-essential proceedings to at least April 1, including jury trials. The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. OCA recommends that you continue to delay in-person proceedings of any size until **at least May 1**. However, with the introduction of the new remote proceedings capability described below, some of these non-essential proceedings, except for jury trials, can be conducted remotely.

#### **Remote Proceedings Capability Now Available Using Free Tool from OCA**

In an effort to assist judges to hold both essential and non-essential proceedings remotely, OCA has tested and procured licenses from Zoom to permit any judge in the state to host and provide public access to the proceedings. The system has been tested by several judges at each level of court, and the feedback from the judges has been very positive. Here are some highlights of using Zoom:

- The tool is widely available and free for use by the public. Individuals can download for free the app using a cell phone, tablet, or a computer device. The only requirement on their end is an internet connection. If the person does not have access to the internet or a video-capable device, they can join using a telephone.
- The tool is easy to use by judges and court staff.
- It is easy to publish the electronic proceeding to YouTube, so that the public can have access to the proceeding away from the courthouse, which permits compliance with the Open Courts provision of the Texas Constitution and the orders of the Supreme Court and Court of Criminal Appeals.
- No cost to local government or courts.

### **Closing Courthouses**

OCA has been informed that some counties are considering closing courthouse facilities. As you are aware, it is imperative that the clerks' offices and courts remain available for emergency matters or for other proceedings which cannot be conducted remotely. OCA has been in contact with the County Judges and Commissioners Association regarding this potential. While there may be a way in which public access can be reduced, judges are advised to communicate with their constitutional county judge or mayor/city council regarding the need for the building to remain open in certain situations.

### **Teleworking**

Judges and clerks are advised to extend teleworking options to the degree possible to reduce the risk of transmission of COVID-19. You should consider what options are available to you and use them to the greatest extent feasible.

### **Grand Juries**

Many of you have contacted OCA about how to proceed with grand juries. It is our recommendation that you not terminate grand jury proceedings completely. You should be aware that grand juries can continue during the entire length of your court's term. Sec. 24.012(a), Government Code, provides that the terms of district courts in each county are from January-June and July-December. Therefore, your existing grand jury can continue until the end of June, unless there is a statute that provides for a separate term for your court (Harris County, Armstrong County have specific subsections in 24.012). If you have an issue with your term of court, you may consider using Section 24.0125, Government Code, which permits the Regional Presiding Judge, with the approval of the affected district court, to designate the terms and sessions of court during a disaster.

### **Judges Assigned to Ch. 81 Quarantine Proceedings**

As has been previously discussed, 31 district judges across the state have been assigned  to hear quarantine proceedings under Ch. 81, Health and Safety Code. These judges have received specific training on the proceedings. With the Public Health Emergency Declaration, the

proceedings change a bit. OCA is distributing contact information for these judges to the municipal, county, and district attorneys, as well as the attorney general. It is our expectation that these 31 judges will be able to handle the cases that come in, no matter the court in which the proceedings are filed. Should you wish to handle the proceedings yourself, please contact your Regional Presiding Judge to discuss.

### **Issued 3/12/2020**

- If a court deems that non-essential (see below), in-person proceedings may pose an unnecessary or unreasonable risk to participants, court staff, or the public, the court should avoid that risk, when possible, by simple delay or by a telephone or video remote appearance. Our suggestion is that you follow this practice until at least April 1.
- Essential proceedings include, but are not limited to, criminal magistration proceedings, CPS removal hearings, temporary restraining orders / temporary injunctions, juvenile detention hearings, family violence protective orders, and certain mental health proceedings.
- Courts should schedule or suspend proceedings to avoid the gathering of large groups of people until at least April 1, including jury trials and large docket calls.
- Courts should publicly encourage persons with COVID-19 or flu-like symptoms, a fever, or who are coughing or sneezing, to contact the court before appearing. Courts should also publicly encourage attorneys who know that clients, witnesses, or others have such a condition to alert the court in advance. The court should make reasonable accommodations and reschedule appearances and hearings as needed.
- You may wish to consult with your local health authority for additional guidance on the timing of the suspension of proceedings as conditions in the local community may vary from jurisdiction to jurisdiction.
- Courts should implement telephonic or video remote appearances for all proceedings which may occur remotely.
- Please be aware that the Open Courts provision of the Constitution will generally require that the public have access to proceedings. If you hold telephonic or video remote hearings, you should consider a method by which the public can have access.

### **Request for Notice**

Should your court choose to suspend proceedings for a period of time, please notify OCA by email at [court closures@txcourts.gov](mailto:court closures@txcourts.gov) with information about the closure or fill out the webform. OCA will post the information on our court closure website in an effort to provide public notice of the suspension.


