

Frequently Asked Questions

Regarding the Suspension of In-Person Court Proceedings in Tennessee Due to COVID-19

Access to Courthouses

The Supreme Court's March 13 Order Suspending In-Person Court Proceedings and March 25 Amended Order Continuing Suspension of In-Person Court Proceedings leaves Tennessee's courts open but encourages the use of technology and innovation to continue essential court operations during this time.

Access to Court Proceedings

Court proceedings in Tennessee are open to the public. Judges should be cognizant of the need to keep proceedings open and available through recording audio and video conferences and/or allowing live access of proceedings that would otherwise be held in open court. For help with this, contact Barbara Peck at the Administrative Office of the Courts ("AOC") at barbara.peck@tncourts.gov.

Bar Examination

The Supreme Court filed an Order on April 2 temporarily suspending certain provisions of Tennessee Supreme Court Rule 7 to allow applicants for the July 2020 bar exam more flexibility to practice before licensure and to transfer their application to a future bar exam. The Order is available at: http://tncourts.gov/sites/default/files/docs/ble_covid-19_order.pdf.

Bond Hearings

Bond hearings may be conducted in-person. However, these hearings should be held via video conference whenever possible, and, if conducted in-person, social distancing measures should be strictly enforced.

Continuances

While continuances of certain trials and proceedings may be appropriate at this time, judges, attorneys, and litigants are encouraged to use video and audio conferences to keep cases moving forward, especially because the duration of this pandemic remains uncertain. Judges should not be continuing everything on their dockets until after the suspension of in-person court proceedings is lifted.

Continuing Legal Education

The Court filed Orders on March 13 and 27 suspending Tennessee Supreme Court Rule 21 to allow distance learning credit for all remaining required CLE hours for 2019 and for all required hours in 2020. The Orders are available at: http://www.tncourts.gov/sites/default/files/docs/cle_order.pdf and http://www.tncourts.gov/sites/default/files/docs/order_-_cle_2020.pdf.

Custody and Child Visitation

- **Emergency Proceedings.** Proceedings related to emergency child custody or visitation orders may be conducted in-person. However, these hearings should be held via video conference whenever possible, and, if conducted in-person, social distancing measures should be strictly enforced.
- **Blanket Standing Orders.** The Court discourages the use of blanket standing orders in child custody cases because of the need to address these matters on an individual, case-by-case basis.
- **Visitation Schedules.** In general, attorneys and parents are encouraged to follow the school-year calendar for custody on school and non-school days even if schools are closed.
- **Surrender of Parental Rights.** Parents who wish to voluntarily surrender their parental rights may do so in-person.
- **Visitation for children in DCS custody.** Like any parent-child visitation matter, each court with jurisdiction over visitation has the discretion to determine whether or how visitation should continue at this time. Judges must determine whether suspension or restriction of visitation involving children in DCS custody and foster care is appropriate and necessary. No DCS policy or DCS preference overrides a judicial order.
- **Exchange of children.** The exchange of children is an exemption to the state's Stay At Home order issued by Governor Lee. Parents should continue to exchange children on schedule unless other arrangements are agreed-upon or approved by a court of competent jurisdiction.

Deadlines

- **Deadlines Set By Rule or Statute.** Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are extended through Wednesday, May 6, 2020. Deadlines that are not set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are not extended or tolled by this order. For example, a statutory deadline set for April 10 is extended until May 6; a statutory deadline of May 10 is still May 10.
- **Deadlines for Written Responses.** There are no extensions of deadlines for written responses due to local courts, if the deadlines have been established by court order. Courts are encouraged to accept such filings via e-filing or email.
- **Deadlines for Discovery.** Deadlines set by orders are not extended, but other discovery deadlines are extended.
- **Deadlines for Appeals.** The Court filed an Order on March 31 clarifying deadlines related to appeals. That Order is available at:
http://www.tncourts.gov/sites/default/files/docs/sct_covid-19_order_-_3-31-2020.pdf.

