

## EXHIBIT "B"

### **New Emergency Orders Issued by Supreme Court and Court of Criminal Appeals (All orders expire May 8, 2020, unless extended by the Chief Justice of the Supreme Court)**

Please be aware of the emergency orders issued since our last guidance:

- First Emergency Order (Issued March 13) – Permits all judges in the state at their discretion, and requires all judges “to avoid risk to court staff, parties, attorneys, jurors, and the public”, without a participant’s consent:
  - To modify or suspend any and all deadlines and procedures prescribed by statute, rule, or order for a stated period ending no later than 30 days after the Governor’s State of Disaster has been lifted. NOTE: The Third Emergency Order (see below) clarified that this applies to all proceedings under Subtitle E, Title 5, of the Family Code (Child Abuse and Neglect Cases), and specifically to deadlines in Section 263.401 (dismissal deadlines in termination cases filed by the government).
  - Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind – including a party, attorney, witness, or court reporter, but not a juror – to participate remotely, such as by teleconferencing, videoconferencing, or other means (see below on OCA-provided tool).
  - Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means.
  - Conduct proceedings away from the court’s usual location, ~~but in the county of venue~~, and only with reasonable notice and access to the participants and the public. NOTE: Third Emergency Order strikes the requirement that the proceeding must be conducted in the county of venue but still requires notice and public access.
  - Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has, COVID-19 or flu-like symptoms, or a fever, cough, or sneezing.
  - Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.
  - Permitting judges to extend the statute of limitations in any civil case for a period ending no later than 30 days after the Governor’s state of disaster has been lifted.
- Second Emergency Order (Issued March 17) – Clarifies that child possession schedules establishing access to a child under a court-ordered possession schedule are not affected by the school’s closure that arises from an epidemic or pandemic and that the original published school schedule controls.
- Third Emergency Order (Issued March 18)
  - Modifies First Emergency Order as described above.
  - Prohibits judges from conducting non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum group size.
    - Governor Abbott’s Executive Order limits groups to 10 or less, so **courts should not schedule any in person proceedings that would cause more than 10 people to gather in a courtroom or area in the courthouse**. Proceedings that are conducted remotely have no limit.

- Examples of essential functions include: criminal magistration proceedings, CPS removal hearings, temporary restraining orders/temporary injunctions, juvenile detention hearings, family violence protective orders. If you want to inquire whether you believe a proceeding is an essential function, please feel free to email (see below).
- Fourth Emergency Order (Issued March 18)
  - **Prohibits a trial, hearing, or other proceeding in an eviction** to recover possession of residential property under Chapter 24 of the Property Code and Rule 510 of the Texas Rules of Civil Procedure until after April 19, 2020,.
  - Prohibits the posting of the written warning required by Sec. 24.0061(d)(1) of the Property Code and the execution of a writ of possession until after April 26, 2020.
  - Permits new filings of eviction cases, but prohibits issuance and service of citation until after April 19, 2020.
  - Permits one of these proceedings to proceed only if the following three actions are met:
    - the plaintiff files a "sworn complaint for forcible detainer for threat to person or for cause";
    - the court determines the facts and grounds for eviction stated in the complaint, under oath with personal knowledge, taken as true, show that the actions of the tenant, or the tenant's household members or guests, pose an imminent threat of (i) physical harm to the plaintiff, the plaintiff's employees, or other tenants, or (ii) criminal activity; and
    - the court signs an order stating procedure for the case to proceed.

#### Recommendations on Delaying Proceedings

- Previous guidance had been to delay non-essential proceedings to at least April 1, including jury trials. The Supreme Court and Court of Criminal Appeals Third Emergency Order has prohibited conducting non-essential proceedings in person contrary to local, state, and national directives, whichever is most restrictive, regarding maximum group size. OCA recommends that you continue to delay in-person proceedings of any size until **at least May 1**. However, with the introduction of the new remote proceedings capability described below, some of these non-essential proceedings, except for jury trials, can be conducted remotely.

#### Remote Proceedings Capability Now Available Using Free Tool from OCA

In an effort to assist judges to hold both essential and non-essential proceedings remotely, OCA has tested and procured licenses from Zoom to permit any judge in the state to host and provide public access to the proceedings. The system has been tested by several judges at each level of court, and the feedback from the judges has been very positive. Here are some highlights of using Zoom:

- The tool is widely available and free for use by the public. Individuals can download for free the app using a cell phone, tablet, or a computer device. The only requirement on their end is an internet connection. If the person does not have access to the internet or a video-capable device, they can join using a telephone.
- The tool is easy to use by judges and court staff.

- It is easy to publish the electronic proceeding to YouTube, so that the public can have access to the proceeding away from the courthouse, which permits compliance with the Open Courts provision of the Texas Constitution and the orders of the Supreme Court and Court of Criminal Appeals.
- No cost to local government or courts.
- **Closing Courthouses**
- OCA has been informed that some counties are considering closing courthouse facilities. As you are aware, it is imperative that the clerks' offices and courts remain available for emergency matters or for other proceedings which cannot be conducted remotely. OCA has been in contact with the County Judges and Commissioners Association regarding this potential. While there may be a way in which public access can be reduced, judges are advised to communicate with their constitutional county judge or mayor/city council regarding the need for the building to remain open in certain situations.
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- **Teleworking**
- Judges and clerks are advised to extend teleworking options to the degree possible to reduce the risk of transmission of COVID-19. You should consider what options are available to you and use them to the greatest extent feasible.
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- **Grand Juries**
- Many of you have contacted OCA about how to proceed with grand juries. It is our recommendation that you not terminate grand jury proceedings completely. You should be aware that grand juries can continue during the entire length of your court's term. Sec. 24.012(a), Government Code, provides that the terms of district courts in each county are from January-June and July-December. Therefore, your existing grand jury can continue until the end of June, unless there is a statute that provides for a separate term for your court (Harris County, Armstrong County have specific subsections in 24.012). If you have an issue with your term of court, you may consider using Section 24.0125, Government Code, which permits the Regional Presiding Judge, with the approval of the affected district court, to designate the terms and sessions of court during a disaster.
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- **Jail Population**
- The Texas Commission on Jail Standards (TCJS) has advised sheriffs to attempt to reduce the jail population where possible to reduce the risk of coronavirus in the jail. In a Technical Assistance Memorandum issued on March 17 to all sheriffs and jail administrators in the state, TCJS recommended "explor[ing] options for releasing non-violent misdemeanors offenders" and "explor[ing] options with local arresting agencies regarding 'cite and release' for those who commit non-violent crimes in order to reduce number of individuals booked into the facility." Judges may wish to consider working with their sheriffs and prosecutors to assist in this effort.
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- **Judges Assigned to Ch. 81 Quarantine Proceedings**
- As has been previously discussed, 31 district judges across the state have been assigned to hear quarantine proceedings under Ch. 81, Health and Safety Code. These judges have received specific training on the proceedings. With the Public Health Emergency Declaration, the proceedings change a bit. OCA is distributing contact information for these judges to the municipal, county, and district attorneys, as well as the attorney general. It is our expectation that these 31 judges will be able to handle the cases that come in, no matter the court in which the proceedings are filed. Should you wish to handle the proceedings yourself, please contact your Regional Presiding Judge to discuss.