

VIRGINIA:

IN THE CIRCUIT COURT OF THE 31ST JUDICIAL CIRCUIT

**DECEMBER 2020 TEMPORARY EMERGENCY ORDER FOR
TRIALS, HEARINGS AND OTHER CIRCUIT COURT
PROCEEDINGS**

UPON THE COURT'S CONSIDERATION OF:

- 1) Updated public health information showing a significant increase in the incidence of COVID-19 infections and increased utilization of hospital resources, within the 31st Judicial Circuit in the past two weeks;
- 2) Public health projections for a continued increase in community spread of COVID-19 over the coming weeks;
- 3) The physical limitations and ventilation in the Prince William County Courthouse;
- 4) The increasing incidence of positive COVID-19 test results among staff of the various agencies providing public services in the Courthouse;
- 5) The Virginia Supreme Court's extension of the declared state of judicial emergency to at least December 13, 2020; and
- 6) The Court's increased ability to utilize technology to conduct remote hearings.

THE COURT HAS DETERMINED that it is necessary to further **reduce in-person proceedings and increase remote proceedings** for the purpose of limiting, to the extent possible, the spread of COVID-19 within the Courthouse.

THE COURT HAS FURTHER DETERMINED that to effectuate the foregoing, **two Circuit Court judges will conduct in-person hearings and the remaining Circuit Court judges will conduct remote hearings on a rotating schedule.** Remote hearings will be hosted through Chambers, and parties will receive instructions from Chambers in advance for the

hearing. The parties will be expected to arrange for the remote attendance of their witnesses. All remote hearings will be conducted through WebEx or teleconference.

Subject to the specific guidelines set forth below, in-person proceedings will include criminal bench trials, suppression motions, sentencing and revocation hearings, civil trials not to exceed six hours, civil motions in excess of two hours, protective order appeals, civil commitment appeals, substantial risk orders, emergency quarantine orders, other civil matters that in the Court's judgment should be heard in-person, and any civil case involving the use of an interpreter.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Effective Date and Period of this Order

This Temporary Emergency Order ("TEO") will be effective **December 7, 2020**, and will remain in effect until **January 31, 2021**, unless earlier dissolved, modified or extended by the Court.

2. All prior orders of the Circuit Court regarding Court proceedings during the COVID-19 Emergency remain in effect except where they conflict with the provisions of this TEO. This TEO controls in the event of a conflict.

3. Liberal Continuance Policy.

The Court's previously announced liberal continuance policy remains in. Agreed continuance Orders may be filed with the Clerk by electronic mail at circuitcourt@pwcgov.org. The Clerk will forward such Orders to Chambers for entry.

4. No Additional Trials or Hearings to be Scheduled During Effective Period; Exceptions.

Only those cases previously scheduled for trial or hearing during the Effective Period of this TEO will go forward. No additional cases will be scheduled for trial or hearing dates occurring during the Effective Period unless such matters are entitled to constitutional or

statutory priority. The Friday motions docket, both criminal and civil, remains available for scheduling of motions not previously set.

5. Jury Trials are temporarily suspended.

a. All criminal jury trials are suspended until January 31, 2021. Parties with criminal jury trials scheduled to begin the week of January 31 will be contacted by Chambers to schedule the pretrial conference for their cases. When jury trials resume, they will resume under the Jury Plan previously approved by the Virginia Supreme Court.

b. Civil jury trials are suspended until further Order of the Court. Any civil jury trial scheduled for December 2020 will be continued to the Court's February Term Day docket to be re-set. Any civil jury trial scheduled for January 2021 will be continued to the Court's March Term Day docket to be re-set.

c. Status conferences for Criminal Cases. Criminal jury trials currently scheduled during the Effective Period shall remain on the docket for the sole purpose of conferring with the parties about the status of the case and selecting a new trial date. If the parties agree on an earlier or different status conference date, counsel may reschedule it by either setting it on a motions day or through Chambers.

