

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

IN THE ADMINISTRATIVE MATTER OF:

THE SECOND JUDICIAL DISTRICT COURT'S
RESPONSE TO CORONAVIRUS DISEASE
(COVID-19) PANDEMIC –

**ENDING TRIAL STACK JURY TRIAL
SETTING – CIVIL DOCKET.**

_____ /

ADMINISTRATIVE ORDER 2022-12

[ENDING DISTRICT-WIDE TRIAL STACK JURY TRIAL SETTING - CIVIL DOCKET]

**[DIRECTING SETTING OF GENERAL JURISDICTION CIVIL TRIALS AND MOTIONS TO
CONFIRM ON INDIVIDUAL DEPARTMENT CALENDARS FOR DATES CERTAIN
AND DISCUSSING HEARINGS]**

WHEREAS the Second Judicial District Court (“SJDC”) Chief Judge has authority to
make administrative decisions pertaining to the business of the court. WDCR 2(2), NRS
3.025(2)(c);

WHEREAS on March 12, 2020, Governor Steve Sisolak (“Governor Sisolak”) issued
a Declaration of Emergency in Nevada to facilitate response to the Coronavirus Disease
(COVID-19);

WHEREAS as the result of the Declaration of Emergency for COVID-19, Governor
Sisolak issued subsequent Directives governing activities in Nevada;

1 WHEREAS the Declaration of Emergency for COVID-19, and all Directives issued,
2 are available at: https://gov.nv.gov/News/Emergency_Orders/Emergency_Orders (last
3 visited 6/19/2022);
4

5 WHEREAS in response to the COVID-19 pandemic, then Chief Judge Scott N.
6 Freeman entered Administrative Orders (singular “AO” and plural “AOs”) to manage SJDC
7 business and proceedings;

8 WHEREAS in response to the continued COVID-19 pandemic, current Chief Judge
9 Lynne K. Simons (“Chief Judge”) entered AOs to manage SJDC business and proceedings;
10

11 WHEREAS all SJDC AOs are available at [https://www.washoecourts.com/
12 Main/AdminOrders](https://www.washoecourts.com/Main/AdminOrders) (last visited 7/24/2022);

13 WHEREAS in response to the COVID-19 pandemic and resulting emergency health
14 circumstances and concerns, members of the bar were appointed to working groups to
15 investigate, report and make recommendations on recommencing criminal and civil jury
16 trials (“the WG Recommendations”). These working groups provided the SJDC with
17 significant information and assisted the SJDC in refining its plan for conducting trials and the
18 public’s return to the SJDC courthouse(s) to serve as jurors and participants in jury trials
19 with public access;
20

21 WHEREAS after review and consideration of the WG Recommendations, the SJDC
22 established a standing working group, comprised of members of the judiciary and members
23 of the initial working groups, to further address resumption of jury trials (“the Standing Jury
24 Trial WG”). The Standing Jury Trial WG, the SJDC bench and Court Administration
25 continued to develop a working plan for conducting in person jury trials during the COVID-
26 19 pandemic;
27
28

1 WHEREAS the SJDC determined commencement of jury trials should occur on a
2 staged basis. The identified stages, as set forth in AO 2020-02(D) are:

- 3 • Jury trials involving criminal charges asserted against in-custody defendants
4 who have invoked their Constitutional rights to a speedy trial.
- 5 • Jury trials involving criminal charges asserted against out-of-custody
6 defendants who have invoked their Constitutional rights to a speedy trial.
- 7 • Jury trials involving criminal charges asserted against in-custody defendants
8 who have waived their Constitutional rights to a speedy trial.
- 9 • Jury trials involving criminal charges against out-of-custody defendants who
10 have waived their Constitutional rights to a speedy trial.
- 11 • Jury trials involving criminal charges against out-of-custody defendants who
12 have waived their Constitutional rights to a speedy trial.
- 13 • Jury trials involving civil claims for relief with statutory or rule-based priority.
- 14 • Jury trials involving civil claims for relief.