- **Statutes of Limitations and Repose.** Statutes of limitations and statutes of repose that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are extended through Wednesday, May 6, 2020. Statutes of limitations and statutes of repose that are not set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are not extended or tolled by the Orders. For example, if the statute of limitations was set to expire April 10, it is extended until May 6; a statute of limitations set to expire May 10 is still May 10.

Depositions

The taking of in-person depositions is not suspended at this time. Judges should make accommodations as necessary and encourage the taking of video depositions when possible.

Detainer Warrants

Detainer warrants can continue to be filed but should not be served. Courts can set hearing dates several weeks out for filed detainer warrants but should be prepared to cancel or reset those matters if things have not stabilized by the time the hearings are scheduled.

Drug Courts

See Recovery Courts.

Elderly Persons

Proceedings related to emergency protection of elderly or vulnerable persons may be in-person but are encouraged to be conducted via video or audio conference when possible. If conducted in-person, social distancing measures should be strictly enforced.

Evictions & Foreclosures

- **Suspension of evictions.** Pursuant to the Supreme Court's inherent constitutional authority, it has halted the residential — not commercial — evictions process in most situations. Taking this action was in line with what HUD had already decided on March 18 when it put in place a foreclosure and eviction moratorium for single family homeowners with FHA-insured mortgages and was also in line with the several safer at home orders in place in many cities across the state that then became a statewide stay at home order issued by the Governor. The Court has not altered parties' responsibilities to the existing contract terms (e.g., paying rent timely), and it has left discretion with local judges to still hold eviction proceedings in extraordinary circumstances (e.g. when there exists threatening behavior, vandalism, etc.). Any eviction hearings held, whether residential due to extraordinary circumstances or commercial, should be handled like any other civil matter right now, and they probably do not rise to the level of an emergency that necessitates an in-person hearing.

- **Foreclosures.** The Supreme Court has not addressed foreclosures in its orders, primarily because most foreclosures in Tennessee are non-judicial in nature. On March 18, the U.S. Department of Housing and Urban Development implemented a 60-day foreclosure and eviction moratorium on single family homeowners with FHA-insured mortgages. The HUD Policy halts all new foreclosure actions and suspends all foreclosure actions currently in process. The policy also ceases all evictions of persons from FHA-insured single-family properties. For more information, visit www.hud.gov.

Exceptions to the Suspension of In-Person Hearings

To request an exception for an in-person hearing not listed in the Supreme Court's orders, judges should send a single email to all three of the following:

sara.diehl@tncourts.gov

evan.elliott@tncourts.gov

steve.jobe@tncourts.gov

Ex Parte Orders of Protection

See Orders of Protection

Garnishments

While existing garnishments should remain in place, no new garnishments should be ordered absent exceptional circumstances.

Grand Juries

Grand juries may convene during this time. However, if courts choose to convene grand juries, the courts should advise grand jury members that they can be excused for a legitimate COVID-19 concern, and there will be no punishment for those that do not appear because of legitimate pandemic concerns. If grand juries convene, courts must ensure the grand jury practices social distancing and utilizes strict procedures to ensure jurors, witnesses, and others are protected.

Indigent representation billing by appointed counsel

- **Online approval of claims.** All judges should quickly review pending claims online. The AOC has been instructed to make contact with every judge not online with ACAP to enroll them in the system for online approval. This will ensure attorneys are paid more quickly.
- **Interim billing in non-capital cases.** Given current financial and technology constraints, it is not possible to permit interim billing in non-capital cases at this time.
- **Automatic approval amounts.** Tennessee Supreme Court Rule 13 has been temporarily amended to increase the level requiring judicial review of claims from

\$200 to \$400. That Order is available at http://www.tncourts.gov/sites/default/files/docs/order_indigent_representation.pdf.

- **Earlier submission of a claim.** Tennessee Supreme Court Rule 13 does not require attorneys to wait for a case to close to bill, particularly if they are at the cap or near the cap they can bill the whole case; however, they will not be able to bill again at a later date at the time the case is closed.