### **Issued 03/05/2020**

**Previous Preparation Work:** The Supreme Court of Texas established the Task Force to Ensure Judicial Readiness in Times of Emergencies (JRITE) in 2008 and charged the Task Force with reviewing and updating its plan in 2016. Included in JRITE's work is an interim plan and other resources, including resources for preparing and responding to pandemics such as COVID-19. To view these resources, please visit <http://txcourts.gov/organizations/policy-funding/task-force-on-judicial-emergency-preparedness/jrite-resource-archives/>. The ultimate

goal of the preparedness plan is to allow courts to operate in a way that protects the health and safety of everyone at the court facilities and to keep courts open to ensure the justice system continues.

#### **Personal Protection/Prevention:**

The most important steps in responding to the virus is prevention. The CDC has issued the following prevention tips:

- Avoid close contact with people who are sick.
  - DSHS has recommended to OCA that you maintain at least 6-8 feet between you and a person who is symptomatic to reduce the risk of spread of the virus.
  - DSHS has indicated that evidence shows that the virus is not able to survive in the ventilation system.
  - If you have a proceeding involving a person who is symptomatic and the proceeding must continue, attempt to isolate that proceeding to reduce the risk of interaction with others.
- Avoid touching your eyes, nose, and mouth.
- Stay home when you are sick.
  - Judges, court employees, attorneys, or litigants who are sick should be encouraged to stay home and to seek medical attention.
- Cover your cough or sneeze with a tissue (or into your arm if a tissue is not available); then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces using a household cleaning spray or wipe. A list of products recommended by DSHS for this purpose is available at <https://www.americanchemistry.com/novel-coronavirus-fighting-products-list.pdf> .
- While some might think that the use of a facemask is necessary or advisable, CDC does not recommend the use of a mask for people who are well, as they are less effective at preventing infection and are in short supply for health care workers. However, CDC and DSHS has recommended that courts consider providing facemasks (the common surgical masks can be used) to individuals who are showing symptoms of COVID-19 to help avoid spread of the virus to others.
- Wash your hand often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.
  - If soap and water are not available, use an alcohol-based hand sanitizer with at least 60% alcohol.


#### **Preparation:**

While there is currently no need for alarm, courts should prepare now to ensure a proper response if an outbreak occurs.

- Courts should consider and identify who is authorized to make decisions in an emergency including evacuation (partial or total) and the closing of court operations.
- Courts should consider which functions are essential and must continue if an outbreak occurs.
  - Essential functions are typically divided into those that are necessary in the first 7 days, 7-30 days, 30-90 days, and 90+ days.

- Examples of essential functions that must occur in the first 7 days include: criminal magistration proceedings, CPS removal hearings, temporary restraining orders/temporary injunctions, juvenile detention hearings, family violence protective orders.
- Courts are encouraged to delay non-essential functions in the event of an outbreak and to reduce the need for large numbers of possibly infected people to congregate. This may include the need to consider delay of jury trials.
- Courts should consider which staff are essential and which staff could stay home if court functions are to be continued.
  - Courts should prepare now for the possibility of permitting staff to work remotely, including considering the technology needs for that to occur.
- Courts should consider which proceedings could occur by telephonic or video remote appearances. This may include using “low-tech” solutions such as teleconferencing, Facetime, Skype, or some other common remote appearance tool.
  - Courts should plan how to notify self-represented litigants, witnesses, and others of the remote appearance technology.
  - Some courts have begun to place wording on orders setting hearing and docket notices reminding attorneys/parties to contact the court if they are ill.
- Courts should consider how to promptly communicate the activation of plans to judges, courts staff, and the public.
  - The Office of Court Administration and the State Bar of Texas have a communication plan that allows for prompt notification of the bar and public notices; however, additional local notifications will likely be necessary.
  - Some courts have posted notices or entered orders encouraging or requiring attorneys and parties to notify the court if they (or their clients) are experiencing symptoms.

**Quarantine:**

While the state and local health authorities generally have responsibility for establishing quarantine control methods, a court may need to become involved if a person does not comply with those control orders from the health authority. Chapter 81, Health and Safety Code, sets out the procedures in such cases. A bench book at <https://www.law.uh.edu/healthlaw/HLPIBenchBook.pdf>  provides guidance and forms for district judges who are responsible for hearing these cases.

To ensure quick response and continuity, the Regional Presiding Judges and Chief Justice Nathan Hecht have identified several judges from each region of the state who are being assigned to hear proceedings under Chapter 81, Health and Safety Code. These judges will be on-call for the proceedings should the need arise in an emergency or after-hours situation. Your regional presiding judge can provide you additional information on the assignments in your region.