

**IN THE  
ST. JOSEPH COUNTY SUPERIOR COURT**

**ORDER REGARDING ONGOING OPERATIONS IN THE ST. JOSEPH SUPERIOR  
COURT – TRAFFIC & MISDEMEANOR AND SMALL CLAIMS DIVISIONS IN  
COURTHOUSE 2 (THE 1855 COURTHOUSE) IN SOUTH BEND, INDIANA**

On November 10, 2020, the Indiana Supreme Court entered an Order on Continued Emergency Actions. The Order states, in part: “Trial judges have an obligation to help protect their communities by taking proactive, responsible steps to minimize the potential for exposure and infection in—and from—their courtrooms by reducing in-person proceedings.”

In an effort to continue to reduce foot-traffic throughout the 1855 Courthouse/Superior Court and following all guidelines set forth by the Centers for Disease Control, Executive Orders issued by Governor Eric Holcomb, and the St. Joseph County Public Health orders issued by the St. Joseph County Health Department, the Court reiterates the following protocols in regard to hearings/dispositions/trials set in the Superior Court- Traffic & Misdemeanor (“T&M”) and Small Claims (“SC”) divisions.

Pursuant to the November 10, 2020 Order on Continued Emergency Actions, this Order remains in effect until July 1, 2021.

**TRAFFIC & MISDEMEANOR (“T&M”) DIVISION**

**I. MORNING ARRAIGNMENT COURT**

- **The Court reminds all Parties of Local Rule 304.4.** - Presence of Traffic and Misdemeanor Defendants. Traffic and Misdemeanor defendants represented by counsel, upon request of counsel and leave of the Court, may be excused from appearing in Traffic and Misdemeanor Court except for (a) initial hearing, (b) second appearance, (c) record and trial setting. A traffic

and misdemeanor defendant who is excused under this rule stipulates that notice to the attorney of the next court date requiring his or her presence shall constitute notice to the traffic and misdemeanor defendant.

- Counsel for Defendant is encouraged to adhere to said local rule and properly notify his/her client of any orders, directives, offers, decision given during court sessions.
  - Counsel shall also notify the Court as to whether he/she has had direct or indirect communication with his/her client outside of court.
- **8-8:45 a.m.** This morning session of T&M Arraignment Court will allow **only** private attorneys with at-liberty defendants to appear during the morning hours (Monday through Friday) from 8 – 8:45 a.m.
    - Only scheduled defendants and their attorneys may appear.
    - Causes will be heard on the dates previously set by the Court (**no walk-ins or open court**) and will adhere to the previous policy of assigning cause numbers to a particular magistrate.
      - D01/D06 – Magistrate Singleton
      - D02/D05 – Magistrate Hardtke
      - D03/D07 – Magistrate Doi
      - D04/D08 – Magistrate Verheye
    - Social distancing practices set forth by the Centers for Disease Control will be followed in the courtroom.
    - No visitors, friends or family of said defendants may appear in court; without prior permission from said Court. No children will be allowed into the courtroom at any time.
    - All parties must practice social distancing from each other, court staff, and judicial officers.
    - **Attorneys are encouraged to appear on behalf of their clients, whenever possible, as provided by Local Rule 304.4.**
- **9am-12noon** This morning session of T&M Arraignment Court will then be broken down into time slots beginning at 9 a.m.
    - Assigned public defender **only** cases will proceed during this time slot (**no walk-ins or open court**).
    - The Court will schedule no more than **30** cases per hour beginning at 9 a.m. and ending at noon on each given day.
    - Social distancing practices set forth by the Centers for Disease Control will be followed in the courtroom.
    - Only scheduled defendants may appear for their date and time.
    - No visitors, friends or family of said defendants may appear in court; without prior permission from said Court. No children will be allowed into the courtroom at any time.
    - All parties must practice social distancing from each other, court staff, and judicial officers.
    - **Attorneys are encouraged to appear on behalf of their clients, whenever possible, as provided by Local Rule 304.4.**

## II. AFTERNOON COURT

- All afternoon felony arraignment procedures will remain the same. However,
  - Only scheduled defendants and their attorney may appear for their date and time.
  - No visitors, friends or family of said defendants may appear in court; without prior permission from said Court. No children will be allowed into the courtroom at any time.
  - All parties must practice social distancing from each other, court staff, and judicial officers.
  
