

## MEMORANDUM

TO: All District Court Judges; Birch Burdick, State's Attorney;  
Monty G. Mertz, Chief Public Defender; Megan Huffman, Clerk of District Court;  
Rod Olson, Court Administrator; Jon Jensen, Chief Justice; Sgt. Tommy Ray;  
Sally Holewa, State Court Administrator; Jesse Jahner, Sheriff of Cass County  
ECJD Referees; Linda Fatland & Tammy Held, Calendar Control Clerks;

FROM: Frank L. Racek, Presiding Judge

RE: Covid-19 Rescheduling

DATE: April 1, 2020

---

Yesterday I distributed to the District Judges the list of cases that had been continued in the first ten days of limited access to the Courthouse. We had 256 criminal cases continued and 52 civil cases continued for a total of 308 district court cases. This does not include what would be a substantial number of referee cases for juvenile, traffic, small claims, child support and paternity. In addition, we have halted all non-jail appearances in criminal. I would estimate in ten days that there would be approximately 100 additional cases that have been deferred into the future either by commencing a case with a summons or setting a voluntary appearance into the future. So far, we are probably 500 court appearances behind. If our limited access goes until the end of May, we could easily be about 3,500 hearings behind if we can restart business by June 1. This will soon become exceedingly complex to plan for unless some structure is put in place. This is what I propose to implement:

- (1) **April and May 2020:** Until the end of May, 2020, we will plan to continue with the limited access rules currently in place and make plans for even further restrictions if they occur. During this period we will continue, basically, as we have been for the past ten days with the hearing judges and referees handling criminal matters for people in custody by ITV, civil and juvenile hearings by telephone, if appropriate, and mental health hearings and domestic violence protection orders in person. I sent some guidance yesterday on the ability for judges and referees to begin scheduling some of their work telephonically under Administrative Rule 52. Should there be additional restrictions on the access to the Courthouse, however, you must be prepared to conduct these hearings over the teleconference system from your home. In that event, we would have one of our court reporters also call

in and transcribe the proceedings from their home if necessary. That is why for the next two months telephone hearings must be limited only to the two assigned hearing judges as we only have two available court reporters for District Court. Our third court reporter will have to be used to handle juvenile and referee matters in a similar fashion. Of course, small claims and traffic do not need a record, so if the Referee is comfortable scheduling these things by telephone, they could be conducted from a remote site without the necessity of a record. The calendar clerks can therefore plan to continue the status quo through the end of May. All hearings and trials through May, not before the hearing judge, can begin to be rescheduled.

- (2) **June 1, 2020:** This will be our first planned “almost normal” return to regular week. At this time we will not reschedule any proceedings that are set to occur after June 1, hoping that the Courthouse restrictions will be lifted by then. We, however, will not schedule any new hearings or proceedings during this time, except for hearing judges and referees. (June 1 to July 13). No criminal jury trials are to be set during this time unless emergent and coordinated with Court Administration. (If they are allowed at all by the Supreme Court). We can leave on any civil trials currently set, but we will not set any new civil trials until after July 13, 2020.
  
- (3) **Beginning June 15, 2020:** We will begin our first “transition week” in criminal. These weeks will be in addition to the regular hearing week judges. These “transition weeks” will be assigned to the two judges who would be doing criminal trials that week. For example, on June 15, Judge Olson and I are to be the criminal trial judges. We will be assigned to the regular 301 and 302 courtrooms. During this transition week there will be no criminal jury trials. The transition week will be scheduled as follows:

**Example Transition Week**

Monday	Tuesday	Wednesday	Thursday	Friday
9:00 a.m. -Change of Pleas (up to 50 cases)	9:00 a.m. – Order to Show Cause/Revocations (up to 35 cases)	9:00 a.m. – Motion Hearings	9:00 a.m. – Preliminary Hearings (up to 35)	9:00 a.m. – Dispo Conferences (up to 100 cases)

1:30 p.m. Change of Pleas (all cases in excess of 50)	1:30 p.m. – Order to Show Cause/Revocations (any in excess of 35)	1:30 p.m. – Criminal Bench Trials	1:30 p.m. – Preliminary Hearings (in excess of 35)	1:30 p.m. – Dispo Conferences (in excess of 100 cases)
---	---	-----------------------------------	--	--

- (4) All criminal cases that have, or will be continued, will be rescheduled to the transition week for that judge.

**Transition Weeks:**

- (5) **June 15, 2020:** Judge Olson and Judge Racek.
- (6) **June 22, 2020:** Judge Marquart and Judge McCullough.
- (7) **June 29, 2020:** Judge Bailey and Judge Van de Streek.
- (8) **July 6, 2020:** Judge Stiel and Judge Webb.
- (9) **July 13, 2020:** Judge Irby (one judge only)
- (10) Should we still be experiencing restricted access, the transition week would then be continued until that judge’s next criminal week and we would follow that pattern until we can get the Courthouse open. IF we are open and group sizes are limited, we will need to plan “waiting areas” and bring folks into court in small groups.
- (11) **July 13, 2020:** This will be the first week that we anticipate criminal jury trials commencing. For this particular week, it would be Judge Racek only. All criminal jury trials that are currently set prior to July 13 should be reset beginning July 13 in front of the appropriate judge.
- (12) Each judge should check their schedules and make sure that this plan is workable before Tammy reschedules all of the hearings. Hopefully we can then get back on track fairly quickly.
- (13) This plan will require additional planning and staffing for the State’s Attorney, Public Defender, and the Sheriff, and I would appreciate hearing from each of you as to whether you would be able to accommodate this proposal.