

Fauquier County Circuit Court First Transition Plan

Pursuant to the Supreme Court of Virginia's Fourth Order Modifying and Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, as amended, the Circuit Court of Fauquier County adopts this First Transition Plan.

For cases that do not conform with this Transition Plan, including but not limited to cases that remain on the docket through June 7, 2020, the parties must contact the Deputy Clerk or file an appropriate motion to reschedule those cases.

I. Civil Cases

Effective immediately, the Court will hear previously specially-scheduled motions and trials scheduled for a Monday, Tuesday or Wednesday; and any new, properly-scheduled civil trials and hearings by WebEx video or teleconference ("Remote Hearings"). While the Court will attempt to hear the above-referenced motions and trials, the Court may need to reschedule some matters *sua sponte* to accommodate the dockets and procedures established in this First Transition Plan.

The Court may in its discretion also permit hearings by additional videographic platforms (e.g., Go To Meeting). All hearings shall be Remote Hearings, absent leave of Court for good cause shown. If good cause is shown, the Court will authorize the in-person appearance of parties, counsel, witnesses or other individuals to facilitate the efficient and just administration of the case. This may occasionally result in a case being heard partly remotely and party in-person.

Should a party believe there is good cause for an in-person appearance or hearing, the party must file a motion with accompanying affidavit(s) at least 21 days prior to the court date, with notice to all parties. The motion should specify if leave is sought for a certain individual(s) or for a full in-person hearing. Any party opposing the motion shall file a written opposition at least 14 days prior to the court date. All motions for in-person hearings, either wholly or partly, shall be decided administratively by the Court without a hearing.

The consent of all parties for a Remote Hearing is not required. Nothing in this Transition Plan dispenses with parties' obligations to comply with Rule 4:15(b) of the Rules of the Supreme Court of Virginia.

The following cases will have docketing priority over other civil cases: petitions for protective orders; child custody or protection cases (emergencies will be prioritized); civil commitment hearings; petitions for temporary injunctive relief; proceedings related to emergency protection of elderly or vulnerable persons; petitions for appointment of a guardian or conservator; proceedings necessary to safeguard applicable constitutional protections; rules to show cause; matters deemed an emergency by the Court; and child custody/visitation matters.

The Court *sua sponte* may need to continue motions and trials, sometimes possibly at the last moment, as may be necessary to accommodate docket volume and priorities, or in the interest of public safety.

Trials will commence at 10:00 a.m. and are limited to matters lasting two days or less (to allow for luncheon recess and occasional brief daily recesses, a day equals approximately 5 to 5 1/2 hours) until further notice. The Court will endeavor to allocate time equally between the parties. All time allocations for cases will be strictly enforced. Failure of the parties to adhere to time allocations may result in mistrial, necessitating the case being retried.

Counsel (and self-represented parties) are responsible, should they choose, to subpoena witnesses to appear remotely. Failure to have a validly-served subpoena for a witness to appear remotely by video or teleconference on the trial date and time, or as soon thereafter as they may be called, is analogous to not issuing a subpoena to a witness for an in-person hearing. Simply put, the trial will move on.

When calculating time estimates, counsel are advised to consider, due to the logistics and contingencies associated with remote hearings, that any remote hearing is likely to take longer than the same hearing held in-person. Counsel are also advised that the Court will not routinely, if at all, adjourn cases that do not finish in the allotted time to another date for resumption of trial. Such a decision will remain in the discretion of the trial judge. The Court observes that continuing unfinished cases to a future date is a highly inefficient use of judicial resources.

Any presently set motions and trials that do not conform with this Transition Plan, including motions placed on civil motions dockets that were not filed pursuant to the Court's April 29, 2020 Order establishing temporary remote hearing procedures, must be reset.

A. Civil Trial Scheduling Docket

Scheduling of civil trials will occur on the first two Fridays of each month at 8:30 a.m. by the filing of a motion to schedule accompanied by a civil scheduling praecipe. The motion and praecipe must be filed with the Clerk at least ten (10) days prior to scheduling. In addition, parties will be allowed to schedule civil trials, if all parties consent, on any Calendar Control day (every Tuesday and Wednesday at 9:00 a.m.) by completing and filing a Calendar Control Request form and delivering or emailing the same to the Deputy Clerk at CVDRcircuit@fauquiercounty.gov.

