



JAY K. WEATHERBY

DISTRICT JUDGE

340TH JUDICIAL DISTRICT COURT OF
TOM GREEN COUNTY, TEXAS
112 WEST BEAUREGARD AVE.
SAN ANGELO, TEXAS 76903

SYLVIA NORIEGA – COURT ADMINISTRATOR
325-657-8013 325-658-8046 (FAX)

CINDY SAUNDERS – COURT REPORTER
325-659-6573

December 24, 2020

**REQUEST TO RECERTIFY THE
COVID-19 OPERATING PLAN FOR THE TOM GREEN COUNTY JUDICIARY**
(Originally Approved on May 29, 2020)

At the request of the Office of Court Administration for the State of Texas (as set forth in its *COVID UPATE #19*), the judiciary of Tom Green County hereby submits its request for recertification of the *COVID-19 Operating Plan for the Tom Green County Judiciary* that was originally approved on May 29, 2020.

In support of that request, please find attached hereto the following:

1. A statement of the objective criteria to be used to determine when an in-person hearing will be necessary.
2. A statement of the objective criteria to be used to determine whether a judge has used all reasonable efforts to conduct a proceeding remotely?
3. Emails evidencing the consultation between the Local Administrative District Judge and the Local Health Authority, Dr. James G. Vretis. The email from Dr. Vretis expresses his approval of the Tom Green County operating plan and makes suggestions for conducting safe in-person proceedings.
4. Emails evidencing the consultation between the Local Administrative District Judge and each of the judges in Tom Green County with courtrooms in county buildings (Justice Marilyn Aboussie, Judge Ben Woodward, Judge Brad Goodwin, Judge Carmen Dusek, Judge Pamala Talley, Judge Gary Banks, Judge Penny Roberts, Judge Ben Nolen, Judge Steve Floyd, Judge Eddie Howard, Judge Susan Werner and Judge John P. McGuire) except Judge Fred Buck.

I CERTIFY THAT I have consulted with the Local Health Authority, Dr. James G. Vretis and received his continued approval of the *COVID-19 Operating Plan for the Tom Green County Judiciary*. I have consulted with all Tom Green County judges as required. Documentation verifying each consultation is attached to this request. I will continue to ensure that the judges of courts with courtrooms in the court buildings covered by this Operating Plan conduct proceedings consistent with the plan.

Signed this

Jay K. Weatherby,
Local Administrative District Judge
Tom Green County, Texas

Attachment
#1

**STATEMENT OF THE OBJECTIVE CRITERIA TO BE USED TO DETERMINE
WHEN AN IN-PERSON HEARING WILL BE NECESSARY**

All judges in Tom Green County shall:

1. Contact each counsel and pro se litigant - prior to a hearing - to determine whether any of them, their clients, their witnesses, or an interpreter/translator are unable to participate in the hearing due to any one or more of the following:

- a. the 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. the lack of access to a computer, tablet or other device with internet video capability;
 - ii. the lack of access to a cell phone; or
 - iii. the lack of access to an internet connection.
- b. a physical, mental, or other disability that prevents them 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; or
 - ii. a physical disability that precludes them from effectively seeing, hearing, or otherwise participating in a Zoom video hearing.
 - iii. the lack or unavailability of an interpreter who can assist the individual in communicating during a Zoom hearing.
 - iv. incarceration and the incarcerating facility's lack of technological resources or facilities to allow the inmate to participate remotely in the hearing and/or to be able to confer privately with their legal counsel.

2. If an individual is unable to participate for one of the reasons stated above, prior to holding an in-person hearing, make reasonable efforts to accommodate the individual as set forth in the *Statement of the Objective Criteria to Be Used to Determine Whether a Judge Has Used All Reasonable Efforts to Conduct a Proceeding Remotely*.

Attachment
#2

**STATEMENT OF THE OBJECTIVE CRITERIA TO BE USED TO
DETERMINE WHETHER A JUDGE HAS USED ALL REASONABLE
EFFORTS TO CONDUCT A PROCEEDING REMOTELY**

When an individual is found to be unable to participate in a Zoom videoconference for one of the reasons stated in the *Statement of the Objective Criteria to Be Used to Determine When An In-Person Hearing Will Be Necessary*, prior to holding an in-person hearing, the judge of the court in which the matter is pending shall make all reasonable efforts to make accommodations that will allow the individual to participate. The accommodations that the judges of Tom Green County shall consider include:

1. When an individual does not have adequate technological resources on their own to participate in a Zoom videoconference 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 protocol;
 - b. determine if such technological resources can be provided to the individual by some other source (e.g. a participating attorney, a party, 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 otherwise prevent them from effectively 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 they can effectively participate in the proceeding by a sworn statement made out of court as permitted by the Emergency Orders of the Texas Supreme Court.

