

From: Lon Hurwitz  
Sent: Wednesday, May 13, 2020 10:37 PM  
Subject: FW: Mandatory Family Law Hearing Order and Pro Per DV Protocols

Counsel:

Attached to this Message, please find Judge Nakamura's Administrative Order No. 20/15 Mandating Remote Hearings in all Family Law Matters; and the DV Protocols for In-Court DV Proceedings designed for Pro Per DV cases signed by Judge Henson and Commissioner Watson.

By way of explanation and anticipated questions from the Bar, allow me to address certain issues:

1. The Administrative Order Mandating Remote Hearings

(i) I believe that the Preface and Background sections of the Order are self-explanatory. Counsel should be aware that the Mandatory provisions apply to those matters SELECTED BY EACH JUDICIAL OFFICER, IN THEIR DISCRETION, which shall be set for Hearing. It DOES NOT mandate that all matters currently pending be set.

The criteria for selection of what will be heard will be those matters that can be heard in a total of 2 hours or less, with some leeway, within reason, for the Judicial Officer to exceed that 2 hours in his/her discretion. This means that we will not be able to hear most matters involving 2 attorneys. It also means that any matter selected for Hearing that involves counsel cannot exceed 2 hours, with an understanding that another few minutes can be allocated if it will finally resolve the matter. IT DOES NOT MEAN THAT A 2 HOUR HEARING CAN BECOME A 4 HOUR HEARING. If that happens, the Judicial Officers have been encouraged to declare a Mistrial. But because of this Administrative Order, and the time limits imposed, the selection of which cases will be heard is left to the SOLE DISCRETION of the Trial/Hearing Judicial Officer. COUNSEL WILL NOT BE ABLE TO ADVOCATE FOR THEIR MATTER TO BE HEARD; AND THE COURT WILL NOT ENTERTAIN OR GRANT AN EX PARTE BASED SOLELY ON AN ARGUMENT THAT A PARTICULAR NON-EMERGENCY MATTER MUST BE HEARD.

(ii) The manner and method of the Remote Proceeding will be determined by each Judicial Officer in their discretion. Judicial Officers may use Teams, WebEx, Court Call, or Conference Call applications for the remote proceedings. Much will depend on what matters each individual Judicial Officer wishes to set. By example, some of our Judicial Officers wish to conduct the previously set Status Conferences set in June remotely, because they believe that many of the matters that were trailed/continued now have different facts/circumstances as a result of the situation; so they wish to see how things have changed and give folks an opportunity to amend pleadings, file documents, update Declarations, etc. Those might be done telephonically or via Court Call. Some Judicial Officers have set Status Conferences with accompanying VSC settings and they may want to do those remotely via Web Ex. Some Judicial Officers may want to advance the scheduled Status Conference and set a Remote Hearing via Teams or Web Ex.

(iii) As a result of the discretion referenced above, Counsel need do nothing. If a case is selected in which you represent a Party, you will be advised. If you do not believe that the matter can be tried in 2 hours, please advise the Clerk so that the Judicial Officer can reconsider the selection and perhaps select a different matter to be heard instead. If your matter is selected, you will be given the Protocols for the Remote Hearing, including how to submit evidence and how to access the Remote Hearing Application that will be used.

We have set up Sharepoint folders for the receipt and consideration of evidence; and the Department will provide you with the time parameters for the submission of evidence.

All documents submitted for filing but not yet filed on the case selected will be pulled from the queue based on a case number search and filed/scanned into ELF before the Hearing.

(iv) It is probable that matters involving lawyers on both sides will not be selected for Hearing at this time. The reason for this is that, depending upon the matter under consideration, it is more likely than not that the matter will involve more than one issue; or more than a simple issue, and cannot reasonably be heard in 2 hours. While we understand the frustration of the Bar on this point, the reality is that we have a backlog of about 10,000 matters and we must move through these as quickly as possible. A day long Hearing, taking 6 hours, resolves 1 matter. Those same 6 hours could have resolved 3 two hour matters.

