



HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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April 13, 2020

RE: The Pandemic, Appearances by Attorneys and the Accused

TO: All Harris County Criminal Court Judges (via email)

Hon. Hazel B. Jones, 174th

Hon. Nikita Harmon, 176th

Hon. Robert Johnson, 177th

Hon. Kelli Johnson, 178th

Hon. Randy Roll, 179th

Hon. DaSean Jones, 180th

Hon. Danny Lacayo, 182nd

Hon. Chuck Silverman, 183rd

Hon. Abigail Anastasio, 184th

Hon. Jason Luong, 185th

Hon. Greg Glass, 208th

Hon. Brian Warren, 209th

Hon. Frank Aguilar, 228th

Hon. Chris Morton, 230th

Hon. Josh Hill, 232nd

Hon. Hilary Unger, 248th

Hon. Lori Chambers Gray, 262nd

Hon. Amy Martin, 263rd

Hon. Herb Ritchie, 337th

Hon. Ramona Franklin, 338th

Hon. Jesse McClure III, 339th

Hon. George Powell, 351st

Hon. Alex Salgado, CCL1

Hon. Ronnisha Bowman, CCL2

Hon. Erica Hughes, CCL3

Hon. Shannon Baldwin, CCL4

Hon. David M. Fleischer, CCL5

Hon. Kelley Andrews, CCL6

Hon. Andrew A. Wright, CCL7

Hon. Franklin Bynum, CCL8

Hon. Toria Finch, CCL9

Hon. Lee Harper Wilson, CCL10

Hon. Sedrick T. Walker II, CCL11

Hon. Genesis Draper, CCL12

Hon. Raul Rodriguez, CCL13

Hon. David L. Singer, CCL14

Hon. Tonya Jones, CCL15

Hon. Darrell Jordan, CCL16

Honorable Judges of Harris County:

The Harris County Criminal Lawyers Association (HCCLA) calls on *all* Harris County Criminal Courts to not require defendant(s) and/or their attorney(s) to appear in person, while the State is permitted to appear via video conference, absent extraordinary circumstances. Many courts' ongoing policy of requiring defendants to appear in person presents both a threat to public safety and the impartial administration of justice. These defendants' lawyers, given their constitutional and ethical obligations to their clients, feel compelled to appear in person, even if not expressly required to so. Specifically, such a judicial policy requiring appearances:

- (1) endangers the lives of defendants, defense counsel (who feel compelled to appear if not expressly required to do so), and the court staff;
- (2) endangers the lives of the family members of defense counsel, defendants, and court staff;
- (3) endangers the lives of third parties with whom the aforementioned come into contact; and
- (4) endangers foundational principles of our Constitution and the criminal justice system—that all parties shall be treated equally and no judge engage in the appearance of impropriety—by perpetuating a double standard of compelling one side appear in person (and therefore be put at risk) while allowing the other side to appear electronically.

HCCLA is the largest local criminal defense bar in the United States, with more than 700 active members engaged in defense of persons accused of criminal acts. HCCLA has, for 50 years, stood for criminal justice, and criminal justice reform. HCCLA has consistently stood against judicial overreach. HCCLA has and will continue to seek legal redress for our members and their clients in the face of wrongdoing by judges, prosecutors, law enforcement.

So that Harris County criminal courts maintain fairness and objectivity, while protecting those before them, HCCLA requests *all courts immediately cease this double standard and threat to public health, except in the rare circumstance of (1) a truly essential proceeding that (2) requires the physical presence of the defendant and/or defense counsel.*

COURTROOM APPEARANCES

Based on current modeling, cases of COVID-19 are expected to reach apex in Texas around May 4, 2020. Federal, State and Local governments issued strict guidelines and restrictions on all persons leaving their homes. These policies, sometimes in the form of emergency declarations, are deemed necessary to protect the safety of each individual and society as a whole, in an attempt to end this pandemic quickly.

At present, there are over 500,399 confirmed cases of Covid-19 in the US. There are 13,328 confirmed cases in Texas and 3,629 confirmed cases in Harris County. There are already over 20,602 deaths in the United States. Locally, over ten percent of the Harris County Jail is quarantined. At this writing, at least 49 Harris County Deputy Sheriffs, Jailers, and Bailiffs and 25 inmates have tested positive for COVID-19. Jails, those working therein, and detained persons are at increasing risk nationwide. The number afflicted with this virus has exploded in New York City and Chicago jails. Experts have decried the current practices in Harris County, as has the Harris County Sheriff.

