

## **Loudoun County Circuit Court First Transition Plan**

Pursuant to the Supreme Court of Virginia's Fourth Order Modifying and Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, as amended, the Circuit Court of Loudoun County adopts this First Transition Plan.

For cases that do not conform with this Transition Plan, including but not limited to cases that remain on the docket through June 7, 2020, the parties must contact the Docket Manager or file an appropriate motion to reschedule those cases.

### **I. Civil Cases**

Starting June 8, 2020, the Court will hear presently scheduled motions and trials scheduled for a Monday, Tuesday or Wednesday; and any new, properly noticed matters, by Go To Meeting video or teleconference ("Remote Hearings"). The Court will attempt to hear motions and trials previously set for Thursdays and Fridays, but may need to reschedule those matters *sua sponte* to accommodate the Thursday and Friday dockets in this First Transition Plan.

The Court may in its discretion also permit hearings by additional videographic platforms (e.g., WebEx). All hearings shall be Remote Hearings, absent leave of Court for good cause shown. If good cause is shown, the Court will authorize the in-person appearance of parties, counsel, witnesses or other individuals to facilitate the efficient and just administration of the case. This may occasionally result in a case being heard partly remotely and party in-person.

Should a party believe there is good cause for an in-person appearance or hearing, the party must file a motion with accompanying affidavit(s) at least 21 days prior to the court date, with notice to all parties. The motion should specify if leave is sought for a certain individual(s) or for a full in-person hearing. Any party opposing the motion shall file a written opposition at least 14 days prior to the court date. All motions for in-person hearings, either wholly or partly, shall be decided administratively by the Court without a hearing.

The consent of all parties for a Remote Hearing is not required. Nothing in this Transition Plan dispenses with parties' obligations to comply with Rule 4:15(b) of the Rules of the Supreme Court of Virginia.

The following cases will have docketing priority over other civil cases: petitions for protective orders; child custody or protection cases (emergencies will be prioritized); civil commitment hearings; petitions for temporary injunctive relief; proceedings related to emergency protection of elderly or vulnerable persons; petitions for appointment of a guardian or conservator; proceedings necessary to safeguard applicable constitutional protections; rules to show cause; matters deemed an emergency by the Court; and child custody/visitation matters.

The Court *sua sponte* may need to continue motions and trials, sometimes possibly at the last moment, as may be necessary to accommodate docket volume and priorities, or in the interest of public safety.

Trials will commence at 10:00 a.m. and are limited to matters lasting two days or less (to allow for luncheon recess and occasional brief daily recesses, a day equals approximately 5 to 5 1/2 hours) until further notice. The Court will endeavor to allocate time equally between the parties. All time allocations for cases will be strictly enforced. Failure of the parties to adhere to time allocations may result in mistrial, necessitating the case being retried.

Counsel (and self-represented parties) are responsible, should they choose, to subpoena witnesses to appear remotely. Failure to have a validly-served subpoena for a witness to appear remotely by video or teleconference on the trial date and time, or as soon thereafter as they may be called, is analogous to not issuing a subpoena to a witness for an in-person hearing. Simply put, the trial will move on.

When calculating time estimates, counsel are advised to consider, due to the logistics and contingencies associated with remote hearings, that any remote hearing is likely to take longer than the same hearing held in-person. Counsel are also advised that the Court will not routinely, if at all, adjourn cases that do not finish in the allotted time to another date for resumption of trial. Such a decision will remain in the discretion of the trial judge. The Court observes that continuing unfinished cases to a future date is a highly inefficient use of judicial resources.

Any presently set motions and trials through June 7, 2020 that do not conform with this Transition Plan, including motions placed on the June 5, 2020 civil motions docket that were not filed pursuant to the Court's April 29, 2020 Order establishing temporary remote hearing procedures, must be reset.

#### **A. Civil Trial Scheduling Docket**

Scheduling of civil trials will occur on the first Monday of each month (the second Monday if the first Monday is a recognized holiday) at 9:00 a.m., by the filing of a Civil Scheduling Praecipe (Remote). The civil scheduling praecipe approved by the Court is attached to this Transition Plan and will be available at the Clerk's office and on the Clerk's Office website. The Civil Scheduling Praecipe must be filed with the Clerk at least ten (10) days prior to scheduling. Absent prior leave of Court, and unless otherwise ordered, all scheduling is conducted by telephone at the following number: 571-258-3708. Counsel and self-represented parties are expected to call in and remain in the telephone queue until contacted. There is no in-person scheduling option.

