

Second Revised
**PROCEDURAL ORDER GOVERNING
THE PROTECTIVE CUSTODY DOCKET
IN REGION 1**

In response to the COVID-19 pandemic, the Trial Chiefs have issued two Orders indicating that the District Courts will continue to hear Child Protective petitions and hearings, but that termination hearings are deferred until further notice. Consistent with the two Orders, Biddeford District Court remains open to hear Child Protective petitions and hearings, other than termination hearings.

Subject to ongoing modifications and further Orders from the Trial Chiefs, the following guidance applies to the Protective Custody docket in Region 1 through May 1, 2020. This Second Revised Procedural Order replaces the First Revised Order in its entirety.

Summary Preliminary Hearings

Summary preliminary hearings will occur in the courthouse as scheduled. The statute, 22 M.R.S § 4034(3), requires that waivers must be executed in court before a judge. However, the statute also provides that if a party fails to appear after proper notice has been given, a summary hearing need not be held and the party's failure to appear will be deemed a waiver.

If a party intends to waive, but would prefer to not come to the courthouse to execute the waiver, one alternative might be to enter into an agreement in advance with the AAG whereby the party will not appear for the SPH, and the proposed Order After Opportunity For Summary Preliminary Hearing submitted to the Clerk by the AAG, with copies to all counsel and the GAL, will indicate the party's failure to appear was the result of an agreed-to default for COVID-19 purposes. The Court will accept agreed-upon Orders with language to that effect.

Counsel, however, will need to advise their clients as they determine appropriate.

If a case management hearing is scheduled to occur with a summary preliminary hearing, and parties plan not to come to the courthouse, the case management hearing will occur telephonically at the originally scheduled date and time.

The Court is set up to use Zoom, and will consider requests to conduct summary preliminary hearings and waivers via Zoom. Counsel who would like to use Zoom should contact the Clerk to schedule a telephonic conference in advance to discuss use of Zoom for an upcoming proceeding.

Jeopardy Hearings

Contested jeopardy hearings will occur in the courthouse as scheduled. The Court will consider requests to have witnesses testify telephonically on a witness-by-witness basis. The Court will

consider motions to continue on a case-by-case basis. Motions will be accepted by email sent to the Clerk, copied to all counsel and the GAL.

If parties to a contested jeopardy hearing know in advance they plan to agree to jeopardy findings, and as a result the parties and counsel would prefer not to come to the courthouse, the Court will take the jeopardy agreements telephonically. Contact the Clerk in advance, so that the Clerk can distribute Bridge line call-in information.

Work out conferences will occur as scheduled. Work out conferences can occur at the courthouse or in other mutually agreeable locations. The Court urges parties to conduct work out conferences telephonically if possible. The Court will consider motions to continue on a case by case basis. Motions will be accepted by email sent to the Clerk, copied to all counsel and the GAL. If work out conferences lead to jeopardy agreements, the AAG will take the lead on calling the Clerk to arrange a time to take the jeopardy agreements telephonically.

The Court is set up to use Zoom, and will consider requests to conduct jeopardy hearings via Zoom. Counsel who would like to use Zoom should contact the Clerk to schedule a telephonic conference in advance to discuss use of Zoom for an upcoming proceeding.

Termination of Parental Rights Hearings

Hearings on termination petitions are deferred until further notice. As a practical matter, that means any termination hearings scheduled through the end of April 2020 are continued. As we get closer in time, the Court will update Counsel and GALs as to termination hearings currently scheduled for May 2020.

Work out conferences associated with deferred termination hearings are also deferred until further notice. However, counsel, parties, and the GAL can privately work to achieve resolution to termination petitions, but any such negotiation is optional. Negotiation should be conducted via telephone or video to the maximum extent possible.

The Court will still take consents to termination. The statute, 22 M.R.S § 4055(1)(B)(1), requires that consents must be executed in court before a judge. As has historically been the case in Region 1, under certain narrow circumstances, the Court will consider taking consents by video (Zoom or another platform depending on the situation). If you anticipate your client will be consenting to a TPR, notify all counsel and the GAL, and contact the Clerk to schedule a date and time to take the consent in the courthouse or possibly by video.

