VIRGINIA:

IN THE 20TH JUDICIAL CIRCUIT OF VIRGINIA

LOUDOUN, FAUQUIER & RAPPAHANNOCK

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ORDER ESTABLISHING TEMPORARY HEARING PROCEDURES

THIS ORDER establishes temporary hearing procedures for the 20th Judicial Circuit during the COVID – 19 pandemic emergency. This Order remains in effect until modified or vacated by the Court.

I. General Principles and Procedures

This Order establishes hearing procedures for emergency and non-emergency matters. Emergency matters are docketed on a case-by-case basis by the Court. Certain non-emergency matters may be docketed pursuant to the rules set forth herein. In either instance, unless the Court determines that an *ex parte* appearance is permitted by law, all parties must agree to a remote hearing, either by a designated web-based communication platform or by teleconference.

II. Emergency Matters

Emergency matters are docketed in the sole discretion of the Court. To clarify the concept of "emergency" this Court is mindful of the direction provided by the Supreme Court of Virginia:

> "Judges shall exercise their discretion as necessary in determining whether the matter is urgent and must be heard without delay in order to protect important liberty and constitutional interests and the health and safety of the parties, and others necessarily involved and affected by the proceedings." [Emphasis added].

Notwithstanding any other provision of this Order, requests for emergency hearings will be docketed on a case-by-case basis, guided by a consideration of the factors set out by the Supreme Court of Virginia – liberty and constitutional interests and health and safety of the parties and other affected persons (hereafter "SCV factors"). Requests for emergency hearings should set out in detail facts supporting a finding of urgency based on the SCV factors.

III. Non-Emergency Matters

A. Rules of General Application to Non-Emergency Hearings Permitted Under this Order:

1. All parties must consent in writing to a remote hearing.
2. All parties must be available at the time the court initiates the remote communication.
3. All parties must either accept a web-based invitation to proceed on an approved and available platform, or provide a telephone number for teleconference communication. For consistency, the Court intends that all parties to a case would participate by the same means (i.e., teleconference or web-based video/audio conference).
4. While the parties and counsel MUST appear remotely, the proceeding takes place in court. The docket will be posted and the courtroom will be open to the public. However, any person attending court shall practice social distancing in accordance with CDC.gov and Virginia Department of Health recommendations. See http://www.vdh.virginia.gov/coronavirus/what-is-social-distancing-and-how-can-i-do-my-part-to-slow-the-spread-of-covid-19/.
5. In civil cases, should the parties desire a court reporter they must arrange for the court reporter's attendance. In the event technology permits, a court reporter may attend remotely, but it is the parties' responsibility to accommodate remote attendance.
6. In criminal cases, it shall be the defendant's attorney's responsibility to assure their client has been served with and/or provided any notices, pleadings or other court documents necessary to allow the hearing to proceed.
7. All pleadings must include the contact telephone number and email address of counsel of record (or the contact telephone number and email address of self-represented litigants). All pleadings and permitted affidavits must be double-spaced using 12 point type.

B. Court Calendar

Commencing the week of May 11, 2020, the court's calendar shall be arranged weekly, with normal allowances for recognized holidays, as follows:

Monday through Wednesday – reserved for arraignments, bail/bond hearings and emergency matters, and scheduled by the Court based on type and filing date of motion, availability of remote technology for incarcerated defendants, and jurisdiction (Fauquier, Loudoun or Rappahannock).

Thursday – Criminal Docket/Motions Day

10:00 am. **Felony guilty pleas** (incarcerated defendants only)

2:00 pm. **Criminal sentencing** (incarcerated defendants only) and

Probation Violation - Revocation hearings (incarcerated defendants only)

2:00 pm. **Criminal motions** without witnesses (counsel must file written authorization from client to proceed with motion in absence of the defendant)

Friday – Civil Docket/Motions Day

9:00 am. **Uncontested** civil motions/order presentment – 2 minutes or less.

10:00 am. **Contested** non-domestic motions (see practice requirements herein)

2:00 pm. **Contested** civil motions – **child custody and visitation determinations only** (see practice requirements herein)

C. Manner of Setting Cases for Hearing[1]

Criminal cases – (all counties in the circuit) By filing a praecipe, notice, motion, certification of remote hearing and all other documents required to be filed by this Order (e.g., proposed plea agreements; proffers of fact; amendments; and waivers) with the Clerk of Court having proper venue.

Civil cases – (all counties in the circuit) By filing a praecipe, notice, motion and certification of remote hearing with the Clerk of Court having proper venue.[2] Due to limited oral argument time, the court requires briefing of all contested motions, and thus a 14-day notice prior to hearing. All pleadings for contested motions (but not uncontested motions or child custody/visitation determinations) filed with the Clerk of the Circuit Court for the county in which the case is pending shall be

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[1] *Cases set for hearing should be filed with the Clerk of the Circuit Court in which the matter is pending, but because all such matters are to be heard remotely, copies of the pleadings must also be forwarded to the Court through the Circuit Court's designated judicial staff member in Loudoun.*

[2] *All civil case motions in circuit court shall be scheduled and heard using the following procedures:*

(a) Scheduling. *All civil case motions in circuit court shall be scheduled and heard using the following procedures: (1) Presenting the motion on a day the court designates for motions hearings... Va. Sup. Ct. R. 4:15*

simultaneously submitted via PDF transmission to the Loudoun County Circuit Court Lead Staff Attorney at Eric.pohlner@loudoun.gov.

