

ORIGINAL



FILED
FOR RECORD
MAR 18 2020
MELANIE REED, DISTRICT CLERK
ELLIS COUNTY, TEXAS

40TH DISTRICT COURT
378TH DISTRICT COURT
443RD DISTRICT COURT
COUNTY COURT AT LAW NO. 1
COUNTY COURT AT LAW NO. 2

ELLIS COUNTY COURTS BUILDING
109 S. JACKSON
WAXAHACHIE, TX 75165

JOINT COVID-19 MITIGATION AND DOCKET CONTROL PLAN

*Plan Delineating How the Ellis County District Courts and County Courts at Law Will
Function During the Initial Stages of the Coronavirus Public Health Emergency*

March 18, 2020

Whereas, President Trump declared a national emergency on Friday afternoon, March 13, 2020 to combat the outbreak of the coronavirus; and

Whereas, prior to President Trump’s declaration on Friday, Governor Abbott declared a public health disaster in Texas in response to the imminent threat of the coronavirus pandemic; and

Whereas, the Texas Supreme Court and the Texas Court of Criminal Appeals issued their joint First Emergency Order Regarding the COVID-19 State of Disaster on Friday after the Governor’s declaration; and

Whereas, on Friday afternoon the District Court and County Court at Law Judges in Ellis County (the “Judges”) issued their notice to attorneys and members of the public regarding the cancellation of all non-essential legal proceedings scheduled for Monday (March 16th) and Tuesday (March 17th), with the understanding that a more formal and comprehensive plan would be issued; and

Whereas, the Judges in Ellis County remain fully committed to:

1. Keeping the courts open and functioning smoothly to the maximum extent practical under the circumstances in order to ensure the rule of law throughout Ellis County and the continuity of the justice system;
2. Working diligently to guarantee the system of justice maintains its role in protecting life, liberty, property, and individual rights; and

3. Administering justice in a fair, timely, and responsible manner while at all times operating in such a way as to maximize the protection to the health and safety of attorneys, litigants, court participants, witnesses, support personnel, clerks, deputies, jailers, and judicial staff, as well as the community at large from the spread of the coronavirus (COVID-19).

NOW, THEREFORE, WE, the undersigned Judges hereby adopt the following Joint COVID-19 Mitigation and Docket Control Plan for the purpose of delineating how the Ellis County District Courts and County Courts at Law will function during the initial stages of the coronavirus public health emergency:

1. **Jury Trials**. All civil, criminal, and family law jury trials which are scheduled to begin with jury selection at any time on or before April 30, 2020 are hereby postponed, and each respective court coordinator is directed to work with counsel via email or phone in order to reschedule agreed jury trial dates.
 - a. The Judges plan to issue another communication on April 15, 2020 to confirm whether jury trials scheduled to begin with jury selection *after* April 30, 2020 will in fact proceed as scheduled.
2. **Felony Criminal Cases**. All felony criminal dockets such as those for arraignments, pretrial hearings including suppression hearings, revocations, and trial announcements which are scheduled to occur on or before April 30, 2020 are postponed and will be rescheduled to dates to be noticed by each respective court coordinator.
 - a. All writs of habeas corpus hearings and hearings on writs to reduce bond amounts are considered essential court functions and will take place weekly as follows:
 - Note: we encourage counsel for the state and defense to work by email collaboratively to achieve a responsible *agreed* Order Setting Bond and Conditions.
 - i. Each Tuesday morning at 9:00 a.m., all properly noticed writs will be handled by the 443rd District Court.
 - ii. Each Thursday morning at 9:00 a.m., all properly noticed writs will be handled by the 40th District Court.
 - iii. At the Judge's discretion, writ hearings may be conducted by video-conference or other electronic means.