Judicial Reviews, Permanency Planning, and Case Management

Judicial Reviews will occur as scheduled, subject to the following procedures intended to allow flexibility and reduce the need for counsel, GALs, and parties to physically appear in the courthouse.

Agreed upon judicial review orders will be accepted by email, with a copy to all counsel and the GAL, submitted on or before the scheduled judicial review day. On or as long before the scheduled judicial review day as possible, the AAG must send an email to the Clerk (and all counsel and the GAL) representing that all parties and the GAL agree to the judicial review order, and asking that counsel, the GAL, and all parties be excused from appearing in Court. The AAG must promptly email the proposed judicial review order to the Clerk.

The Court nevertheless reserves the right to require parties to appear in person, depending on the status of the case.

Contested judicial reviews will likely need to be heard in the courthouse. Motions to conduct the contested judicial review telephonically will be considered, depending on the number of witnesses and complexity of the issues. Motions to continue will also be considered. Motions will be accepted by email sent to the Clerk, copied to all counsel and the GAL.

The Court will continue to consider motions for expedited judicial reviews, but urge counsel to limit such motions to the most pressing issues.

Judicial reviews combined with permanency planning, and separately scheduled permanency planning hearings, will be handled using the procedures described above for contested judicial reviews.

Case management conferences will occur as scheduled, but to the extent possible will be conducted telephonically, so that dates for trial can be discussed. The Clerk will provide Bridge line call-in information. Following the hearing, case management orders will be accepted by email, with a copy provided to all counsel and the GAL.

The Court is set up to use Zoom, and will consider requests to conduct contested judicial reviews via Zoom. Counsel who would like to use Zoom should contact the Clerk to schedule a telephonic conference in advance to discuss use of Zoom for an upcoming proceeding.

GAL Reports

GAL reports and compliance reports for all matters will be accepted via email sent to the Clerk, copied to all counsel. GALs do not need to come to the courthouse to file their reports.

Writs

Writs will still be served, but consideration will be given to the extent possible for inmates to participate in proceedings telephonically or by video. The Court will consider motions for inmates to participate remotely on a case by case basis. Motions will be accepted by email sent to the Clerk, copied to all counsel and the GAL.

Submissions to the Clerk

The Court will accept, but discourages, the filing of paper documents by hand at the Clerk's office. The Court urges counsel, parties, GALs, and interested persons to file Protective Custody documents by email.

For new cases originating in Springvale, new Petitions and new Petitions with PPOs should be emailed to dc.staff.sprdc@courts.maine.gov.

For new cases originating in York, new Petitions and new Petitions with PPOs should be emailed to dc.staff.yordc@courts.maine.gov.

All other Petitions, motions, requests, reports, and other Protective Custody documents should be emailed to dc.staff.biddc@courts.maine.gov.

If a request for a PPO is going to be emailed, the caseworker's affidavit must be notarized prior to emailing the request for a PPO.

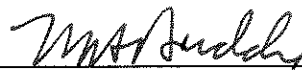
Documents submitted by email after hours will not be acted on by the Court until the Court re-opens for business. If a PPO needs to be acted on after hours, the Department must use other means to bring the request to the attention of a judge.

Documents emailed to the Clerk must be copied by email to all counsel and the GAL, along with persons (or their counsel) designated as having interested person status. Emailed documents must be in PDF format, and contain a signature or electronic signature. Petitions for Child Protection Order, PPO documents, and Petitions for Termination of Parental Rights filed by email must also be filed in hard copy with the Court. If other Protective Custody documents are submitted by email, do not additionally deliver or mail hard copies to the Clerk's office.

Proposed judicial review orders must contain the date the GAL last visited the child or children involved, whether in person or otherwise.

So ordered.

March 25, 2020.
2:30 p.m.



Michael A. Duddy, Judge
Maine District Court