

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

SEP 22 2020

*Shirley A. Johnson Lepp*  
Clerk

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RE:

STATE OF SOUTH DAKOTA )  
COUNTY OF TRIPP ) SS

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

IN RE THE ADMINISTRATION OF )  
THE SIXTH JUDICIAL CIRCUIT )  
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ORDER APPROVING  
  
THIRD AMENDED  
COVID-19 PROCEDURES

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By the Court's Order of March 13, 2020, Declaring Judicial  
Emergency COVID-19 Disease the South Dakota Supreme Court declared the  
existence of a judicial emergency pursuant to SDCL 16-3- 11 through 15  
and pursuant to the Court's authority to administer justice and to  
ensure the safety of court personnel, litigants and the public, it is

ORDERED that the attached Sixth Judicial Circuit Third  
Amended COVID 19 Procedures dated September 22, 2020, be and they are  
hereby approved in their entirety.

IT IS FURTHER ORDERED that this order shall remain in effect  
until further order of the Court.

DATED at Pierre, South Dakota this 22nd day of September,  
2020.

BY THE COURT:

ATTEST:

*[Signature]*  
Clerk of the Supreme Court  
(SEAL)

*David Gilbertson*  
David Gilbertson, Chief Justice

6<sup>TH</sup> JUDICIAL CIRCUIT

THIRD AMENDED<sup>1</sup> COVID-19 PROCEDURES

September 22, 2020

1. Citizens who need to conduct business at the county clerk of court, for matters not requiring a court appearance, should first utilize options available online and by mail. Many commonly requested forms for divorce, temporary protection orders, small claims, and criminal cases are available online at <https://ujslawhelp.sd.gov/>. If your trip to the courthouse is to pay a fine, online payment options are available. A list of clerk of court numbers can be found at [https://ujls.sd.gov/Sixth\\_Circuit/Links/Counties.aspx](https://ujls.sd.gov/Sixth_Circuit/Links/Counties.aspx).
2. The following persons are **not allowed into the courtroom, jury room, or offices of the clerk of court, court services, judges, or administrative staff** unless authorized by the Court.
  - a. Anyone who has tested positive for COVID-19, for the following time period, whichever is shorter: (i.) Until the quarantine period recommended by a doctor, medical provider, or health agency has ended; or (ii.) Until the person presents a doctor's statement that the person is no longer positive for COVID-19 and does not constitute a risk of infection to the public.
  - b. **Anyone who, within the last 10 days, has lived with or had close contact with a person who has tested positive for COVID-19. Close contact is defined in the attached document from the South Dakota Department of Health.** [https://doh.sd.gov/documents/COVID19/COVID-19\\_WhatShouldIDo\\_Infographic.pdf](https://doh.sd.gov/documents/COVID19/COVID-19_WhatShouldIDo_Infographic.pdf)
  - c. Anyone who, although not testing positive for COVID-19, has been recommended to self-quarantine by a doctor, medical provider, or health agency, for the following time period, whichever is shorter: (i.) Until the recommended self-quarantine period has ended; or (ii.) Until the person presents a doctor's statement that the person is not positive for COVID-19 and does not constitute a risk of infection to the public.
  - d. **Anyone experiencing one or more of the following symptoms within the last 48 hours, where the symptom is not clearly attributable to another diagnosed medical condition:**
    - i. **Chills or fever over 100 degrees;**
    - ii. **Cough;**
    - iii. **Shortness of breath or difficulty breathing;**

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<sup>1</sup> Changes from previous version in bold unless bolded in original.

- iv. **Fatigue (unusual);**
  - v. **Muscle or body aches (not attributable to physical activity);**
  - vi. **Headache (uncommon);**
  - vii. **New loss of taste or smell;**
  - viii. **Sore throat;**
  - vix. **Congestion or runny nose;**
  - x. **Nausea or vomiting; or**
  - xi. **Diarrhea**
- e. **Anyone who, within the last 10 days, has traveled on a cruise ship or to any country designated Warning Level 3 by the CDC, or anyone who lives with that person. <https://wwwnc.cdc.gov/travel/notices>**
- f. Children aged 10 and under unless a witness or party to the proceeding.

