


APRIL 2021 UPDATE

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SOUTH CAROLINA JUDICIAL BRANCH

Columbia, South Carolina
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TRIAL COURTS OPERATIONS ORDER

- Currently has been extended for 90 days beginning March 3, 2021
- Most recent change only extended for the 90 days – there were no substantive changes made to the order

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TRIAL COURTS OPERATIONS ORDER

- In-Person Proceedings – Resumed March 15, 2021
- Jury Trials – Resumed April 5, 2021
- Still must follow guidance contained within section (c)(3) of the Order

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TRIAL COURTS OPERATIONS ORDER

- **Hearings/Non-Jury Trials**
 - Still may hold hearings and civil non-jury trials remotely and are encouraged to do so if feasible. Don't do criminal non-jury trials remotely – confrontation clause issues
- **Jury Trials**
 - Must submit plan to Court Admin and receive approval prior to holding jury trials
 - Renee Lipson – rlipson@sccourts.org ⁴

MASK ORDER

- **Continues to be in effect and likely will be for a while. Read order for when judges/attorneys may be allowed to remove.**
- **Does not matter if masks are not required in state executive buildings, or if your municipality does not have a mask ordinance in effect – persons visiting courthouses MUST wear.** ⁵

TRIAL COURTS OPERATIONS ORDER

- Even if hearing is in person, you can have one (or more) party, witness, etc. appear via remote technology
- Helpful if you have one person who would otherwise hold up a hearing because of objecting to coming to court or wearing mask
- Only in civil hearings / trials ⁶

TRIAL COURTS OPERATIONS ORDER

- Extensions of time by consent under SCRPC Rule 6(b) are now unlimited – parties/counsel can extend deadlines by consent
- Service Using AIS E-mail – Lawyers may serve other lawyers using e-mail. Not available for pro se litigants

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TRIAL COURTS OPERATIONS ORDER

- LAWYERS may sign docs using s/, stamp, or other electronic signature. NOT judges, judges who happen to be lawyers, law enforcement, or anyone else.

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TRIAL COURTS OPERATIONS ORDER

- Filing with the court via email/fax
 - Completely up to court whether you want to allow this or not.
 - How many of you are doing this? Has it been useful?
 - We can put instructions for your court on our court status page if you would like

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TRIAL COURT'S OPERATIONS ORDER

- (h)(2) – Transmission of Warrants for General Sessions Offenses
 - The allowance for serving incarcerated/jailed defendants via mail is about to be made permanent.
 - Absent action by the General Assembly, rule change will take effect on April 30, 2021.

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TRIAL COURT'S OPERATIONS ORDER

- New Rule 3(a), SCRCrimP – italicized language added to Rule. Otherwise unchanged.

Transmittal to Clerk, Magistrates, municipal judges, and other officials authorized to issue warrants shall, in all cases within the jurisdiction of the Court of General Sessions, forward to the Clerk of the Court of General Sessions all documents pertaining to the case including, but not limited to, the arrest warrant and bond, within fifteen (15) days from the date of arrest in the case of an arrest warrant and date of issuance in the case of other documents. *If it is determined that the defendant is already in the custody of the South Carolina Department of Corrections or a detention center or jail in South Carolina, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions.* Transmittal shall be pursuant to procedures now or hereafter promulgated by the Office of South Carolina Court Administration.

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TRIAL COURT'S OPERATIONS ORDER

- New Rule 3(a), SCRCrimP – Cont'd
- Different from Trial Court Operations Order in one respect – the new Rule does not require the warrant to be mailed to General Counsel for SCDOC

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TRIAL COURT'S OPERATIONS ORDER

- New Rule 3(a), SCRCrimP takes effect April 30, 2021.
- BUT! Trial Courts Operations Order controls and should be followed until it expires or is rescinded

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TRIAL COURT'S OPERATIONS ORDER

- Guilty Pleas – (h)(3)
- Was clarified in one of the more recent revisions of the order that this section does applies to transfer court cases

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TRIAL COURT'S OPERATIONS ORDER

- Defendants (including defendants without counsel) may plead guilty via remote technology if defendant and prosecutor agree, and defendant knowingly and intelligently waives right to be physically present for plea. If counsel participates remotely, defendant must knowingly and intelligently waive right for counsel to be physically present

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TRIAL COURT'S OPERATIONS ORDER

- Defendants *with* counsel may plead guilty via affidavit or certification. This process may not be used if defendant will be sentenced to jail time.
- Whether remote or via affidavit, ensure that victims' rights are protected. If victim wishes to make verbal statement, it is ok to have them do so via remote technology

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STATE V. BELLARDINO

- Summary courts have inherent power to order competency to stand trial evaluations
- For indigent defendants, prosecuting agency must pay for evaluation if they wish to pursue prosecution of the defendant. If defendant not indigent, defendant can be ordered to pay.

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WARRANTS FOR FACEBOOK, ETC.

- A summary court cannot issue warrants for things located outside its jurisdiction
- Circuit Court judges have the power to do this because of a specific federal statute authorizing it
- Law Enforcement will ask your courts for these warrants out of expediency but don't do it. Also, don't issue warrant to local cell phone store for data that is stored out of state

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ADA ISSUES – REQUESTING AN ACCOMODATION

- No “special” form required
- Your county or municipality may have a form
- Does not have to be in writing – may be requested orally
- May be requested via email

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ADA ISSUES – REQUESTING AN ACCOMODATION

- The ADA prohibits from asking the underlying condition or disability that is the basis for the accommodation that is being requested.
- Your county or municipality may have a form
- Does not have to be in writing – may be requested orally
- May be requested via email

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ADA ISSUES – SERVICE ANIMALS

- Only dogs and miniature horses qualify as “service animals”
- Not required to have certificate, vest, etc.
- Shall be on leash unless handler is unable to use leash, or would interfere with performance of tasks
- Animal may be excluded if it is out of control or not housebroken. If animal excluded, person must be allowed to participate w/o animal

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FIRST AMENDMENT "AUDITS"

- Citizens generally do have a right to film the PUBLIC areas of government buildings.
- They do not have the right to be disruptive, threatening, or harassing. They do not have the right to film non-public areas or film court proceedings without complying with SCACR 605.

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