Attachment
#3

From: [Jay Weatherby](#)

To: James Vretis

Subject: Required Recertification of In-Person Proceedings Operating Plans

Date: Friday, December 18, 2020 4:08:00 PM

Attachments: [COVID-19 Operating Plan for Tom Green County.pdf](#)
[image003.png](#)

Dr. Vretis,

I am sorry to burden you with this but the OCA has issued COVID Update #19, which requires that counties recertify the COVID Operating Plans that were put in place in late May, 2020. The recertification requires that the Local Administrative District Judge (LADJ) consult with the Local Public Health Authority to: review a previously-submitted in-person proceeding operating plan to determine whether the plan provides sufficient health and safety protocols to permit in-person proceedings:

inquire whether current local pandemic conditions are conducive to in-person proceedings; and

inquire as to what precautions should be taken when in-person proceedings are conducted.

At this time, almost all of our proceedings are conducted via Zoom. There have only been a handful of inperson proceedings. However, I am currently working on our Jury Plan Addendum (to the plan attached hereto), which would allow us to have in-person jury trials as early as February of 2021 (I will be submitting that plan to you for approval as well).

I am required to document our consultation and I believe attaching a copy of our email conversation would suffice.

If you could please provide a response to the three items listed above, I would be most grateful.

Thank you in advance for your time and please let me know if you need further information.

Jay K. Weatherby

District Judge

340th Judicial District Court

jay.weatherby@co.tom-green

From: Vretis, James
To: Jay Weatherby
Subject: In-person proceeding operating plan
Date: Friday, December 18, 2020 9:48:23 PM

Good evening Your Honor;

I have reviewed the previously-submitted in-person proceeding operating plan. I believe the previously-submitted in-person proceeding operating plan has sufficient health and safety protocols to permit limited in-person proceedings.

Our local positivity rate remains high. I believe very limited in-person proceedings are safe; however, the majority of proceedings should be via videoconferencing.

I believe in-person proceedings should require masks on everyone in attendance. Plexiglass partitions around judges, court reporters, jury boxes would be helpful. Witness boxes should be sanitized between witnesses.

Please contact me if I can be of further assistance.

James G Vretis II, DO MSc FAAEM FAEMS
Practice limited to Tactical, Emergency and Critical Care Medicine
Local Health Authority: San Angelo / Tom Green County Health Department Medical Director:
San Angelo Fire Department, San Angelo Police Department, Tom Green County Sheriff Office, Sterling County Sheriff Office, Concho County Sheriff Office, Reagan County Sheriff Office, Grape Creek VFD, Carlsbad VFD
Tactical Physician Texas Ranger Special Operations Group SRT4
325.277.1210

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Attachment
#4

From: Jay Weatherby

To: maboussie2@earthlink.net; Ben Woodward; Brad Goodwin; Carmen Dusek; Pamala W. Talley; Gary Banks (Gary.Banks@txcourts.gov); Penny Roberts; Ben Nolen; Steve Floyd; Eddie Howard; Fred Buck; Susan Werner; John P. McGuire

Subject: IMPORTANT - PLEASE READ AND RESPOND

Date: Saturday, December 19, 2020 8:51:00 PM

Attachments: image001.png

Importance: High

Hopefully you have all reviewed the COVID Update #19 that the OCA sent out on Thursday evening. This update requires the local administrative district judge to submit a request for recertification of the COVID Plan that was previously submitted in May of this year. This update applies to the district courts (including CPS and Child Support), courts at law, county court, justice courts, and drug courts of Tom Green County.

As a part of that recertification process, I am required to consult with the Local Health Authority, Dr. Vretis, and receive his approval. That has been accomplished. I am also required to consult with each judge in the county. I am then required to prepare a written request and set forth therein the “objective criteria that will be used to determine when an in-person proceeding is necessary and when all reasonable efforts do not permit the proceeding to be conducted remotely.”