B. Civil Motions

Civil motions will be heard the first and second Friday of each month according to the following schedule:

8:30 a.m. Civil Scheduling, uncontested matters and proposed agreed orders (including but not limited to proposed final orders for divorce in which a party has not waived signature/presentation but are believed to be uncontested)

9:00 a.m. Contested civil motions (non-domestic)

10:30 a.m. Contested domestic-related motions (including but not limited to pendente lite motions on support issues) and ore tenus divorce proceedings.

Civil motions may be docketed for hearing by the filing of a civil motions praecipe. ***Civil motions will be conducted in-person using the safety protocols approved by the Court (e.g., required social distancing; masks covering the face and mouth in the courtroom unless excused by the Court; limited parties in the courtroom at a given time). Reasonable accommodations will be made for those parties wishing to appear remotely for any reason resulting from the impact of the ongoing COVID-19 crisis.***

Except as otherwise specifically allowed herein, all motions placed on the 9:00 a.m. and 10:30 a.m. dockets shall not exceed a total of 20 minutes. Motions are limited to 3 pages; a motion shall concisely set forth only the facts relied upon and the relief requested (i.e., no authority) and shall be filed at least 14 days prior to the scheduled motions day. Briefs must accompany a motion, shall be limited to 5 pages and shall be filed at least 14 days prior to the scheduled motions day. If the motion is contested, responses to motions must be filed, shall be limited to 5 pages and shall be filed at least 7 days prior to the scheduled motion. The Court may permit deviations from the above page limits upon motion for good cause shown. All parties filing a motion shall file a proposed order with the motion. All parties opposing a motion shall file a proposed order with their opposition papers but in no event less than 7 days before argument on the motion. All proposed orders shall include a reasonable number of blank lines in the event a ruling does not conform precisely with the proposed order. Motions filed that are in compliance with the briefing schedule as set forth in a previous order entered prior to this First Transition Plan are exempt from the requirements of this paragraph.

Pendente Lite Motions for Support: In addition to the briefing requirements above, both parties shall file all exhibits no later than 7 days prior to the hearing [see Section 3(C)(a) below regarding exhibit requirements]. Exhibits should include, if applicable, a party's most recent W2 or 1099, the last two pay statements, evidence of periodic health insurance paid on behalf of the child(ren), evidence of work-related child care expenses, an income and expense statement, and a completed proposed support guideline worksheet. No exhibits that were not timely filed and exchanged shall be considered. Pendente lite motions will be allocated 30 minutes (rather than 20) as follows: moving party's testimony proffered (5 mins); cross-examination of moving party (5 mins); responding party's testimony proffered (5 mins); cross-examination of responding party (5 mins); 10 minutes reserved for any questions from the Court, review of exhibits, and ruling. The time limits herein will be strictly enforced. Parties are strongly encouraged to file written stipulations as part of their exhibit filings.

Motions to Compel: In all motions to compel discovery responses, and oppositions thereto, the parties shall file with the clerk (CVDRcircuit@fauquiercounty.gov) an excel-type spreadsheet (“Spreadsheet”) specifically identifying and succinctly summarizing the areas of dispute. The Spreadsheet shall be filed with the motion at least 14 days prior to argument on the motion. An opposition Spreadsheet shall be filed at least 7 days prior to argument on the motion. Parties are strongly encouraged, but not required, to file a joint Spreadsheet 14 days prior to argument on the motion. The Spreadsheet requirement shall take the place of the briefing requirement above.

All motions initially will be scheduled to begin at 8:30 a.m., 9:00, and 10:30 a.m., as appropriate and parties are expected to be available to participate when their case is called. Failure to be available and ready to participate may, in the Court’s discretion, result in (a) a motion being heard without a responding party’s participation; (b) the motion being placed at the end of the docket; or (c) removal of the motion. Notwithstanding the above, each presiding judge may, in the judge’s discretion, organize and segment the assigned docket and set and announce each motion for a time certain throughout the day.