6. Criminal cases – Non-jury matters:

a. Criminal Docket. During the Effective Period, at least one in-person judge shall be assigned to the criminal docket each Monday, Tuesday, and Wednesday.

b. 9:30 a.m. Video Docket. During the Effective Period, the Court will continue to hear bond **motions**, arraignments, and motions to reconsider sentences each day Monday-Thursday at 9:30 a.m. by video. Non-incarcerated defendants are excused from appearing at status and to-be-set hearings. Incarcerated defendants will appear for such hearings by video. Bond motions must be filed two days in advance of the hearing in accordance with existing

practice. During the Effective Period, in order to accommodate a Friday motions docket, the Court will not hear bond motions on Fridays.

c. Criminal Bench Trials will go forward in person as currently scheduled during the Effective Period. Criminal trials shall have priority over all other matters except cases entitled to statutory priority. If the parties agree, counsel are encouraged to continue trials for non-incarcerated defendants to a date after January 31, 2021.

d. Guilty pleas will continue to be heard on Thursdays at 10:00 a.m. Guilty pleas not previously set may continue to be set during the Effective Period. If the parties agree, counsel are encouraged to continue pleas for non-incarcerated defendants for a date after January 31, 2021.

e. Sentencing and revocation hearings for incarcerated defendants will go forward in-person before the judge assigned to the case under a modified schedule. All sentencing and revocation matters for incarcerated defendants will be heard at 1:00 p.m. on Thursdays. Friday afternoon sentencing and revocation hearings for incarcerated defendants occurring between December 7, 2020, and January 31, 2021, will be continued by the Court to the assigned judge's next in-person Thursday sentencing/revocation date at 1:00 p.m. If the assigned judge is not scheduled for one of the in-person courtrooms on his/her previously scheduled sentencing/revocation date, all cases on the previously established date will be rescheduled through Chambers, in consultation with the parties, to a Thursday afternoon at 1:00 p.m. during the Effective Period when the judge is assigned to an in-person courtroom. The parties may, by agreement, also continue a sentencing/revocation for an incarcerated defendant to one of the judge's future sentencing/revocation dates outside the Effective Period.

f. Sentencing and revocation hearings for non-incarcerated defendants will be continued to the assigned judge's sentencing dates in February 2021 or later. The assigned

judge's law clerk will contact counsel to select a new date for the hearing and prepare a continuance Order.

g. Suppression motions and motions in limine in criminal cases. Suppression motions and motions in limine presently docketed for hearing during the Effective Period will be heard in-person as scheduled, unless rescheduled by agreement of the parties. For motions not currently scheduled, the motion must be filed and then the case should be placed on a Friday motions docket at 9:00 a.m. to be set for hearing.

h. Friday 9:00 a.m. docket. Friday motions in which the Commonwealth's Attorney has an interest will be heard in-person at 9:00 a.m.

7. Civil Cases

a. Case Priority; Certain Cases to remain on the Court's Docket; Setting of Cases for Hearing on the Court's Docket during the Effective Period.

Subject to the time limitations set forth below, rules to show cause, child custody, visitation, and support matters, as well as quarantine or isolation matters of a civil nature, protective order cases, and civil commitment hearings constituting "emergency matters" as set forth in the Supreme Court's March 16, 2020 Order, will remain on the docket, and will be addressed either in-person or remotely, as provided in this TEO. Should new matters arise and/or require scheduling for hearing during the effective period of this TEO, they will be scheduled by the parties in consultation with Chambers..

The court will apply **strict time limitations** of one hour for in-person hearings of **rules to show cause** and **two hours for pendente lite issues** of child custody, visitation, and support. **No in-person civil trial on any matter can exceed one day (six hours of presentation time).** Failure of counsel to conclude the presentation of evidence and argument within the allotted time

shall be grounds for the Court to order a mistrial of the case, and the case will be re-set for a future date.

b. Cases to be Removed from the Court's Docket during the Effective Period.

Effective December 7, 2020 **no multi-day civil trials** will be held during the Effective Period of this TEO. Cases set for multi-day civil hearings in December 2020 will be continued to the February Civil Term Day to be reset. Cases currently set for multi-day hearings in January 2021 will be continued to the March Civil Term Day to be re-set. Counsel may also reschedule any multi-day trials presently on the docket for a later date by contacting Chambers. **To expedite the conclusion of child custody, visitation, and support disputes, if the parties agree, the Court will bifurcate the issues of child custody, visitation, and support from other issues in divorce actions for hearing and a final decision during the Effective Period, provided that the issues of child custody, visitation, and support can be concluded in a one-day (six hour) trial.**

c. Remote Hearings.

Effective December 7, 2020, the Court will hear all civil trials and hearings that can be completed in two hours or less remotely during the Effective Period. Should the parties to a civil case believe their case constitutes an emergency or statutory priority matter, or believe good cause exists for a two-hour or less matter to be heard in person (i.e., a party or witness needs the services of a court-certified interpreter), they must contact Chambers one week in advance of the hearing to obtain court permission to schedule the case for an in-person hearing. If the parties disagree as to the need for an in-person hearing, the party requesting an in-person hearing must schedule a motion for a Friday to be heard on the issue.

