



CITY OF COLLEGE STATION

Municipal Court

Re-Certification of In-Person Operating Plan

January 4, 2021

Re: Re-Certification of In-Person Operating Plans

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 College Station Municipal Court's In-Person Operating Plan.

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. 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; at present we are operating remotely;
- Local pandemic conditions are conducive to in-person proceedings with modifications to the precautions and protocols in the previously-submitted in-person operating plan;
- 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.

In addition, I have conferred with the judges of the courts with courtrooms in municipal 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 College Station Municipal Court, 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

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- 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;
 - 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; 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.
 - 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* analysis.
 - d. A proceeding where one Participants 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 the County/Municipal Court 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.
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/municipal facilities that no in-person hearings will be permitted on or after January 11 until I receive an acknowledgement from you that the re-certification meets the requirements of OCA's Guidance.

Sincerely,



Ed Spillane
Presiding Judge
College Station Municipal Court