

IN THE UTAH SUPREME COURT and UTAH JUDICIAL COUNCIL
Administrative Order for Court Operations During Pandemic

ADMINISTRATIVE ORDER September 17, 2021

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Governor Gary Herbert and Governor Spencer Cox declared a state of emergency. In light of the Governor's declaration, and to protect the public and all court participants, the Utah Judiciary continues to implement its Pandemic Response Plan.

The Judiciary has monitored the Governor's declarations in deciding the risk phases for the courts, but the Judiciary must follow the phases of its Pandemic Response Plan, which are Red, Yellow, and Green. Throughout the pandemic the Judiciary has consistently focused on the safety of court personnel and patrons while monitoring the developments of the pandemic, case counts in the state, vaccination rates, and the advice of The Utah Department of Health and health experts. The Judiciary continues to be in the unique position of having authority to compel individuals to attend court proceedings in person. Recently, an unvaccinated court team member who did not know they had Covid-19 spread the virus to an individual who was compelled to attend court and to other team members. Some court locations have had COVID-19 exposures among court team members. Now that the courts are operating in the Yellow phase, there will be an increase in the number of individuals who are compelled to come to the court, and the courts cannot assure these individuals that other people they may encounter in the courts are vaccinated. The increased risk for court personnel and patrons and the recent advice of health experts requires some modest adjustments to the Court's response to the pandemic.

To bring uniformity to the operation of the courts during the COVID-19 pandemic, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, issued a March 13, 2020 Administrative Order. The purpose of the March 13, 2020 Administrative Order was to identify mission-critical functions of the judiciary at each court level, ensure that the courts remain open to perform those functions, and to do so in a manner that promotes the health of the public and all court participants.

Since the March 13, 2020 Administrative Order, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, has issued a series of updated administrative orders, each of which has entirely supplanted the preceding order. On June 3, 2021 the Chief Justice, on behalf of the Utah Judicial Council and the Utah Supreme Court issued an Administrative Order authorizing all courts to operate in the Yellow Phase beginning June 7, 2021, if the local court's risk response plan has been approved by the Management Committee. Districts and individual court locations were given flexibility to determine how best to transition to more in person proceedings, but were required to give priority to

resuming in court proceedings that were not capable of being held remotely, such as jury trials. On July 28, 2021 an Administrative Order imposed a mask mandate for individuals who enter the courthouse. Today's Order entirely replaces all preceding administrative orders. This includes a rescission of the Amended Administrative Order dated March 25, 2020, which means the standards and requirements in rules 3-101(2) & (3), 3-104(3)(L), and 3-111(3)(C) of the Utah Rules of Judicial Administration are no longer suspended.

This Order provides directives the courts must follow during Red and Yellow phases of operation, incorporates the mask mandate with clarifications, and authorizes the courts in the state to continue to operate in the Yellow phase.

To the extent any provision of this Order conflicts with the Utah Code of Judicial Administration or a rule of procedure or evidence, the provision in this Order will govern. The provisions of this Order are therefore subject to the same types of challenges that could be raised against a rule of administration, procedure, or evidence. Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.

IT IS HEREBY ORDERED:

Mask Mandate

If a court is located in a county that has been designated by the Utah Department of Health as a moderate or high transmission index county, then individuals who enter court buildings are required to wear a mask over their nose and mouth while in court buildings. The court must supply a mask to an individual who is not wearing a mask. An individual who refuses to wear a mask may not enter the courthouse and may be removed from the courthouse for failure to wear a mask over their nose and mouth. If an individual is denied entry or removed from the courthouse because of a refusal to wear a mask, the individual must be provided with information about how to contact the court for further instructions.

The mask mandate does not apply to:

- individuals who enter a court building located in a county that is designated by the Utah Department of Health as a low transmission index county.
- a witness while the witness is testifying or to other individuals in a courtroom if the judge determines that the temporary removal of a mask is necessary for identification or other similar purposes and physical distancing can be maintained.
- court personnel if they are at their desk, not dealing with the public, and physically distanced from others, or if they are actively eating or drinking, not dealing with the public, and physically distanced from others.

Red Phase

General Orders

1. In accordance with page 6 of the Pandemic Response Plan, the Pandemic Response Plan is activated. A court in any county that is operating in the Red Phase, may submit a request to the Management Committee of the Judicial Council that they be allowed to operate in the Yellow phase. The request may be granted if the Management Committee is satisfied the criteria for the Yellow phase as described in the Risk Phase Response Plan are being met in that county. All court personnel should be provided access to the Pandemic Response Plan, the Continuity of Operations Plan, and the Risk Phase Response Plan. The Pandemic Response Plan remains operative. However, to the degree it is inconsistent with this Order and the Risk Phase Response Plan, this Order and the Risk Phase Response Plan supersede the Pandemic Response Plan.
2. The coronavirus response team formed by the Administrative Office of the Courts will continue to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.
3. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and should coordinate with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.
4. [Deleted]

Consistent with the Pandemic Response Plan, the coronavirus response team must help each court implement measures that will continue the mission-critical work of the judiciary while also protecting members of the judiciary and the general public.

