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J. CLAY GOSSETT

JUDGE
FOURTH JUDICIAL DISTRICT COURT
RUSK COUNTY COURTHOUSE, SUITE 303
115 NORTH MAIN
HENDERSON, TEXAS 75652

Rusk County Judiciary Re-Certification of In-Person Operating Plan

January 7, 2021

As required by the Supreme Court's Emergency Orders and Guidance from the Office of Court Administration, I include here the required re-certification of Rusk County Court's In-Person Operating Plan.

I have consulted with the local public health authority regarding the local pandemic conditions and have reviewed with the health authority the previously-submitted in-person operating plan to determine whether the plan provides sufficient health and safety protocols to permit in-person proceedings.¹ The local public health authority has determined that (check one):

- Local pandemic conditions are conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan;
- Local pandemic conditions are conducive to in-person proceedings with modifications to the precautions and protocols in the previously-submitted in-person operating plan;²
- Local pandemic conditions are not currently conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan.

Approval attached as Exhibit A.

In addition, I have conferred with the judges of the courts with courtrooms in county buildings and have determined that the following criteria will be used to determine when an in-person proceeding is necessary and when all reasonable efforts do not permit the proceeding to be conducted remotely:

All judges in Rusk County Court, before conducting an in-person hearing shall first determine if an in-person hearing is necessary by following this procedure:

1. The judge shall inform each counsel and pro se litigant that the hearing shall be conducted remotely over Zoom. The judge shall provide each counsel and pro se litigant a phone number or email address to inform the judge if they believe any counsel, their clients, a pro se litigant,

¹ Documentation of the consultation can be accomplished by submitting this letter stating such or an email or letter from the local public health authority.

² If it is determined that the previously-submitted in-person operating plan needs to be modified, the local administrative district judge or presiding judge of the municipal court should submit the modified plan after following the process detailed on p. 3 of the [Guidance for All Court Proceedings During COVID-19 Pandemic](#).

any witness, an interpreter, or any other participant (all referred to below as “Participant”) cannot participate remotely. The judge or judge’s staff shall then determine whether a Participant is unable to participate in the hearing due to any one or more of the following:

- a. lack of technology which precludes or impedes their ability to participate in the hearing via the Zoom videoconferencing app. Examples of the lack of such technology include:
 - i. lack of access to a computer tablet or other device with internet video capability;
 - ii. lack of access to a cell phone; or
 - iii. lack of access to an internet connection.
 - b. A physical, mental, or other disability that prevents a Participant from being able to effectively operate or utilize the required technology. Examples of such a disability include:
 - i. a physical or mental disability that precludes them from effectively operating the technology necessary to access the Zoom videoconferencing app;
 - ii. a physical disability that precludes them from effectively seeing, hearing, or otherwise participating in a Zoom video hearing;
 - iii. the lack of or unavailability of an interpreter who can assist the individual in communicating during a Zoom hearing;³
 - iv. incarceration and the incarcerating facility’s lack of technological resources or facilities to allow the inmate to participate remotely in the hearing or confer privately with the inmate’s legal counsel;⁴ or
 - v. if the proceeding is in a specialty court defined by Title 2, Subtitle K of the Texas Government Code (e.g. veteran’s court, mental health court, drug court, etc), the specialty court team determines that there is a risk to the physical or mental well-being of a participant in the specialty court program if the proceeding is not held in person.
 - c. A confrontation clause constitutional objection is raised by criminal defense counsel or a pro se litigant, and the judge sustains the objection after conducting a *Haggard*⁵ analysis.
 - d. A proceeding where one Participants needs to appear in person due to a need to provide fingerprints, is subject to incarceration, or must meet with multiple departments as a result of the court proceeding, in which case that party may need to appear while the other parties appear remotely.
2. If an individual is unable to participate for one of these reasons, prior to holding an in-person hearing, the judge shall make reasonable efforts to accommodate the individual as set forth in the procedure below.

When an individual is found to be unable to participate in a Zoom videoconference for one of the reasons stated above, prior to holding an in-person hearing, the judge considering the in-person hearing shall make all reasonable efforts to make accommodations that will allow the individual(s) to participate. The accommodations that the judges of the Rusk County Court shall consider include:

³ If a Spanish interpreter is needed, please consider using OCA’s free Spanish interpretation service. More information and scheduling options is available at <https://www.txcourts.gov/tcris/>.