(v) The Criminal backlog is severe. As a result, many Judicial Officers in non-criminal assignments will be reassigned to deal with the Criminal backlog. We are therefore losing Judge Ospino to the Criminal Panel. His cases will have to be distributed to the rest of our Panel; placing an even greater strain on the time issues to get our backlog handled.

(vi) The Courtrooms in Harbor, West, and North are being taken to deal with the Criminal backlog. So Commissioner Wilson, Judge De La Cruz, and Judge Gaffney will, more than likely, have to be working offsite.

(vii) I have been advised that we will lose virtually all of our Bailiffs to the Criminal Courts. The operation of a Family Court with Parties, Counsel, Experts, Court Staff, and Judicial Officers present in a Courtroom without a law enforcement presence is not something which Judge Nakamura, or I, am willing to do, for all of the reasons which we know, all too well, about.

(vii) The primary bases, therefore, for the mandatory remote hearings plan are the loss of bailiffs in virtually all Family Law Inventory Courts, and the ever increasing backlog of cases which will not allow us to wait until the Criminal Backlog is handled. The logical choice is, therefore, remote hearings which will not require bailiffs and which therefore lets us get started on the backlog.

And while remote hearings are the current logical choice, they will take longer for a number of reasons; Interpreters will have to interpret "consecutively" as opposed to "simultaneously", meaning that they cannot interpret as the person is speaking-they must wait until the person is finished speaking and then translate. People will not be able to interrupt or talk over each other, and when that happens, the Judicial Officer will have to interrupt and stop the proceedings because the Court Reporter will be working remotely and may not be able to observe who is talking.

And there will be a variety of technical issues which we will have to sort through, as this will be an evolving endeavor.

(viii) Unfortunately, the effect of all of this will be significant delays for longer Hearings. How long you ask? We do not anticipate getting thru our backlogs before the end of the summer.

And that assumes that additional Judicial Officers will not be taken for the Criminal Backlog; and additional Court Reporters/Staff will not be taken to service Criminal Matters.

So to the extent that you want to know when your Long Cause matter can be heard, the answer, at this time, is "we don't know". Much will depend on your Judicial Officer's selection of those matters that can be heard in 2 hours or less and how quickly he/she can whittle down their backlog; and the extent to which priority matters (DV, EI's) interfere in that endeavor.

It is conceivable, and quite likely, that your non-emergency long cause matters won't be heard until next year.

## 2. DV's in L11 and L63

DV's that do not involve counsel (Pro Per on each side) will be taken In-Court using the Protocols set forth in the attached Memo signed by Judge Henson and Commissioner Watson.

Attorney cases in these Courts will not yet be heard so that we can get thru the backlog of approximately 500 Pro Per matters. Each case being set by the 2 DV Courts will take no more than 20 to 30 minutes. Hearings involving Counsel will be set once we get thru the Pro Per backlog.

## 3. DCSS Matters

Commissioners Coleman and Kasch are developing independent Protocols for DCSS cases in conjunction with the private bar and DCSS. As DCSS cases are governed Federal and State Statute independent of other Family Code Statutes, separate Protocols for those cases are necessary. More to come on those Protocols when they are finalized.

## 4. Alternatives to Delays in Matters being Heard

(i) We will accept Stipulations to submit on documents/pleadings/declarations already filed provided there is a Stip to waive the provisions of Family Code section 217;

(ii) We will accept Stipulations to "Reifflerize" and submit on Decs rather than testimony, provided there is a signed waiver within the Stip of the provisions of Family Code section 217;

(iii) You can take advantage of our excellent VSC Program by contacting Dan Boehm;

(iv) You can Stip to go to a Private Judge;

(v) You can take advantage of a VSC set by your Judicial Officer on the same day as the Status Conference if that has been done by your Judge/Commissioner;

(vi) You can engage in discussions between yourselves and perhaps submit partial Stips that significantly narrow issues so that your Judicial Officer can re-examine the time requirements to hear your matter;

(vii) It is my understanding that the folks at Human Options are willing to do Mediations on financial issues.