Orders Applicable to All Court Levels

5. All courthouses shall remain open during regular business hours in a manner necessary to effectuate the mission of the courts, which may include being electronically or telephonically accessible. In accordance with the Risk Phase Response Plan, individuals who have been diagnosed with COVID-19 and have not recovered, or who show symptoms of COVID-19 may not enter the courthouse. An individual who has sustained close contact with someone who has COVID 19, as defined in the Risk Phase Response Plan, may not enter the courthouse for the period of time designated in the Risk Phase Response Plan, which shall be based on the recommendations of public health experts.
6. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails,

and other communications. Individuals who do not have access to e-filing may file documents by email in any pending case. An individual shall contact the court by telephone to make arrangements to file a pleading to initiate a case or file a notice of appeal. Lawyers are encouraged to stipulate to extensions of time. Judges are directed to grant liberally motions for extensions of time. This Order does not extend filing deadlines. Any future extension of a specific deadline will be made by separate order.

7. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.
8. Except as provided below, absent exigent circumstances, all hearings shall be conducted on the papers, or through remote transmission, such as by telephone or video conferencing. If an in-person hearing is necessary due to exigent circumstances, the court shall conduct the hearing consistent with all applicable government and public health orders, the Court’s Pandemic Response Plan, and the Risk Phase Response Plan. A judge must obtain approval from the presiding judge before conducting an in-person hearing based on exigent circumstances. A person who appears at the courthouse in response to a summons or citation, or pursuant to a promise to appear, shall be given a new date to appear or provided with instructions on how their case may be handled through remote transmission, and the court or clerk may address summary matters and matters that should not be postponed to another date because the person would not have the technology necessary to participate.
9. (a) Except as provided below, district court and justice court judges may not conduct any criminal jury trials (whether the defendant is or is not in custody) or civil jury trials during the Red phase. If a defendant is in custody on a class B or C misdemeanor offense, the assigned judge must reconsider the defendant’s custody status and is encouraged to release the defendant subject to appropriate conditions.

(b) [Deleted]

(c) The Management Committee is authorized to create standards for jury trials in the Red phase and to authorize any court that meets those standards to conduct jury trials. The Management Committee will consider the input and advice of health officials in determining whether jury trials can be safely conducted and the standards for conducting those trials. The Management Committee may authorize courts to deviate from the Risk Phase Response Plan to the extent necessary to conduct jury trials. The Supreme Court must review and approve any standards involving the Supreme Court’s authority before those standards may be implemented.

- (d) The Supreme Court adopts the following temporary rule modifications:
- (i) Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following:
 - (a)(4) In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. “Trial participants” is defined to include the judge and testifying witnesses. The defendant’s waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.
 - (ii) Rule 17(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial, all felony cases must be tried by jury unless the defendant waives a jury on the record. The prosecution’s consent is not required for a Red phase jury trial.
 - (iii) Rule 17.5(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial and for good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if (1) the defendant is the party calling the witness, or (2) the defendant waives any right to confront the witness in person. In the event the prosecution is the party calling the witness and the defendant does not waive any right to confront the witness in person, the court may nevertheless permit such testimony if the court (1) finds the witness has COVID-19, is exhibiting symptoms consistent with COVID-19, or has a health or other condition that places the witness at increased risk of harm if the witness contracts COVID-19, and (2) sets forth the reasons for its findings on the record.
 - (iv) The following paragraph is added as Rule 18(h) of the Utah Rules of Criminal Procedure: In all cases tried during a Red phase jury trial, jury selection should occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless of the number of alternative jurors selected and regardless of the number of prospective juror groups that are created.
 - (v) The following paragraph is added as Rule 47(t) of the Utah Rules of Civil Procedure: In all cases tried during a Red phase jury trial, jury selection should occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless of the number of alternative jurors

selected and regardless of the number of prospective juror groups that are created.

(e) The Judicial Council adopts the following temporary rule modifications:

- (i) The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.
- (ii) Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.
- (iii) The following paragraph is added as rule 4-405(3)(E): During a Red phase jury trial a court may provide meals to jurors allowing them to remain in the protected environment of the courthouse during the course of a trial.

10. Presiding judges shall issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order. Any order issued by a presiding judge or individual judge before or after the effective date of this Order is superseded to the extent the order is inconsistent with this Order.

