

FILED
DISTRICT COURT
THIRD JUDICIAL DISTRICT
SWEETWATER COUNTY WY

MAR 20 2020

BY DONNA LEE BOBAK
CLERK OF COURT
DEPUTY CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
WITHIN AND FOR SWEETWATER COUNTY, WYOMING

General Order Concerning Case
Requirements During COVID-19
Pandemic of 2020.

General Order No. 2020-01

The President and Governor have declared national and statewide emergencies due to the COVID-19 pandemic. As a result, several court systems have limited non-essential operations, delayed certain matters, or suspended operations all together. On March 18, 2020 the Wyoming Supreme Court entered an *Order Adopting Temporary Plan to Address Health Risks Posed By the Covid-19 Pandemic* recognizing the present public health emergency in the State of Wyoming and, effective March 18, 2020 through April 10, 2020, suspending in-person proceedings and finding good cause to continue proceedings, with exceptions for critical court functions, unless proceedings can be held through the use of teleconferencing or video conferencing technology.

Although the due administration of justice requires the trial courts to continue to hear and determine certain critical matters, the courts must operate their agencies consistent with guidelines that promote the general welfare and public health. This includes following guidelines promulgated by public health officials, including the Centers for Disease Control, the Wyoming Department of Health, and County and local health officials. Those guidelines include, but are not limited to:

- Minimizing/Eliminating all person-to-person contact
- Maintaining a minimum distance of six (6) feet between persons
- Avoiding gatherings of more than 10 people
- Practicing proper hygiene (washing hands with soap and water, cover mouth with extended elbow when coughing or sneezing, disinfecting areas)

While the trial courts of Wyoming remain open, they must take into consideration the global health crisis caused by COVID-19 when determining the manner in which hearings will be conducted and scheduled.

The following types of proceedings will, to the greatest extent practical and consistent with protecting public health, continue to take place in accordance within existing timeframes:

- Arraignments and bond revocations;
- Probation revocations when the defendant has been arrested;
- Involuntary hospitalization proceedings;

- Shelter care hearings, detention hearings, juvenile court bench trials and juvenile dispositional hearings;

All other court proceedings will be considered non-critical as long as the national and statewide emergencies continue. The Court may schedule and conduct such hearings as can be conducted by teleconference or video conference, consistent with practices recommended by public health officials, with emphasis on the health and safety of the parties, attorneys, witnesses, and court personnel.

No previously scheduled hearings are being continued at this time except for those continued by a case specific order. Consistent with governing rules, statutes and Constitutional principles, until further notice **all participants must attend all hearings by teleconference or video conference. No one may attend in person unless specifically ordered by the Court for extraordinary circumstances.**

Counsel shall promptly notify opposing counsel and the Court if they reasonably suspect that a participant in any scheduled proceeding has an elevated risk of transmitting coronavirus. That includes anyone who has:

- a. Visited China, Iran, South Korea, any European countries, or any other high-risk countries identified by the CDC in the previous 14 days;
- b. Resided with or been in close contact with someone who has been in any of those countries within the previous 14 days;
- c. Traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
- d. Been asked to self-quarantine by any doctor, hospital, or health agency;
- e. Been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19; or
- f. A fever, cough or shortness of breath.

Counsel shall affirmatively inquire of their clients and witnesses whether they come within any of the categories. No person who falls within any of these categories shall attend any proceeding in person without prior authorization from the Court. Counsel shall notify the Court and opposing counsel if any proceedings relating to the litigation of cases pending before the Court would require travel or other actions contrary to guidance set forth by the Centers for Disease Control and Prevention or other public health officials.

Under no circumstances will in-custody defendants who are symptomatic of

coronavirus be transported to court facilities.

Please see Appendix A attached hereto for further information on the Court's teleconference and video conference capabilities, instructions, and use.

Filing

The Clerk of District Court will temporarily allow email and fax filings, including in non-emergent circumstances. **Such filing is strongly encouraged.** The Wyoming Supreme Court has waived or modified the Rules of Civil Procedure and Rules for Fees and Costs of the District Court to allow filing documents which exceed ten (10) pages by electronic mail and waive the \$1.00 per page charge to transmit or receive a facsimile or email filing. For filings that require a filing fee (e.g., complaint or notice of appeal), the Wyoming Supreme Court has ordered that the collection of fees may be delayed. Please contact the Clerk's office at 872-3820 or 922-5246 prior to email or fax filing for instructions on how to file.

Civil Cases

All hearings will be held by video conference except as specified herein. Counsel and unrepresented parties must consult with each other and provide all telephone numbers and email addresses **in one email** to ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery or aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson of **all participants or attendees of the hearing, including spectators** by 12 p.m. (noon) two working days before the hearing.

