

COVID-19 Operating Plan for the Upshur and Marion County Judiciary

Recognizing the need to ensure the health and safety of litigants, attorneys, visitors, court staff, judges, and other individuals entering the buildings housing the courts, the courts of Upshur and Marion County will implement the following protective measures:

General

1. All judges will comply with the Emergency Orders issued by the Supreme Court of Texas and Court of Criminal Appeals, including conducting in-person proceedings according to the guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions.
2. All judges will use all reasonable efforts to conduct proceedings remotely.
3. All judges in Upshur and Marion County Courts, before conducting an in-person hearing shall first determine if an in-person hearing is necessary by following this procedure:

(I) 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;¹
 - 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;² 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.),

¹ 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/>.

² 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.

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*³ 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.

(II) 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 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.

³ *Haggard v. State*, 2020 WL 7233672 (Tex. Crim. App. 2020)

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.
7. The Administrative District Judge will maintain regular communication with the local health authority and the Upshur County and Marion County Judges and adjust this operating plan as necessary.

Judge and Court Staff Health, Including District and County Clerks and Their Staff

1. Judges and court staff who can perform the essential functions of their job remotely may telework when possible.
2. Judge and Court Staff Monitoring Requirements: Judges and their court staff shall take their temperature each day, prior to traveling to their court or office.
3. Judges or court staff who feel feverish or have measured temperatures equal to or greater than 99.6°F, or with new or worsening signs or symptoms of COVID-19 such as cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, sore throat, loss of taste or smell, diarrhea, or having known close contact with a person who is confirmed to have COVID-19 will not be permitted to enter the building and should seek medical advice.
4. Judges and court staff may wear face coverings and will be required to practice social distancing, and practice appropriate hygiene recommendations at all times.

Scheduling

1. In order to reduce occupancy in county court buildings, Judges with courtrooms located in the same county building as another court, shall not schedule court at the same time.

Vulnerable Populations

1. Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable populations.
2. Each judge will include information on orders setting hearings, docket notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations. A notice with this information will be posted on the courts' websites and in conspicuous locations around the court building (a copy of which is attached).
3. Vulnerable populations who are scheduled for court will be accommodated by having their case continued until this operating plan expires.

Social Distancing

1. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least 6 feet.
2. No more than two individuals not from the same household will be permitted in an elevator. If more than one individual from the same household is in an elevator, no other individuals will be permitted in the elevator.
3. Each restroom has been evaluated to determine the appropriate capacity to ensure social distancing and the maximum capacity has been posted on each restroom door.
4. Public common areas, including break rooms and snack rooms, have been closed to the public.

Gallery

5. The maximum number of persons permitted in the gallery of each courtroom has been determined and posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.
6. The gallery of the courtroom has been marked to identify appropriate social distancing in the seating. Seating is limited to every other row.

Well

7. In each courtroom, the counsel tables, witness stand, judge's bench, and clerk, court reporter, and bailiff seating have been arranged in such a way so that there is social distancing of at least 6 feet between each space.

Hygiene

1. Hand sanitizer dispensers have been placed outside of elevators on each floor, outside of each courtroom, on each witness stand, and at each counsel tables.
2. Tissues have been placed near the door of the courtroom, at counsel tables, at the witness stand, on the judges' benches, and in the hallways.
3. The Department of State Health Service's "Stop the Spread of Germs Flyer" has been posted in multiple locations on each floor of the court building.

Screening

1. When individuals attempt to enter the court building, the security officer or in county buildings where there is no security officer, the first member of court staff who has contact with the individual, will ask the individuals if they are feeling feverish; have a cough, shortness of breath, or difficulty breathing; or have been in close contact with a person who is confirmed to have COVID-19. Individuals who indicate yes to any of these questions must follow the instructions of the security officer or court staff.
2. When individuals attempt to enter the court building, the security officer or in county buildings where there is no security officer, the first member of court staff who has contact with the individual, will use an infrared thermometer to determine the

temperature of the individual. Individuals whose temperature equals or exceeds 100.0°F will be refused admittance to the court building.

3. Inmates being transported from the jail to the court building will be screened for symptoms of COVID-19 and have their temperature taken prior to transport. Inmates with symptoms or a temperature equal to or above 99.6°F will not be transported to the court building.
4. Staff who are screening individuals entering the court building will be provided personal protective equipment, including face coverings, hand sanitizer, disposable gloves and tissues.

Face Coverings

1. Individuals entering the court building are required to wear face coverings at all times, unless the use of a face covering is impossible due to health reasons.
2. Individuals will be encouraged to bring cloth face coverings with them.

Cleaning

1. Court building cleaning staff will clean the common areas of the court building so that common spaces are cleaned at least every four hours.
2. Court building cleaning staff will clean the courtrooms between every hearing, between morning and afternoon proceedings, and at the end of each day the courtroom is used.
3. Court building cleaning staff have been provided cleaning supplies shown to be effective with this coronavirus.
4. Court building cleaning staff have been trained on proper cleaning techniques and provided appropriate personal protective equipment.

I have attempted to confer with all judges of courts with courtrooms in the court building regarding this Operating Plan. In developing the plan, I consulted with the acting local health authority and the Upshur and Marion County Judges, documentation of which is attached to this plan. I will ensure that the judges of courts with courtrooms in the court building covered by this Operating Plan conduct proceedings consistent with the plan.

Date: January 1, 2021

Judge Dean Fowler
Administrative District Judge for Upshur and
Marion Counties

NOTICE TO VULNERABLE POPULATIONS

Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy may contact the Court and have their case continued until all Emergency Orders issued by the Supreme Court of Texas and the Court of Criminal Appeals have expired.