## 5. Court Services

(i) Emergency Investigations will be available remotely;

(ii) Custody Mediations will be available remotely;

(iii) CCI's WILL NOT BE AVAILABLE;

(iv) We have made significant progress processing many of the 1600 backlogged Judgments and are almost caught up;

(v) We are now processing much of the 9,000 plus backlog of submitted documents and filing them. The date of filing will be the operative date; not the date of submission, by Statute.

This is a lot to take in. I wish we had better news for you. Unfortunately, the situation in the Criminal Courts is driving the bus; and until that is resolved, there is not a whole bunch we can do.

Please consider the above 7 options to waiting for a Hearing date. The sooner we can clear the backlog, the sooner we can get back to better serving your clients.

Many thanks for your patience and understanding; and to those of you who have volunteered to help us get cases settled through your great work as TJ's; and for your excellent leadership in Dan Monarch and Dan Boehm.

My Best to all of You, your Families, and your Staffs.

Lon Hurwitz



# Superior Court of California County of Orange

Chambers of  
**KIRK H. NAKAMURA**  
PRESIDING JUDGE

700 CIVIC CENTER DRIVE WEST  
SANTA ANA, CA 92701

## ADMINISTRATIVE ORDER NO. 20/15

### FAMILY LAW ORDER MANDATING REMOTE HEARINGS

#### **PREFACE**

On March 17, 2020, Chief Justice Tani Cantil-Sakauye issued an Emergency Order permitting the closure of Court facilities to the public, with minimal exceptions, from March 17, 2020 through March 27, 2020. On March 20, 2020, the Chief Justice issued an Advisory Memorandum recommending the suspension of all Family Law Trials, Hearings, and Proceedings for at least 60 days, with the exception of time-sensitive matters, such as Restraining Orders and urgent matters.

Based upon the Emergency Orders and Advisory Recommendations of the Chief Justice, the Presiding Judge of the Orange County Superior Court issued Administrative Order No. 20/08 on March 23, 2020, suspending all non-emergency Family Law Trials, Hearings, and Proceedings through June 1, 2020; and setting all such matters for a Status Conference to be scheduled for hearing after June 1, 2020.

On April 4, 2020, the Judicial Council of California issued its Emergency Rule No. 3, effective April 6, 2020, which stated, in relevant part:

#### **Use of technology for remote appearances**

- (a) Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts **must** conduct judicial proceedings and court operations as follows:
  - a. Courts ***may require*** that judicial proceedings and court operations be conducted remotely...
  - b. Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of

remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.

(b) Sunset

- a. This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the Covid-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

[Judicial Council Emergency Rule No. 3, April 4, 2020; Emphasis Added].

### **BACKGROUND**

As a result of the Covid-19 pandemic, and the Orders issued by the Chief Justice and the Governor, the Orange County Superior Court has been closed to the public, with limited exceptions, since March 17, 2020. This was necessary to protect the public, court employees, and judicial officers. Despite this closure, Court Operations have continued based upon the availability of Staff to process filings, minute orders, and other essential services.

Nevertheless, significant backlogs have occurred as a result of the closure in all case types. This will necessitate a prioritization of the allocation of judicial and support services to process time sensitive matters. Of the highest priority, by Federal and State Constitutional Statute and case authority, are criminal matters; such that a reallocation of support staff will be necessary to enable the satisfaction of said Statutory time limitations. This reallocation will necessarily involve the transfer of Sheriff's personnel from non-criminal case types in order to enable currently non-criminal courts to handle criminal matters. This will unavoidably mean that Family Law Courts, with limited exceptions, will not have Sheriff's personnel to act as bailiffs in Family Law Proceedings.

Additionally, significant backlogs are continuing to accrue in Family Law Courts, such that the implementation of protocols to enable these proceedings to go forward must be implemented without delay.

