

## **MEMORANDUM**

TO: Members of the Bar in the 19<sup>th</sup> Judicial District (MCBA and RCBA)

FROM: Ross H. Hicks, Circuit Court Judge

RE: Civil and Criminal Proceedings in Circuit Court Part 1 (Judge Hicks)

DATE: July 6, 2020

As all of you know, we have had to make numerous changes to our procedures as a result of the Covid-19 crisis. We are still operating under a Supreme Court Order that requires us to minimize all in-person proceedings. However, in its May 26, 2020 Order extending the state of emergency, the Court also eased suspension of in-person court proceedings after July 3<sup>rd</sup>. There are still some significant limitations and local courts must conduct as much business as possible by means other than in-person court proceedings. The Court is also allowing the resumption of some jury trials after July 3, 2020 with very stringent social distancing and PPE requirements in place. As of June 15<sup>th</sup> the Court is allowing a maximum capacity of 50% of the total number of people a courtroom can accommodate *as long as social distancing measures are strictly followed*. Spaces have been marked off in all courtrooms in District 19 to provide for social distancing. Unfortunately none of our courtrooms can operate at anywhere near 50% capacity with social distancing requirements in place.

Although the Supreme Court has relaxed its rules regarding in-person court proceedings, any Judge within the District has the discretion to continue operating pursuant to the former courtroom restrictions (10 person limit). The Supreme Court is also limiting civil jury trials to six person juries with limited exceptions. With all these things in mind, I want to take this opportunity to inform you as to the procedures which will be employed in Civil and Criminal proceedings in the Circuit Court Part 1. These procedures may be changed as time goes on because the situation with Covid-19 is very dynamic. When the procedures change, you will be advised. Because I am at enhanced risk for Covid-19, these procedures may differ slightly from those of other District 19 Judges.

### **CIVIL COURT DOCKETS**

#### **Motions**

1. All motions will continue to be decided on the pleadings unless a hearing is deemed necessary by the Court. It is not necessary to request that Motions be determined on the pleadings. Absent a request for a hearing (electronic or in-person), all Motions will be decided on the pleadings. If you desire an electronic or in-person hearing, you must request it. Please continue to place a Notice of Hearing on all motions so your adversary will know the date that their written response/opposition must be filed. Hearing dates must be set no earlier than 10 days after the Notice of Hearing is filed with the Clerk. I will read the pleadings on the scheduled hearing date and will issue an order or contact all parties to schedule a hearing if the Court deems one necessary. When required, electronic hearings will be conducted via Zoom. No in person or electronic hearings will be scheduled prior to review of the

pleadings. This procedure will continue indefinitely and is designed to limit exposure of attorneys, clients and witnesses to others in or around the courthouse.

2. All uncontested divorces (attorney represented and self-represented litigants) will be decided on the pleadings.

3. Motions may be set for hearing on any civil non-jury day with at least 10 days notice of hearing being provided. The Motion must contain the Covid-19 notice language (see attached example). The Notice of Hearing must clearly state that if the respondent opposes the Motion, a written response must be filed with the Clerk of the Court at least 3 days prior to the hearing date with a copy sent to the movant's counsel (see attached). If the Court determines that the matter cannot be decided on the pleadings, the Judge's assistant will be in touch with counsel and/or the pro se parties to arrange for the hearing.

4. When submitting a Petition or Motion for a Temporary Restraining Order or other ex parte relief, you must present a proposed Order for the relief sought and include the appropriate Notice language specified in the preceding paragraph.

5. The Proposed Order must also contain all the respondents known contact information, i.e. mailing address, telephone number, email address, etc. This will enable the Court to make arrangements for an electronic hearing.

6. Appeals from General Sessions and Juvenile Court, including appeals of Orders of Protection, will continue to be set by the Clerk for a particular docket call date. Appearance by counsel or the pro se parties at the docket call is not necessary. The Court will be in contact with counsel and the parties following the docket call with regard to setting the matter for hearing via electronic means.

7. Electronic hearings (Zoom, telephonic, etc.) will be conducted in the same manner as final hearings and bench trials.

### **Final Hearings and Bench Trials**

1. The Court will conduct final hearings and bench trials via Zoom for matters that can be heard in 3 hours or less. When setting a bench trial, you are required to notify the Clerk of the Court in writing of the estimated time for all sides to present their proof. Bench trials and final hearings currently scheduled after July 13th requiring longer than 3 hours must be reset to a date no earlier than September 1, 2020. Those that are currently set requiring 3 hours or less to hear will be heard in the order they were set by Zoom. When setting the cases, you must advise the Clerk of the time required for the hearing and the email addresses for all counsel and pro se parties in order for the Court to set the electronic hearing via Zoom or other means. Although the Court does not anticipate holding any in-person hearings until after September 1, 2020, if such hearings are deemed necessary, they will be scheduled by the Court.

2. The parties are required to exchange all exhibits which might be used at the hearing 2 days prior to the hearing. A copy must be filed with the Clerk of the Court and all exhibits must be easily

identifiable by number, letter of the alphabet, or pagination so as to facilitate their introduction and consideration during the hearing. Objections to exhibits will be dealt with during the hearing. All provisions of the Local Rules of Court regarding the filing of briefs, pre-trial statements, income/expense statements, etc. must be followed and copies of the same must be furnished to all parties and the Court via the Clerk's Office.