Rule 26 of the Wyoming Rules of Civil Procedure requires:

(3) Pretrial Disclosures

(A) ... a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken

stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence--separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. ...

(4) *Form of Disclosures.* ... all disclosures ... must be in writing, signed, and served.

Additionally, at least 5 days before any evidentiary hearing, counsel and unrepresented parties must provide copies by email of any exhibits which may be used at the hearing to each other lawyer, unrepresented party, or witness to be used for that evidence, and to the Court at ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery and aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson. **No exhibit which has not been provided in advance as required will be allowed at the hearing. This includes rebuttal exhibits, except, on a case-by-case basis, true rebuttal if a party shows good cause for not disclosing in advance.**

Juvenile Cases

All hearings will be held by video conference except as specified herein. All parties, counsel, and witnesses in the conference will need to be using a device with a camera and a microphone, such as a laptop computer, desktop computer with those features, an iPad or other tablet, a smart phone, or other similarly equipped device. An email address is also required to obtain the video conference invitation. A participant without video conference capability, may participate telephonically on a case-by-case basis with permission from the Court.

Counsel must be present at the client's location unless counsel has consulted with the client in advance and the client is prepared to consent on the record to appearing without counsel physically present at the client's location.

The Sweetwater County and Prosecuting Attorney's office, defense counsel if any, guardian ad litem if any, DFS caseworker if any, and Sweetwater County Juvenile Probation if any, must provide in **one email** to ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery or

aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson the telephone numbers and email addresses of **all participants or attendees of the hearing, including spectators** by 12 p.m. (noon) the day before the hearing.

At least 5 days before any evidentiary hearing, counsel and unrepresented parties must provide copies by email of any exhibits which may be used at the hearing to each other lawyer, unrepresented party, or witness to be used for that evidence, and to the Court at ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery and aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson. **No exhibit which has not been provided in advance as required will be allowed at the hearing. This includes rebuttal exhibits, except, on a case-by-case basis, true rebuttal if a party shows good cause for not disclosing in advance.**

The Court recognizes the mandates set forth under the Child Protection Act, Juvenile Justice Act, and Children in Need of Supervision Act that an adjudicatory hearing, including jury trial, be held within 60 days unless the court finds good cause to delay or postpone the hearing, and in no case after more than 90 days. However, jury trials require gatherings of 10 or more people which currently should be avoided according to health care authorities. All cases set on the April trial docket will be continued to the May and June trial dockets depending on time constraints. Except, any cases that would exceed 90 days if continued from April to May or June will be set for a hearing for the purpose of entertaining any motion to the juvenile court for a prompt hearing and/or any motion for leave to dismiss without prejudice and refile that may be filed. *In re DSB*, 2008 WY 15, ¶¶ 23-28, 176 P.3d 633, 638-39 (Wyo. 2008).

All MDT meetings shall no longer take place in person and shall take place by video and/or phone. The MDT coordinator shall coordinate how this shall occur with the assistance of the Sweetwater County Attorney's Office and Department of Family Services. The Sweetwater County Attorney's Office and Department of Family Services will work together to create a call system that allows for multiple party teleconference and/or video conference calls and participation by all necessary participants.

Criminal Cases

All hearings will be held by video conference except as specified herein. All parties, counsel, and witnesses in the conference will need to be using a device with a camera and a microphone, such as a laptop computer, desktop computer with those features, an iPad or other tablet, a smart phone, or other similarly equipped device.

An email address is also required to obtain the video conference invitation. A participant, *except the Defendant or counsel*, without video conference capability, may participate telephonically on a case-by-case basis with permission from the Court.

Counsel must be present at the client's location unless counsel has consulted with the client in advance and the client is prepared to consent on the record to appearing without counsel physically present at the client's location.

The Sweetwater County and Prosecuting Attorney's office and defense counsel if any must provide in **one email** to ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery or aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson the telephone numbers and email addresses of **all participants or attendees of the hearing, including spectators** by 12 p.m. (noon) the day before the hearing.

At least 5 days before any evidentiary hearing, counsel and unrepresented parties must provide copies by email of any exhibits which may be used at the hearing to each other lawyer, unrepresented party, or witness to be used for that evidence, and to the Court at ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery and aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson. **No exhibit which has not been provided in advance as required will be allowed at the hearing. This includes rebuttal exhibits, except, on a case-by-case basis, true rebuttal if a party shows good cause for not disclosing in advance.**

The Court recognizes the mandates set forth under Rule 48 of the Wyoming Rules of Criminal Procedure. However, jury trials require gatherings of 10 or more people which currently should be avoided according to health care authorities. All cases set on the April trial docket will be continued to the May and June trial dockets depending on speedy trial constraints. Except, any cases that would exceed 180 days if continued from April to May or June will be set for a hearing. If it becomes necessary to do so, the Court may consider continuances exceeding 180 days on a case by case basis under W.R.Cr.P. 48(b)(4)(B)(iii) and 48(b)(4)(C). *Osban v. State*, 2019 WY 43, ¶ 15, 439 P.3d 739, 743 (Wyo. 2019).