The Court may require that any person submit to screening, including but not limited to a temperature check, to determine whether the person falls into any of these categories. **The Court may also require that everyone entering the courtroom or other area referenced in this paragraph 2 wear a mask or other material that covers the nose and mouth.**

3. Most court proceedings are open to spectators. However, persons not directly involved in the proceeding as a party, witness, or victim are encouraged to stay away from the courthouse to minimize the number of people gathering and potentially spreading COVID-19.

4. Persons within the following categories are at higher risk of complications from COVID-19: **(1) Over 60 years of age; (2) Underlying conditions including but not limited to heart disease, lung disease or diabetes; (3) Weakened immune systems; or (4) Pregnancy.** If a high-risk individual is a plaintiff, defendant, lawyer or witness in a case currently scheduled for trial or hearing, a continuance or request for telephonic, ITV, Zoom, or other electronic appearance will be granted unless the interests of justice require personal appearance. Requests may be made via phone to the clerk of court or to the judge's court reporter or court recorder. A list of clerk of court numbers can be found at [https://ujs.sd.gov/Sixth\\_Circuit/Links/Counties.aspx](https://ujs.sd.gov/Sixth_Circuit/Links/Counties.aspx). Requests may also be made in writing or orally at the time of hearing.

5. Defendants in custody will be given priority in scheduling for all trials and hearings, and those within the high-risk categories referenced in paragraph 4 shall be given highest priority. An in-custody defendant shall appear via ITV whenever possible to minimize potential transmission of COVID-19 into the jail. In the event an in-custody defendant cannot appear via ITV, steps shall be taken to minimize the defendant's time in the courtroom and potential contact

with other individuals.

6. The Court will conduct initial appearances, arraignments, preliminary hearings, and other hearings, except trials, via ITV, phone, **Zoom, or other electronic means** whenever possible, or continue jury trials as necessary, to minimize the number of persons required to gather in the courtroom and court offices.

7. Pursuant to South Dakota Supreme Court Order issued March 13, 2020, the 180 day rule is suspended effective March 13, 2020, until further order of the South Dakota Supreme Court.

8. Potential jurors falling into the high-risk categories listed in paragraph 4 may request to be excused from jury duty via letter to the clerk of court. The Court shall timely consider each request and inform the juror of the time period of excusal. Jurors may also make this request orally during jury selection.

9. Judges and court staff shall adopt in court practices and schedules to encourage social distancing and smaller groups of participants and spectators. **This may include limiting the occupancy of any courtroom or court office or adjacent common area to a number less than the posted occupancy limit.**

10. All courtrooms, court offices, and adjacent areas shall be regularly cleaned and disinfected.

11. If the presiding judge deems it necessary to cancel court or close court offices because of an increased threat from COVID-19, notice will be provided through the UJS notification system. Individuals may sign up for notifications at <https://ujnotifications.sd.gov/Register.aspx>

12. **Weddings may be scheduled and performed by clerk magistrates, magistrates, and circuit judges in the Sixth Circuit if court schedules and duties and safety considerations so allow.**

**Depositions, mediations, and arbitrations may be allowed in the courtroom or court areas of the Sixth Circuit if approved by the presiding judge, and court schedules and safety considerations so allow.**

**The safety considerations referenced in this paragraph shall include, but not be limited to, the number of active COVID-19 cases in the community and whether any part of the courthouse has been closed to the public by the county commission due to COVID-19. Any gathering referenced in this paragraph 12 may not exceed fifteen attendees. Social distancing and other CDC recommendations, including masking for all attendees, may be required.**

13. Any mandatory sanction required pursuant to the Application of Supervisory Responses (ASR) established by SDCL § 23A-48-7 and SDCL § 23A-48-9, may be deferred in the discretion of the Court Services Officer in consultation with the deputy or chief court services officer. In consultation and with approval from the chief or deputy chief court services officer,

in person contact requirements with probationers may be waived or modified.

14. Whenever SDCL 15-5A, **South Dakota Supreme Court order**, or **these procedures** permit a hearing to be conducted by ITV, with the permission of the judge hearing the case, parties and/or counsel are permitted to appear by telephone, **Zoom**, or **other electronic means**.

15. If law enforcement testing is not available to perform any HOPE or 24/7 probation testing in any Sixth Circuit county, court services may perform periodic testing of the probationer in lieu of the HOPE probation or 24/7 testing.