I know we are in the midst of the holidays and I know this is one more thing to add to your already long “to do” list; but the request must be prepared, submitted, and approved prior to January 1, 2021. I AM REQUIRED TO HAVE A RESPONSE FROM EACH OF YOU. I have tried to make this process as easy as possible by doing it via email. **Please answer the questions below and forward those answers to me under a separate email.** I will then compile your responses into a list, prepare a written request, and forward it to the Regional Presiding Judge for approval. I will attach this email and your responses to the request as evidence of our “consultation.”

QUESTIONS:

- 1. What objective criteria do you use to determine when an in-person hearing is necessary?**
- 2. What objective criteria do you use to determine that all reasonable efforts do not permit a proceeding to be conducted remotely?**

Please remember that the criteria should be specific and not include a broad case of hearing type categories (e.g. courts may not indicate that all motions to suppress will be held in person, etc.). Examples of criteria may include items such as inability of parties to participate due to a disability or lack of technology. And also remember that there is no longer a distinction between essential and non-essential hearings. Judges will need to examine those in-person hearings they may have been conducting and find a way to conduct them remotely. If at all possible, I need your answers by December 23rd. I will still have to sort and compile your responses, draft a written request, and submit it for (and receive) approval before January 1st.

Thank you!

Jay K. Weatherby

District Judge

340th Judicial District Court

jay.weatherby@co.tom-green.tx.us

112 W Beauregard Ave.

San Angelo, TX 76903

(325) 657-8013

From: Jay Weatherby

To: maboussie2@earthlink.net; Ben Woodward; Brad Goodwin; Carmen Dusek; Pamala W. Talley; Gary Banks (Gary.Banks@txcourts.gov); Penny Roberts; Ben Nolen; Steve Floyd; Eddie Howard; Fred Buck; Susan Werner; John P. McGuire

Subject: RE: IMPORTANT - PLEASE READ AND RESPOND

Date: Saturday, December 19, 2020 9:26:00 PM

Attachments: [image001.png](#)

I apologize. Question number 2 in the previous email is worded poorly. Please replace it with the following:

QUESTION

2. What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

From: Susan Werner
To: Jay Weatherby
Subject: FW: IMPORTANT - PLEASE READ AND RESPOND
Date: Sunday, December 20, 2020 2:32:22 PM
Attachments: image001.png

Good afternoon Judge,

I hope you and your family are all staying safe. I would like to thank you for all the hard work you do to keep us all up and running and providing all the Judges and our staff a safe environment in these troubled times we are facing.

Here are my responses to your questions.

**What objective criteria do you use to determine when an in-person hearing is necessary?
What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?**

The in-person hearings will be determined after a short screening with each individual. My clerks will reach out prior to any hearings to verify if they are able to participate at the zoom hearing. We verify they understand how zoom works and how they can access it via phone or computer. Most of our communication with them are by phone or emails however, we do not always have information to contact them other than mail. We put zoom information on all civil citations. We will take into consideration if anyone is unable to participate due a lack of a computer, cell phone or Internet connection and or having a physical or mental disability.

The state has allowed the Justice Courts to waive any deadlines to our discretion. Justice Courts also have the authority to waive Eviction hearings however, my court has not waived those hearings as of yet. If we have a Plaintiff or Defendant that does not have the ability to participate in zoom in their environment we allow them to attend at my courtroom on a laptop we have provided so we can all maintain the social distancing.

I hope this helps as Justice courts are more flexible than other courts.

Susan Werner

Justice of the Peace Pct. 1
122 W Harris Ave.
San Angelo, Texas 76903
325-659-6444
325-659-6459 Fax

From: [Eddie Howard](#)

To: [Jay Weatherby](#)

Subject: RE: IMPORTANT - PLEASE READ AND RESPOND

Date: Tuesday, December 22, 2020 9:55:32 AM

Attachments: [image001.png](#)

This is not all that should be done but our hearings are usually very short and I leave the decision to the parties to decide on their level of sophistication with the tech stuff.

1) What objective criteria do you use to determine when an in-person hearing is necessary?

We give instructions on how to appear; when Plaintiff files and in Defendant packet mailed to them.

We allow the choice and have had in person, and zoom either individually or both.

At hearing, masks and social distancing protocols are followed. Following each hearing a cleaning regiment is performed. We do not discourage in person hearings nor encourage them.....we allow the litigants to make their own determination as to what is best

From: John P. McGuire
To: Jay Weatherby
Subject: COVID Plan
Date: Sunday, December 20, 2020 4:48:54 PM

Judge Weatherby:

1. What objective criteria do you use to determine when an in-person hearing is necessary? Our Court seeks to determine from the parties prior to the hearing if any litigants are unable to participate in the hearing due to lack of technology or impeding the ability of the litigant to participate in the hearing via Zoom video conference. A litigant having a physical or mental disability that precludes from them being able to operate the technology required is also determined.

