

NAVARRO COUNTY

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February 9, 2021

The Honorable Billy Ray Stubblefield (VIA E-MAIL)
Administrative Judge of the 3rd Administrative Judicial Region

Re: Re-Certification of COVID-19 Operating Plan for the Navarro County Judiciary

Dear Judge Stubblefield:

As required by the Supreme Court's Emergency Orders and Guidance from the Office of Court Administration, I include here the required re-certification of Navarro County's COVID-19 Operating Plan for the Navarro County Judiciary.

I have consulted with the local public health authority regarding the local pandemic conditions and have reviewed with the health authority the previously-submitted in-person operating plan to determine whether the plan provides sufficient health and safety protocols to permit in-person proceedings.¹ (See attached Exhibit "A") The local public health authority has determined that (check one):

- Local pandemic conditions are conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan;
- Local pandemic conditions are conducive to in-person proceedings with modifications to the precautions and protocols in the previously-submitted in-person operating plan;²
- Local pandemic conditions are not currently conducive to in-person proceedings under the precautions and protocols contained in the previously-submitted in-person operating plan.

¹ Documentation of the consultation can be accomplished by submitting this letter stating such or an email or letter from the local public health authority.

² If it is determined that the previously-submitted in-person operating plan needs to be modified, the local administrative district judge or presiding judge of the municipal court should submit the modified plan after following the process detailed on p. 3 of the [Guidance for All Court Proceedings During COVID-19 Pandemic](#).

In addition, I have conferred with the judges of the courts with courtrooms in county buildings and have determined that the following criteria will be used to determine when an in-person proceeding is necessary and when all reasonable efforts do not permit the proceeding to be conducted remotely:

All judges in Navarro County, before conducting an in-person hearing shall first determine if an in-person hearing is necessary by following this procedure:

1. The judge shall inform each counsel and pro se litigant that the hearing shall be conducted remotely over Zoom. The judge shall provide each counsel and pro se litigant a phone number or email address to inform the judge if they believe any counsel, their clients, a pro se litigant, any witness, an interpreter, or any other participant (all referred to below as “Participant”) cannot participate remotely. The judge or judge’s staff shall then determine whether a Participant is unable to participate in the hearing due to any one or more of the following:
 - a. lack of technology which precludes or impedes their ability to participate in the hearing via the Zoom videoconferencing app. Examples of the lack of such technology include:
 - i. lack of access to a computer tablet or other device with internet video capability;
 - ii. lack of access to a cell phone; or
 - iii. lack of access to an internet connection.
 - b. A physical, mental, or other disability that prevents a Participant from being able to effectively operate or utilize the required technology. Examples of such a disability include:
 - i. a physical or mental disability that precludes them from effectively operating the technology necessary to access the Zoom videoconferencing app;
 - ii. a physical disability that precludes them from effectively seeing, hearing, or otherwise participating in a Zoom video hearing;
 - iii. the lack of or unavailability of an interpreter who can assist the individual in communicating during a Zoom hearing;³
 - iv. incarceration and the incarcerating facility’s lack of technological resources or facilities to allow the inmate to participate remotely in the hearing or confer privately with the inmate’s legal counsel;⁴ or
 - v. if the proceeding is in a specialty court defined by Title 2, Subtitle K of the Texas Government Code (e.g. veteran’s court, mental health court, drug court, etc), the specialty court team determines that there is a risk to the physical or mental well-being of a participant in the specialty court program if the proceeding is not held in person.

³ If a Spanish interpreter is needed, please consider using OCA’s free Spanish interpretation service. More information and scheduling options is available at <https://www.txcourts.gov/tcris/>.

⁴ If the facility is a TDCJ facility, judges should contact coronavirus@txcourts.gov to see if OCA can assist with getting the facility connected with the court.

- c. A confrontation clause constitutional objection is raised by criminal defense counsel or a pro se litigant, and the judge sustains the objection after conducting a *Haggard*⁵ analysis.
 - d. A proceeding where one Participant needs to appear in person due to a need to provide fingerprints, is subject to incarceration, or must meet with multiple departments as a result of the court proceeding, in which case that party may need to appear while the other parties appear remotely.
2. If an individual is unable to participate for one of these reasons, prior to holding an in-person hearing, the judge shall make reasonable efforts to accommodate the individual as set forth in the procedure below.

