

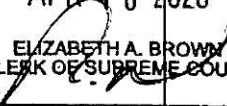
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

IN RE CORONAVIRUS EMERGENCY
AND ITS IMPACT ON THE COURTS

AO-0013

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER CONCERNING ONGOING ADMINISTRATION OF DISTRICT
COURT PROCEEDINGS DURING COVID-19 EMERGENCY

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency in response to the COVID-19 pandemic. The next day, March 13, 2020, the President of the United States declared a nationwide emergency pursuant to Section 501(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207. To mitigate the spread of this deadly virus, the Center for Disease Control recommends putting as much distance between people as possible, and Governor Sisolak has directed Nevadans to stay home except to seek or provide essential services.

Article 3, section 1 of the Nevada Constitution provides that, “The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.” “In addition to the constitutionally expressed powers and functions of each Department, (the Legislative, the Executive, and the Judicial) each possesses inherent and incidental powers that are properly termed *ministerial*. Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each

Department.” *Galloway v. Truesdell*, 83 Nev. 13, 21, 422 P.2d 237, 243 (1967).

Nevada’s judicial system comprises the Supreme Court, the Court of Appeals, the District Courts, and the Limited Jurisdiction Courts. *See* Nev. Const. art. 6, §1. The District Courts are divided into eleven judicial districts. Article 6, section 19 of the Nevada Constitution makes the chief justice of the Nevada Supreme Court the administrative head of Nevada’s court system. Although the District Courts in the eleven judicial districts apply the same laws and follow the same statewide rules, their operating procedures are not identical—for example, some have electronic filing systems, making it possible to eliminate paper filings during the COVID-19 emergency, where others do not.

Immediately following the Governor’s March 12, 2020, Declaration of Emergency, in consultation with the Chief Justice of the Nevada Supreme Court, Nevada’s District Courts exercised their ministerial judicial power and entered emergency administrative orders to mitigate the risk of COVID-19 infection while preserving essential court services. While these orders have minor differences, as appropriate to the needs and operations of the individual judicial district, each provides that, “This order shall be reviewed no later than every 30 days and shall continue until modified or rescinded by a subsequent order.” On March 31, 2020, Governor Sisolak entered Declaration of Emergency Directive 10. This Directive extends the emergency declared on March 12, 2020, to April 30, 2020, a date past the promised review dates in the District Courts’ administrative orders.

Experience under the existing COVID-19 administrative orders has led to their revision or expansion in some districts. To facilitate the

District Courts' review and updating of their administrative orders, a committee was formed consisting of Nevada Supreme Court Chief Justice Kristina Pickering, First Judicial District Court Judge James Wilson, Second Judicial District Court Judge Kathleen Drakulich, and Eighth Judicial District Court Chief Judge Linda Bell. This committee reviewed the orders and experience under the existing administrative orders and received input concerning the NRCP and NEFCR from a separate committee consisting of Judge Egan Walker of the Second Judicial District Court, Nevada Solicitor General Heidi Perry Stern, and attorneys Robert Eisenberg, Graham Galloway, Craig Newby, Dan Polsenberg, and Don Springmeyer.

The committee has prepared and attaches a form of order the District Courts can use to extend their existing orders and to address the COVID-19 emergency going forward. Not all provisions in the attached form will be appropriate in each District. However, the form provisions are offered to assist the District Courts in reviewing and updating the administrative orders they entered in mid-March.

The Clerk of the Court is directed to file this order in ADKT 554 and serve it on the District Courts. A District Court can obtain a copy of Attachment A in editable Word format by emailing or calling the Clerk of the Court at nvscclerk@nvcourts.nv.gov or 775-684-1600.

Dated this 10 day of April, 2020


Chief Justice Kristina Pickering

cc: Administrative Office of the Courts
All District Court Judges
All Limited Jurisdiction Judges
Nevada State Bar
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association

JUDICIAL DISTRICT COURT

COUNTY, NEVADA

IN THE ADMINISTRATIVE MATTER
OF COURT OPERATIONS IN
RESPONSE TO COVID-19

No. _____

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency in response to the COVID-19 pandemic. The next day, March 13, 2020, the President of the United States declared a nationwide emergency pursuant to Section 501(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207. To mitigate the spread of this deadly virus, the Center for Disease Control recommends putting as much distance between people as possible, and Governor Sisolak has directed Nevadans to stay home except to seek or provide essential services.