15 (“Identified Stages”);

16 WHEREAS utilizing the Identified Stages, and pursuant to its inherent authority to
17 control its docket, the SJDC established the Trial Stack (“TS”) model to safely conduct civil
18 jury trials during the COVID-19 pandemic with limited courtrooms while adhering to priority
19 by the Identified Stages and precluding significant backlog. Maheu v. Eighth Jud. Dist. Ct.,
20 89 Nev. 214, 217, 510 P.2d 627, 629 (1973);

21 WHEREAS TSs were set at four (4) week intervals with the first TS commencing on
22 April 6, 2021. By subsequent AOs, district-wide prioritization was ordered for each TS. TS
23 dates have been set through 2023. Prioritization has occurred through TS 18 which
24 commenced July 26, 2022;

25 //

1 WHEREAS the SJDC implemented appropriate sanitization measures, staged jury
2 venire reporting times, and utilized the TS jury trial setting model to conduct trials in all
3 General Jurisdiction courtrooms, including the Complex Litigation Courtroom established
4 during the pandemic to accommodate multi-party trials;

5
6 WHEREAS the SJDC Trial Flight (criminal) and TS (civil) jury trial models, including
7 setting, prioritizing, and conducting trials, assisted in successfully completing civil jury trials
8 when only two courtrooms, later when three courtrooms, and currently when all courtrooms
9 are in use, resulting in minimal trial backlog;

10
11 WHEREAS on May 18, 2022, Governor Sisolak entered the Proclamation
12 Terminating Declaration of Emergency Related to COVID-19. [https://gov.nv.gov/News/
13 Proclamations/2022/Proclamation_Terminating_Declaration_of_Emergency_Related_To
14 Covid-19](https://gov.nv.gov/News/Proclamations/2022/Proclamation_Terminating_Declaration_of_Emergency_Related_To_Covid-19); and,

15
16 WHEREAS the Chief Judge entered AO 2022-10 ending district-wide TF jury trial
17 setting for the criminal docket and intends to enter separate and subsequent AOs after the
18 instant AO applicable to Family Division matters, Specialty Court Program dockets, and
19 other general jurisdiction proceedings.

20
21 **Accordingly, after review, and good cause appearing therefor, this AO 2022-12**
22 **issues:**

23 The intent of this AO is to facilitate court processes consistent with the Proclamation
24 Terminating Declaration of Emergency Related to COVID-19 Declaration of Emergency in
25 Nevada.

26 The intent of this AO is also to continue to effectuate a sequential return to in person
27 proceedings, return to date certain trial dates, and continue audiovisual hearing
28

1 proceedings, consistent with Nevada Supreme Court rules and policy, while remaining
2 cognizant of COVID-19 status and statistics in Washoe County, Nevada, including cases,
3 hospitalizations, seven-day moving average and reported positive testing rates.

4 <https://washoe.maps.arcgis.com/apps/dashboards/0db36fa8fa9c47758bc382> [Washoe
5 County COVID-19] (7/20/2022).
6

7 **Civil Jury Trials.**

8 By this AO, the Chief Judge ends TS trial settings in civil matters. **COMMENCING**
9 **WITH TS 19 [August 23, 2022], ALL TRIALS WILL BE RESET ON INDIVIDUAL**
10 **DEPARTMENTS' CALENDARS FOR DATES CERTAIN.** If a date certain was previously
11 set, due to special circumstances, trial will remain set on the date set. For all matters
12 currently set on TSs, within fifteen (15) days of the date of entry of this AO, counsel shall
13 contact the judicial assistant in the assigned judicial department and reset TS matters for a
14 date certain on the assigned department's calendar.
15
16

17 **To facilitate sufficient veniremember attendance for trials, at the time counsel**
18 **reset a trial to a date certain on an individual department's calendar, a motion to**
19 **confirm ("MTC") hearing will also be set in the assigned department for a date not**
20 **later than three (3) weeks before the trial date set.** For all trials previously set for a date
21 certain due to special circumstances, within fifteen (15) days counsel will contact the
22 department and set an MTC consistent with this AO. If the trial date is not confirmed at the
23 MTC hearing, counsel will contact the judicial department within fifteen (15) days to reset
24 the matter for trial, unless the presiding judge in the judicial department otherwise orders.
25
26

27 Jury veniremembers for individual departments will continue to report on staggered
28 reporting intervals as recommended by the Court Administrator and Jury Commissioner and

1 decided by the Chief Judge. **Trial start time on the first day of trial will be governed by**
2 **jury veniremember reporting times and will be determined by the Chief Judge.**

3 **CIVIL JURY TRIALS WILL COMMENCE ON TUESDAY OF EACH WEEK TO**
4 **ACCOMMODATE CRIMINAL JURY TRIALS STARTING ON MONDAY OF EACH WEEK.**

5 The first day of trial may be moved from Tuesday, with Court approval, based on
6 veniremember check-in time availability after criminal jury trial first day of trial start times
7 have been established.