2. What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely? Our Court provides, when the papers are served, a notice that the litigant is asked to provide an email address in order to be given a link for the Zoom video conference. If the litigant does not have an email address, the litigant is asked to contact our office as soon as possible. All of our hearings have been postponed until a later date, except evictions.

From: Ben Nolen
To: Jay Weatherby
Cc: Penny Roberts; Joe Losoya; Christina Ubando
Subject: The following applies to CCL and CCL2
Date: Tuesday, December 22, 2020 10:54:26 AM
Attachments: image001.png

Jay
This is the response for both CCL and CCL2.
Ben

QUESTIONS:

What objective criteria do you use to determine when an in-person hearing is necessary?

Our Court seeks to determine from the parties prior to hearings if any litigants are unable to participate in the hearing due: (A) to a lack of technology precluding or impeding the ability of the litigant to participate in the hearing via Zoom video conference (e.g. lack of a computer, cell phone or Internet connection); (B) to a litigant having a physical or mental disability that prevents the litigant from being able to effectively operate the technology required (e.g. the litigant has a physical or mental handicap that precludes the litigant from effectively operating the technology necessary to access the Zoom video conference hearing or the litigant has a physical handicap that precludes them from effectively seeing, hearing, or otherwise participating in the Zoom video conference hearing-e.g. deaf, blind or mute or need for an interpreter); or (C) to incarceration and the incarcerating facility's lack of technological resources or facilities to allow the inmate to participate remotely in the hearing and to be able to confer privately with any legal counsel.

What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

For litigants who do not have adequate technological resources on their own to participate in a Zoom video conference hearing, our Court seeks to determine if such resources are available in the community or can be provided by the litigant's lawyer, another litigant or third party (e.g. whether the litigant can utilize technological resources of their lawyer, family, friends, public libraries, or the Texas Office Of Court Administration). The Court will also seek to determine whether the litigant can call into the Zoom proceeding if they do not have Internet capability or whether the Court can call the litigant and place them on a speaker telephone where the litigant can hear the proceeding and be heard by the other litigants. For litigants with physical or mental impairments, our Court seeks to determine if the litigant has legal counsel, family or friends who can assist them to participate in the Zoom video conference hearing or if special accommodations need to be made to allow the litigant with a disability to participate. For incarcerated litigants located in facilities that lack the technological resources or facilities to allow the incarcerated litigant to participate in the hearing, the Court will seek to determine whether the Court can arrange with the facility for the litigant to participate in the Zoom video conference hearing by telephone. For those litigants who are otherwise unable to participate in the hearing for any of the foregoing or other reasons, the Court will also seek to determine whether they can effectively participate in the proceeding sworn statements made out of Court as permitted by the Texas Supreme Court's emergency orders. For misdemeanor Defendants who must be arraigned in person, they will be ordered to Court for the initial appearance in small socially distanced hearings according to the approved plan in place at the time. At that hearing information will be gathered to allow for future hearings to be conducted remotely under the above outlined process. Future notices for these arraignments will include information by which the individual Defendant may contact the Court to arrange for even this first hearing to be remotely conducted. All clerks, attorneys and court personnel must appear remotely for these few hearings that must have Defendants in person. Screening will continue to take place at security for symptoms of these persons.

From: Pamala W. Talley
To: Jay Weatherby
Cc: Carmen Dusek; Ben Woodward
Subject: Requested responses for recertification of COVID-19 Plans
Date: Monday, December 21, 2020 12:08:55 PM

Judge Weatherby,

Response to your questions for Child Support Court 34 regarding recertification of Tom Green County's COVID-19 Plan are listed below. If you need anything additional or further details, please let me know.

I am copying Judge Dusek & Judge Woodward with my responses as I also hear cases in other counties within their judicial districts and assume that they will need the information to draft recertification plans for those counties.

Thank you in advance for all your work in compiling the information for the plan recertification.

What objective criteria do you use to determine when an in-person hearing is necessary?