Article 3, section 1 of the Nevada Constitution provides that, “The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.” “In addition to the constitutionally expressed powers and functions of each Department, (the Legislative, the Executive, and the Judicial) each possesses inherent and incidental powers that are properly termed *ministerial*. Ministerial functions are methods of implementation to accomplish or put into effect the basic function of each Department.” *Galloway v. Truesdell*, 83 Nev. 13, 21, 422 P.2d 237, 243 (1967).

Following the March 12, 2020, Declaration of Emergency this Court exercised its ministerial judicial power and entered, on an emergency basis, Administrative Order No. _____. This Order changed court procedures so as to minimize person-to-person contact and mitigate the risk associated with COVID-19 pandemic, while continuing to provide essential court services. The Order specifies that it “shall be reviewed no later than every 30 days and shall continue until modified or rescinded by subsequent order.”

On March 31, 2020, Governor Sisolak entered Declaration of Emergency Directive 010, which directs Nevadans to stay home except to seek or provide essential services. Directive 010 extends the declared emergency through April 30, 2020. Consistent with this Directive and its original Order, the Court has reviewed Administrative Order No. _____ and, after consultation with Chief Justice of the Nevada Supreme Court, orders as follows:

GENERAL PROVISIONS

1. Continuity. Administrative Order No. _____ shall remain in effect, with the additional provisions noted below.
2. Jury trials suspended. All jury trials, civil and criminal, are suspended until 30 days after this order is lifted. They will be rescheduled as the court calendar allows, with priority given to in-custody defendants who have invoked their speedy trial rights. No summonsed prospective jurors are to appear. Any currently ongoing jury trial will finish.
3. Hearings.
 - a. All non-essential district court hearings shall be conducted by video or telephonic means, decided on the papers, or continued, unless otherwise directed by a District Court Judge. Notices of hearing shall

include the information needed for the parties and any other interested person to participate remotely.

b. Essential case types and hearings will continue to be heard. These may be conducted through in-person appearances, although appearance by alternative means under Nevada Supreme Court Rule Part IX is encouraged when possible. Essential case types and hearings include the following:

1. In-custody criminal arraignments, sentencings, bail motions, and probation revocation hearings;
2. Civil commitment cases;
3. Guardianship matters except for compliance-related hearings which include annual accountings. Given the vulnerability of the guardianship populations, all protected persons shall appear by alternative means;
4. Domestic temporary or extended protection orders;
5. Juvenile delinquency matters;
6. Abuse and neglect preliminary protective hearings;
7. High-risk protective orders;
8. Civil temporary restraining orders and preliminary/permanent injunctive relief hearings;
9. Probate petitions for orders of cremation;
10. Emergency child custody motions that cannot reasonably be resolved by telephonic or audiovisual hearing;
11. Other than jury trials, case-by-case exceptions may be ordered at the discretion of the District Court Judge.

Rules 3 of SCR IX-A (A) and (B) are modified to eliminate their exclusion of juvenile proceedings from the Supreme Court Rules governing telephonic and audiovisual proceedings.

4. Filing. Face-to-face contact between the clerk's office and the public needs to be minimized. For courts without e-filing, pleadings and papers to be filed should be mailed to the court clerk with a self-addressed stamped envelope for the return of file-stamped copies. If there is a time issue—deadline imposed by statute, rule, or order—the document may be:
 - a. Dropped off at the filing deposit box (which is monitored by security) just inside the courthouse front entrance with a self-addressed stamped envelope for the return of file-stamped copies; or
 - b. Emailed to the court clerk at [court clerk's email address] or faxed to the court clerk at [court clerk's facsimile number], with the original mailed to the court clerk the same day, with a self-addressed stamped envelope for the return of file-stamped copies.
5. Courthouse restrictions. The Centers for Disease Control (CDC) has advised that the best way to prevent illness is to avoid exposure. Consistent with CDC guidelines, District Court Administration is ordered to post a notice at the entrance of all district court facilities advising the following people that they may not enter the court facility:
 - a. Persons who in the last 14 days have traveled outside the United States;
 - b. Persons who reside or have close contact with someone who has traveled outside the United States within the last 14 days;
 - c. Persons who have been asked to self-quarantine by any doctor, hospital, or health agency;

d. Persons who have been diagnosed with coronavirus or who have had contact in the past 14 days with anyone who has been diagnosed with COVID-19; or

e. Persons with unexplained fever, cough, or shortness of breath.