#### **B. Civil Motions**

Civil motions will be heard the first, third and fourth Friday of each month according to the following schedule:

9:00 a.m. Uncontested civil motions / agreed order presentment – 2 minutes or less.

10:00 a.m. Contested non-domestic motions

2:00 p.m. Contested domestic-related motions (including but not limited to pendente lite motions on support issues) and ore tenus divorce proceedings.

Civil motions may be docketed by civil motions praecipe (the praecipe approved by the Court is attached to this Transition Plan and will be available in the Clerk's Office and on the Clerk's Office website). Civil motions will be conducted by Remote Hearing absent prior leave of Court for good cause shown. It will not be considered good cause that a party, without additional compelling justification, merely prefers to appear personally.

Except as otherwise specifically allowed herein, all motions placed on the 10:00 a.m. and 2:00 p.m. dockets shall not exceed a total of 20 minutes. Motions are limited to 3 pages; a motion shall concisely set forth only the facts relied upon and the relief requested (i.e., no authority) and shall be filed at least 14 days prior to the scheduled motions day. Briefs must accompany a motion, shall be limited to 5 pages and shall be filed at least 14 days prior to the scheduled motions day. If the motion is contested, responses to motions must be filed, shall be limited to 5 pages and shall be filed at least 7 days prior to the scheduled motion. The Court may permit deviations from the above page limits upon motion for good cause shown. All parties filing a motion shall file a proposed order with the motion. All parties opposing a motion shall file a proposed order with their opposition papers but in no event less than 7 days before argument on the motion. All proposed orders shall include a reasonable number of blank lines in the event a ruling does not conform precisely with the proposed order. Motions filed that are in compliance with the briefing schedule as set forth in a previous order entered prior to this First Transition Plan are exempt from the requirements of this paragraph.

Pendente Lite Motions for Support: In addition to the briefing requirements above, both parties shall file all exhibits no later than 7 days prior to the hearing [see Section 3(C)(a) below regarding exhibit requirements]. Exhibits should include, if applicable, a party's most recent W2 or 1099, the last two pay statements, evidence of periodic health insurance paid on behalf of the child(ren), evidence of work-related child care expenses, an income and expense statement, and a completed proposed support guideline worksheet. No exhibits that were not timely filed and exchanged shall be considered. Pendente lite motions will be allocated 30 minutes (rather than 20) as follows: moving party's testimony proffered (5 mins); cross-examination of moving party (5 mins); responding party's testimony proffered (5 mins); cross-examination of responding party (5 mins); 10 minutes reserved for any questions from the Court, review of exhibits, and ruling. The time limits herein will be strictly enforced. Parties are strongly encouraged to file written stipulations as part of their exhibit filings.

Motions to Compel: In all motions to compel discovery responses, and oppositions thereto, the parties shall file with the docket manager ([Amy.bain@loudoun.gov](mailto:Amy.bain@loudoun.gov)) an excel-

type spreadsheet (“Spreadsheet”) specifically identifying and succinctly summarizing the areas of dispute. The Spreadsheet shall be filed with the motion at least 14 days prior to argument on the motion. An opposition Spreadsheet shall be filed at least 7 days prior to argument on the motion. Parties are strongly encouraged, but not required, to file a joint Spreadsheet 14 days prior to argument on the motion. The Spreadsheet requirement shall take the place of the briefing requirement above.

All motions initially will be scheduled to begin at 9:00 a.m., 10:00 a.m. or 2:00 p.m., as appropriate and parties are expected to be available to participate remotely when contacted by the Court. Failure to be available and ready to participate remotely may, in the Court’s discretion, result in (a) a motion being heard without a responding party’s participation; (b) the motion being placed at the end of the docket; or (c) removal of the motion. Notwithstanding the above, each presiding judge may, in the judge’s discretion, organize the assigned docket and set and announce each motion for a time certain throughout the day.

The Court in its discretion may remove and specifically set for argument any motion that, in its judgment, requires a lengthier hearing. Due to volume, the Court *sua sponte* may reassign a motion(s) to the next available docket.