1. I do not foresee any IV-D case types that require an in-person hearing. The IV-D caseload is very conducive to remote hearings and I am certain we will be able to proceed remotely for an indefinite period.
2. The last in-person hearing I conducted was on March 13, 2020, the day the first Supreme Court Order came out requiring all hearings be conducted remotely if reasonably possible. I have not had any issues that have prevented a party from participating remotely to date. I plan on continuing with remote hearings without issue indefinitely.
3. If a unique issue arises that has not been encountered to date, I will use the criteria listed in my response to your next question to determine if all reasonable efforts have been made to accommodate the necessary party before I would consider an in-person hearing.

What objective do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

1. All Notices and/or Orders setting hearing dates include information regarding Zoom meeting numbers and means of connecting through both video/audio or telephone only. These notices are sent to the best possible address of every necessary party and/or attorney of record. If the party has not filed an answer or response to the pending action, the notice/order is sent to the last known address and/or the address of service. The Notice also includes an email address to contact with questions and/or exhibits. The phone number for the Court and the Office of the Attorney General is also easily accessible.
2. If the Court is contacted by a litigant regarding lack of technology to connect to the meeting, we first attempt to have them connect by telephone call. If the litigant is unable to connect by phone due to toll charges, we attempt to arrange a call to their number and include them through conference call in the Zoom Meeting.
3. If the above options are not workable, the Court will attempt to arrange a space in the courthouse that meets social distancing standards and provide a device for connection by requesting for an iPad loan from the Office of Court Administration.
4. If the individual has difficulty connecting through physical or mental difficulty, the Court will attempt to determine if a friend or family member can assist with the connection. If not, the Court will use the options listed in (3) to accommodate the individual at the courthouse or other location that will accommodate the specific disability.
5. Finally, the Court will also allow participation through written affidavit and/or submission of exhibits (i.e. employment, income, disability benefits, etc.) as allowed through the Supreme Court Emergency Orders. If necessary for the party to participate by this means, the Court will grant a continuation for the submission of written documents.

Pamala W. Talley
IV-D Associate Judge
122 West Harris Avenue
San Angelo, TX 76904
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Fax: 325-486-0148

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From: Gary Banks
To: Jay Weatherby
Cc: Ben Woodward; Carmen Dusek; Brad Goodwin
Subject: COVID-19 Update-Recertification Of COVID Plan
Date: Sunday, December 20, 2020 8:02:22 AM

Judge Weatherby, thank you for your work on updating Tom Green County's COVID-19 Plan for recertification. Per your directions, I have set forth below for the Child Protection Court Of The Concho Valley, responses to the two questions posed. Since it is my understanding that the COVID-19 Plans for the other counties covered by my Court will also need to be updated and recertified, I am copying Judge Woodward, Judge Dusek and Judge Goodwin with this email. If I need to revise the responses or if any of you need further information from my Court, please let me know. Thank you.

QUESTIONS:

1. What objective criteria do you use to determine when an in-person hearing is necessary?

Our Court seeks to determine from the parties prior to hearings if any litigants are unable to participate in the hearing due: (A) to a lack of technology precluding or impeding the ability of the litigant to participate in the hearing via Zoom video conference (e.g. lack of a computer, cell phone or Internet connection); (B) to a litigant having a physical or mental disability that prevents the litigant from being able to effectively operate the technology required (e.g. the litigant has a physical or mental handicap that precludes the litigant from effectively operating the technology necessary to access the Zoom video conference hearing or the litigant has a physical handicap that precludes them from effectively seeing, hearing, or otherwise participating in the Zoom video conference hearing- e.g. deaf, blind or mute or need for an interpreter); or (C) to incarceration and the incarcerating facility's lack of technological resources or facilities to allow the inmate to participate remotely in the hearing and to be able to confer privately with any legal counsel.

2. What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

For litigants who do not have adequate technological resources on their own to participate in a Zoom video conference hearing, our Court seeks to determine if such resources are available in the community or can be provided by the litigant's lawyer, another litigant or third party (e.g. whether the litigant can utilize technological resources of their lawyer, family, friends, public libraries, the Texas Office Of Court Administration, or Child Protective Services) or whether the Court can arrange for the technology to be provided to the litigant at a remote segregated location in the courthouse (outside the courtroom) or at another location. The Court will also seek to determine whether the litigant can call into the Zoom proceeding if they do not have Internet capability or whether the Court can call the litigant and place them on a speaker telephone where the litigant can hear the proceeding and be heard by the other litigants. For litigants with physical or mental impairments, our Court seeks to determine if the litigant has legal counsel, family or friends who can assist them to participate in the Zoom video conference hearing or if special accommodations need to be made to allow the litigant with a disability to participate. For incarcerated litigants located in facilities that lack the technological resources or facilities to allow the incarcerated litigant to participate in the hearing, the Court will seek to determine whether the Court can arrange with the facility for the litigant to participate in the Zoom video conference hearing by telephone. For those litigants who are otherwise unable to participate in the hearing for any of the foregoing or other reasons, the Court will also seek to determine whether they can effectively participate in the proceeding sworn statements made out of Court as permitted by the Texas Supreme Court's emergency orders.

