DAYTON TEXAS

**Re-Certification of In-Person Operating Plan**

January 5, 2021

Re: Re-Certification of In-Person Operating Plans

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 Dayton Municipal 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.

In addition, I have conferred with the judges of the courts with courtrooms in county/municipal 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 Dayton Municipal 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, 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:

[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.

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 Participant 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 County/Municipal Court shall consider include:**

1. When an individual does not have adequate technological resources on their own to participate in a Zoom video conferencing 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

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[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.

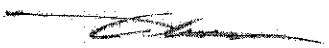
[5] Haggard v. State, 2020 WL 7233672 (Tex. Crim. App. 2020)

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.

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,



Alan D. Conner
Judge Dayton Municipal Court