The Court in its discretion may remove and specifically set for argument any motion that, in its judgment, requires a lengthier hearing. Due to volume, the Court *sua sponte* may reassign a motion(s) to the next available docket.

Parties may continue to request rulings on any motion (except motions to compel discovery responses and motions for sanctions for failure to respond to discovery) based only on filed briefs by waiving oral argument and notifying the Court of this preference. The above page requirements for briefs apply, but parties need not appear on a motions day, but rather jointly notify the Court in writing (with an email copy to the clerk at CVDRcircuit@fauquiercounty.gov) that oral argument is waived.

C. Civil Trials

1. Jury Trials

No jury trials will occur until further notice. To allocate as much available docket time as possible for non-jury matters, jury trials that have currently been set will remain on the Court’s docket in a “COVID status” posture and, if necessary, may be rescheduled when the Supreme Court of Virginia removes the prohibition on jury trials. Notwithstanding the removal of the prohibition on jury trials, the Court may further postpone previously-set jury trials based on docket volume or priorities, or in the interest of public safety. In lieu of a jury trial, all parties may agree to a bench trial of no more than two days.

2. Bench Trials

Bench trials currently scheduled after the effective date of this First Transition Plan set for two days or less, remain scheduled as Remote Hearings absent notice from the Court to the contrary. Especially for cases set for two days previously, the parties shall consider whether a remote hearing will take longer than two days and, if so, make a motion to

continue/reschedule. New trials may be scheduled through the Civil Trial Scheduling process and continuances may be requested through the Calendar Control process. The parties are responsible for the remote appearance of their respective witnesses, and responsible to make arrangements to have witnesses properly sworn if the witness is appearing by telephone.

3. Exhibits and Related Filing Requirements

a. Exhibits

Parties must pre-file with the Clerk and exchange proposed exhibits at least 7 days prior to trial. All exhibits filed with the Clerk must be in notebooks, contain two copies of an exhibit roster, be tabbed by exhibit number, have exhibit stickers attached to the first page of each proposed exhibit, and have all pages sequentially numbered (beginning with the first page of Exhibit 1). If an exhibit is expected to be moved into evidence through more than one witness, the exhibit(s) shall be organized with sub-tabs to allow exhibit pages to be more easily identified by the appropriate authenticating witness .

No additional exhibits will be considered in Remote Hearings. Failure to adhere to the above requirements may result in the exhibits not being considered.

Witnesses participating in remote hearings must be provided with exhibits in advance so that they may have access to the exhibit during their testimony and/or for identification purposes.

b. Equitable Distribution Cases

In any case involving equitable distribution, parties must file at least 7 days prior to trial a joint equitable distribution schedule identifying each entry on which the parties *disagree*. This requirement will necessitate cooperation between the parties. Should the Court find that a party has failed to cooperate in good faith to narrow the equitable distribution issues for trial, the Court may take such action as may be appropriate, including but not limited to the exclusion of evidence and prohibiting a party from arguing or defending a particular matter(s). Nothing herein dispenses with the Court's prior policy of scheduling pre-trial conferences (which will now be remote) in all equitable distribution cases.

Parties in contested domestic relations cases involving grounds of divorce, child custody, equitable distribution, spousal support and/or child support should expect the Court to require post-trial transcripts and Proposed Findings of Fact and Conclusions of Law cross-referenced to the trial transcripts and exhibits. Parties are urged to prepare their respective case in anticipation of the Court ordering the above post-trial filings.

D. Calendar Control

Any party may request (a) the scheduling of an alleged emergency matter; (b) a continuance; (c) the scheduling of a criminal motion requiring witness testimony; (d) the

scheduling of a bond motion/bond appeal; or (e) the scheduling of a civil trial by delivering or emailing [CVDRcircuit@fauquiercounty.gov for civil matters; CRcircuit@fauquiercounty.gov for criminal matters] the Deputy Clerk a Calendar Control Request form, and thereafter contacting Calendar Control at 571-258-3708 any Tuesday or Wednesday at 9:00 a.m. Continuance requests (even if contested) will be heard at Calendar Control if all parties entitled to notice participate in the call. The telephone queue system protocols applicable to civil and criminal trial scheduling apply.