- **All attorneys are *strongly encouraged* to set up an audiovisual conference with the Court in order to best expediate their client's cause.** The Court advises all parties of **Administrative Rule 14** (See attached).
  - The Court will set aside hearing time, **Monday through Friday 3-4:30 p.m.**, in the Superior Court -Traffic & Misdemeanor Division.
  - This hearing time is for attorneys who wish to use telephone/audiovisual telecommunication pursuant to Admin.R. 14.
  
  - **Attorneys** wishing to use telephone or audiovisual telecommunication pursuant to the provisions of this rule shall:
    - (1) obtain from the Court an “Audio/Visual Consent Form” – Defendant is required to sign the Audio/Visual Consent Form prior to court;
    - (2) contact the Court's Administrative Secretary at 574-245-6794 or 574-245-6796 to set up a time for said hearing:
      - **All audio/visual hearings will take place between 3-4:30 p.m.**
      - Causes will be heard on the dates set by the Court (no walk-ins or open court) and will adhere to the previous policy of assigning cause numbers to a particular magistrate.
    - (3) the attorney will provide the Court with defendant's contact information or the attorney will directly contact said defendant, pursuant to Admin.R.14, and;
    - (4) the attorney will provide Notice to all parties of his/her intent to proceed pursuant to Admin.R.14.

## III. BENCH TRIALS

- The Court has forwarded a list of all trials set in front of the Court for the month of November & December 2020. Said list will be dispersed to the State of Indiana

(St. Joseph County Prosecutor's Office), the St. Joseph County Public Defender Department, and any and all private criminal defense attorneys appearing on said causes.

- All parties are *highly encouraged* to review said list and inform the Court no later than **November 20, 2020** as to whether the case will:
  - (1) proceed with trial,
  - (2) be set for plea hearing in advance of the trial date,
  - (3) be moved to be continued by filing a Motion to Continue, with just cause, or
  - (4) be dismissed by the State.
- The Court further **ORDERS** all Parties to effectively communicate with each other as to the final status/outcome of said case.
- All parties are to notify the Court, by the aforementioned date above, if they had meaningful consultation in order to reach a final resolution in said matter.
- Counsel for Defendant is ordered to advise the Court, in writing, as to how information has been relayed to his/her client (whether USPS, telephone, email, etc).

#### **SMALL CLAIMS ("SC") DIVISION**

- The parties may appear for any hearing telephonically by filing a written motion with the Small Claims clerk.
- Parties appearing telephonically are required to file a notice of telephonic appearance. The Court will limit attendees to comply with social distancing guidelines;
- A maximum of five (2 to 5) in-person cases will be permitted per ½ hour; and,
- Out-of-court proceeding supplemental hearings, commonly referred to as "hallway hearings", will be limited to 10 per half hour.

**SO ORDERED** on November 13, 2020

  
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Elizabeth C. Hurley, Chief Judge  
St. Joseph Superior Court

**Rule 14. Use of Telephone and Audiovisual Telecommunication\*\***

(A) Authority. A trial court may, in its discretion, use telephone or audiovisual telecommunication pursuant to the provisions of this rule as follows:

- (1) A trial court may use telephone or audiovisual telecommunication to conduct:
  - (a) Pre-trial conferences;
  - (b) Proceedings where only the attorneys are present;
  - (c) Proceedings during a declared emergency under Ind. Administrative Rule 17; and,
  - (d) Proceedings where a party or witness is unavailable due to quarantine.
- (2) A trial court may use audiovisual telecommunication to conduct:
  - (a) Initial hearings pursuant to IC 35-33-7-1, 3, 3.5, 4 and 5, including any probable cause hearing pursuant to IC 35-33-7-2; determination of indigence and assignment of counsel pursuant to IC 35-33-7-6; amount and conditions of bail pursuant to IC 35-33-7-5(4), 35-33-8-3.1 and 4; and the setting of omnibus date pursuant to IC 35-36-8-1;
  - (b) The taking of a plea of guilty to a misdemeanor charge, pursuant to IC 35-35-1-2;
  - (c) Sentencing hearings pursuant to IC 35-38-1-2 when the defendant has given a written waiver of his or her right to be present in person and the prosecution has consented;
  - (d) Post-conviction hearings pursuant to Ind. Post-Conviction Rule 1(5), with the written consent of the parties;
  - (e) Preliminary hearings in mental health emergency detention proceedings pursuant to IC 12-26-5-10;
  - (f) Review hearings in mental health commitment proceedings pursuant to IC 12-26-15-2;
  - (g) When a child is alleged to be a delinquent child, for a detention hearing pursuant to IC 31-37-6 or a periodic review hearing pursuant to IC 31-37-20-2;
  - (h) When a child is alleged to be a child in need of service, for a detention hearing pursuant to IC 31-34-5 or a periodic review hearing pursuant to IC 31-34-21-2.