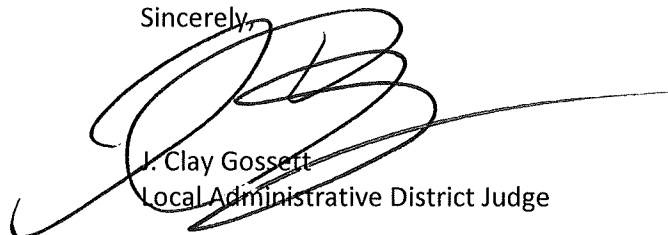
⁴ If the facility is a TDCJ facility, judges should contact coronavirus@txcourts.gov to see if OCA can assist with getting the facility connected with the court.

⁵ [Haggard v. State](#), 2020 WL 7233672 (Tex. Crim. App. 2020)

1. When an individual does not have adequate technological resources on their own to participate in a Zoom videoconferencing hearing, a judge shall:
 - a. determine whether the court has the ability to provide the individual with a laptop or other device which would allow the individual to participate in the hearing from some segregated location within the court facility while following appropriate COVID-19 precautions and protocols;
 - b. determine if such technological resources can be provided to the individual by some other source (e.g. a participating attorney, a party, a family member, friend, public library, or an appropriate agency of the State of Texas); and
 - c. determine whether the individual could participate in a meaningful manner by telephone (audio only).
2. When an individual has physical or mental disabilities that would prevent the individual from operating the technology required, a judge shall:
 - a. determine if the individual has legal counsel, family or friends who can assist in operating the required technology; and
 - b. inquire as to what, if any, accommodations could be made which would allow the individual with a disability to participate.
3. When an individual is incarcerated, a judge shall:
 - a. determine whether the facility has the technological resources or facilities to allow the incarcerated individual to participate in the hearing;
 - b. if the facility does not have the technological resources to allow the inmate to participate in a Zoom videoconference, determine whether the inmate could participate in a meaningful manner by telephone (audio only).
4. When an individual is otherwise unable to participate in a hearing via videoconference or by audio only, a judge shall determine whether the individual can effectively participate in the proceeding by a sworn statement made out of court as permitted by the Emergency Orders of the Supreme Court of Texas.
5. If no accommodation is available, the judge shall determine if a continuance is warranted, balancing the risk to public health and safety with the need to resolve the particular case.
6. If no accommodation is available and the judge determines a continuance is not warranted, the judge may permit the hearing to occur in-person under the precautions and protocols in the approved in-person operating plan attached as Exhibit B.

Having completed the required re-certification, I am submitting it to you in your role as Regional Presiding Judge. I understand and have communicated to the judges with courtrooms in county/municipal facilities that no in-person hearings will be permitted on or after January 11 until I receive an acknowledgement from you that the re-certification meets the requirements of OCA's Guidance.

Sincerely,



J. Clay Gossert
Local Administrative District Judge

Exhibit A

Judge Gossett

From: M Joyce Starling <cowye@aol.com>
Sent: Thursday, January 07, 2021 9:31 AM
To: Judge Gossett
Subject: Re: TEMPLATE FOR RE-CERTIFICATION AND EXTENSION OF DEADLINE

I agree with the proposed Template for Recertification and Extension of Deadline.
Dr. Starling

Sent from my iPhone

On Jan 7, 2021, at 9:01 AM, Judge Gossett <jgossett@co.rusk.tx.us> wrote:

Please review the template as well.

