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April 21, 2020

RE: Harris County Criminal Court Operations During COVID-19

**TO: Hon. Herb Ritchie, Presiding Judge, Criminal District Courts
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:

I am following up on our previous letter urging an end to in-person court and pretrial service appearances. We need an immediate solution that protects all individuals involved in the Harris County criminal justice system and stops the community spread of the novel coronavirus (COVID-19).

As you are aware, this is a critical and urgent health crisis, literally a matter of life and death. Two New York judges who continued holding in-person courtroom proceedings died weeks later from complications related to COVID-19. Our own CSO Brian Magee, a longtime security officer at the U.S. District Courthouse in Houston, Texas also died recently from COVID-19. People working in courthouses seem to be especially hard hit by this pandemic.

On March 18, 2020, the Texas Supreme Court and the Court of Criminal Appeals of Texas co-authored the Third Emergency Order in an attempt to cease the spread of COVID-19.

This order made clear that courts across the State of Texas “**must not conduct** non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum group size” [emphasis added]. The most restrictive group size for gatherings in Harris County, Texas is ten (10) people.

On April 17, 2020, the Governor of Texas issued an order adopting the emergency orders of the Supreme Court of Texas and the Court of Criminal Appeals of Texas which provide more specific court operation guidance during the COVID-19 crisis, such as:

1. “**In-person proceedings** of any size should be delayed until **at least June 1**”;
2. “**Essential** proceedings should occur in-person **only if holding the proceeding remotely is not possible or feasible**”;
3. “If essential proceedings must be held in-person, the court should ensure that:
 - a. No more than 10 persons are gathered in the courtroom or in areas around the courtroom;
 - b. **Participants wear face coverings where possible**; and
 - c. Participants in the courtroom are separated consistent with social distancing and other precautions.”
4. “**No non-essential proceedings should be held in-person**”;
5. “With the introduction of remote proceedings capability through Zoom, most non-essential proceedings, except for jury trials, can be conducted remotely, and there are no limitations on those remote proceedings so long as reasonable notice and access is provided to the participants and the public.”

[emphasis added]

Governor Greg Abbott and the state’s two high Courts have clearly directed how courts in all 254 Texas counties must conduct business. The order is clear in its directive that *no in-person proceedings should occur for routine court business*. To better protect judges, prosecutors, witnesses, court staff, defendants, and defense counsel, HCCLA agrees with the orders disallowing in-person proceedings for arraignment, bond matters, pleas of guilt, or any matter that can be conducted through Zoom or other remote means.

IMPLEMENTING THE EMERGENCY ORDERS AND COURT OPERATION GUIDANCE

HCCLA understands that the proper implementation of the two high courts’ order will necessarily alter some of the current operating procedures by some criminal courts. To facilitate better communication between stakeholders and District Court judges, and to better ensure the health and safety of our members and our clients, HCCLA suggests the following:

1. **Courts should require jail magistrates to set bond conditions. The criminal courts have hired and entrusted magistrates to set bonds and conditions of release. They should be used for this purpose.** If the State or defense has a complaint about conditions of release that a magistrate sets, then the complaining

side can bring the matter to the assigned court's attention and copy opposing counsel (assuming both sides cannot agree on conditions).

For example: Defendant is arrested on April 1, sees a magistrate at jail, has a bond set later that day, and is released. Why are the conditions not set at jail when the magistrate sets or reviews bond? Why is the defendant then being told to contact the court, and in some cases *actually physically appear* in court, for conditions of release (which are standard conditions anyhow in the vast majority of cases)? How does requiring this physical appearance in court, *after* the defendant has seen a magistrate at jail (whose job it is to handle bond matters), comport with the letter and spirit of the high courts' order that in-person proceedings should only be conducted: (1) if *essential*, and (2) only if holding the proceeding remotely is *not possible or feasible*?

2. **Courts should halt all in-person appearances immediately except when absolutely essential and impossible to conduct remotely.** An example of "essential" would be a proceeding wherein an accused was going to be immediately released from custody, or taken into custody. "Essential" does *not*, for reasons explained in this letter, include: standard bond conditions, "initial appearances" to appoint an attorney, arraignments, appearances for "announcements" for trial during the stay-at-home period, "admonishments" or warnings for violations of bond or probation (that do not result in revocation), and all other matters that can be done remotely.
3. **Courts should direct Pretrial Services to ask defendants to complete indigency affidavits *before* release on bond.**
4. **Courts should direct Pretrial Services to obtain phone numbers and email addresses for all defendants that are being released on bond.**
5. **Courts should direct Pretrial Services to ask defendants if they have access to a phone that might allow them to participate in remote court proceedings via Zoom, Skype, etc.**
6. **Courts should supply information for defendants to Pretrial Services that must be conveyed to defendants so they can report to the courts electronically, by email or by phone.**
7. **Courts should conduct essential matters (MOEP's, etc.) remotely via Zoom, swear in the defendant, and have the court reporter record the proceeding for future use, if necessary.**

ADDITIONAL COURT OPERATION GUIDANCE FOR HARRIS COUNTY CRIMINAL COURT JUDGES

HCCLA strongly suggests all courts consider the following simple procedures already in use when advising defendants of their bond conditions:

- 1. If a defendant is released on a surety bond and has an attorney, the CLO can contact the defendant thorough the defendant’s lawyer or bondsman (in the event the defendant does not have a lawyer). Bond conditions can be forwarded to the lawyer or bondsman who can have the defendant review the conditions and sign them, with the lawyer or bondsman signing as a witness. Bond conditions are then emailed back to the CLO within 48 hours.**

For example: Defendant is arrested on April 1, sees a magistrate at jail, has a bond set later that day, and is released. For whatever reason, the defendant does not receive bond conditions at the jail. The CLO receives information on that defendant, the defendant’s lawyer or bondsman is contacted, the conditions are emailed to the lawyer or bondsman, the lawyer or bondsman reviews them with the defendant, and the defendant signs them with the lawyer or bondsman as a witness. The conditions are then emailed back to the court within 48 hours. In the meantime, the defendant’s next appearance is scheduled many weeks away after it is anticipated the stay-at-home order may be lifted. Why should a defendant, given these options, have to appear in person in court? It is certainly “possible” and “feasible” to do these things remotely. How do we know? *Because some Harris County District Courts are already doing it.*

- 2. If a defendant is released on a PR bond, Pretrial Services can contact the defendant by calling or emailing the defendant (or the defendant’s lawyer if the defendant has one). Pretrial Services can advise the defendant of bond conditions by phone or email. If the defendant needs to sign something, it could be emailed to the defendant with instructions for the defendant to sign and email back within 48 hours.**

It would be rare indeed, and certainly not a reasonable justification not to follow this suggestion, for a defendant to later claim, if there was a violation of a condition of release, that someone other than the defendant received the bond conditions via phone or email. Of course, if a court is overly concerned with this “I didn’t know” defense, the court could (1) use Zoom or Facetime to directly contact defendants on PR bonds who do not have an attorney, or (2) have the defendant send a photocopy of identification along with the signed conditions.

HCCLA remains steadfast in its commitment to ensuring the safety of our clients, members, their families, and those who work at the courthouse. Given the current crisis and available technology, in almost every case a phone, an email, or remote technology can and should be utilized instead of requiring in-person appearances.

We will continue to assist the Courts in developing methods to utilize available technology to ensure that no one's health or safety is placed in jeopardy.

We appreciate your consideration in this matter.

Respectfully submitted,



Neal A. Davis

President

Harris County Criminal Lawyers Association

Cc: **Honorable Susan Brown**
Presiding Judge
Eleventh Judicial Administrative Region