From: Marilyn Aboussie

To: Jay Weatherby

Subject: RE: IMPORTANT - PLEASE READ AND RESPOND

Date: Monday, December 21, 2020 12:12:49 PM

Attachments: [image001.png](#)

Judge Weatherby,

As a Senior Judge, I will adhere to the criteria set by the elected trial judge for whom I am sitting. I will also verify whether, in my opinion, the criteria established for determining the need for an inperson hearing versus a remote hearing is appropriate for the specific case I am asked to hear.

With respect to the Felony Drug Court proceedings, these have all been held by Zoom since April 2020. Thus far, no issues have been encountered that would preclude a Zoom hearing.

Zoom hearings require access to the internet and the technology necessary to be seen and heard. In the beginning, the defendant who was not equipped sometimes joined the proceeding from the probation offices, but this is no longer used. If the participant does not have appropriate equipment or internet access, the probation officer meets with the defendant to direct the person to a point of access in the community. If the person is unfamiliar with use of the technology, the probation officer assists the person with familiarity and sometimes practices in advance of court. Most of the participants join the hearings by video/mobile phone, which most individuals have. Potential participants who are in jail are able to join the court proceeding through availability at the jail, and participants who are in residential treatment are able to join court hearings through the residential treatment facilities. Those facilities cooperate with the Court when needed.

Thus far, no one has been unable to participate via a Zoom hearing.

Truthfully, Zoom hearings are more convenient for most participants. They are able to take short breaks from school or work to participate, rather than requiring several hours to leave work, find a parking space, come into the courthouse, and sit through lengthy hearings. They often sit in their cars and sign in on their mobile phone.

Both staff hearings and court hearings are necessary. Based on experience so far, we have not encountered a situation where staff or defendant/participants cannot participate remotely.

Due to the nature and flexibility of Felony Drug Court, the only criteria that would not allow one to participate in remote hearings would be lack of required equipment or internet. There are public places where this can be utilized.

Marilyn Aboussie
Chief Justice (Retired)
Senior Judge
112 West Beauregard
San Angelo, Texas 76903
(325) 658-9758 phone
maboussie2@earthlink.net

From: [Ben Woodward](#)

To: [Jay Weatherby](#)

Subject: Recertification

Date: Tuesday, December 22, 2020 11:19:35 AM

Gary and Pam did a great job. I'm not sure I can improve on them!

Ben Woodward

Judge, 119th District Court

Concho, Runnels, and Tom Green Counties, Texas

From: Carmen Dusek
To: Jay Weatherby
Subject: RE: IMPORTANT - PLEASE READ AND RESPOND
Date: Monday, December 21, 2020 4:37:10 PM
Attachments: image001.png

Here are my answers:

1. What objective criteria do you use to determine when an in-person hearing is necessary?

The 51st District Court has conducted all civil and family nonjury hearings and trials on Zoom video meeting since the spring of 2020.

All criminal pre-trials and pleas, with few exceptions, have been conducted on Zoom since July 6, 2020. In-person criminal hearings or pleas only occur in the following circumstances:

1. Capital murder case,
2. Murder case in which the victims desire to make a victim impact statement to the court at the plea. This is done to allow the solemnity of the process to be available to the victim,
3. Plea in which Defendant is agreeing to life in prison – to ensure full understanding and voluntariness of the plea by the Defendant due to the nature of the sentence.
4. Is the hearing essential? If yes, is there any way to connect all parties and witnesses remotely? If no, the court may conduct a hybrid hearing with those persons who absolutely cannot connect remotely after exhausting the means set out in Question #2 below are allowed to appear in person or at the least appear from an isolated location in the courthouse while all persons who can connect remotely do so.

In “nonessential” matters where a party lacks the technology to connect remotely, see Question # 2 below.