Parties may continue to request rulings on any motion (except motions to compel discovery responses and motions for sanctions for failure to respond to discovery) based only on filed briefs by waiving oral argument and notifying the Court of this preference. The above page requirements for briefs apply, but parties need not appear on a motions day, but rather jointly notify the Court in writing (with an email copy to the lead staff attorney at [eric.pohlner@loudoun.gov](mailto:eric.pohlner@loudoun.gov)) that oral argument is waived.

### **C. Civil Trials**

#### **1. Jury Trials**

No jury trials will occur until further notice. To allocate as much available docket time as possible for non-jury matters, jury trials that have currently been set will remain on the Court’s docket in a “COVID status” posture and, if necessary, may be rescheduled when the Supreme Court of Virginia removes the prohibition on jury trials. Notwithstanding the removal of the prohibition on jury trials, the Court may further postpone previously-set jury trials based on docket volume or priorities, or in the interest of public safety. In lieu of a jury trial, all parties may agree to a bench trial of no more than two days.

#### **2. Bench Trials**

Bench trials currently scheduled after June 7, 2020, set for two days or less, remain scheduled as Remote Hearings absent notice from the Court to the contrary. Especially for cases set for two days previously, the parties shall consider whether a remote hearing will take longer than two days and, if so, make a motion to continue/reschedule. New trials may be scheduled through the Civil Trial Scheduling process and continuances may be

requested through the Calendar Control process. The parties are responsible for the remote appearance of their respective witnesses, and responsible to make arrangements to have witnesses properly sworn if the witness is appearing by telephone.

### 3. Exhibits and Related Filing Requirements

#### a. Exhibits

Parties must pre-file with the Clerk and exchange proposed exhibits at least 7 days prior to trial. All exhibits filed with the Clerk must be in notebooks, contain two copies of an exhibit roster, be tabbed by exhibit number, have exhibit stickers attached to the first page of each proposed exhibit, and have all pages sequentially numbered (beginning with the first page of Exhibit 1). If an exhibit is expected to be moved into evidence through more than one witness, the exhibit(s) shall be organized with sub-tabs to allow exhibit pages to be more easily identified by the appropriate authenticating witness .

No additional exhibits will be considered in Remote Hearings. Failure to adhere to the above requirements may result in the exhibits not being considered.

Witnesses participating in remote hearings must be provided with exhibits in advance so that they may have access to the exhibit during their testimony and/or for identification purposes.

#### b. Equitable Distribution Cases

In any case involving equitable distribution, parties must file at least 7 days prior to trial a joint equitable distribution schedule identifying each entry on which the parties *disagree*. This requirement will necessitate cooperation between the parties. Should the Court find that a party has failed to cooperate in good faith to narrow the equitable distribution issues for trial, the Court may take such action as may be appropriate, including but not limited to the exclusion of evidence and prohibiting a party from arguing or defending a particular matter(s). Nothing herein dispenses with the Court's prior policy of scheduling pre-trial conferences (which will now be remote) in all equitable distribution cases.

Parties in contested domestic relations cases involving grounds of divorce, child custody, equitable distribution, spousal support and/or child support should expect the Court to require post-trial transcripts and Proposed Findings of Fact and Conclusions of Law cross-referenced to the trial transcripts and exhibits. Parties are urged to prepare their respective case in anticipation of the Court ordering the above post-trial filings.

### **D. Calendar Control**

Any party may request (a) the scheduling of an alleged emergency matter; (b) a continuance; or (c) the scheduling of a criminal motion requiring witness testimony by contacting Calendar Control at 571-258-3708 any Monday, Tuesday or Wednesday at 9:00 a.m. Continuance requests (even if contested) will be heard at Calendar Control if all

parties entitled to notice participate in the call. The telephone queue system protocols applicable to civil and criminal trial scheduling apply.

If a continuance request is contested, or if it is unknown whether the continuance request is contested, and both parties do not participate in the call, a party may file a Contested Continuance Motion Praeipce (Remote) upon 7 days notice and set the motion for any Thursday at 2:00 p.m.