- iv. All writs must be accompanied by a sworn verification or certificate of conference, stating that reasonable and responsible efforts were undertaken by Defense Counsel to reach an agreement on the merits with the ADA, but such efforts were unsuccessful. The verification/certification must be submitted at or prior to the time that a hearing is requested. Failure to provide verification/certification may result in delay or the writ being denied.
 - b. Agreed pleas received from inmates in custody are considered essential court functions and will take place weekly as scheduled.
 - c. After taking into consideration the totality of circumstances, any other felony criminal matter will also be considered an essential court function, which the Judge determines is necessary to be heard by the trial court in order to achieve justice, and prevent a time sensitive and substantial right of the state or defense from being denied or unduly prejudiced.
- 3. **Grand Jury**. All meetings of the currently impaneled grand jury which are scheduled to occur on or before April 30, 2020 are canceled, and will be re-scheduled by the Ellis County and District Attorney's Office to a date after April 30, 2020.
- 4. **Misdemeanor Criminal Cases**. All general misdemeanor criminal dockets for legal matters such as arraignments and pretrial hearings which are scheduled to occur on or before April 30, 2020 are postponed, and will be rescheduled to dates to be noticed by the court coordinator. The following legal matters are considered essential court functions and will be heard by the Judge:
 - a. Writs of habeas corpus, which will be handled as follows:
 - i. Counsel will communicate by email with the court coordinator to arrange a hearing date and time.
 - ii. All writs must be accompanied by a sworn verification or certificate of conference, stating that reasonable and responsible efforts were undertaken by Defense Counsel to reach an agreement on the merits with the ADA, but such efforts were unsuccessful. The verification/certification must be submitted at or prior to the time that a hearing is requested. Failure to provide verification/certification may result in delay or the writ being denied.

- b. Any dispositive trials, proceedings, or hearings for incarcerated defendants where an outcome favorable to the Defendant would result in immediate release from incarceration.
 - c. After taking into consideration the totality of circumstances, any other misdemeanor criminal matter will also be considered an essential court function, which the Judge determines is necessary to be heard by the trial court in order to achieve justice, and prevent a time sensitive and substantial right of the state or defense from being denied or unduly prejudiced.
 - d. Agreed pleas received from inmates in custody are considered essential court functions and will take place weekly as scheduled.
 - e. At the Judge's discretion, hearings may be conducted by video-conference or other electronic means. All agreed orders may be submitted electronically.
5. **CPS Hearings, Mental Health Proceedings, and Other Essential Court Matters.** Due to their nature and timing, the legal matters identified below will be handled on a case-by-case basis. Counsel are encouraged to communicate with the court coordinator via email. These essential court matters include:
- a. CPS removals and 14-day adversary hearings;
 - b. Mental health proceedings;
 - c. Family violence protective orders and all other protective orders;
and
 - d. All probate and guardianship matters that require emergency action.
6. **Juvenile Proceedings.** During the time period in which this Joint COVID-19 Mitigation and Docket Control Plan is in effect, the following juvenile matters are considered essential and will be heard by the Judge on a weekly basis:
- a. Juvenile detention hearings; and
 - b. Pleas and case resolution for those juveniles in a detention facility.

7. **Family Law Matters.** Guidance for family law matters while this Joint COVID-19 Mitigation and Docket Control Plan is provided below:
- a. In terms of judicial hearings, the Judge will focus on the following core functions:
 - i. Hearings on temporary restraining orders and temporary injunctions;
 - ii. Hearings on temporary protective orders and family violence protective orders; and
 - iii. Hearings involving writs of attachment or writs of habeas corpus.
 - b. The following *agreed* prove-ups will be handled by submission:
 - i. Agreed final divorces, with the proposed final decree containing an attached Prove-up Affidavit setting forth all the statutory elements; and
 - ii. Agreed final modifications, with the proposed final order containing an attached Prove-up Affidavit setting forth all the statutory elements.
 - c. The following *contested* matters will be handled and ruled upon by submission:
 - i. Applications or motions for temporary orders, with testimony to be provided as follows:
 - The testimony of all direct witnesses must be in writing, in the form of sworn affidavits subject to penalty of perjury, and e-filed of record at least 3-days prior to the submission date.
 - The testimony of all rebuttal witnesses must be in writing, in the form of sworn affidavits subject to penalty of perjury, and e-filed of record at least 1-day prior to the submission date.
 - d. Any request for temporary emergency relief which is deemed by the Judge to constitute an essential court function will be provided an in-court hearing, or alternatively, at the discretion of the Judge, a hearing by video-conference or other electronic means.