Thank you,
Kim for
J. Clay Gossett, Judge Presiding
4th District Court, Rusk County
115 N. Main St., Ste 303
Henderson, TX 75652
903-657-0358
903-655-1250 (fax)

From: Alfonso Charles <Alfonso.Charles@co.gregg.tx.us>
Sent: Monday, January 04, 2021 8:21 AM
To: Judge Andrew Bench <abench@huntcounty.net>; Judge Bill Harris <bharris@co.lamar.tx.us>; Judge Bill Miller <bill.miller@txkusa.org>; Judge Bobby Lockhart <bsorsby@txkusa.org>; Judge Brad Morin <bradm@co.harrison.tx.us>; Judge Campbell Cox <campbell.cox@co.nacogdoches.tx.us>; Judge Chad Dean <chad.dean@co.rusk.tx.us>; Judge Charles Mitchell <mitchell6489@sbcglobal.net>; Judge Chris Day <distrc2nd@co.cherokee.org>; Judge Christi Kennedy <ckennedy@smith-county.com>; Judge Clay Gossett <james.gossett@co.rusk.tx.us>; Judge Craig Mixson <craig.mixson@co.jasper.tx.us>; Judge Dan Moore <dmoore@co.henderson.tx.us>; Judge Deborah Evans <spowell@co.anderson.tx.us>; Judge Donald Dowd <ddowd@casscountytexas.org>; Judge Duncan Thomas <dthomas@huntcounty.net>; Judge Eddie Northcutt <northcuttlaw@gmail.com>; Judge Edwin Klein <ed.klein@co.nacogdoches.tx.us>; Judge Floyd Getz <fgetz@smith-county.com>; Judge Jack Sinz <jsinz@co.nacogdoches.tx.us>; Judge Jack Skeen <dlangston@smith-county.com>; Judge Janice Stone <jstone@co.cherokee.org>; Judge Jeff Addison <addison@txkusa.org>; Judge Jeff Doran <jdor@co.anderson.tx.us>; Judge Joe Black <jblack@co.harrison.tx.us>; Judge John Tidwell <John.Tidwell@txkusa.org>; Judge Keli Aiken <kaiken@huntcounty.net>; R Kent Phillips <Kent.Phillips@co.gregg.tx.us>; Judge Kerry Russell <krussell@smith-county.com>; Judge LeAnn Kay Rafferty <leann.rafferty@co.panola.tx.us>; Judge Mark Calhoon <csingleton@co.anderson.tx.us>; Judge Michael Davis <mdavis@co.anderson.tx.us>; Judge Nancy Perryman <nperryman@co.henderson.tx.us>; Judge Pam Fletcher <ctadminteetze@co.anderson.tx.us>; Judge Pat Simmons <Pat.Simmons@co.limestone.tx.us>; Judge Robert Rolston <rmrolston@gmail.com>; Judge Sarah Clark <sclark@co.houston.tx.us>; Judge Scott

Exhibit B

COVID-19 Operating Plan for the Rusk County Judiciary

Recognizing the need to ensure the health and safety of litigants, attorneys, visitors, court staff, judges, and other individuals entering the buildings housing the courts, the courts of **Rusk County** will implement the following protective measures:

General

1. All judges will comply with the Emergency Orders issued by the Supreme Court of Texas and Court of Criminal Appeals, including conducting in-person proceedings according to the guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions.
2. All judges will use all reasonable efforts to conduct proceedings remotely.
3. The local administrative district judge will maintain regular communication with the local health authority, DSHS representative, and county judge and adjust this operating plan as necessary with conditions in the county.
4. Judges will begin setting non-essential in-person proceedings no sooner than June 1, 2020.

Judge and Court Staff Health

1. Judges and court staff who can perform the essential functions of their job remotely will telework when possible.
2. Judge and Court Staff Monitoring Requirements: On a daily basis prior to coming to work.
3. Judges or court staff who feel feverish or have measured temperatures equal to or greater than 100.0°F, or with new or worsening signs or symptoms of COVID-19 such as cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, loss of taste or smell, diarrhea, or having known close contact with a person who is confirmed to have COVID-19 will not be permitted to enter the building and should seek medical advice.
4. Judges and court staff will be required to wear face coverings in court proceedings or any matters where they come in contact with the public, practice social distancing, and practice appropriate hygiene recommendations at all time, in interacting with the public.
5. Protective Measures: Staff will comply with items set out in 1-4 on a daily basis and document in writing.

Scheduling

1. The following court schedules are established to reduce occupancy in the court building: The appropriate courts will confer and cooperate on a block schedule to comply with the guidelines in subject matters. This includes but not limited to hearings, docket calls, and trials. This will be supplemented on a timely basis.

Vulnerable Populations

1. Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose

immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable populations.