Orders Applicable to Appellate Courts

11. During the Red Phase of operation, the appellate courts will determine which cases to set for oral argument. In general, except where oral argument would not facilitate the decisional process, oral arguments will be conducted in cases such as child custody, juvenile detention, child-welfare adjudications and dispositions, and other hearings involving child safety, in-custody defendants, and election matters.

12. Oral arguments shall be conducted by remote transmission.

13. Cases not set for oral arguments may be decided on the briefs.

Orders Applicable to District Courts

Criminal Cases

14. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause reviews of warrantless arrests, bail hearings,

bench warrant hearings, first appearances, appearances mandated by statute, preliminary hearings, and sentencing hearings.

15. District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

Civil Cases

16. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions. As used here, mission critical functions include, but are not necessarily limited to, protective order hearings, stalking injunction hearings, temporary restraining order hearings, guardianship hearings where the minor or incapacitated person is at risk of harm, involuntary commitment hearings, and hearings related to enforcement of custody and parent-time orders.
17. (a) District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.
- (b) Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

18. Juvenile court judges may hold any hearing remotely.
19. Any child welfare, delinquency, or protective order timeline may be extended by the court.

20. (a) If a party desires an in-court hearing, a written request must be filed with an explanation as to why such a hearing is necessary and permitted under paragraph 9 and must explain in detail the exigent circumstances requiring an in-court hearing.

(b) Subject to paragraph 9 any remote or in-court hearing may be set by the court on its own motion.

21. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

Orders Applicable to Justice Courts

22. In accordance with paragraph 9 above, justice courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause reviews of warrantless arrests, bail hearings, bench warrant hearings, arraignments, appearances mandated by statute, and sentencing hearings.

23. [Deleted]

24. [Deleted]

25. Justice court judges may conduct any proceedings by remote transmission, including bench trials and small claims hearings, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless

the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

26. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Yellow Phase

General Orders and Orders Applicable to All Courts

27. The coronavirus response team formed by the Administrative Office of the Courts will continue to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.
28. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and the transition from one phase of operation to another phase of operation in coordination with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.
29. Courts in the state are authorized to continue to operate in the Yellow phase of operation and may conduct court proceedings at the courthouse in accordance with the Yellow phase of operations and the Risk Phase Response Plan, if the court location has a risk response plan approved by the Management Committee. When resuming in person proceedings, courts shall give priority to in person proceedings that are not capable of being held remotely, such as jury trials. Courts shall continue to use remote hearings when feasible in accordance with the Risk Phase Response Plan. A court may hold an in person proceeding that is listed in the Risk Phase Response Plan as an approved in person proceedings. Except for Justice Court judges, a judge shall obtain approval from their presiding judge before holding an in person proceeding that is not listed in the Risk Phase Response Plan.
30. All courthouses shall remain open during regular business hours. In accordance with the Risk Phase Response Plan, individuals who have been diagnosed with COVID-19 and have not recovered, or who show symptoms of COVID-19 may not enter the courthouse. An individual who has sustained close contact with someone who has COVID 19, as defined in the Risk Phase Response Plan, may not enter the courthouse for the period of time designated in the Risk Phase Response Plan, which shall be based on the recommendations of public health experts. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails, and other communications during regular business hours. Individuals who do not have access to e-filing may file documents by email in any pending case.

31. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.
32. A court may continue to conduct hearings, bench trials, and oral arguments by remote transmission. Presiding judges may issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order.
33. District Court and Justice Court judges may conduct civil and criminal jury trials in accordance with the Yellow phase requirements set forth in the Risk Phase Response Plan if the court’s local risk response plan has been approved by the Management Committee. Priority should be given to addressing the case backlog for in-custody defendants. The Judicial Council adopts the following temporary rule modifications:
- (a) Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following: (a)(4) In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. “Trial participants” is defined to include the judge and testifying witnesses. The defendant’s waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.
- (b) The calculation of time for determining juror terms of availability under rule 4- 404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.
- (c) Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.

Orders Applicable to District Courts

Criminal Cases

34. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the

extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

Civil Cases

35. Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

36. Any child welfare, delinquency, or protective order timeline may be extended by the court.
37. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

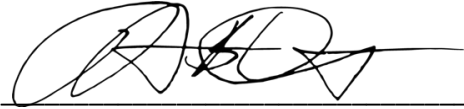
Orders Applicable to Justice Courts

38. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.
39. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Order Subject to Amendment

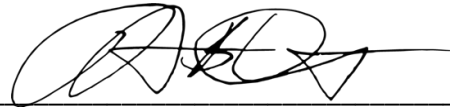
40. This Order may be amended at any time to respond to changed conditions.

DATED this day of September 17, 2021.

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MATTHEW B. DURRANT
Presiding Officer, Utah Judicial Council

DATED this day of September 17, 2021.

A handwritten signature in black ink, identical to the one on the left, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

MATTHEW B. DURRANT
Chief Justice, Utah Supreme Court