8 **Hearings, Special Set Hearings and Settlement Conferences in Civil Proceedings.**

9 The Nevada Supreme Court established its policy favoring simultaneous audiovisual
10 transmission appearance where feasible. Rule 2 of The Rules Governing Appearance by
11 Simultaneous Audiovisual Transmission Equipment for Civil Proceedings, Part IX-B (“AV
12 Rules”), provides:

13 **Rule 2. Policy favoring simultaneous audiovisual transmission**
14 **equipment appearances.** The intent of this rule is to promote uniformity in
15 the practices and procedures relating to simultaneous audiovisual
16 transmission equipment appearances. To improve access to the courts and
17 reduce litigation costs, courts shall permit parties, to the extent feasible, to
18 appear by simultaneous audiovisual transmission equipment at appropriate
19 proceedings pursuant to these rules.

20 AV Rules, Rule 2 [effective July 1, 2013]. In addition, Rule 4 provides, in pertinent part:

21 **Rule 4. Appearance by simultaneous audiovisual transmission**
22 **equipment.**

23 1. Appearances by parties or witnesses through the use of simultaneous
24 audiovisual transmission equipment may be made as follows:

25 (a) Trials, hearings at which witnesses are expected to testify, or hearings
26 on preliminary injunction motions provided there is good cause as determined
27 by the court in accordance with Rule 1(6);

28 (b) Settlement conferences;

(c) Trial management conferences;

(d) Hearings on motions in limine;

(e) Any hearing in which a hearing master determines that the presence of
the parties or witnesses is not necessary to resolve discovery disputes or

1 scheduling matters; and

2 (f) Any proceeding stipulated to by the parties and approved by the court
3 in conformity with Nevada Rule of Civil Procedure 43(a) and other applicable
4 rules or statutes.

5 2. In addition, except as provided in Rule 4(1), a personal appearance is
6 required for the following persons or parties:

7 (a) Applicants seeking an ex parte order, if a hearing is held, unless the
8 applicant is seeking an order:

9 (1) For permission to file a memorandum in excess of the applicable
10 page limits;

11 (2) For an extension of time to serve pleadings;

12 (3) To set hearing dates on alternative writs and orders to show
13 cause; or

14 (4) By stipulation of the parties;

15 (b) Persons ordered to appear to show cause why sanctions should not
16 be imposed for violation of a court order or a rule; or

17 (c) Persons ordered to appear in an order or citation issued under NRS
18 Title 12 or Title 13.

19 3. Court discretion to modify rule.

20 * * *

21 (b) Court may require personal appearances. Upon a showing of
22 good cause either by motion of a party or upon its own motion, the court may
23 require a party or witness to appear in person at a proceeding listed in Rule
24 4(1) or (2) if the court determines on a hearing-by-hearing basis that a
25 personal appearance would materially assist in the resolution of the particular
26 proceeding or that the quality of the simultaneous audiovisual transmission
27 equipment is inadequate.

28 4. Subsequent personal appearance. If, at any time during a hearing,
conference, or proceeding conducted by simultaneous audiovisual
transmission equipment, the court determines that a personal appearance is
necessary, the court may continue the matter and require a personal
appearance by the party or witness.

5. Notice by party.

(a) A party (or a witness for a party) choosing [requesting] to appear by
simultaneous audiovisual transmission equipment at a proceeding under this
rule must either:

(1) Place the phrase "Simultaneous Audiovisual Transmission
Equipment Appearance [Requested]" below the title of the moving, opposing,
or reply papers; or

(2) At least 5 court days before the appearance, notify the court and
all other parties of the party's intent [request] to appear by simultaneous

1 audiovisual transmission equipment. If the notice is oral, it must be given in
2 person. If the notice is in writing, it must be given by filing a "Notice of Intent
3 [Request] to Appear by Simultaneous Audiovisual Transmission Equipment"
4 with the court at least 5 court days before the appearance and by serving the
5 notice at the same time on all other parties by personal delivery, fax
6 transmission, express mail, by electronic service through the court's online
7 docketing system (if available), or other means reasonably calculated to
8 ensure delivery to the parties no later than the close of the next business day.
9 Copies of any exhibits that a party participating by simultaneous audiovisual
10 transmission equipment intends to present at the hearing shall be delivered to
11 the court and all parties by at least noon on the court day prior to any such
12 proceeding.

13 * * *

14 (d) The court, on a showing of good cause, may permit a party to appear
15 by simultaneous audiovisual transmission equipment at a proceeding even if a
16 party has not given the notice required under Rule 4(5)(a) or (b) and may
17 permit a party to appear in person even if the party has given the notice
18 required in Rule 4(5)(a), provided that the party agrees to pay the applicable
19 cancellation fee to the court or third-party provider of the simultaneous
20 audiovisual transmission equipment.

21 6. Notice by court. After a party has requested a simultaneous
22 audiovisual transmission equipment appearance for the party or a witness
23 under Rule 4(5)(a) or (b), if the court requires the personal appearance of the
24 party, the court must give reasonable notice to all parties before the hearing
25 and may continue the hearing if necessary to accommodate the personal
26 appearance. The court may direct the court clerk, a court-appointed vendor, a
27 party, or an attorney to provide the notification.