When an individual is found to be unable to participate in a Zoom videoconference for one of the reasons stated above, prior to holding an in-person hearing, the judge considering the in-person hearing shall make all reasonable efforts to make accommodations that will allow the individual(s) to participate. The accommodations that the judges of Navarro County shall consider include:

1. When an individual does not have adequate technological resources on their own to participate in a Zoom videoconferencing hearing, a judge shall:
 - a. determine whether the court has the ability to provide the individual with a laptop or other device which would allow the individual to participate in the hearing from some segregated location within the court facility while following appropriate COVID-19 precautions and protocols;
 - b. determine if such technological resources can be provided to the individual by some other source (e.g. a participating attorney, a party, a family member, friend, public library, or an appropriate agency of the State of Texas); and
 - c. determine whether the individual could participate in a meaningful manner by telephone (audio only).
2. When an individual has physical or mental disabilities that would prevent the individual from operating the technology required, a judge shall:
 - a. determine if the individual has legal counsel, family or friends who can assist in operating the required technology; and
 - b. inquire as to what, if any, accommodations could be made which would allow the individual with a disability to participate.
3. When an individual is incarcerated, a judge shall:
 - a. determine whether the facility has the technological resources or facilities to allow the incarcerated individual to participate in the hearing;
 - b. if the facility does not have the technological resources to allow the inmate to participate in a Zoom videoconference, determine whether the inmate could participate in a meaningful manner by telephone (audio only).
4. When an individual is otherwise unable to participate in a hearing via videoconference or by audio only, a judge shall determine whether the individual can effectively participate in the proceeding by a sworn statement made out of court as permitted by the Emergency Orders of the Supreme Court of Texas.
5. If no accommodation is available, the judge shall determine if a continuance is warranted, balancing the risk to public health and safety with the need to resolve the particular case.

⁵ [Haggard v. State](#), 2020 WL 7233672 (Tex. Crim. App. 2020)

6. If no accommodation is available and the judge determines a continuance is not warranted, the judge may permit the hearing to occur in-person under the precautions and protocols in the approved in-person operating plan.

Having completed the required re-certification, I am submitting it to you in your role as Regional Presiding Judge. I understand and have communicated to the judges with courtrooms in county facilities that no in-person hearings will be permitted on or after January 11, 2021 until I receive an acknowledgement from you that the re-certification meets the requirements of OCA's Guidance.

Respectfully,



James Lagomarsino
District Judge / Local Administrative Judge

cc: Dr. John Updegrave (VIA E-MAIL)
Local Health Authority – City of Corsican and County of Navarro

The Honorable Amanda Putman (VIA E-MAIL)
The Honorable H.M. Davenport, Jr. (VIA E-MAIL)
The Honorable Phillip Arrien (VIA E-MAIL)
The Honorable Jackie Freeland (VIA E-MAIL)
The Honorable Connie Hickman (VIA E-MAIL)
The Honorable Darrell Waller (VIA E-MAIL)
The Honorable Greta Jordan (VIA E-MAIL)



James Lagomarsino <jlagomarsino@navarrocounty.org>

Recertification

Exhibit "A"

john updegrove <jupdegrove@gmail.com>
To: James Lagomarsino <jlagomarsino@navarrocounty.org>

Fri, Feb 5, 2021 at 3:56 PM

Judge Lagomarsino,

Thank you for the information. At this time, I am very pleased that the rate of positive Covid-19 cases appears to be declining, however, it is not at a level that we would desire or consider acceptable. The next month should be a good indicator as we monitor any surge that follows the Super Bowl festivities and Valentine's Day, although concern will then shift to any bump after the spring break holidays. The various parties involved have done yeoman's work in developing and initiating the vaccine program at the IOOF and I am pleased that the rate of delivery has been increased with further increase in daily/weekly dose delivery expected. I believe that we are currently at approximately 10% of the county having received at least the first dose. Any challenge related to the concurrent administration of 1st and 2nd doses starting in 2 weeks is being discussed. I am also a bit concerned that we may experience some volunteer fatigue at some point. I understand that the local pharmacies will begin receiving and administering vaccines within the next 2 weeks and this will relieve the pressure slightly, although I am worried that so many sites delivering vaccines may become confusing to all parties. I would personally favor that all doses be administered at the IOOF center but that may not be permitted on the basis of some requirement of participation by the individual pharmacies. Failing that, I would favor using the existing signup lists but the inclusion of 50%+ of enrollees from outside the county would either dilute the delivery to local residents or necessitate a filter to funnel them to the IOOF site. In any case, more injections in arms is the key to ultimate herd immunity in the county, state, and country.

I would feel that continuation of the existing Covid-19 safety plan is appropriate at this time and hopefully we can return to a more normal protocol by the summer.

I apologize for the rambling nature of my response and would be happy to discuss any questions or issues that I either raised or failed to address. I appreciate everything that each and every stakeholder group and volunteer has done and will continue to do as we carry on with Dr. Rogers' Resolve.

John Updegrove

[Quoted text hidden]