(B) Other Proceedings. In addition, in any conference, hearing or proceeding not specifically enumerated in Section (A) of this rule, with the exception of criminal proceedings involving the right of confrontation or the right to be present, a trial court may use telephone or audiovisual communications subject to:

- (1) the written consent of all the parties, entered on the Chronological Case Summary; or
- (2) upon a trial court's finding of good cause, upon its own motion or upon the motion of a party. The following factors shall be considered in determining "good cause":
  - (a) Whether, after due diligence, the party has been unable to procure the physical presence of the witness;

- (b) Whether effective cross-examination of the witness is possible, considering the availability of documents and exhibits to counsel and the witness;
- (c) The complexity of the proceedings and the importance of the offered testimony in relation to the convenience to the party and the proposed witness;
- (d) The importance of presenting the testimony of the witness in open court, where the fact finder may observe the demeanor of the witness and impress upon the witness the duty to testify truthfully;
- (e) Whether undue surprise or unfair prejudice would result; and
- (f) Any other factors a trial court may determine to be relevant in an individual case.

(3) A party or a trial court if it is acting on its own motion must give notice of the motion to use telephone or audiovisual telecommunication as follows:

- (a) Any motion for testimony to be presented by telephone or audiovisual telecommunication shall be served not less than thirty (30) days before the time specified for hearing of such testimony;
- (b) Opposition to a motion for testimony to be presented by telephone or audiovisual telecommunication shall be made by written objection within seven (7) days after service;
- (c) A trial court may hold an expedited hearing no later than ten (10) days before the scheduled hearing of such testimony to determine if good cause has been shown to present testimony by telephone or audiovisual telecommunication;
- (d) A trial court shall make written findings of fact and conclusions of law within its order on the motion for testimony to be presented by telephone or audiovisual telecommunication; and
- (e) For cause found, a trial court may alter the time deadlines set forth in paragraphs (a) through (c) upon motion made prior to the expiration of the time for the required action.

(C) Facilities and Equipment. In relation to any hearing or proceeding conducted under this rule, the court shall assure that:

- (1) The facility and equipment provide counsel with the ability to confer privately with an out of court party, or with other counsel, off the record, before, during, and immediately following the hearing or proceeding. Mental health care providers, employees of the Indiana Family and Social Services Administration and its county offices of Family and Children, and county probation officers who appear as witnesses are not parties for the purposes of this section.
- (2) When using telephonic and audiovisual telecommunication:
  - (a) All participants are able to fully view and/or converse with each other simultaneously.
  - (b) The facilities have the capacity for contemporaneous transmission of documents and exhibits.

- (c) Audiovisual images are in color and monitor screens are of sufficient quality, design, and architecture as to allow all parties to observe the demeanor and non-verbal communication of the other parties.
  - (d) The telephonic or audiovisual transmission is of sufficient quality, design, and architecture to allow easy listening and/or viewing of all public proceedings.
  - (e) The use of telephonic or audiovisual technology in conducting hearings and proceedings shall in no way abridge any right of the public.
- (3) Application may be made to the Indiana Supreme Court, through the Indiana Office of Judicial Administration (IOJA), for approval of a plan that uses alternative procedures and technology that meet the intent and objective of this rule.
- (4) The confidentiality accorded to attorney-client communications, and all other privileges applicable under Indiana law, apply.

**\*\*This does NOT include the temporary revisions expanding this rule contained in the May 13, 2020 Order Permitting Expanded Remote Proceedings issued by the Indiana Supreme Court.**