

Fairfax County Circuit Court Third Transition Plan

On July 15, 2020, the Court adopted its “Second Transition Plan.” Pursuant to the Supreme Court of Virginia’s ongoing “Order[s] Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency,” most recently the Sixteenth Order dated January 19, 2021, the Circuit Court of Fairfax adopts this Third Transition Plan. To the extent any provision of this Third Transition Plan differs from the First or Second Plans, the provisions here will control.

I. Civil Cases

The Court will continue to hear presently scheduled motions and trials, and any new, properly noticed matters, via video or teleconference (“Remote Hearings”). All civil hearings, except for proceedings related to protective orders and contempt, shall be Remote Hearings, absent leave of Court for good cause shown. The consent of all parties for a Remote Hearing is not required.

The following items enjoy docketing priority: Petitions for protective orders, child custody or protection cases (emergencies take priority), civil commitment hearings, petitions for temporary injunctive relief, proceedings related to emergency protection of elderly or vulnerable persons, petitions for appointment of a guardian or conservator, proceedings necessary to safeguard applicable constitutional protections, rules to show cause, sexually violent predator hearings, and matters deemed an emergency by the Court.

The Court may need to *sua sponte* continue motions and trials at the last moment pursuant to its own triage process necessary to accommodate priorities, or in the interest of public safety.

Civil trials are generally limited to matters lasting four days or less until further notice.

Presently scheduled motions and trials that do not conform with this policy must be reset at Calendar Control.

A. Civil Motions

The Court will continue to follow its Friday civil non-evidentiary motions practice, including *pendente lite* and rules to show cause.¹ When assigned to a judge, the judge will segment the docket for Remote Hearings.

Civil evidentiary motions may be scheduled Mondays through Thursdays through Calendar Control.

All motions will be initially scheduled to begin at 10:00 a.m. Each presiding judge will organize the assigned docket and will set and announce each motion for a time certain throughout the day.

Parties may continue to request rulings on any motion based only on filed briefs by waiving oral argument and notifying the Court of this preference.

C. Civil Trials

1. Civil Jury Trials

The Supreme Court of Virginia approved the Court's "Addendum to the Fairfax Circuit Court Jury Plan to Address the Resumption of Civil Jury Trials" on January 27, 2021. Civil jury trials may be scheduled for dates between March 16, 2021 and January 1, 2022, by invitation. (The Court will invite civil litigants to advance jury trials already scheduled based on the age of the case and the suitability of the case for a low-technology courtroom and the Addendum's requirements). All other new Civil jury trials will be scheduled after January 1, 2022, through Term Day or Calendar Control. Notwithstanding all this, the Court may postpone jury trials consistent with the then-state of the judicial emergency.

2. Civil Bench Trials

Bench trials currently scheduled for four days or fewer remain scheduled, as Remote Hearings, absent notice from the Court to the contrary. New matters may be scheduled through Calendar Control to be heard Mondays through Thursdays at the discretion of the Court.

¹ The Thursday hearings set forth in the First Transition Plan were terminated in the Second Transition Plan.

II. Criminal Cases

Other than criminal jury trials, all criminal hearings will be initially scheduled to begin at 10:00 a.m. Each presiding judge will organize the assigned docket and will set and announce each motion for a time certain throughout the day.

A. Criminal Motions

The Court will continue to follow its Friday criminal motions practice. The Court may insist Defendants in custody appear remotely. Defendants not in custody must appear in person. All other participants may appear remotely.

B. Criminal Pleas

Pleas for felonies and Class 1 and 2 misdemeanors may be scheduled for hearings Mondays through Thursdays through Calendar Control. Defendants not in custody must appear in-person. The Court may insist Defendants in custody appear remotely. Counsel, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers may appear remotely.

Agreed dispositions for pleas to traffic infraction appeals and Class 3 and 4 misdemeanors appeals may be submitted to the Court in writing for consideration of and entry of the disposition. Pleas without agreed dispositions must be scheduled for hearings Mondays through Thursdays through Calendar Control.

C. Sentencings/Revocations

Currently scheduled sentencing and revocation hearings will proceed. Defendants must appear in person, unless in custody. The Court may insist Defendants in custody appear remotely. Counsel, victims, witnesses, interpreters, court reporters, victim witness services personnel, and probation officers may appear remotely.

D. Criminal Jury Trials

The Supreme Court of Virginia approved the “Fairfax Circuit Court Plan for Resuming Jury Trials,” resubmitted September 15, 2020. Criminal jury trials will continue in three designated courtrooms, pursuant to that Plan. However, the Court

may further postpone jury trials consistent with the then-state of the judicial emergency.

E. Criminal Bench Trials

Felony and Class 1 and 2 misdemeanor criminal bench trials shall enjoy primary priority on the Court's docket.

Misdemeanor appeals of Class 3 and 4 misdemeanors, plus traffic offense appeals, must be continued to a date after August 3, 2020, through Calendar Control.

III. Calendar Control

The Court will continue to follow its 8:30 a.m. Calendar Control process for scheduling and requests for leave to appear in-person at any hearing. Afternoon Calendar Control at 3:30 p.m. is reserved for emergencies or requests pertaining to the next day's docket. All Calendar Control is conducted by telephone. There is no in-person Calendar Control option.

IV. Facilities

A. Courthouse Access

No parties, counsel, or witnesses for a scheduled Remote Hearing may appear in-person at the Courthouse, without leave of Court.

B. Health and Social Distancing

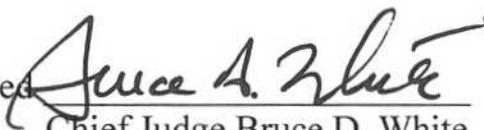
By Order entered May 18, 2020, the Court required and will continue to require face coverings by all who enter and remain in the Courthouse, including within courtrooms. In addition, all persons in the Courthouse must always maintain six-foot social distancing from all other persons, subject to exceptions for security and other approved reasons.

The presiding judge may, in the interest of public safety, limit the number of persons in the courtroom.

The jury resumption plan approved by the Supreme Court of Virginia included the Court's protocol for determining whether conditions warranted a

stoppage of jury trials. The pertinent language reads as follows: "[W]e will carefully monitor evidence of resurgence and consult on an as needed basis with the Fairfax Health Department to determine whether the resumption of jury trials needs to be suspended. Reinstatement of "stay-at-home" Executive Orders, or returning to Phase 1 or Phase 2 reopening status, will almost certainly require suspension of jury trials." The Court continues to monitor evidence of resurgence. The Court also consults with the Fairfax Health Department as COVID-related issues arise and will continue to do so.

Dated: February 8, 2021

Approved 
Chief Judge Bruce D. White