2. What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

1. All Notices and/or Orders setting hearing dates include information regarding obtaining information to connect on Zoom. These notices are sent to the address on file of every necessary party and/or attorney of record. If the party has not filed an answer or response to the pending action, such as in TRO or Temporary Orders hearings, the notice/order sets out the email and phone number for the contact person at the court who can provide the Zoom link with specific instructions to contact this person. Separate notice is provided with instructions on submission of exhibits.
2. If a party is struggling with connecting to Zoom, the Court Administrator helps walk them through the process. If the connection is poor, the Court often allows the person to stop the video and simply proceed on audio or to use 2 devices, 1 for audio and another for video. The Court also provides the Zoom information to bail bondsmen who often have clients appear from their offices or provide assistance for virtual court appearances. The Court will also encourage parties to seek locations with free Wi-Fi such as the local library, McDonalds, etc. Other parties often appear from their attorney's office.
3. If none of the above options work, the Court locate a space in the courthouse where a party may use a court computer and web camera to appear virtually while following Court COVID operating procedures.
4. Individuals in custody in facilities that utilize Zoom are connected with video and audio to fully participate. For individuals incarcerated in TDCJ, the Court will allow them to participate by phone if the unit will not allow Zoom with the individual being sworn in by the officer connecting the call. For individuals in county jails, all efforts are used to allow the party to participate on Zoom or by phone. If this cannot be accomplished due to the facility, the Court may bench warrant the party to the Tom Green County jail which does have good Zoom capabilities so the individual may participate in the hearing.
5. The Court also allows participation through written affidavit and/or submission of exhibits as

allowed through the Supreme Court Emergency Orders if agreed to by all parties. The parties are notified of the submission deadline.

6. If there is no reasonable way to conduct the hearing remotely after exhausting all of these options, the court will continue the hearing to allow more time for all parties to secure remote connectivity.
7. If the individual has difficulty connecting through physical or mental difficulty, the Court will attempt to see if counsel, a bail bondsman or a friend or family member of the party can assist with the connection. If not, and if the other options set out herein are insufficient, the Court may conduct the hearing in person if it can be done with strict adherence to COVID operating procedures (masks, distancing, etc.)
8. For contested hearings in felony cases, if the law enforcement agency cannot or refuses to allow its officers to testify by Zoom, the court may have the officer appear at the Tom Green County Courthouse to testify from a jury room or other isolated location, or allow the witness to testify remotely from an attorney's office so long as the prosecutor is not in the room with the witness. The party proffering the witness is required to provide all exhibits to opposing counsel in advance of the hearing.

Carmen S. Dusek
Judge, 51st District Court
Coke, Irion, Schleicher, Sterling and Tom Green Counties of Texas
112 W. Beauregard Ave.
San Angelo, TX 76903

From: Brad Goodwin
To: Jay Weatherby
Subject: COVID-19 Update/Recertification
Date: Tuesday, December 22, 2020 4:32:39 PM

Judge Weatherby,

As we discussed on the telephone, I have reviewed the response submitted by Judge Banks and I believe it is well-stated and on point. I have slight changes for the 391st and they are noted, below. Many thanks for all the hard work and efforts that you have put in for the judiciary, and the citizens, of Tom Green County.

QUESTIONS:

1. What objective criteria do you use to determine when an in-person hearing is necessary?

For nearly all hearings since March of 2020, the 391st District Court has issued an Order to Appear Remotely, advising all participants to appear via Zoom and not in person. In the Order to Appear Remotely, attorneys, self-represented parties and participants are advised to contact the Court prior to the hearing if they do not have the capability to appear via Zoom. If advised that a participant is unable to appear via Zoom, the Court seeks to determine from the parties if any litigants are unable to participate in the hearing due to: (A) a lack of technology that precludes or impedes the participant's ability to participate in the hearing via Zoom (e.g. lack of a computer, cell phone or Internet connection); (B) a litigant having a physical or mental disability that prevents the litigant from successfully operating the technology required (e.g. the litigant may be deaf, blind, non-verbal or need an interpreter); or (C) a participant's incarceration and the incarcerating facility's lack of technological resources to allow the inmate to participate remotely in the hearing and to be able to confer privately with legal counsel.