All hearings will be held by video conference except as prohibited by Rule 43.1 of the Wyoming Rules of Criminal Procedure, which governs the use of video conferencing in criminal cases:

(b) At the discretion of the court, the judge and/or the defendant may appear by video conferencing as follows:

...

(3) *Arraignment and plea.* Video conferencing may be used to arraign a defendant and to enter any plea, if the defendant consents thereto in writing or on the record. Video conferencing at arraignment shall also be subject to the conditions of subsection (c) of this rule.

(4) Video conferencing shall not be used for bench trials, jury trials, or felony sentencings.

(5) *Felony probation revocation.* If the defendant consents thereto in writing or on the record, video conferencing may be used for non-evidentiary hearings in felony probation revocation proceedings.

(6) *Misdemeanors.* If the defendant consents thereto in writing or on the record, video conferencing may be used to conduct the following proceedings in misdemeanor cases: the defendant may waive his Rule 11 rights, enter a plea, admit to probation revocation allegations pursuant to W.R.Cr.P. 39, and be sentenced at a location other than the court by use of video conferencing. Such use of video conferencing shall be subject to the conditions of subsection (c) of this rule.

(7) With or without the defendant's consent, video conferencing may be used for hearings pursuant to W.S. § 7-11-301 et. seq. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.

(8) With or without the defendant's consent, video conferencing may be used for hearings on W.R.Cr.P. 35 motions seeking reduction or modification of sentence and for any proceeding where the defendant's presence is not required by W.R.Cr.P. 43. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.

(c) Conditions regarding counsel. When the defendant appears by video conferencing, the defendant's attorney may as well, although the attorney cannot be ordered to so appear. Where a defendant's consent to video conferencing is required, the following shall apply:

(1) If the defendant's attorney is not present at the defendant's location, video conferencing may be conducted only if the defendant waives the right to have his attorney physically present at defendant's location. Such waiver must be in writing or on the record; and

(2) If the defendant's attorney is not present at the defendant's location, the defendant and the defendant's attorney have the right to consult privately with one another and may request a recess to do so if the opportunity does not exist during the course

of the proceeding. The defendant may waive the right to consult privately with counsel during the hearing.

Cases will only be scheduled for arraignment, change of plea, non-evidentiary hearings in felony probation revocation proceedings, or sentencings in cases where charges will be reduced to misdemeanors pursuant to a plea agreement when (1) counsel files a request for hearing along with the defendant's consent in writing or a representation that counsel has consulted with the defendant and the defendant is prepared to consent on the record or (2) counsel files a request for hearing demonstrating extraordinary circumstances sufficient to outweigh public health and safety concerns justify an in-person hearing.

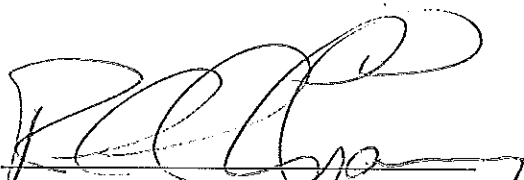
Rule 43.1 prohibits holding bench trials, jury trials, felony sentencings, or evidentiary hearings in felony probation revocation by video conference. Reasonable attempts will be made to delay scheduling cases for bench trial, jury trial, or felony sentencing until the present health and safety concerns are reduced, at least until after April 10, 2020, unless counsel files a request for hearing demonstrating extraordinary circumstances sufficient to outweigh public health and safety concerns justify an early in-person hearing, giving due regard to statutory and Constitutional rights and due process. The Court will consider on a case-by-case basis whether there is good cause to extend the time for an evidentiary hearing in a felony probation revocation under W.R.Cr.P. 39(a)(4)(B)(i), taking into consideration whether a defendant is in custody.

Involuntary Hospitalization


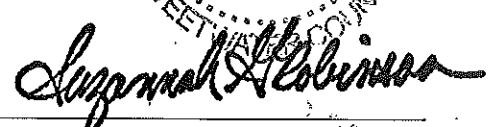
Involuntary Hospitalization proceedings shall occur by video conference or teleconference if such can be arranged with the necessary facility.

Dated this 20 day of March, 2020.