If a continuance request is contested, or if it is unknown whether the continuance request is contested, and both parties do not participate in the call, a party may file a motion and praecipe upon 7 days notice and set the motion for (i) a first or second Friday at 9:00 a.m. for civil cases, or (ii) a first or second Thursday at 1:00 p.m. for criminal cases.

II. Criminal Cases

A. Criminal Docket Days

Criminal docket days shall be the fourth Monday of each month (grand jury day) and the first and second Thursday of each month. The criminal dockets will be segmented as follows: Fourth Monday – 8:30 a.m. (bond motions/appeals, advisement of counsel and capias returns); 9:00 a.m. (grand jury and pleas); 10:00 a.m. (criminal motions); 1:00 p.m. (grand jury returns; criminal trial scheduling motions; and misdemeanor appeals). First and Second Thursday – 8:30 a.m. (bond motions/appeals; advisement of counsel; capias returns; criminal trial scheduling motions); 9:00 a.m. (pleas); 10:00 a.m. (probation violations, sentencings and criminal motions).

The 8:30 dockets on the above three Criminal Docket Days will be conducted remotely for incarcerated defendants.

B. Bond Motions

Bond motions/bond appeals shall be filed with the Clerk and a copy of the motion simultaneously emailed to CRcircuit@fauquiercounty.gov. Bond motions and bond appeals will be scheduled on Criminal Docket Days. Bond appeals/bond motions also may be specially set through the Calendar Control scheduling process. The Court in its discretion may conduct bond motions/bond appeals by remote hearing through WebEx or other videographic platform. Incarcerated defendants will not be transported to court for bond motions, bond appeals, or criminal motions absent prior leave of court for good cause shown. Rather, incarcerated defendants will participate remotely.

C. Criminal Motions Requiring Witness Testimony

Criminal motions requiring witness testimony may be scheduled using the Court's Calendar Control procedures [see Section I(D) above]. For criminal motions requiring witness testimony, the transmission requirements of Section D, No. 6, as well as the briefing and page requirements of Section D, No. 7 below shall apply absent leave of Court.

D. Thursday Criminal Days; Docket Procedures

1. At least fourteen (14) days prior to the scheduled hearing, parties may file a praecipe and motion to docket a plea, sentencing, probation violation matter, or non-witness criminal motion. For all felony guilty pleas, the parties must also file (a) a written plea form or agreement, or both; (b) a detailed, written proffer of facts; (c) if applicable, initialed copies of proposed amendments to warrants/indictments; and (d) if applicable, a waiver of indictment signed by the defendant. Defense counsel shall ensure that a copy of any document (in the most current version) reasonably expected to be referred to during the hearing is provided to the defendant for reference. This applies to detained defendants as well as those at liberty.

2. Any character letters, reference letters, exhibits, sentencing guidelines, restitution orders, and/or victim impact statements relevant to sentencing must be first discussed between the parties and provided to opposing counsel and filed with the Clerk at least seven (7) days prior to the hearing.

3. (a) Pleas (including pleas combined with sentencings and pleas combined with probation violations) may be docketed for Thursdays at 9:00 a.m. Absent prior leave of Court, (a) defendants not in custody must appear in-person with counsel and (b) defendants in custody must appear remotely with counsel from a dedicated room at the Fauquier County Adult Detention Center. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

(b) Agreed dispositions for pleas to traffic infraction appeals and Class 3 and 4 misdemeanor appeals may be submitted to the Court in writing for consideration of and entry of the disposition. Pleas without agreed dispositions remain on the misdemeanor appeals docket.

4. Sentencings and probation violations may be docketed for Thursdays at 10:00 a.m. Absent prior leave of Court, (a) defendants not in custody must appear in-person with counsel and (b) defendants in custody must appear remotely with counsel from a dedicated room at the Fauquier County Adult Detention Center. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

5. Due to volume, the Court *sua sponte* may reassign proposed criminal matters to another Thursday criminal day.

6. Non-witness criminal motions also may be heard Thursdays at 1:00 p.m. The praecipe and motion should be filed with the Clerk and shall be simultaneously sent by email to CRcircuit@fauquiercounty.gov. The parties may submit joint written stipulations applicable to the motion.