16. If 24/7 testing becomes unavailable in any county in which it was available when a driving permit or bond was issued, any driving permit that has been issued pursuant to SDCL 32-23-23 or other law, or any bond which has been set with 24/7 as a condition, is subject to being continued, modified, or revoked by the issuing judge as that judge determines appropriate based upon the circumstances of the individual case.

17. Felony court initial appearances and arraignments, and all hearings for a misdemeanor, may be held via sworn affidavit of the Defendant, without the Defendant's appearance. The affidavit must contain language acknowledging that the Defendant fully understands all of his or her constitutional and statutory rights, the charge or charges in the information or indictment, has received or reviewed a copy of the information or indictment, including the elements of the charge or charges, the potential maximum penalties for each charge, including any mandatory minimum sentence, as well as pleas available to him or her, and the plea to be entered. Only not guilty and not guilty by reason of insanity pleas may be entered by affidavit of the Defendant on a felony.

18. Defendant's appearance for a felony may be waived for any hearing in which no substantive action is taken, including status or scheduling hearings, as well as non-evidentiary motions hearings.

19. For purposes of this paragraph, a "misdemeanor warrant" is a misdemeanor arrest warrant or misdemeanor failure to appear warrant which is active at the date of signing of this order and which was issued by a judge of the Sixth Judicial Circuit for an offense other than Domestic Abuse, Stalking, Violation of Protection Order, and Violation of No Contact Order. A "jail" is the jail specifically designated as the applicable county's jail which has enacted policies and procedures to reduce the jail population in order to stop or limit the spread of COVID-19 within the jail. If a Defendant is arrested for a misdemeanor warrant for which a personal recognizance (PR) bond has not already been authorized, alone or in combination with a new unrelated charge for which a PR bond has been authorized, the bond on the misdemeanor warrant shall be converted to a PR bond, and the Defendant shall not be required to be taken to jail. The arresting officer may issue a summons to appear at a regular court date of the county. Nothing herein shall prohibit a judge within the Sixth Circuit to overrule this paragraph in regard to any specific misdemeanor warrant after the date of signing below.

20. Whenever any county commission within the Sixth Circuit determines it necessary to limit or exclude the public from accessing other offices in the courthouse where the court, court

administration, clerk of court, or court services has its offices, chambers, or courtrooms:

a. No judge or UJS employee shall be denied access to courtrooms, court chambers, clerk of court's offices, court administration offices, or court services offices that are located in any courthouse within the Sixth Circuit.

b. Any document that needs to be obtained from the clerk of court shall be requested via phone or email or obtained online using the information referenced in paragraph 1. Any document required to be filed with the clerk of court shall be filed via Odyssey, mailed, or emailed to the clerk of court's office. If there is a need to obtain or file a time-critical document, and there is no other way to receive or deliver the document other than by personal contact with the clerk of court, then a courthouse entrance must be made available for the person to enter the courthouse during the clerk of court's posted hours.

c. If court services needs to conduct an in-person meeting, a courthouse entrance must be made available for the person meeting with court services to enter the courthouse.

d. If, as a condition of providing access to the courthouse as referenced in this paragraph, any county official requires a temperature check or screening by a third party, the county shall provide the personnel and equipment to provide the screening.

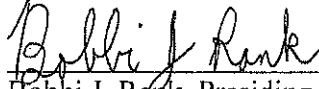
e. Nothing in this paragraph shall require the admittance of any person who is excluded from court areas by paragraph 2.

f. County custodial staff shall continue to provide services in paragraph 10.

21. All attorneys and parties entering the courthouse are expected to know the signs and symptoms of COVID-19 by reviewing publicly available information provided by the South Dakota Department of Health (SD DOH) and the Centers for Disease Control and Prevention (CDC). Such persons are expected to self-monitor for these signs and symptoms on a regular basis and request a phone/ITV appearance or continuance in advance if potential symptoms exist, and such appearance or continuance will be liberally granted. If an attorney or party who has personally appeared in the courtroom or court offices within the previous fourteen-day period is confirmed to have COVID-19, he or she shall inform the applicable court staff or judge of possible exposure to COVID-19. Court staff and judges shall maintain confidentiality of these communications by not providing the name of the reporting party unless that person consents.

22. These policies shall be effective on the date below and remain in effect until modified or repealed by the presiding judge.

It is SO ORDERED this 22nd day of September, 2020.

  
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Bobbi J. Rank, Presiding Judge  
6<sup>th</sup> Judicial Circuit