

MEMO

To: Chittenden County Bar

From: Judge Toor

Re: Update on Civil Court

Date: July 10, 2020

Greetings, all. I miss seeing you in my courtroom! I just wanted to reach out to let you know what's going on with regard to scheduling these days. As I'm sure you know, the Supreme Court gave all courts the go-ahead as of June 1 to start scheduling more than just emergency hearings. However, they have also urged us to do as much as possible by video and phone, in recognition of the safety issues posed by bringing people into the courtrooms during this time of COVID-19.

I am currently scheduling almost all hearings and status conferences for either video or phone hearings. The hearing notices for evidentiary hearings note that you may ask for a live hearing and explain why it is necessary. I have granted some such requests, but am less likely to grant them if they are multi-day hearings. I may also put the live hearing off to a future date if it is not urgent. As you probably know, indoor air is one of the issues that is being talked about a lot as one of the most significant risks, including the concept of greater "viral load" as a result of longer exposure to a potentially asymptomatic carrier. The longer the hearing, with the same people in the same room, the greater potential risk. Our first priority is to keep you, your clients, your witnesses, and court employees safe.

Those of you who have already participated in video hearings in my court have done so through Microsoft Teams, which is the platform we initially had available. Our IT folks have decided we will not be using Zoom. We are moving to a Cisco product called Webex. Thus, as new hearings get scheduled, they will likely be on that platform. Some that have already been scheduled, however, will still be on Microsoft Teams.

In addition, we may try setting a number of video and phone hearings through one Webex link, rather than having to create a new “meeting” for each individual hearing. (We expect this will be way less work for staff). That may require you to go type in the web address or call the phone number that appears on your regular hearing notice rather than just clicking on the link in your “invitation.” (It’s not much of an “invitation” when you are required to appear, is it?). The phone aspect of it should be similar to Skype or other conference call systems we have all used in the past. The idea is that you would call in or join the video just as you would walk into the courtroom—you would be in the same virtual “meeting” as other hearings, and if the last hearing was running late, you would just wait your turn.

You may find that different courts and even different divisions within a county are doing all of this differently for the next few months. This is because we are all scrambling to figure out what works, and what works for civil hearings may not work as well for juvenile or criminal court hearings, or hearings without any lawyers. It is also because we do not all have the same hardware, such as microphones and large-screen monitors. The plan is to get every courtroom upgraded equipment that is identical across the state, but that is expected to take several months. The expectation is that once everyone has the same equipment, there will be a protocol that we will all start using so that you will start seeing less variation around the state. Another issue that remains to be addressed is when and how some hearings can be streamed (and which categories of cases that should include) so that they are publicly accessible to the media or other interested parties in a way that does not require them to physically come to the courthouse. I urge the bar to start thinking about that issue and weighing in on it. There is a big difference between caring enough to come to court to see a hearing and logging on at home to watch, and your clients may have concerns about being on line for all to see.

We have had some glitches with the video hearings, but they have all worked out in the end. I expect that some things we try may not work, and we will have to pivot yet again. Please be

patient with us as we all try to adjust to this new world we have been thrust into. If you have any trouble getting into a hearing or need help with the technology, you may call Jill Mongeon (the Court Operations Manager) directly. Her number is 881-1166.

On top of this new hearing technology is the fact that, as you may recall, we are moving to the new Odyssey electronic filing system as of September. That means that all the staff in Chittenden County are currently spending a lot of time in online trainings for that system now, and will be throughout the summer. They will also have to scan large numbers of existing paper files into the system. We are therefore currently scheduling less than a full hearing schedule in July and August to accommodate all of this extra burden on the staff.

We tried to ramp up and schedule anything that appeared urgent as soon as we were able to do so in June—although the legislative stay on evictions and foreclosures means those are not being set at all unless a motion establishes that an exception to the stay may apply—but if we missed anything that got lost in the shuffle that you feel really does require a hearing soon (or you fear a motion may have been misplaced and should have been ruled on by now), please let us know. Once the stay on evictions and foreclosures ends, we will likely be using quite a bit of hearing time to catch up on those cases for a while.

With respect to civil jury trials, I am sure you know they are currently stayed until at least January. The issue of how to safely bring potential jurors in for jury selection, and how to provide safe distancing for the juries, is of paramount concern. Six-foot distancing for that many people is a major challenge in most, if not all, courthouses. If both sides of any jury cases are willing to waive a jury and do a bench trial, we should be able to get you in much sooner than January. If you can stipulate to a six-person jury, that may also get you heard sooner once juries return. We are expecting a report from the Supreme Court soon on jury plans, so stay tuned.

If you do have a live hearing at the courthouse, please remember that we are currently limited to ten people in a courtroom (meaning eight in addition to a judge and one court

employee), everyone must wear a mask *at all times*, and everyone must keep six feet apart. This includes lawyers and their clients. I am happy to give you breaks to step out to talk (distanced) to your clients, or allow you to text each other in the courtroom, but you cannot sit next to each other and whisper as you normally would. We have moved the furniture in the attorney rooms to make it possible for you to use them but still stay six feet apart.

Finally, please remember that we expect you as members of the bar to be following the guidance from the executive branch for safe contact with clients in your offices as well as in court. At present, this includes the following:

Employees must observe strict social distancing of 6 feet while on the job. Businesses and non-profit or government entities shall ensure customers observe strict social distancing of 6 feet while on location, to the extent possible.

Employees must wear face coverings over their nose and mouth when in the presence of others.

Services operating with a single worker or small office environments (such as appraisers, realtors, municipal clerks, attorneys, property managers, pet care operators, and others) may operate if they can comply with the mandatory health and safety requirements listed above. . .

This comes from the Agency of Commerce and Community Development website as of today at <https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance#financial-legal-professional-services>. This guidance may change, but currently it means that we expect to see these requirements being followed when you and your clients are participating in video hearings.

I know these are stressful times, and everyone is struggling to adjust to a world we never expected. Please bear with us as the courts make the transition into a new technological era. I am thinking of all of you, wishing you some joy this summer despite everything, and looking forward to the day when we can return to seeing much more of each other. As always, if you have any suggestions about the issues I have mentioned here, please feel free to email me at [helen.toor@vermont.gov](mailto:helen.toor@vermont.gov).