- e. At the discretion of the Judge, those hearings identified in items 7.a. and 7.d. above may be conducted using Skype, so long as the testimony does not exceed 20-minutes per side.
 - f. With respect to in-court hearings, no party may bring more than 5 individuals to court, including counsel.
 - g. All final trials on the merits are postponed, and may be re-scheduled by either party once the current Joint COVID-19 Mitigation and Docket Control Plan is lifted.
 - h. The 378th District Court will communicate an update regarding an alternative video-conference temporary order hearing process, on its web page, by 5:00 p.m. on Friday, March 20, 2020.
8. **Appointment of Counsel for Indigent Defendants.** Through the efforts of the Indigent Defense Coordinator and those Judges handling felony and misdemeanor criminal cases, indigent defendants will continue to receive the timely appointment of counsel pursuant to: the Sixth Amendment to the United States Constitution; Article I, Section 10 of the Texas Constitution; Art. 1.051(c) of the Texas Code of Criminal Procedure; and Art. 26.04 of the Texas Code of Criminal Procedure.
9. **Search Warrants.** All evidentiary search warrants including those seeking electronic customer data will be handled by the District Court Judges, with the County Court at Law Judges serving as backup, as follows:
- a. Unless there is an emergency, or a genuine urgency exists – search warrants will be handled Monday thru Friday, from 9:00 a.m. till 12:00 noon.
10. **Civil Lawsuits.** All civil jury trials have been postponed as more fully described in Section 1 above. In addition, all final non-jury bench trials scheduled to begin on or before April 30, 2020 are hereby postponed, and the responsibility rests with counsel representing the civil litigants to communicate by email and arrive at an agreed reset date, subject to final approval by each respective court coordinator. The Judges plan to issue another communication on April 15, 2020 to confirm the status of non-jury bench trials currently scheduled to begin *after* April 30, 2020. The Judges prefer for counsel to wait or hold-off on initiating the reset process, until *after* receiving the upcoming April 15th communication.
- a. Temporary restraining orders (TRO's) are considered essential court functions, and will proceed in accordance with the Texas Rules of Civil Procedure (Rules). All TRO's will be e-filed of record, and there will be no need for counsel to “walk them through the system”.

At the discretion of the Judges and in accordance with the Rules, the Judges will make telephone contact with counsel for plaintiff and/or defense as deemed necessary.

- b. Hearings on temporary injunctions are also considered essential court functions; however, depending upon the case complexity and other key factors identified, each temporary injunction will be handled on a case-by-case basis, with some or all of the following tools being utilized by the Judge:
 - i. Customized and properly noticed pleading and briefing schedules;
 - ii. Written submissions, including the use of affidavit testimony;
 - iii. Video-conferencing; and
 - iv. Traditional in-court hearings, but with properly noticed limitations on the number of witnesses and/or length of witness testimony.
11. **Chapter 81 Proceedings and Orders.** Any motion, application, legal proceeding, and/or order pertaining to any relief sought under Chapter 81 of the Texas Health and Safety Code, such as an order for protective custody or an order for temporary/extended management in connection with any COVID-19 or related matter, shall be handled by the District Courts in the following order of availability: 40th District Court, 443rd District Court, and 378th District Court.
 12. **Modifying/Suspending Deadlines and Procedures.** It is the policy, preference, and practice of the Ellis County District Courts and County Courts at Law to modify or suspend all deadlines and procedures prescribed by statute, rule, or order so as to achieve substantial justice during the period of time this Joint COVID-19 Mitigation and Docket Control Plan is in effect, and consistent with the guidelines and orders of the Texas Supreme Court and the Texas Court of Criminal Appeals.
 - a. Each presiding Judge retains full legal authority to:
 - i. Issue any written policy or procedure pertaining to the cases and legal matters assigned and docketed to such Judge under the Court Rules of Administration for Ellis County, Texas effective November 15, 2019 which has the effect of modifying, revising, or supplementing this Joint COVID-19 Mitigation and Docket Control Plan.

- ii. Make any ruling and/or issue any court order in relation to the cases and legal matters assigned and docketed to such Judge under the Court Rules of Administration for Ellis County, Texas effective November 15, 2019 which has the effect of modifying, revising, or supplementing this Joint COVID-19 Mitigation and Docket Control Plan.

Signed and effective on March 18, 2020.

40th District Court



Judge Bob Carroll

378th District Court



Judge William Wallace

443rd District Court



Judge Cindy Ermatinger

Ellis County Court at Law No. 1



Judge Jim Chapman

Ellis County Court at Law No. 2



Judge Gene Calvert