Therefore, as a result of this needed Bailiff reallocation, and the necessity of immediately commencing Family Law Hearings;

### **IT IS HEREBY ORDERED:**

1. FAMILY LAW PROCEEDINGS, WITH LIMITED EXCEPTIONS AS SET FORTH HEREINBELOW, SHALL BE CONDUCTED VIA REMOTE HEARING, USING EITHER THE TEAMS OR WEB EX APPLICATIONS; THE USE OF WHICH APPLICATION TO BE DETERMINED AT THE DISCRETION OF EACH FAMILY LAW JUDICIAL OFFICER;
2. EACH FAMILY LAW JUDICIAL OFFICER SHALL SELECT THOSE MATTERS CURRENTLY PENDING WHICH THEY BELIEVE, IN THEIR DISCRETION, WILL BE MOST CONDUCTIVE TO A REMOTE HEARING THAT CAN BE ADJUDICATED WITHIN A TWO HOUR TIME FRAME, ALLOCATING ONE HOUR PER SIDE, SUBJECT TO EXTENSION OF SAID TIME FRAME, WITHIN REASON, AT SAID JUDICIAL OFFICER'S DISCRETION;

3. AN IN-COURT PROCEEDING CAN BE SCHEDULED ON A SHOWING OF GOOD CAUSE AS TO WHY A REMOTE HEARING CANNOT OCCUR, WITHIN THE DISCRETION OF THE ASSIGNED JUDICIAL OFFICER;
4. DUAL PRO PER DOMESTIC VIOLENCE CASES (NO ATTORNEYS) ASSIGNED TO THE DEDICATED FAMILY LAW DOMESTIC VIOLENCE COURTS MAY BE SCHEDULED FOR IN COURT PROCEEDINGS AT THE DISCRETION OF JUDGE HENSON OR COMMISSIONER WATSON;
5. DCSS CHILD SUPPORT MATTERS SHALL BE HEARD REMOTELY PURSUANT TO SEPARATE REMOTE HEARINGS PROTOCOLS AS ESTABLISHED BY FEDERAL AND STATE STATUTE AND THE DEPARTMENT OF CHILD SUPPORT SERVICES, IN CONJUNCTION WITH JUDICIAL COUNCIL EMERGENCY RULE NO. 3;
6. SPECIFIC PROTOCOLS FOR THE SUBMISSION OF, AND PRESENTATION OF EVIDENCE SHALL BE DISTRIBUTED TO ALL PARTICIPANTS IN THE MATTERS SELECTED FOR REMOTE HEARING;
7. EACH FAMILY LAW COURTROOM HAS BEEN ASSIGNED A SEPARATE COURTROOM E-MAIL ADDRESS TO FACILITATE THE RECEIPT OF PROPOSED EVIDENCE FROM PARTIES THAT DO NOT HAVE THE CAPABILITY TO PROVIDE EVIDENCE INTO THE SHAREPOINT FOLDERS CREATED FOR RECEIPT OF EVIDENCE IN REMOTE HEARINGS;
8. THOSE PERSONS WANTING ACCESS TO A FAMILY LAW PROCEEDING THAT ARE NOT RESTRICTED FROM PUBLIC ACCESS SHALL APPLY TO THE COURT FOR SAID ACCESS NO LESS THAN 24 HOURS PRIOR TO THE DATE AND TIME SET FOR HEARING BY CALLING IN TO THE COURT AT A NUMBER TO BE POSTED ON THE COURT'S WEBSITE. THE JUDICIAL OFFICER ASSIGNED TO HEAR THE MATTER SHALL, IN HIS/HER DISCRETION, DETERMINE WHETHER OR NOT THE APPLICANT SHALL BE ENTITLED TO ACCESS SAID PROCEEDINGS, AND SHALL EITHER GRANT OR DENY SAID APPLICATION. THE PERSON OR PERSONS MAKING SUCH APPLICATION SHALL BE ADVISED THAT NO PART OF ANY FAMILY LAW PROCEEDING MAY BE RECORDED AND A VIOLATION OF THIS ORDER SHALL SUBJECT SAID INDIVIDUAL(s) TO POTENTIAL CIVIL AND CRIMINAL PENALTIES [Code of Civil Procedure Section 177.5; Penal Code Section 632, et. seq.]
9. THIS ADMINISTRATIVE ORDER IS TO BE READ IN CONJUNCTION WITH ADMINISTRATIVE ORDER NO. 20/08, AND IS TO BE CONSIDERED AN EXCEPTION TO SAID ADMINISTRATIVE ORDER SUSPENDING FAMILY LAW PROCEEDINGS FOR THOSE CASES SELECTED BY EACH JUDICIAL OFFICER TO BE HEARD REMOTELY UNDER THIS ORDER. ADDITIONALLY, THOSE MATTERS SET FOR STATUS CONFERENCE AFTER JUNE 1, 2020 SHALL BE HEARD REMOTELY