Anyone attempting to enter in violation of these protocols will be denied entry.

A person who cannot appear in court because of these restrictions may call the assigned court for help rescheduling the court appearance, arranging for appearance by alternative means, or obtaining other information needed, based on the circumstances of the appearance. The District Court shall establish and post with a notice a telephone number or email address to assist all persons unable to enter the facility because of exposure or illness.

CIVIL CASES

6. Issuance of Summons. A party or lawyer seeking to have the Clerk of the Court issue a summons under NRCP 4(b) shall mail or email the summons to the Clerk (or e-file it when available), who will issue the summons and return a copy of it either by mail in a stamped, self-addressed envelope included for that purpose or email. In jurisdictions with e-filing systems, the Clerk of the Court will issue and return the summons to the requesting party through the e-filing system.
7. Service of Summons. The court recognizes that accomplishing personal service of process may pose significant challenges at this time, given the closure of non-essential businesses and stay-home directives. Properly documented service issues related to the COVID-19 pandemic constitute “good cause” for the extension of time for service pursuant to NRCP 4(e), whether the motion is made before or after the 120 day service period.

8. Extensions of time deadlines. Pursuant to NRCP 6(b), the Court recognizes the COVID-19 emergency as constituting “good cause” and “excusable neglect” warranting the extension of time in non-essential civil and civil-domestic case types. This does not apply to the time deadlines that must not be extended under NRCP 6(b)(2) (motions under NRCP 50(b), 52(b), 59, and 60 and motion made after NRCP 54(d)(2) time has expired).
9. Rule 16.1, 16.2, and 16.205 early case conferences. NRCP 16.1, 16.2, and 16.205 early case conferences should continue to take place but are to be conducted by telephone, teleconference, videoconference or other remote means. During the next 60 days, if an early case conference cannot be accomplished by alternate means, it shall be rescheduled. No early case conference shall be conducted in person during the COVID-19 emergency. On stipulation or order of the court, the deadlines for initial disclosures, supplements and other written discovery may be extended. If not stayed, such discovery shall be exchanged by mail or through electronic means.
10. Rule 16 conferences. NRCP 16 pretrial scheduling conferences will still take place when possible. Rule 16 conferences are to be conducted by video or telephonic means or, if they cannot be conducted remotely, rescheduled at the direction of the assigned District Court Judge.
11. NRCP 25(a)(1). The COVID-19 pandemic poses special challenges for dealing with the death of a party and the timely substitution of a successor or representative. To alleviate those challenges, consistent with NRCP 1, NRCP 25(a)(1) is tolled during the period this order is in effect.

12. Depositions through remote electronic means. During the period of the COVID-19 emergency, no in-person depositions shall proceed except on stipulation or order obtained on motion demonstrating cause therefor. Depositions by remote means may proceed as provided in NRCP 30(b)(4). The Court interprets NRCP 28(a)(1) and NRCP 30 to allow the deposition officer to be in a separate location from the deponent. See SCR IX-B (A) and (B) Rules 9.
13. NRCP 41(e). This order shall operate to stay trials in civil cases and toll the time for bringing a case to trial for purposes of NRCP 41(e) for the duration of the COVID-19 emergency and for a period of 30 days thereafter.
14. Non-jury trials in civil cases. Any scheduled non-jury trials in non-essential civil cases are stayed. On order of the District Court and for good cause shown, a non-jury trial may be rescheduled or conducted by alternative means.
15. Non-jury trials and hearings in civil-domestic cases. Non-jury trials and evidentiary hearings in civil-domestic cases may be conducted by alternative means or continued, to be decided on a case-by-case basis.

CRIMINAL CASES

16. Appearances by in-custody defendants. In-custody defendants will appear by alternate means when possible. No defendant who is in isolation pursuant to the detention health protocol will be brought for any court appearance. Attorneys may appear by alternate means, when available.
17. Out-of-custody matters. Out-of-custody matters may be decided by the judge or may be heard at the discretion of the judge if the matter can be

heard entirely by alternate means. Otherwise, out-of-custody matters will be continued.

18. Right to speedy trial. The time period of any continuance resulting from the stay of jury trials imposed due to the COVID-19 pandemic shall be excluded for purposes of calculating speedy trial time limits under NRS 178.556(1) and NRS 174.511. The Court finds that the pandemic constitutes good cause for the delay and the ends of justice served by delaying jury trials outweighs the interests of the parties and the public in a speedy trial. The period of exclusion shall be from the March 2020 date when the jury trial stay was first imposed through the date 30 days after this order is lifted.