The Court's handling of remote hearings will be subject to the limitations of the Court's technology and the technology of the parties. The parties are expected to provide court reporters for a remote hearing as they would for an in-person hearing.

All exhibits to be presented must be provided to the Court in advance. Exhibits should be sent to mmeckes@vacourts.gov at least two business days prior to the hearing with the subject line "[Plaintiff/Defendant] Exhibits [Case Number]." Exhibits should be sent in separate PDF files, identified by exhibit number, with an accompanying table of contents. Each exhibit should be clearly labeled and pre-marked. The Court may provide further guidelines for remote hearings in a separate Order. Parties are encouraged to confer about stipulations of fact and about the Exhibits and Witnesses to be presented and, where possible, stipulate to the admissibility of Exhibits.

e. Pretrial Conferences will be held by teleconference. Among other issues, counsel should be prepared to discuss whether the case will be heard remotely or in person.

f. Ore Tenus Hearings for Divorce. The Court will continue to conduct Ore Tenus hearings in-person on the first and third Thursdays of each month at 9:00 a.m., as previously scheduled. A maximum of ten cases may be placed on a given ore tenus docket.

g. Friday Civil (10:30 a.m.) Motions; Docket will be limited. During the Effective Period of this TEO, all Friday civil motions, with limited exceptions, will be handled remotely. Civil Motions Day will proceed at 10:30 a.m. Contested civil motions will be limited to twenty minutes (ten minutes per side). The civil motions docket will be limited with respect to all other matters to a maximum number of 30 cases for all judges combined during the Effective Period. The following matters **shall not count** toward the 30-case maximum:

- Garnishments
- Debtor Interrogatories

- Name Change Petitions
- Petitions to Amend a Birth or Death Certificate
- Adult Guardianship Petitions
- Infant Settlements
- *Pendente Lite* motions and Rules to Show Cause to be set for a date certain

The Clerk will be instructed to close the 10:30 a.m. docket upon reaching the 30-case maximum for a given day (for both in-person dockets and remote dockets).

h. Friday Civil (10:30 a.m.) Motions To Be Heard in Person; Motions to be Heard Remotely.

The following Friday civil motions will be heard **in-person**:

- Garnishments
- Debtor interrogatories
- Adult guardianships
- Name change petitions
- Petitions to amend birth or death certificates
- Initial returns on rules to show cause
- Initial returns on motions for pendente lite relief
- Motions for default judgment
- Cases involving pro se parties
- Cases in which a defendant/respondent has not entered an appearance
- Cases in which an interpreter has been requested
- Any other motion that a judge determines should be heard in-person (Parties may request an in-person hearing of a motion for good cause)

i. Friday Civil (10:30 a.m.) Motions To Be Heard Remotely.

All other Friday civil motions will be heard remotely. Chambers will email the WebEx meeting/teleconference information at least two days prior to the Motions Day to all parties indicated on the praecipe the parties filed to set the motion for hearing. If the email address of a necessary party is not included on the praecipe/notice of motion, it is the moving party's responsibility to forward the WebEx meeting link to the opposing party. The WebEx invitation will also include information for how to join a teleconference if the WebEx system fails to function.

After every remote hearing on Friday Motions Day, the Court will instruct one party to prepare an order. The order shall be prepared as instructed by the Court, circulated for all parties' signatures, and emailed to Circuitcourt@pwcgov.org no later than close of business on the Tuesday following the hearing. The subject line of the email should state, "Friday Civil Motions Remote Docket" and all relevant case numbers.

j. Friday Civil Motions can be considered without oral argument. If agreed by all parties, the Court will consider and rule **without oral argument** on civil motions in accordance with the procedures and with the briefing limits set forth in the Court's Memorandum of April 23, 2020 (attached).


8. Other Court Proceedings:

- a. Grand Juries will continue to meet as scheduled.**
- b. December and January Criminal Term Days will be held in-person.**
- c. December and January Civil Term Days will be held in person.**

The Court will conduct Civil Term Day, organizing the cases through Chambers as it has done in past months. As always, the Court urges parties to schedule trial dates by agreement through Chambers, using the previously established procedures.

There may be further adjustments to the Court's dockets if the public health situation warrants.

ENTERED this 2 day of December, 2020.


STEVEN S. SMITH
Chief Judge