2. What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

As set out above, the Court's Order to Appear Remotely advises attorneys, self-represented parties and participants to contact the Court prior to the hearing, if they do not have the capability to appear via Zoom. If advised that a participant does not possess adequate technological resources to participate in a Zoom video conference hearing, the Court seeks to determine if such resources can be provided by the litigant's lawyer, another litigant or third party, or are available in the community (e.g. whether the litigant can utilize technological resources of their lawyer, family, friends, public libraries) or whether the Court can arrange for the technology to be provided to the litigant at a remote, segregated location in the courthouse (outside the courtroom) or at a location outside the courthouse. The Court will also seek to determine whether the litigant can call into the Zoom proceeding if the litigant does not have Internet capability or whether the Court can call the litigant and place them on a speaker telephone where the litigant can hear the proceeding and be heard by the other litigants. For litigants with physical or mental impairments, our Court seeks to determine if the litigant has legal counsel, family or friends who can assist them to participate in the Zoom video conference hearing or if special accommodations need to be made to allow the litigant with a disability to participate. For incarcerated litigants located in facilities that lack the technological resources to allow the incarcerated litigant to participate in the hearing, the Court will seek to determine whether the Court can arrange with the facility for the litigant to participate in the Zoom video conference hearing by telephone. For those litigants who are otherwise unable to participate in the hearing for any of the foregoing or other reasons, the Court will also seek to determine whether they can effectively participate in the proceeding by sworn statements made out of Court as authorized by the Texas Supreme Court's emergency orders.

Brad Goodwin
District Judge
391st Judicial District Court
112 West Beauregard
San Angelo, Texas 76903
(325) 657-8014



JAY K. WEATHERBY

DISTRICT JUDGE

340TH JUDICIAL DISTRICT COURT OF
TOM GREEN COUNTY, TEXAS
112 WEST BEAUREGARD AVE.
SAN ANGELO, TEXAS 76903

SYLVIA NORIEGA – COURT ADMINISTRATOR
325-657-8013 325-658-8046 (FAX)

CINDY SAUNDERS – COURT REPORTER
325-659-6573

December 31, 2020

Judge Dean Rucker
Presiding Judge, Seventh Administrative Judicial Region
Midland County Courthouse
500 North Loraine Street, Suite 502
Midland, Texas 79701

Re: Additional Documentation for Recertification Request

Judge Rucker,

On December 24, 2020, I submitted a *Request to Recertify the Covid-19 Operating Plan for the Tom Green County Judiciary*. At that time, I had consulted with every judge in the county except Judge Fred Buck. As you may know, Judge Buck has had ongoing health issues, so I was neither surprised nor concerned by his failure to respond.

On December 28, 2020, I received the attached email from Judge Buck's office. That email contained Judge Buck's response to my email survey/consultation. I would ask that you attach this to my initial submission as proof of my consultation with Judge Buck.

Additionally, please know that his response does not alter the *Statements of Objective Criteria* set forth in our recertification request. Each judge in Tom Green County has been provided a copy of the approved request and has been instructed to conduct all proceedings in a manner consistent with the operating plan.

Warmest regards,

Jay K. Weatherby
340th District Court

From: Tonia Riley <tonia.riley@co.tom-green.tx.us>

Sent: Monday, December 28, 2020 11:42 AM

To: Jay Weatherby <jay.weatherby@co.tom-green.tx.us>; Fred Buck <fred.buck@co.tom-green.tx.us>

Subject: FW: Important - Please Read and Respond

Good morning Your Honor;

Due to health problems the response time for Judge Buck was delayed. Attached is Judge Fred Buck's read and respond answers for recertification of the COVID Plan and has asked for me to scan and email it to you.

Please advise of what is the next step that needs to be taken by Judge Buck and his office to be included in the Request To Recertify The Covid-19 Operating Plan For the Tom Green County Judiciary(Originally Approved on May 29, 2020).

Please contact me if I can be of further assistance.

Tonia Riley,
Court Coordinator for
Judge Fred Buck
Justice of the Peace, Pct. 3

Judge Weatherby:

What objective criteria do you use to determine when an in –person hearing is necessary?

What objective criteria do you use to determine whether you have made all reasonable efforts to conduct a proceeding remotely?

The in-person hearings well be determined after a screening with each individual. Clerks attempt to contact each party to determine if they can participate with a Zoom Hearing. I have found that many of the respondents of cases filed in our court do not have computers or internet access. We do not always have contact information for respondents, or respondents do not answer or respond to our calls or emails if we have their contact information. We do take into consideration if anyone is unable to participate due to lack of internet connection and or having a physical or mental disability.

Masks and social distancing are strictly enforced. I am thankful for having a large courtroom to exercise social distancing. Following each hearing, tables and chairs are cleaned.

Thank you for your help during this troubled time.

**Fred Buck
Justice of the Peace, Pct. 3
Tom Green County, Texas**