D. Criminal Docket/Motions Day Procedures

1. At least 7 days prior to the scheduled hearing, the parties must jointly file a motion to docket a plea, sentencing or probation violation matter. For felony guilty pleas, the parties must also file a (1) written plea form or agreement or both; (2) a detailed, written proffer of facts; (3) a certificate that all parties consent to a remote hearing; (4) if applicable, initialed copies of proposed amendments to warrants/indictments; and (5) if applicable, a waiver of indictment signed by the defendant.
2. All pleas will be docketed for Thursdays at 10:00 am.
3. All sentencings and probation violations will be docketed for Thursdays at 2:00 pm.
4. In the event of docket unavailability due to volume, the Court may reassign a proposed criminal matter to another Thursday.
5. Non-witness criminal motions will be heard remotely Thursdays at 2:00 p.m. Any such motion filed with the Clerk of the Circuit Court of the county in which the case is pending shall be simultaneously sent via PDF transmission to the Loudoun County Circuit Court Lead Staff Attorney at Eric.pohlner@loudoun.gov. The Court does not intend the word "non-witness" from prohibiting the parties from submitting joint written stipulations applicable to the motion.
6. A non-witness criminal motion (and the brief in support of the motion) must be filed 14 days prior to the scheduled hearing. Any brief in opposition must be filed seven days prior to the hearing. Non-witness criminal motions may not exceed 3 pages. Briefs in support and in response may not exceed 5 pages each. Each party shall be allowed 10 minutes to argue non-witness criminal motions, unless the presiding judge allows the parties additional time.
7. 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 of the Circuit Court at least 7 days prior to the hearing.
8. Witness testimony is not permitted.
9. Victims, probation officers and court reporters may attend court hearings in compliance with social distancing standards. Court reporters may make arrangements for participation by teleconference, or web interface as otherwise permitted by this Order.

E. Civil Docket/Motions Day Procedures – non-domestic

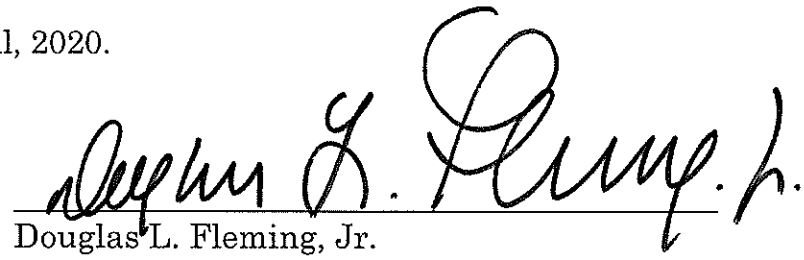
1. Civil motions may be docketed for a Friday (at the appropriate designated time) by praecipe and notice filed by counsel (along with other applicable filing requirements) with the Clerk of the Court in the county in which the action is pending. The motion must include a certificate that all parties consent to a remote hearing. Counsel shall simultaneously submit all contested motions (but not uncontested motions and child custody/visitation determinations) by PDF to the Loudoun County Circuit Court Lead Staff Attorney as indicated above. A proposed order shall be filed with the opening and responsive brief.
2. All contested motions shall be briefed. The motion and attached brief in support shall be filed and served 14 days prior to the hearing. Briefs are limited to 5 pages and no exhibits or other documents may be attached.
3. A response brief limited to 5 pages shall be filed and served 7 days prior to the hearing.
4. The hearing is limited to 20 minutes with time equally apportioned among the parties.
5. Witness testimony is not permitted.
6. Parties are responsible for retaining court reporters who may attend in compliance with social distancing standards, or may make arrangements to participate remotely by web interface or by teleconference.
7. In the event of docket unavailability due to volume, the Court may reassign a proposed civil hearing to another Friday.

F. Civil Docket/Motions Day Procedures – child custody and visitation determinations only

1. Limited solely to original or modification determinations for child custody and/or visitation only (including but not limited to a pendente lite motion for child custody and/or visitation only). This category of case would also include DFS/CPS cases, JDR appeals and any case in which a child custody determination must be made (e.g., child abuse and neglect, foster care appeals, termination of parental rights petitions). No other domestic relations subject matters will be heard.
2. The following requirements apply:
    a. The parties' best case shall be set forth in writing. The filing, briefing and other pleading requirements and limitations for contested civil hearings, including but not limited to a certificate that all parties consent to a remote hearing, apply.

b. No witnesses may be called, but affidavits shall be permitted if they are attached to the party's original brief or response brief. Individual affidavits shall not exceed five pages in length. Each party may submit no more than four affidavits.
c. No exhibits may be filed.
d. Parties will be limited to 10 minutes of argument per side with 2 minutes for the movant's rebuttal, if any.

ENTERED this 29th day of April, 2020.



Douglas L. Fleming, Jr.
Chief Judge, 20th Judicial Circuit