JUVENILE DELINQUENCY

19. In-custody juvenile appearances. Subject to constitutional, statutory, and rule requirements, the court will exercise its discretion to determine whether contested juvenile hearings, detention hearings, hearings for entry of plea, certification hearings, disposition hearings, probation violation hearings, and parole violations for in-custody juveniles may be held in a way that protects the health and safety of all involved. These hearings will, if possible, be conducted by alternative means. Attorneys, probation officers, social workers, parents, guardians, and any other necessary parties to a juvenile proceeding are strongly encouraged to appear by alternative means. Video appearances are strongly preferred. No in-custody juvenile who is hospitalized, isolated, or quarantined will be transported to court or appear for a court proceeding. Those matters are to be continued until the juvenile is no longer under any hospitalization, isolation, or quarantine.

20. Out-of-custody matters. All matters where the juvenile is out of custody will be continued until further order of the court.
21. Drug court. Juveniles in drug court may be required to check in by telephone or otherwise be supervised electronically.

JUVENILE DEPENDENCY AND ADOPTIONS

22. Abuse and Neglect.
 - a. Initial protective custody hearings will continue to be heard as an essential case type.
 - b. The COVID-19 pandemic is good cause to continue all adjudicatory hearings set under NRS 432B.530 during the next 30 days. The court will provide notice of the new date.
 - c. Disposition hearings held under NRS 432B.540 and NRS 432B.550 currently set will be decided on the report filed with the court. Attorneys for the parents, children, and any CASA may file a report to supplement the DCFS recommendation for disposition, placement, and services. All disputed dispositions will be heard by teleconference. Dispositions set for the week of April ___, 2020, will be continued one week to allow for notice of objection and teleconference.
 - d. All semi-annual and annual reviews to be heard during the next 30 days under NRS 432B.580 and NRS 432B.590 will be decided on the reports submitted by DCFS to the court. Attorneys for the parents, children, and any CASA may file a supplemental for the court's consideration. The court may notice parties of a court hearing with an appearance by alternative means for disputed issues.
 - e. Hearings regarding presumptions held under NRS 432B.153, 432B.157, 432B.159 and 432B.555 will be continued for at least 30 days,

unless the parties stipulate to the facts, that a decision can be made on the papers, and that the court determines extraordinary circumstances exist to proceed with the hearing.

23. Termination of parental rights.

a. Motions to terminate parental rights under 432B.5901 and any related motions may be decided on the pleadings and papers filed unless the court determines a hearing is required.

b. All currently set initial hearings on termination of parental rights under NRS 432B.5901-5905 will be held in person as essential hearings unless the court approves appearances by alternative means. If the court approves appearances by alternative means, DCFS personnel will appear by alternative means, and attorneys for all parties may also appear by alternative means. The statutory requirement for the parents to appear in person may be waived as long as a parent can appear by alternative means.

c. Any termination of parental rights trials currently in process will be concluded. All termination of parental rights trials currently set for trial in the next 30 days will be continued and re-noticed by the court, unless the court determines compelling reasons exist to hold the trial. Appearances by alternative means are encouraged for any party, witness or lawyer participating in the trial. See NRS 432B.5905.

d. Other motions may be decided on the papers or continued unless the court determines an appearance by alternative means is necessary because of extraordinary circumstances. Status checks will be continued or handled with written reports unless extraordinary circumstances warrant a hearing by alternative means.

- e. All mediations conducted pursuant to NRS 432B.5904 will be continued for 30 days unless arrangements can be made to hold the mediation by alternative means.
24. Adoptions. Adoptions will be conducted by alternative means unless the court determines otherwise.

FINAL PROVISIONS

25. Attorney obligations. Attorneys, as officers of the court, have ethical obligations for cooperative civility under normal circumstances. This Court, under the present emergency, reminds attorneys that they have an obligation to be cooperative with courts and each other as we all navigate this emergency.
26. Duration. This order shall be reviewed no later than every 30 days and shall remain in effect until thirty (30) days following the expiration of the March 12, 2020 Governor's Emergency Declaration or until modified or rescinded by a subsequent order, whichever occurs earlier.

Dated: April __, 2020

Signature line(s) and titles