Yet more than ten inmates per court are still being brought unnecessarily to the courthouse every day the courts operate. Defense counsel must meet with inmates in the courtroom holding cells, needlessly and recklessly exposing these lawyers to the risk of COVID-19. The six-foot social distancing rule is not, and cannot, be adhered to in the holding cells. When defense lawyers or defendants leave the holding area and enter the courtroom, they expose the judge, court staff and deputies. Large groups of defendants and counsel are left for hours in the hallways, awaiting “their turn” to enter the courtroom. The six-foot rule is not enforced, which violates the County Engineer’s Order regarding the courthouse.

This continues, despite reports a criminal judge and/or staff member has tested positive for COVID-19. HCCLA reminds you a New York judge died from COVID-19, within two weeks of insisting on conducting his regular docket. This is an extremely contagious and deadly disease where many persons exposed to the virus are asymptomatic—meaning no fever, sweats or chills, body aches, or other symptoms. They are spreading the virus and exponentially increasing it, without even knowing it. And the virus does not discriminate on how it spreads—it can be person-to-person, or from a hard surface (e.g., elevator buttons, door handles, a courtroom telephone receiver, courtroom furniture, writing instruments, etc.)

Video appearances are easy and routine now. Indeed, the Harris County District Attorneys Office (HCDAO) has expressly forbidden Assistant District Attorneys (ADAs) from appearing in courtrooms, except in the rarest of occasions. Every criminal court has acquiesced to this arrangement for ADAs. For a Harris County Judge to require one party to physically appear and risk exposure to a deadly pathogen, and allow the other party to appear remotely, violates a judge's appearance of impartiality, at a minimum.

Each court has the ability to appoint counsel for indigent defendants electronically. Neighboring Fort Bend and Brazoria Counties have done this for more than a decade. A simple email notifying defense counsel the appointment is available in the attorney kiosk is all that is required in criminal cases. The technology is already in place, and several judges currently use this electronic appointment system in the most serious of cases. Other judges simply refuse to implement it for no apparent or explicable reason.

Most Harris County Criminal District Courts and County Criminal Courts at Law are not requiring defendants on bond to make appearances. Cases are being automatically reset by these courts. HCCLA applauds these courts and the foresight of these judges. The coordinators have worked overtime to accommodate defendants and their lawyers, and we are grateful for their service.

For all the aforementioned reasons, HCCLA urges the remaining courts to follow. Every unnecessary appearance in court threatens to spread this deadly virus. With few exceptions, magistrates can and should impose bond conditions. Should the presiding court wish to amend those conditions, a video conference can be held and if the conditions are amended, defense counsel and defendant can be provided immediate notice.

"IN PERSON" REPORTING TO PRE-TRIAL SERVICES

Despite stay-at-home orders and social distancing guidelines, HCCLA has been informed some courts are still requiring bonded defendants to report personally to pretrial services. HCCLA urges the courts to replace in person reporting with reporting by phone. Requiring bonded defendants to report, in person, to a facility hosting hundreds of people daily is contrary to national, state and local mandates. It creates an unneeded health risk and prolongs this state of emergency. COVID-19 has not yet reached its apex, and limiting its spread is the highest priority in Harris County and across the nation.

HCCLA is aware of some bonded defendants being required to report twice in the same week for urine tests, despite being 1) presumed innocent, 2) the court already having required interlock/monitoring devices, and 3) there being no reported violations. Such practices endanger the lives of the very community that bond conditions are designed to protect.

HCCLA recommends all "in person" reporting and drug testing of bonded persons with unresolved cases pending in the Harris County criminal justice center cease effective immediately, and not resume until the appropriate government officials declare this health emergency has passed.

CONCLUSION

HCCLA demands the defense bar, and presumptively innocent defendants, be accorded the same treatment as the Assistant District Attorneys. Court appearances must cease immediately, except in narrow situations where such physical appearances are universally deemed truly “essential”. Finally, HCCLA strongly urges unnecessary in person reporting to pre-trial services be suspended, for the duration of this health emergency.

Thank you for your consideration.

Respectfully submitted,



Neal A. Davis

President

Harris County Criminal Lawyers Association

Cc: Hon. Lina Hidalgo, Harris County Judge
Hon. Rodney Ellis, Harris County Commissioner, Precinct 1
Hon. Adrian Garcia, Harris County Commissioner, Precinct 2
Hon. Steve Radack, Harris County Commissioner, Precinct 3
Hon. R. Jack Cagle, Harris County Commissioner, Precinct 4
Mr. John R. Blount, PE, Harris County Engineer
Mr. Alex Bunin, Harris County Public Defender
Hon. Ed Gonzalez, Harris County Sheriff
Hon. Kim Ogg, Harris County District Attorney
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