

SUPERIOR COURT of the STATE OF ARIZONA

County of Navajo



Robert J. Higgins
Presiding Judge

LuAnn Garbini
Interim Court Administrator

IN RE THE MATTER OF:)
)
AUTHORIZING PROCEDURES)
FOR COURT OPERATIONS)
DURING A PUBLIC HEALTH EMERGENCY)
)
_____)

ADMINISTRATIVE ORDER
NUMBER 2020-008

This Administrative Order updates and supersedes Administrative Order 2020-05. Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona has declared a statewide emergency pursuant to A.R.S. § 26-303 and in accordance with A.R.S. §26-301 (15). The Governor has issued Executive Order 2020-12 which defines the Courts as essential services which should remain open and Executive Order 2020-18 which provides for citizens to Stay Home, Stay Healthy and Stay Connected. Although the courts in Navajo County remain open for business, cooperation by the Judicial Branch is essential to reducing the risk associated with this public health emergency. The Arizona Supreme Court has instructed Presiding Superior Court Judges to take steps to reduce the number of people entering courthouses and issued Administrative Order 2020-48 and as may be amended by a subsequent Administrative Order. The philosophy of the Court in ordering these steps for all court hearings is to first eliminate the incidence of social contact or in the alternative to minimize said social contact as allowed by law. The safety and health of all of our citizens, justice partners, court staff and judges shall be the primary consideration in the interpretation of this Administrative Order.

IT IS THEREFORE ORDERED, effective immediately until otherwise ordered, the following procedures will be in place for the Superior Courts of Navajo County.

1. Any individuals who have a fever, cough, shortness of breath or other symptoms of illness will not be allowed to enter the courthouse. They will be directed to call their lawyer or the court to request further information. This rule also applies to court staff and shall be enforced by the Judges and supervisors for each department.
2. All parties and counsel to cases are authorized to appear telephonically for any hearing unless the Judge issues an order for an in-person appearance or an in-person appearance is constitutionally or statutorily required.

3. In hearings in which an in-person appearance is required, the Court will arrange the scheduled hearings in such a way that provides for ten or fewer participants in the courtroom at one time, whenever possible. In all such in-person appearance cases, the Court shall provide for social distancing as recommended by the CDC.

4. The Court is authorized after consideration of existing space, social distancing and the principal of open courtrooms to order non-participants to leave the courtroom to provide for the safety of the participants at the hearing. The Court is authorized to limit all in-person proceedings to attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons, in order to provide for the safety of the participants and court staff. If the person(s) who is asked to leave the courtroom is not exhibiting any symptoms of illness, they will be given the option of finding a space within the courthouse that allows for social distancing. If the person(s) is ill or does not maintain social distancing, court staff is authorized to direct the person(s) to leave the courthouse.

5. If telephonic appearances are not permitted for a specific type of hearing, the Court will liberally grant stipulated continuances so long as victim rights and any applicable laws are followed.

6. If a defendant is in custody of the jail and would like to appear telephonically or by video-conference, defense counsel is responsible for contacting the jail and arranging for their client to appear as requested. Video conferencing will be utilized as feasible during the criminal law and motion calendar for in-custody defendants in all Courts. Self-represented defendants in criminal cases will appear telephonically or by video-conference if available, unless the Court orders their appearance. If defense counsel is waiving the appearance of their client, there is no need to file a motion. Counsel will be allowed to inform the Court on the record at the hearing that they are waiving their client's appearance.

7. For arraignments, the Court waives the requirement of notarized signatures for the written waiver and affidavit provided in Rule 14.3(b), Arizona Rules of Criminal Procedure.

8. The Court has established policies for the acceptance of electronically transmitted motions and other documentation. Documents for filing along with any required filing fee may always be submitted by means of the U.S. mail.

9. If the Court does not already have an email address for counsel or a self-represented litigant, Judges shall notify counsel and self-represented litigants that they shall provide their email address to the Clerk of Court within five (5) days of notice. The purpose of obtaining email addresses for all counsel and self-represented litigants is to permit the assigned Judicial Officer's Office to communicate electronically with litigants, to permit opposing litigants to communicate electronically and, whenever practical, to permit the Clerk of Court to distribute court documents electronically.

10. In extraordinary circumstances and with appropriate precautions, the Court authorizes the following in-person hearings and court proceedings to be conducted with more than 10 people but in no event more than 25 persons:

- A. Grand Jury proceedings;
- B. Release hearings;
- C. Preliminary Hearings;
- D. Domestic violence protective proceedings;
- E. Child protective temporary custody proceedings;
- F. Civil commitment hearings and reviews;
- G. Injunctions Against Harassment and Injunctions Against Workplace Harassment Hearings;
- H. Emergency protection of elderly or vulnerable persons proceedings;
- I. Habeas corpus proceedings;
- J. COVID-19 public health emergency proceedings;
- K. Juvenile detention hearings;
- L. Juvenile dependency hearings; and
- M. Any other proceeding that is necessary to determine whether to grant emergency relief.

