
MEMORANDUM



Matter: General

From: João C.J.G. de Medeiros

To: File

Date: Revised March 24, 2020

Re: COVID-19 and Minnesota Courts

The COVID-19 pandemic has resulted in the declaration of a national emergency by the United States Federal Government and a Peacetime Emergency in the State of Minnesota. This has resulted in the adoption of a number of precautionary orders by the state and federal court systems to address the need to limit the congregation of groups of people to slow the spread of the novel coronavirus. These limiting measures will have an effect on the progress of civil matters presently working their way through the court system.

Orders have recently been issued by Chief Justice Lorie Gildae of the Minnesota Supreme Court and Chief Judge John Tunheim of the U.S. District Court for the District of Minnesota. These orders will affect cases around the State of Minnesota. In addition, the chief judges of Minnesota's state trial courts are also expected to issue orders controlling the governance of their local cases.

Even if hearings continue as scheduled, both state and federal courts are exploring means to hold those hearings over remote video and telephone conferencing systems where possible.

At this time, most of the impacts related to case management are temporary in nature and will therefore be chiefly directed towards near-term hearings and trials. Long-term scheduling orders do not appear to have been

significantly impacted by the orders. However, it is unclear how realistic this is, particularly with respect to in-person discovery such as depositions and medical examinations. To the extent this form of discovery cannot be accommodated, it may be necessary to seek relief from the judge presiding over a matter.

This Memorandum provides an outline on the likely impact of the orders issued to date upon the handling of these matters. Because this is an emergent situation, the rules and procedures outlined below will change. If this occurs, such changes are likely to be in the direction of further suspensions and delays of court deadlines & hearings.

U.S. District Court for the District of Minnesota

As of the time of this Memorandum, the United States Courthouses in Minneapolis, St. Paul, Duluth, and Fergus Falls remain open for limited business. However, all jury trials in the District of Minnesota have been postponed through at least April 27, 2020.

Other hearings and bench trials have not been affected by the Court's order. These will continue as scheduled unless the individual judges order otherwise. In addition, the individual judges may implement telephonic or videoconference hearings as they deem appropriate.

Discovery and trial-related deadlines in civil cases have NOT been affected by this continuance, notwithstanding the postponement of trials. Instead, the chief judge has left any modifications of these deadlines to the individual judges handling those cases. Accordingly, in the absence of such an order from a civil judge, scheduling deadlines in civil cases remain in effect.

A second order by the District of Minnesota responds to policies being implemented by the Bureau of Prisons, and is addressed to criminal matters.

On March 23, 2020, General Order No. 3 activated the U.S. District Court's continuity of operations plan through at least April 27, 2020. The COOP appears to be an internal management document, and does not appear to be

publicly available. The public facing order of primary interest to civil litigators is that *attorneys are no longer to provide physical courtesy copies of motion papers while the order remains in effect.*

Finally, the U.S. District Court has implemented certain procedures for entering the court buildings. On March 17, 2020 the District Court entered a new set of protocols regarding entry into the court buildings. The protocols:

- (1) Prohibit persons who travelled to a list of affected countries within the previous 14 days;
- (2) Prohibit entry by anyone who resides with or has had close contact with someone who travelled to one of the restricted countries within those previous days;
- (3) Prohibit entry by anyone who has been asked to self-quarantine by a hospital or health agency; and
- (4) Prohibit entry by anyone who was been diagnosed with or had had contact with anyone who has been diagnosed with COVID-19.

The order is enforceable by the U.S. Marshals and Court Security Officers. People are required to self-report whether they meet these conditions to these officers.

Attorneys who meet any of the above conditions and has an upcoming hearing should reach out to the judge's chambers so that appropriate safeguards can be taken or, with the approval of the presiding judge, arrange to appear by teleconference or videoconference.

Minnesota State Courts (Statewide)

Minnesota appellate courts are now authorized to issue reasonable extensions, of up to 30 days, of the deadline for initiating an appeal or requesting review of an order. In addition, although proceedings are continuing as scheduled, the appellate courts have been directed to implement procedures to allow hearings to be conducted remotely, and have been authorized to determine that oral

argument is not necessary in some cases in light of the emergency. Finally, the deadline for district courts to transmit physical exhibits to the Court of Appeals has been extended until at least April 22, 2020.

The Minnesota Supreme Court of Appeals and Supreme Court have issued standing orders reliving parties from the obligation of filing paper copies of briefs. The Court of Appeals has suspended the requirement of serving bound copies on co-counsel. The Supreme Court has not suspended the requirement of providing bound copies on co-parties. It appears that following the end of the stay of emergency parties might be required to submit paper copies of the briefs upon order of the court or at the request of co-parties.

The Office of Lawyers Professional Responsibility has been authorized to take measures the director deems appropriate in response to the emergency, including transferring as much of the investigation and hearing work to remote works as possible. In addition, panels may be suspended until at least April 22, 2020.

Jury trials that were underway as of March 13, 2020 may continue until completed. However, the commencement of new jury trials has been suspended until at least April 22, 2020.