7. Praecipes and motions for non-witness criminal motions set on Thursdays must be filed fourteen (14) days prior to the scheduled hearing. Each party shall be allowed ten (10) minutes to argue non-witness criminal motions unless the presiding judge allows the parties additional time. Motions are limited to 3 pages; a motion shall concisely set forth only the facts relied upon and the relief requested (i.e., no authority). Briefs must accompany a motion, shall be limited to 5 pages and shall be filed at least 14 days prior to the scheduled motions day. If the motion is contested, responses to motions must be filed, shall be limited to 5 pages and shall be filed at least 7 days prior to the scheduled motion. The Court may permit deviations from the above page limits upon motion for good cause shown. All parties filing a motion shall file a proposed order with the motion. All parties opposing a motion shall file a proposed order with their opposition papers but in no event less than 7 days before argument on the motion. All proposed orders shall include a reasonable number of blank lines in the event a ruling does not conform precisely with the proposed order.

8. Victims, probation officers and court reporters may attend court hearings in compliance with social distancing standards and other applicable, required safety protocols. Court reporters may make arrangements for participation by teleconference, or web interface as otherwise permitted by this Transition Plan.

E. Criminal Jury Trials

No jury trials will occur until further notice. Jury trials that have currently been set will remain on the Court's docket in a "COVID status" posture and, if necessary, may be rescheduled when the Supreme Court of Virginia removes the prohibition on jury trials. Notwithstanding the removal of the prohibition on jury trials, the Court may further postpone previously-set jury trials based on docket volume or priorities, or in the interest of public safety. In lieu of a jury trial, all parties may agree to a bench trial of no more than two days.

F. Criminal Bench Trials

Felony and Class 1 and 2 misdemeanor criminal bench trials shall enjoy priority on the Court's docket. Currently scheduled bench trials set to commence after the date of this First Transition Plan and lasting two days or less may proceed absent notice or leave from the Court otherwise. Should counsel or parties wish that all or some parts of a criminal bench trial be held remotely (it is not required), consideration should be given to any prior time estimates to determine if such time estimates remain reasonable.

Misdemeanor appeals that cannot be resolved by agreed disposition submitted to and approved by the Court will be heard on the misdemeanor appeals docket (the fourth Monday of each month at 1:00 p.m.) provided the matter can be resolved in 15 minutes or less. Any misdemeanors appeal requiring a bench trial of greater than 15 minutes will be specially set.

Defendants not in custody must appear in-person for trial. Absent prior leave of Court, Defendants in custody will appear remotely for trial. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

III. Facilities

A. Courthouse Access

No parties, counsel or witnesses for a scheduled Remote Hearing may appear in-person at the Courthouse without prior leave of Court. The courthouse remains open to members of the press and to "court-watch" groups.

B. Health and Social Distancing

All persons entering and remaining in all public areas of the Courthouse must wear a mask or face covering at all times over the nose and mouth. The requirement to wear masks and face coverings include inside the courtrooms unless excused or permitted by the presiding judge. Notwithstanding the above, the requirement to wear masks in the courthouse does not apply to persons with health conditions or medical conditions that prohibit wearing a face covering, nor to persons seeking to communicate with the hearing impaired and for which the mouth needs to be visible. If timely notified, the Court will make every reasonable effort to accommodate any person who, for legitimate reason, is unable to wear a mask, such as by allowing a remote appearance or granting a continuance.

In addition, all persons in the Courthouse must maintain six-foot social distancing from all other persons at all times, subject to exceptions for security and other approved reasons.

The presiding judge may, in the interest of public safety, limit the number of persons in the courtroom.

This Transition Plan remains in effect until modified or vacated. To the extent prior orders of this Court conflict with the procedures and protocols set forth in this Transition Plan, this Transition Plan controls.

Dated: June ^{7th} 12, 2020

Approved: _____


Douglas L. Fleming, Jr.
Chief Judge

Attachment: Calendar Control Request Form