2. Each judge will include information on orders setting hearings, dockets notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations. A notice with this information will be posted on the courts' websites and in conspicuous locations around the court building (a copy of which is attached).
3. Vulnerable populations who are scheduled for court will be accommodated by allowing them to appear by zoom or remotely. In the event they are required to appear in person, they will be allowed to appear and to be segregated in an appropriate space.

Social Distancing

1. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least 6 feet.
2. No more than two individuals not from the same household will be permitted in an elevator. If more than one individual from the same household is in an elevator, no other individuals will be permitted in the elevator.

Gallery

3. The maximum number of persons permitted in the gallery of each courtroom has been determined and posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.
4. The gallery of the courtroom has been marked to identify appropriate social distancing in the seating. Seating is limited to every other row.

Well

5. In each courtroom, the counsel tables, witness stand, judge's bench, and clerk, court reporter, and bailiff seating have been arranged in such a way so that there is social distancing of at least 6 feet between each space.

Hygiene

1. Hand sanitizer dispensers have been placed at the entrances to the building, outside of elevators on each floor, outside of each courtroom, and outside of bathrooms.
2. Tissues have been placed near the door of the courtroom, at counsel tables, at the witness stand, on the judges' benches, and in the hallways.
3. The Department of State Health Service's "Stop the Spread of Germs Flyer" has been posted in multiple locations on each floor of the court building.

Screening

1. When individuals attempt to enter the court building, courthouse security will ask the individuals if they are feeling feverish; have a cough, shortness of breath, or difficulty breathing; or have been in close contact with a person who is confirmed to have COVID-19.

Individuals who indicate yes to any of these questions will be refused admittance to the court building.

2. Inmates being transported from the jail to the court building will be screened for symptoms of COVID-19. Inmates with symptoms or a temperature will not be transported to the court building.
3. Staff who are screening individuals entering the court building will be provided personal protective equipment, including face coverings and gloves.

Face Coverings

1. All individuals entering the court building for court proceedings will be required to wear face coverings at all times in the courtroom.
2. Individuals will be encouraged to bring cloth face coverings with them, but if the individual does not have a cloth face covering, a disposable face mask will be provided if the supply is available.
3. Individuals who will be required to be in the court building for over 1 hour will be provided face coverings and required to wear them while in the court building if the supply is available.

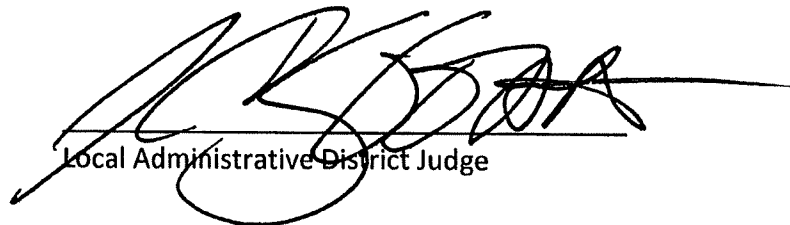
Cleaning

1. Court building cleaning staff will clean the common areas of the court building so that common spaces are cleaned as needed.
2. Court building cleaning staff will clean the courtrooms between morning and afternoon proceedings and at the end of each day the courtroom is used.
3. Court building cleaning staff have been provided cleaning supplies shown to be effective with this coronavirus as available.
4. CDC guidelines will be available as a resource for guidance.

I have attempted to confer with all judges of courts with courtrooms in the court building regarding this Operating Plan. In developing the plan, I consulted with the local health authority, DSHS representative, and county judge, documentation of which is attached to this plan. I will ensure that the judges of courts with courtrooms in the court building covered by this Operating Plan conduct proceedings consistent with the plan.

Any individual court modifications to the plan will be attached.

Date: 5/26/2020



Local Administrative District Judge

RUSK COUNTY

JUSTICE OF THE PEACE 2 MODIFICATIONS

Judges and Court Staff Health

4. Judges and court staff **may** wear face coverings in court proceedings or any matters where they come in contact with the public, practice social distancing and practice appropriate hygiene recommendation at all time.

Face Coverings

1. All individuals entering the court building **are recommended** to wear face coverings.
3. Individuals who will be required to be in the court building for over 1 hour will be provided face coverings and it is **recommended** that they wear them while in the court building if the supply is available.