Effective March 23, 2020, all hearings in non-priority litigation (including most ordinary civil litigation) is to be held remotely via ITV, other remote technology, or by review of written submissions without oral argument.

All filings from parties who are required to make electronic filings should be electronic at this time. *I would strongly recommend that in cases where a prior court order requires courtesy copies to be delivered to the Court, that the attorney reach out to the court to confirm whether the Court still requires such copies.*

With respect to other cases pending before the Minnesota trial courts, the Court has established a priority-ranking system to triage cases. Cases assigned to a Super High Priority or High Priority ranking will proceed as usual. For cases of a lower priority, cases will proceed under modified rules.

With respect to general civil litigation cases, only Temporary Restraining Order, Harassment Restraining Order, and Temporary Injunction cases have been given a High Priority Assignment. These types of hearings and motions will proceed under the ordinary rules. The remainder of general civil-litigation cases may be affected if they have near-term deadlines.

First, new jury trials may not commence or be scheduled in lower-priority cases from March 16 through at least April 15. In addition, ALL court proceedings for these cases are suspended for these lower priority cases between March 16 and at least March 30.

Once proceedings in cases resume, they will occur via video- and telephone-conferencing to the extent possible.

In addition to these measures, the Court has made a number of COVID-19 related orders. Anyone with an elevated risk of transmitting COVID-19 is barred from attending any in-court hearing or proceeding. Witnesses, parties, or others who might attend a hearing must notify the Court if they will be unable to appear at the hearing due to actual or suspected exposure to COVID-19. As a result, it is important for attorneys to remain in contact with their clients and with witnesses related to the scheduling of these matters.

The state law library is closed.

Second Judicial District (St. Paul/Ramsey County)

The Second Judicial District has issued an order implementing the Supreme Court's order, but not expanding upon the restrictions put in place by it. As with the statewide order, the Second Judicial Order will suspend all hearings in lower priority matters for 14 days and will suspend the commencement of new jury trials for 30 days.

The one matter of note is that court facilities in Ramsey County will remain open, including service windows, and filings will also remain open. However, members of the public are being discouraged from making any non-essential visits to court facilities during this time.

The primary effect of this limitation on non-essential physical access to the courthouse, other than the limitations already previously addressed, will be to limit the ability to perform any tasks that cannot be performed remotely. For example, public access to documents filed in Minnesota trial cases is through public access terminals in the courthouses. Therefore, although attorneys working on court files will still be electronically served with documents from the cases they are working on, they may not be able to conduct investigations into documents filed in previous cases involving the same parties or witnesses.

Fourth Judicial District (Minneapolis/Hennepin County)

The Fourth Judicial District issued guidance on March 17, 2020 addressing the Supreme Court order. The Court and service windows remain open, but nonessential visits are discouraged. In-person hearings will not occur in the civil division through at least March 31, 2020, with the exception of Harassment Restraining Order, Temporary Restraining Order, and Temporary Injunction Hearings.

The public records terminals are available, but staff will only issue up to two copies and will mail any additional documents after prepayment. The self-help centers are available for emergency customers only. The Legal Aide Clinics have been cancelled through March 27, 2020. The Fourth Judicial District is attempting to notify attorneys of delays, but those with hearings scheduled between March 16 through March 27 may contact the Court at (612) 348-6000 to follow up on case status. In particular, I would note that although the guidance indicates that in person hearings have been cancelled, it does not address what has happened to telephone conferences with the court.

LINKS

U.S. District of Minnesota General Order

https://www.mnd.uscourts.gov/sites/mnd/files/2020-0313_COVID-19-AdminOrder.pdf

U.S. District of Minnesota General Order No. 2

https://www.mnd.uscourts.gov/sites/mnd/files/2020-0317_COVID-19-General-Order-No2.pdf

U.S. District of Minnesota Entry Protocol

https://www.mnd.uscourts.gov/sites/mnd/files/2020-0317_Admin-Order-EntranceProtocols.pdf

U.S. District of Minnesota General Order No. 3

https://www.mnd.uscourts.gov/sites/mnd/files/2020-0323_COVID-19-General-Order-No3.pdf

Minnesota Supreme Court

<https://www.mnbar.org/docs/default-source/publication/adm20-8001---order-continuing-operations---03132020.pdf>

<http://mncourts.gov/mncourtsgov/media/CIOMediaLibrary/News%20and%20Public%20Notices/Orders/Order-Continuing-Operations-of-the-Courts-of-the-State-of-Minnesota-Under-a-Statewide-Peacetime-Declaration-of-Emergency.pdf>

Second Judicial District (St. Paul/ Ramsey County)

<https://www.mnbar.org/docs/default-source/publication/covid-19-information-guide---rcba.pdf>

Fourth Judicial District (Minneapolis/Hennepin County)

<https://www.mnbar.org/docs/default-source/publication/4thdist-covid-19-info-guide.pdf>

Other Minnesota Judicial Districts (Scroll Down to Drop-Down Menu & Select County)

<http://mncourts.gov/emergency>