Injunctive Relief

- Proceedings related to petitions for temporary injunctive relief may be conducted in-person. However, these hearings should be held via video conference whenever possible and, if conducted in-person, social distancing measures should be strictly enforced.

Local Jail Populations

- **Reduction of jail populations.** Each Judicial District was required to submit a plan to reduce the number of inmates in the jail populations. The plans submitted are available by sending a public information request to aocpublicrecords@tncourts.gov.
- **Transportation of inmates.** Transportation of inmates from one county to another or to and from a TDOC facility should be curtailed as much as possible at this time. If a situation requires transfer of an inmate, inmates should not be placed in the local jail – an up and down transfer should occur, if possible. Judges should not be signing transportation orders like business as usual.

Mediation

The Court always encourages mediation, and in-person mediations are not suspended during this time. Mediations that are conducted in-person should adhere to strict social distancing standards. The use of video mediation is encouraged when possible.

Mental Health Orders

Proceedings related to emergency mental health orders may be conducted in-person. However, these hearings should be held via video conference whenever possible and, if conducted in-person, social distancing measures should be strictly enforced.

Notary Requirements

Attorneys and judges are encouraged to utilize the “Online Notary Public Act” codified at Tenn. Code Ann. § 8-16-301, et seq., and the regulations promulgated by the Secretary of State at Sec. of State, Tenn. R. and Reg. 1360-07-03-.01. Additionally, with regard to court filings, declarations under penalty of perjury may be used as an alternative to a notary.

Notice Requirements

Notice requirements are not suspended. Service by mail is encouraged at this time.

Orders of Protection

- **Proceedings.** Proceedings related to relief from abuse, including but not limited to orders of protection, may be heard in-person. However, these hearings should be held via video conference whenever possible, and, if conducted in-person, social distancing measures should be strictly enforced. Orders of protection that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, have been extended through Wednesday, May 6, 2020.
- **Ex Parte Orders of Protection.** Proceedings related to ex parte orders of protection should not be continued and must be heard to ensure the respondent receives due process. These hearings may be held via video conference and are not required to be in-person at this time. If conducted in-person, social distancing measures should be strictly enforced. Ex parte orders of protection should not be addressed by a bridge order.

Plea Agreements

- **For Incarcerated Individuals.** Plea hearings for incarcerated individuals may be conducted in-person. However, plea hearings may be conducted via video conference. If conducted in-person, social distancing measures should be strictly enforced.
- **For Non-Incarcerated Individuals.** The requirement of in-person plea hearings in Tennessee Rule of Criminal Procedure 11 is suspended at this time to permit acceptance of pleas via video conference. Unless there exist extraordinary circumstances, judges should not accept guilty pleas from non-incarcerated individuals that require jail time.

Preliminary Hearings for Incarcerated Individuals

Preliminary hearings for incarcerated individuals should continue to be heard and may be conducted in-person. However, these hearings should be held via video conference whenever possible, and, if conducted in-person, social distancing measures should be strictly enforced.

Property Taxes

Interest on property taxes continues to accrue as scheduled at this time. Judges are encouraged to work with court clerks to ensure residents have access to the court clerk to pay their taxes whether at a courthouse drop box or by mail.

Recovery Courts

The Court understands the importance of regular communication and dependable support for the individuals enrolled in recovery court programs and strongly encourages

judges and staff to use video conferencing and other tools to maintain contact and interaction with participants.

Rules Requiring In-Person Proceedings, Filings

Any state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended during this time. This suspension allows the use of audio and video technology in place of in-person appearances at court proceedings and allows court clerks to use alternative means of accepting filings, such as through the use of email.

Service

See Notice Requirements.

Settlements

Settlements involving a minor or a person with a disability may be conducted in-person. However, these hearings should be held via video conference whenever possible, and, if conducted in-person, social distancing measures should be strictly enforced.

Traffic Court

Traffic court may only be conducted via video or audio conference at this time.

Video Conferencing

Systems like WebEx, Skype, Zoom, and FaceTime are permissible for legal proceedings at this time. Judges may contact the AOC for access to these resources.