28 * * *

19 8. Procedure.

20 (a) The court must ensure that the statements of participants are audible
21 and visible to all other participants and the court staff and that the statements
22 made by a participant are identified as being made by that participant. The
23 court may require a party to coordinate with a court-appointed person or
24 persons within a certain time *before* the hearing to ensure the equipment is
25 compatible and operational.

26 (b) Upon convening a simultaneous audiovisual transmission proceeding,
27 the judge shall:

28 (1) Recite the date, time, case name, case number, names and
locations of parties and counsel, and the type of hearing;

(2) Ascertain that all statements of all parties are audible and visible
to all participants;

//

1 (3) Give instructions on how the hearing is to be conducted, including
2 notice if necessary, that in order to preserve the record, speakers must identify
themselves each time they speak; and

3 (4) Designate a person or persons with whom the party would
4 coordinate and communicate about system requirements and compatibility.

5 9. Reporting. All proceedings involving simultaneous audiovisual
6 transmission equipment appearances must be reported to the same extent
and in the same manner as if the participants had appeared in person.

7 10. Information on simultaneous audiovisual transmission equipment.
8 The court must publish a notice providing parties with the particular
9 information necessary for them to appear or have a non-party witness testify
10 by simultaneous audiovisual transmission equipment at proceedings in that
court under this rule.

11 11. Public access. The right of public access to court proceedings must
12 be preserved in accordance with law.

13 AV Rules, Rule 4 [effective July 1, 2013] (emphasis added).

14 Discussing “good cause”, the AV Rules state:

15 [Rule 1] 6. “Good cause” may consist of one or more of the following
16 factors as determined by the court:

17 (a) Whether a timely objection has been made to parties or witnesses
18 appearing through the use of simultaneous audiovisual transmission
equipment;

19 (b) Whether any undue surprise or prejudice would result;

20 (c) The convenience of the parties, counsel, and the court;

21 (d) The cost and time savings;

22 (e) The importance and complexity of the proceeding;

23 (f) Whether the proponent has been unable, after due diligence, to
24 procure the physical presence of a witness;

25 (g) The convenience to the parties and the proposed witness, and the cost
26 of producing the witness in relation to the importance of the offered testimony;

27 (h) Whether the procedure would allow effective cross-examination,
28 especially where documents and exhibits available to the witness may not be
available to counsel;

(i) The importance of presenting the testimony of witnesses in open court,
whether the finder of fact may observe the demeanor of the witness, and
where the solemnity of the surroundings will impress upon the witness the duty
to testify truthfully;

(j) Whether the quality of the communication is sufficient to understand the
offered testimony; and

//

1 (k) Such other factors as the court may, in each individual case, determine
2 to be relevant.

3 AV Rules, Rule 1(6).

4 Pursuant to WDCR 12(5), "Decision shall be rendered without oral argument unless
5 oral argument is ordered by the court, in which event the individual court department shall
6 set a date and time for hearing." WDCR 12(5). **Accordingly for those matters, in which
7 a hearing is ordered pursuant to WDCR 12(5) and other proceedings in civil matters
8 identified in Rule 4 of the AV Rules, such hearings shall be conducted in person or by
9 audiovisual means in the discretion and manner directed and noticed by the
10 presiding judge in the assigned department or as directed by the Chief Judge. A
11 party requesting appearance by audiovisual means shall file a notice of request to
12 appear by simultaneous audiovisual transmission¹. Exhibits will be provided in the
13 time and manner directed by the presiding judge in the assigned department. All
14 matters heard by audiovisual platform shall otherwise be conducted in accordance with the
15 Nevada Supreme Court Rules Governing Appearance by Audiovisual Transmission
16 Equipment, Part IX.**

17
18
19
20 The Court finds the ends of justice and public health concerns are best served by this
21 AO ending TS trial setting and allowing judicial departments and attorneys/self-represented
22 litigants to set trials on dates certain and to conduct hearings and other proceedings in the
23 manner determined by the presiding judge in the assigned department within his or her
24 discretion.

25
26 //

27
28

¹ The Chief Judge intends to file an AO providing forms for notice after all proceedings subject to the
AV Rules and the stated policy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Following sequential AOs which will address proceedings not addressed here.
All provisions of AOs not amended by this AO shall remain in full force and effect, except as specifically modified or supplemented by this or other subsequent AOs.

IT IS SO ORDERED.

DATED this 2nd day of August, 2022.



LYNNE K. SIMONS
CHIEF JUDGE