3. If an in person hearing is scheduled, attorneys, litigants and witnesses must follow all requirements established by the Sheriff's Department for entry into the building, including but not limited to, requirements that client and witness lists be provided to security personnel in advance of any scheduled hearing.

4. Although the Court does not anticipate that there will be requests from the media or the public to access hearings which are being conducted via Zoom or other electronic means, these are open proceedings and the Court will make special arrangement upon request for anyone interested in the proceedings to observe them via electronic means. Any such request must be made at least 24 hours prior to the scheduled hearing.

5. In any in person hearing, **all persons in the courtroom will be required to wear masks**, practice safe social distancing and follow any other CDC recommendations. Parties or their attorneys must bring all necessary PPE and ensure that their witnesses, interpreters and court reporter have appropriate PPE.

### **Civil Jury Trials**

1. **All civil jury trials scheduled for the months of July or August are continued and must be reset to a date no earlier than September 1, 2020.**

2. Until further notice, all civil jury trials set after September 1, 2020 will be conducted with 6 person juries. If a 12 person jury is requested, that request must comport with the requirements of the Supreme Court's Order of May 26, 2020. A request for a jury of more than 6 persons will result in the trial date being continued indefinitely. The Court will not conduct civil trials with juries of more than 6 persons until CDC recommendations relating to social distancing and the wearing of PPE are relaxed.

3. If an in person hearing is scheduled, attorneys, litigants and witnesses must follow all requirements established by the Sheriff's Department for entry into the building, including but not limited to, requirements that client and witness lists be provided to security personnel in advance of any scheduled hearing.

4. Although the Court does not anticipate that there will be requests from the media or the public for courtroom access. These are open proceedings and the Court will make special arrangement upon request for anyone interested in the proceedings to observe them. Any such request must be made at least 24 hours prior to the scheduled hearing.

5. In any in person hearing, **all persons in the courtroom will be required to wear masks**, practice safe social distancing and follow any other CDC recommendations. Parties or their attorneys

must bring all necessary PPE and ensure that their witnesses, interpreters and court reporter have appropriate PPE.

### **CRIMINAL MISDEMEANOR CASES**

1. The Court will continue its practice of setting criminal misdemeanor motion and/or settlement days twice per month. Courtroom admission for those cases will be limited to the attorneys, defendants and authorized court personnel. No more than 10 people plus the Judge, necessary court personnel and court security will be allowed in the courtroom at any one time. Cases will be taken up individually and lawyers and defendants will wait outside the courtroom until called into court.

2. Attorneys, litigants and witnesses must follow all requirements established by the Sheriff's Department for entry into the building, including but not limited to, requirements that witness lists be provided to security personnel in advance of any scheduled hearing

3. . Although the Court does not anticipate that there will be requests from the media or the public for courtroom access, these are open proceedings and the Court will make special arrangements upon request for anyone interested in the proceedings to observe them. Any such request must be made at least 24 hours prior to the scheduled hearing.

4. In any in person hearing, **all persons in the courtroom will be required to wear masks**, practice safe social distancing and follow any other CDC recommendations. Parties or their attorneys must bring all necessary PPE and ensure that their witnesses, interpreters and court reporter have appropriate PPE.

5. Settlements. All documents necessary to present and approve a settlement must be prepared in advanced and immediately presented to the Court when the attorney approaches the podium.

6. If the State and the defense are in agreement to reset or continue a matter, that agreement can simply communicated to the Clerk's office and it is not required that the attorney or defendants be in Court. The District Attorney is required to notify the Clerk's office of the continuance or resetting. If a matter is set for status review, neither the attorney or defendant is required to appear IF proof has been supplied to the Clerk that the status requirement has been met.

7. **All misdemeanor jury trials scheduled for the months of July or August are continued and must be reset.** The Court will resume 12 person criminal jury trials no earlier than September 1, 2020. For all cases scheduled for jury trial after that date, you will be notified in the prior month whether the case will proceed to jury trial or be reset depending on the Covid-19 protocol in effect at that time. Based on the current situation, it is unlikely that the Court will resume misdemeanor jury trials until CDC recommendations relating to social distancing and PPE are relaxed. The only possible exceptions would be for cases where the Defendant is incarcerated.

### **NOTICE OF HEARING**

Comes now the Plaintiff, \_\_\_\_\_, by and through counsel, and hereby gives NOTICE that the foregoing \_\_\_\_\_ will be heard *the pleadings only* **Month and day, 2020 at 9:00 a.m.**, in the Circuit Court for Montgomery County, Tennessee before the Honorable Judge Ross H. Hicks.

### **COVID-19 NOTICE**

Based on the Supreme Court's Order dated May 26, 2020 in response to the COVID-19 pandemic all in-person hearings have been suspended except in certain limited circumstances that have been enumerated by the Supreme Court's order.

***Therefore, if you are opposed to this action you must respond in writing by Month and day, 2020 (3 days prior to hearing date) (an email address and telephone number) to:***

Attorney  
Address  
Clarksville, TN  
Tel: (931)  
Fax: (931)

And to:

Montgomery County Circuit Civil Court  
2 Millennium Plaza, Suite 115  
Clarksville, TN 37040  
Tel: (931) 648-5700  
Fax: (931) 648-5729

**FAILURE TO RESPOND WILL RESULT IN THE MOTION POSSIBLY BEING GRANTED BY THE COURT.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing \_\_\_\_\_ has been mailed, postage prepaid, or emailed, or faxed to \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_

Attorney