## **II. Criminal Cases**

### **A. Criminal Trial Scheduling Docket**

Scheduling of criminal trials will occur at 9:00 a.m. on the Tuesday of each month immediately following the grand jury by the filing of a Criminal Scheduling Praeipce (Remote). The scheduling praeipce approved by the Court is attached to this Transition Plan and will be available at the Clerk's office and on the Clerk's Office website. The Criminal Scheduling Praeipce must be filed with the Clerk at least ten (10) days prior to scheduling. Absent prior leave of Court, and unless otherwise ordered, all scheduling is conducted by telephone at the following number: 571-258-3708. Counsel and self-represented parties are expected to call in and remain in the telephone queue until contacted. There is no in-person scheduling option.

### **B. Bond Motions**

Bond motions/bond appeals shall be filed with the Clerk and a copy of the motion simultaneously emailed to the Court's Docket Manager at [amy.bain@loudoun.gov](mailto:amy.bain@loudoun.gov). Bond motions and bond appeals will be scheduled on the docket as priority matters at 9:00 a.m. on Mondays, Tuesdays and Wednesdays.

### **C. Criminal Motions Requiring Witness Testimony**

Criminal motions requiring witness testimony may be scheduled on a criminal scheduling day using a scheduling praeipce or by using the Court's Calendar Control procedures [see Section I(D) above]. For criminal motions requiring witness testimony, the transmission requirements of Section C, No. 6, as well as the briefing and page requirements of Section D, No. 7 below shall apply absent leave of Court.

### **D. Thursday Criminal Docket Procedures**

1. At least fourteen (14) days prior to the scheduled hearing, parties may file a Criminal Docket Praeipce (Remote) and motion to docket a plea, sentencing, probation violation matter, or non-witness criminal motion. For all felony guilty pleas, the parties must also file (a) a written plea form or agreement, or both; (b) a detailed, written proffer of facts; (c) if applicable, initialed copies of proposed amendments to warrants/indictments; and (d) if applicable, a waiver of indictment signed by the defendant. Defense counsel shall ensure that a copy of any document (in the most current version) reasonably expected to be

referred to during the hearing is provided to the defendant for reference. This applies to detained defendants as well as those at liberty.

2. Any character letters, reference letters, exhibits, sentencing guidelines, restitution orders, and/or victim impact statements relevant to sentencing must be first discussed between the parties and provided to opposing counsel and filed with the Clerk at least seven (7) days prior to the hearing.

3. (a) Pleas (including pleas combined with sentencings and pleas combined with probation violations) may be docketed for Thursdays at 10:00 a.m. Defendants not in custody must appear in-person. Defendants in custody will appear remotely. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

(b) Agreed dispositions for pleas to traffic infraction appeals and Class 3 and 4 misdemeanor appeals may be submitted to the Court in writing for consideration of and entry of the disposition. Pleas without agreed dispositions remain on the misdemeanor appeals docket.

4. Sentencings and probation violations may be docketed for Thursdays at 2:00 p.m. Defendants not in custody must appear in-person. Defendants in custody will appear remotely. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

5. Due to volume, the Court *sua sponte* may reassign proposed criminal matters to another Thursday.

6. Non-witness criminal motions also may be heard Thursdays at 2:00 p.m. The praecipe and motion should be filed with the Clerk and shall be simultaneously sent by PDF transmission to the Loudoun Circuit Court Lead Staff Attorney at [Eric.pohlner@loudoun.gov](mailto:Eric.pohlner@loudoun.gov). The parties may submit joint written stipulations applicable to the motion.

7. Praecipes and motions for non-witness criminal motions set on Thursdays must be filed fourteen (14) days prior to the scheduled hearing. Each party shall be allowed ten (10) minutes to argue non-witness criminal motions unless the presiding judge allows the parties additional time. Motions are limited to 3 pages; a motion shall concisely set forth only the facts relied upon and the relief requested (i.e., no authority). Briefs must accompany a motion, shall be limited to 5 pages and shall be filed at least 14 days prior to the scheduled motions day. If the motion is contested, responses to motions must be filed, shall be limited to 5 pages and shall be filed at least 7 days prior to the scheduled motion. The Court may permit deviations from the above page limits upon motion for good cause shown. All parties filing a motion shall file a proposed order with the motion. All parties opposing a motion shall file a proposed order with their opposition papers but in no event less than 7 days before argument on the motion. All proposed orders shall include a

reasonable number of blank lines in the event a ruling does not conform precisely with the proposed order.

