

Family Court Webinar Notes

The following are notes taken during the April Webinar presented by Judge Martin and the Hon. Julie Armstrong on April 27, 2020 regarding Court procedures until the COVID-19 pandemic is behind us. The following has been approved by Judge Martin:

I. Personal Service of Process

The Supreme Court Orders have allowed e-mail service on attorneys, but do not address personal service of process or how it is to be accomplished, since quarantine rules do not allow for it. How do we get parties to a newly-filed action personally served right now?

A. The Sheriff's Office is performing service of process duties now. Some private process servers are also working.

B. Bench Warrants are not being served right now.

II. Virtual Motions

The Orders address consensual video motion hearings, but what happens if the opposing counsel will not consent to a virtual motion hearing? It seems like an unfair tactic to delay the case (at the least, to delay a motion hearing).

A. Telephone conferences and virtual hearings may be scheduled – Judge Martin asks that people call his assistant to schedule. Court Reporters will be present at Webex hearings, and Exhibits will be pre-filed and sent prior to the hearing to the opposing party and/or his or her counsel.

1. If the Defendant is represented, a virtual hearing may go forward without consent. If the other party is Pro Se and does not consent to a virtual hearing, the hearing will be continued.

2. Attorneys may now consent to Webex hearings on behalf of their clients without the need for the client's signature.

3. Please continue to send in requests no-hearing adjudications, with the appropriate paperwork completed and filed, but no hearing to be held, as long as the Court's backlog remains, at least.

a. Attorneys or parties can submit a Motion and Affidavits electronically and the other side can submit a Return and Affidavits the same way. No hearing will be required, unless specifically requested.

B. In-person hearings

1. Pursuant to the Supreme Court's Order, only if a Judge determines that a hearing cannot be adequately conducted remotely will the hearing be in person for the present. To request an in-person hearing, send a letter to the Chief Administrative Judge stating the purpose (motion hearing, trial, etc.), and the amount of time needed.

2. Trials can be in person, but for the present, they are only being scheduled up to a half day. Anything that requires more Court time will have to wait until the Coronavirus danger is past.

3. In-person hearings can still be held, but they may be delayed. The Clerk's Office is open from 10 AM until 2 PM Monday through Friday, and documents, including Motions and Affidavits, may be dropped in a box located in the courthouse lobby during those times. All paper will be quarantined for 48 hours; they will then be filed and date-stamped with the original date they were brought in. No more than 10 pages will be allowed by each side in the courtroom. Please file your

request at least 12 days ahead of time, as it's best to allow 10 days' notice to the other side, but 5 days, at a minimum. There are delays right now beyond everyone's control.

4. Until further notice, no more than 10 people, including the Judge, deputies, Court Reporter, bailiffs, attorneys, litigants, and witnesses may be present in any courtroom at any time. The hallways outside of the courtrooms will also be kept sparsely populated, for everyone's continued safety.

III. Adoption hearings

How should adoptions (both contested and uncontested) be handled during this health crisis? They are not generally emergent, but they are important, as prospective adoptive parents want the cases finalized, and the children remain in limbo until there is a Final Order.

A. Adoption hearings may be heard by video conferencing. All paperwork must be filed well ahead of the hearing. If an adoption hearing is contested, it must be held in person.

1. Attorneys may witness Consent/Relinquishment of Parental Rights without being present, so long as it is by video conferencing and the parent signing provides a photo ID, a copy of which (with DL number redacted) should be submitted with the Consent and Relinquishment Affidavit.

IV. Child Support

How should child support be calculated, since many parents have been furloughed, laid off, or terminated due to COVID-19 closures? Should this be a temporary calculation subject to re-calculation once things have returned to normal?

A. Child support should be calculated with the best information available to the Court at that time, imputing minimum wage to unemployed or furloughed parents (unless they are receiving unemployment). Reference the Supreme Court's Order 2020-447, stating that a de novo hearing can be requested to re-calculate child support without the need to prove a substantial change of circumstances once the COVID-19 crisis is over and people are working again.

V. Re-scheduling Canceled or Continued Hearings due to COVID-19

How do we go about this? Because of the backlog which will inevitably occur in the Courts, can we continue to send in paperwork for uncontested divorces, Final Agreements, and consent Orders without requesting hearings? The Supreme Court has only ordered this through April 27th.

A. For one or both parties as Pro Se litigants, call the Clerk's Office about how to request a hearing.

1. Pro Se divorces: everything can be done by consent, and with all of the appropriate paperwork filed, no hearing will be necessary. The list of paperwork necessary is outlined in the Supreme Court's Emergency Order. For this purpose, an attorney representing one side may collect the paperwork from the Pro Se litigant and provide it to the Court without worry that it is providing legal services to the Pro Se party.