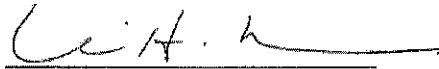
May 12, 2020

UNLESS THIS ADMINISTRATIVE ORDER IS VACATED OR AMENDED, SUBJECT TO THE PROVISIONS OF SECTION 3 IMMEDIATELY HEREINABOVE;

10. THIS ADMINISTRATIVE ORDER SHALL REMAIN IN EFFECT UNTIL VACATED BY THE PRESIDING JUDGE, OR FURTHER ADMINISTRATIVE ORDER BY THE PRESIDING JUDGE.

THIS ORDER IS EFFECTIVE IMMEDIATELY.

IT IS SO ORDERED this 12th day of May 2020, at Santa Ana California.



Kirk H. Nakamura  
Presiding Judge





Superior Court of California  
County of Orange

FAMILY LAW OPERATIONS  
LAMOREAUX JUSTICE CENTER

341 THE CITY DRIVE, SOUTH  
ORANGE, CA 92863  
PHONE: 657-622-6504

**Rules for Advanced and In Court Domestic Violence Hearings**  
**Departments L11 and L63**

1. Due to the current COVID-19 Pandemic and consistent with recommendations/directions of the Center for Disease Control (CDC), the Governor of the State of California and the Orange County Health Department, all individuals entering this courthouse must wear a face mask (or comparable face cloth covering mouth and nose). **Refusal to wear a mask will result in dismissal of the case if the moving party refuses to wear a mask and a default (unopposed) proceeding if the Respondent refuses to wear a mask.**
2. Parties are asked to arrive 15 minutes prior to their designated hearing time and check in with an Orange County Sheriff Deputy upon arrival at the courthouse. Deputies will assist the public at the front entrance.
3. Hearings shall be staggered approximately 30 minutes apart.
4. Petitioners may be accompanied by one support person as currently allowed under existing law.
5. Childcare is not available in the courthouse. Parties may not bring children into the courthouse.
6. Proof of service must be emailed to the court at least 2 days prior to the hearing. Emailed documents for Dept. L-11 shall be sent to the email listed below.
7. A witness list must be provided to the court by email at least 2 days prior to the hearing. If the witness list is not provided (such that the Sheriff can identify witnesses at the door) the witness will not gain entry to the building or be allowed in the hearing.
8. Documentary evidence (photos, documents, text messages, or emails) intended to be used or introduced by either party shall be emailed to the court at least 2 days prior to the hearing (unless such documents were previously provided to the court at the time a restraining order was requested).
9. Each party shall provide or confirm a valid telephone number and address to the clerk by email/fax at least 2 days prior to the hearing.
10. To the extent possible, the parties shall sit at opposite ends of the counsel table and witnesses may testify from the front row of the gallery seating (This may be modified on a case by case basis to ensure all parties and staff can clearly see and hear evidence).

Department L11 email address L11@occourts.org

A handwritten signature in black ink, appearing to read "Carol L. Henson".

Carol L. Henson  
Judge, Department L11

Department L63 email address L63@occourts.org

A handwritten signature in black ink, appearing to read "William G. Watson".

William G. Watson  
Commissioner, Department L63