8. Victims, probation officers and court reporters may attend court hearings in compliance with social distancing standards. Court reporters may make arrangements for participation by teleconference, or web interface as otherwise permitted by this Transition Plan.

#### **E. Criminal Jury Trials**

No jury trials will occur until further notice. Jury trials that have currently been set will remain on the Court's docket in a "COVID status" posture and, if necessary, may be rescheduled when the Supreme Court of Virginia removes the prohibition on jury trials. Notwithstanding the removal of the prohibition on jury trials, the Court may further postpone previously-set jury trials based on docket volume or priorities, or in the interest of public safety. In lieu of a jury trial, all parties may agree to a bench trial of no more than two days.

#### **F. Criminal Bench Trials**

Felony and Class 1 and 2 misdemeanor criminal bench trials shall enjoy priority on the Court's docket. Currently scheduled bench trials set to commence after June 7, 2020 and lasting two days or less may proceed absent notice or leave from the Court otherwise. Should counsel or parties wish that all or some parts of a criminal bench trial be held remotely (it is not required), consideration should be given to any prior time estimates to determine if such time estimates remain reasonable.

Misdemeanor appeals that cannot be resolved by agreed disposition submitted to and approved by the Court will be heard on the misdemeanor appeals docket (currently the second Friday of each month) provided the matter can be resolved in 15 minutes or less. Any misdemeanors appeal requiring a bench trial of greater than 15 minutes will be specially set.

Defendants not in custody must appear in-person. Defendants in custody will appear remotely. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers are strongly encouraged, but not required, to appear remotely.

### **III. Miscellaneous**

Since parties will now have the ability to schedule civil trials on the civil trial scheduling docket, address averred emergent matters and motions to continue through the Calendar Control process, and directly schedule civil motions on the Friday motions day dockets, the previous Tuesday – Thursday telephone civil scheduling is discontinued.

#### IV. Facilities

##### A. Courthouse Access

No parties, counsel or witnesses for a scheduled Remote Hearing may appear in-person at the Courthouse without prior leave of Court. The courthouse remains open to members of the press and to “court-watch” groups.

##### B. Health and Social Distancing

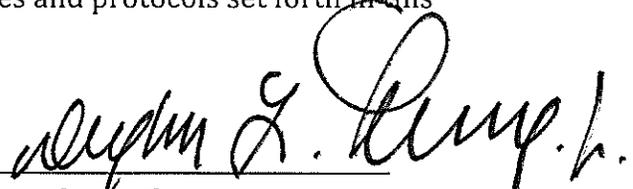
By Order previously entered, the Loudoun County Circuit Court, the Loudoun General District Court, and the Loudoun Juvenile and Domestic Relations District Court, require all persons entering and remaining in all public areas of the Courthouse to wear a mask or face covering at all times over the nose and mouth. The requirement to wear masks and face coverings include inside the courtrooms unless excused or permitted by the presiding judge. Notwithstanding the above, the requirement to wear masks in the courthouse does not apply to persons with health conditions or medical conditions that prohibit wearing a face covering, nor to persons seeking to communicate with the hearing impaired and for which the mouth needs to be visible. If timely notified, the Court will make every reasonable effort to accommodate any person who, for legitimate reason, is unable to wear a mask, such as by allowing a remote appearance or granting a continuance.

In addition, all persons in the Courthouse must maintain six-foot social distancing from all other persons at all times, subject to exceptions for security and other approved reasons.

The presiding judge may, in the interest of public safety, limit the number of persons in the courtroom.

This Transition Plan remains in effect until modified or vacated. To the extent prior orders of this Court conflict with the procedures and protocols set forth in this Transition Plan, this Transition Plan controls.

Dated: May <sup>29<sup>th</sup></sup> 2020

Approved:   
Douglas L. Fleming, Jr.  
Chief Judge

Attachments:

1. Civil Scheduling Praeipce (Remote)
2. Criminal Scheduling Praeipce (Remote)
3. Criminal Docket Praeipce (Remote)
4. Civil Motions Praeipce (Remote)
5. Contested Continuance Motion Praeipce (Remote)