IT IS FURTHER ORDERED the Court finds that public health and safety as described in the Governor's Executive Orders and the Chief Justice's Administrative Orders authorize the Court to "conduct business in a manner that reduces the risk associated with this public health emergency" by avoiding in-person hearings to the "greatest extent possible consistent with core constitutional rights until further order of this court". In addition, the Chief Justice's Administrative Orders provide that "any court rule that impedes a judge's or court clerk's ability to use available technologies to eliminate or limit in-person contact in the conduct of court business is suspended through April 17, 2020."

In furtherance of the public health and safety this Court finds that pursuant to *State v. Riley*, 196 Ariz. 40, 992 P.2d 1135 (App. 1999) the language of Rule 5.3(a)(2), *Arizona Rules of Criminal Procedure* suggesting that witnesses for Preliminary Hearings should testify in-person is not constitutionally mandated as long as timely decisions are made regarding release conditions. The Court also finds that Rules 5.1, *Arizona Rules of Criminal Procedure* which set forth the timing of the Preliminary Hearings for in-custody defendants is not constitutionally mandated. The Court further finds that as long as available technology permits the recording of Preliminary Hearings electronically, the requirement of Rule 5.2, *Arizona Rules of Criminal Procedure* which requires a certified court reporter record the proceeding upon request of the defendant is not constitutionally mandated.

THEREFORE, IT IS ORDERED that as long as timely decisions are made regarding release conditions and subject to further argument by defense counsel at Early Disposition Court or at the Preliminary Hearing, if no Early Disposition Court hearing was conducted, the following Rules of Criminal Procedure are suspended effective immediately until further Order of this Court and that Judges of the Superior Court, Magistrates and Justices of the Peace who conduct Preliminary Hearings in Navajo County are authorized to take the following action:

1. Rule 5.3(a)(2), *Arizona Rules of Criminal Procedure* is suspended and witnesses in all Preliminary Hearings in Navajo County shall be permitted to provide video testimony unless the Court finds on the record that good cause exists to require in-person testimony or finds on the

record that good cause exists to permit telephonic testimony. Good cause includes but is not limited to a finding that available technology will not allow for the telephonic or video-conference presentation of a witnesses' testimony including the review of any exhibits offered. If telephonic testimony or video testimony is provided by a witness at the Preliminary Hearing, the witness shall be made available to testify at trial and at trial the defendant shall have the ability to cross-examine and confront the witness in-person.

2. Rule 5.1(a) and (d) *Arizona Rules of Criminal Procedure* requiring Preliminary Hearings for in-custody defendants to be conducted within ten (10) days of the initial appearance is suspended and the time for conducting in-custody Preliminary Hearings is extended for up to a total of twenty (20) days after the initial appearance.

3. Rule 5.2, *Arizona Rules of Criminal Procedure* is suspended, and electronic means may be used to create a verbatim record even if a defendant makes a request that a certified court reporter be used to record the proceedings.

IT IS FURTHER ORDERED, the Clerk of Superior Court in Navajo County is authorized to temporarily accept electronic filings of motions to continue and other documents via email in all types of cases except for civil cases which already have an electronic filing process. This temporary process is in place pursuant to previous Administrative Order 2020-05 and shall remain in place until further Administrative Order.

1. The electronically-submitted document shall be deemed filed on the date and time it is received by the Clerk of Superior Court as reflected through Microsoft Outlook email accounts. Any electronically-submitted document requiring a filing fee or deferral/waiver of a filing fee, shall be deemed filed on the date such fee or deferral/waiver is received.

2. Until further order, the Navajo County Clerk's Office is authorized to electronically file documents submitted through the addresses contained in paragraph 1 without reducing same to paper and any paper file impacted shall be marked in a manner designated by the Clerk of Court to indicate the electronic documents are not included in the file.

3. The filing party is responsible for distribution of each electronically filed pleading to the other respective parties.

4. All documents shall be formatted in compliance with the Arizona rules of procedure applicable to the case type, shall be legible and shall be in a .pdf format.

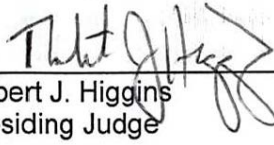
5. The Clerk of Court will electronically distribute documents issued from the Court whenever practical. In the event electronic distribution is not practical or if there is a request for other than electronic distribution, i.e. the need for a certified document, the Clerk of Court will make distribution through the mail or interoffice.

6. The currently empaneled Navajo County grand jury shall remain empaneled until June 10, 2020, an extension of two months which is permissible by statute.

IT IS FURTHER ORDERED, the Justice Courts, Municipal Courts and Magistrate Courts

are authorized to adopt this Administrative Order or issue their own Administrative Order consistent with Supreme Court Administrative Order 2020-48 and as may be amended by a subsequent Administrative Order.

EXECUTED this 3rd day of April 2020.



Robert J. Higgins
Presiding Judge

Original: Clerk of the Superior Court

Copies: Hon. Robert J. Higgins, Presiding Judge,
Hon. Ralph Hatch, Judge Division I,
Hon. Dale P. Nielson, Judge Division III,
Hon. Michala M. Ruechel, Judge Division IV
Hon. Jon H. Saline, Judge Pro Tempore
Adult & Juvenile Probation
Justices of the Peace
Court Administration