By the Court


Richard L. Lavery
District Court Judge

By the Court



Suzannah G. Robinson
District Court Judge

Appendix A – Protocols for Video Conference Hearings

- (1) U.R.D.C. 802. Pursuant to U.R.D.C. 802, the Court, in its discretion, can use conference calls for civil matters and some criminal matters. During the COVID-19 pandemic, the Court finds it appropriate to hold hearings by telephone or video where possible, absent compelling circumstances to require in-person hearings. For evidentiary hearings and certain contested matters, the Court finds that video conferencing will be more appropriate than telephone conferences.
- (2) Appearing through Microsoft Teams. Wyoming courtrooms are equipped with a Microsoft HUB which allows for, among other things, appearances by video conference. The video conferencing platform used by the Wyoming courts is Microsoft Teams.
- (3) In civil cases, counsel and unrepresented parties must consult with each other and provide all telephone numbers and email addresses in one email to ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery or aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson of all participants or attendees of the hearing, including spectators by 12 p.m. (noon) two working days before the hearing.
- (4) In criminal and juvenile cases, the Sweetwater County and Prosecuting Attorney's office, defense counsel if any, guardian ad litem if any, DFS caseworker if any, and Sweetwater County Juvenile Probation if any, must provide in one email to ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery or aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson the telephone numbers and email addresses of all participants or attendees of the hearing, including spectators by 12 p.m. (noon) the day before the hearing.
- (5) The Court will then send counsel, the parties, the witnesses and other attendees a Teams invite to facilitate their appearance at the hearing. The invite will arrive by email.
- (6) That invite includes a link to click on a few minutes before the hearing begins. The link will connect the participant to the conference. Note that the invite will identify a period of time longer than the hearing. That does not indicate the hearing has been extended.
- (7) All parties, counsel, and witnesses shall use the video feature for appearance at the hearing (not the audio-only feature). Note that the Court's Staff Attorney

- may appear as a conference participant on your screen but without video.
- (8) Everyone should mute their microphone, through the mute icon on the Teams screen, until they need to speak.
 - (9) Everyone must observe ordinary courtroom decorum while appearing by video. Failure to observe ordinary courtroom decorum will be deemed waiver of attendance at the hearing. The Court will remove from the video conference anyone who fails to observe ordinary courtroom decorum as directed by the Court.
 - (10) *Technical Requirements.* All parties, counsel, and witnesses in the conference will need to be using a device with a camera and a microphone, such as a laptop computer, desktop computer with those features, an iPad or other tablet, a smart phone, or other similarly equipped device. A participant without video conference capability may participate telephonically on a case-by-case basis with permission from the Court. An internet connection will be required. We recommend using an internet connection as opposed to wireless data. Some jurisdictions have identified connectivity issues when using cellular data for the connection. An email address is also required to obtain the Team invitation.
 - (11) Conference participants should be indoors in a quiet location, preferably without others present. If that is not possible, others in that location may not speak or coach or otherwise assist a witness or party in their testimony.
 - (12) Attendees who are not parties, counsel, or witnesses may attend by dialing the call-in number and using the Conference ID in the Teams invite email. They must mute the microphone on their telephone or computer.
 - (13) By ORDER of the Court, video or teleconference attendees are prohibited from using any audio or video recording equipment to record proceedings. Violation of this is subject to contempt of court actions which could result in a criminal charge with penalties of jail time, fines, or both.
 - (14) Exhibits. Prior to the hearing, any exhibits that counsel wish to introduce at the hearing shall be furnished to (1) the witness to be used for that evidence, (2) opposing counsel, and (3) to the Court. Each exhibit shall be clearly marked according to an exhibit list that is to be provided 5 days before a hearing. Failure to so provide exhibits pursuant to these guidelines will result in the preclusion of the exhibits. This includes rebuttal exhibits, except, on a case-by-case basis, true rebuttal if a party shows good cause for not disclosing in advance.
 - (15) Exhibits sent to the Court should be sent by email to the Court's Judicial

Assistant and the Court's Staff Attorney at ktyler@courts.state.wy.us and jd3lawclerkb@courts.state.wy.us for Judge Lavery and aeychner@courts.state.wy.us and enewell@courts.state.wy.us for Judge Robinson.

- (16) The exhibits that were provided to the Court, if admitted into evidence, shall be considered the original exhibits when video hearings are held, unless a substitution is required and approved by the Court such as for certified copies, maps, high quality photographs, or similar documents where an electronic copy is not appropriate. In the event such originals are to be provided to the Court, counsel should contact the Court's Judicial Assistant for appropriate protocols. Witnesses shall not alter or amend exhibits during their testimony without Court permission.