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Court Administration Updates

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SC Judicial Branch Coronavirus Information

- [Sccourts.org/coronavirus/covid-19/](https://sccourts.org/coronavirus/covid-19/)
- Court information: Judicial Branch contact info, court closings, filings, payments, local county announcements and administrative orders
- Orders and memos

Required Use of Protective Masks in County and Municipal Courthouses

- **IT IS ORDERED** all persons employed in, conducting business in, or otherwise visiting or present for any reason in county and municipal courthouses statewide are **required** to wear a protective mask or other facial covering while inside the courthouse, subject to the following provisions:
- During courtroom proceedings, the judge may require the removal of masks or face coverings for a brief period of time for the fair presentation of the case. In such instances social distancing should be observed.
- Judges and court reporters may remove their masks while in the courtroom in order to fulfill their duties. In such instances clear face shields should be worn if available and social distancing should be observed to the extent practicable.
- Face coverings need not be worn by judges and courthouse personnel while in private work areas where the person is not likely to come within six feet of other staff.
- Persons may be required by judges, courthouse staff, or law enforcement to briefly remove their mask when necessary for identification purposes.

· **IT IS FURTHER ORDERED** all persons employed in, conducting business in, or otherwise visiting or present for any reason in county and municipal courthouses statewide shall be screened for fever by courthouse staff using an infrared or temporal thermometer. Anyone who registers a temperature of 100.4 degrees Fahrenheit or above shall not be admitted. However, if a person believes their temperature is temporarily elevated due to warm weather or a medical condition, they may be retested after allowing for a brief period of time to cool off. If the person was there to attend a court proceeding, the court should be notified of the person's name and the proceeding they were to attend, and the judge may continue the matter. Any thermometer or other equipment used to screen visitors shall be regularly disinfected.

· To ensure that proper social distancing may be maintained, and that there are sufficient supplies for those who must be present in courthouses, Clerks of Court and Chief Judges for Administrative Purposes or presiding judges may limit the number of non-litigants allowed inside courthouses.

· Any person who refuses to comply with these directives is subject to contempt for violation of this order. This order does not prohibit anyone from wearing other PPE, including but not limited to gloves, in addition to their mask or other facial covering.

Resolution of Certain Summary Court Level Offenses During COVID-19 Outbreak

· **IT IS ORDERED** that those charged with criminal offenses, traffic violations, ordinance violations, and administrative violations within the jurisdiction of the summary courts may plead guilty by affidavit or certification. This procedure may only be utilized by persons represented by an attorney and desiring to plead guilty where the charge does not carry imprisonment as a possible punishment or where the prosecutor or prosecuting law enforcement officer and defense attorney have agreed that the recommended sentence will not result in jail time. If applicable, the prosecutor or prosecuting law enforcement officer must comply with the Victims' Bill of Rights under Article 1, Section 24 of the South Carolina Constitution.

· I find that the Affidavit/Certification of Guilty Plea (SCCA/656) bearing a creation date of 5/2020 is approved for use in the summary courts of South Carolina.

Operation of the Trial Courts During the Coronavirus Emergency

Last Amended April 22, 2020

Terminology

- (1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.
- (2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.
- (3) Summary Court: the magistrate and municipal courts.
- (4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

General Guidance

Jury Trials

- All jury selections and jury trials in all criminal and civil cases are continued until further notice.

Non-Jury Trials

The appropriate Chief Judge for Administrative Purposes, or in the case of any court that does not have a Chief Judge for Administrative Purposes, the appropriate judge responsible for scheduling matters, may authorize a non-jury trial to occur if the parties consent, or the matter involves an emergency or other circumstance warranting immediate resolution. To proceed, the Chief Judge or the appropriate judge responsible for scheduling matters must find that the trial can be conducted in a manner to minimize the risk such as limiting the persons present to the parties, counsel and necessary witnesses, or that the trial may be conducted using remote communication technology to avoid the need for a physical appearance of all or some of the parties, counsel or witnesses. If an in-person non-jury trial is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. Hearings must be staggered to minimize the number of people appearing at the same time.

Hearings

A hearing on a motion or other matter may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel. Only if a judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination, will an in-person hearing be conducted. If an in-person hearing is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. The total number of participants should not exceed ten (10) people. Hearings must be staggered to minimize the number of people appearing at the same time.

Minimizing Hearings on Motions

While the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

Determination of Probable Cause Following Warrantless Arrest

· When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

Preliminary Hearings

· Until further order of this Court, preliminary hearings will not be conducted.

Remote Administration of Oaths

· Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

Courthouses

- (A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.
- (B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.
- (C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court. Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

Statute of Limitations

- This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

Signatures of Lawyers on Documents

- A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

Optional Filing Methods

· During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

Certification in Lieu of Affidavit

· If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

Arrest and Search Warrants

· Due to this emergency, it may not be possible for an officer seeking an arrest warrant or a search warrant to appear before the judge to be sworn and sign the warrant. Therefore, a judge may use the procedures provided in section (c)(7) above to remotely administer the oath to the officer and, if appropriate, the judge may take sworn testimony using remote communication technology to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

Summary Court

Bond Hearings

· Bond hearings, which shall be conducted in the manner specified by (c)(3) above, should be held at least once a day. In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

Transmission of Warrants for GS Offenses

· Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, 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 for processing under Rule 3, SCRCrimP.

Guilty Pleas

If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held by the summary court. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

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Effective Date and Revocation of Prior Order and Memoranda. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court. This order replaces the following order and memoranda previously issued.

- (1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."
- (2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

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