

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR BENTON AND FRANKLIN COUNTIES

IN RE THE MATTER OF ) THE RESPONSE BY ) BENTON & FRANKLIN ) SUPERIOR COURT TO THE COUNTIES ) PUBLIC HEALTH EMERGENCY ) IN BENTON & FRANKLIN COUNTIES ) AND THE STATE OF WASHINGTON ) ) ) )	Nos. 20-2-00001-03 20-2-50001-11  <b>SECOND ADDENDUM TO                  EMERGENCY ORDER #4-02-A                  Re: Dependency and Termination                  Matters                  Effective October, 19, 2020</b>
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The public health emergency in Washington State posed by the coronavirus 2019 (COVID-19) continues to evolve and requires modification of Emergency Order # 1 (issued March 16, 2020), Emergency Order #2 (issued March 19, 2020), Emergency Order #3 (issued April 22, 2020), Emergency Order #4-02 (issued May 4, 2020), and Amended Emergency Order #4-02. The Court has in mind the factual record of these Emergency Orders and incorporates the same by reference, and in particular has in mind the following:

1. On April 30, 2020, Washington Supreme Court Chief Debra Stephens entered Order No. 25700-B-622, modifying the Court’s April 3, 2020- Order re: Dependency and termination cases and stating as follows:

“9. Exceptional reasons pursuant to RCW 13.34.070(1) exist to continue all dependency fact-finding hearings that are set between now and a reasonable time after courthouse-based operations resume, unless an agreed order of dependency is entered, or such hearings can be held by video, equally accessible to all parties, or in person provided that social distancing and other public health measures are preserved.”

“10. For hearings set between now and a reasonable time after courthouse-based operations resume, juvenile courts may find that the COVID-19 pandemic is a basis to find a good cause exception under RCW 13.34.145(5)(a) not to order the Department of Children, Youth, and Families to file a petition to terminate parental rights.”

2. On May 29, 2020, Washington Supreme Court Chief Debra Stephens the Amended Third Revised Order No. 25700-B-626, which provided that:

“1. All civil jury trials remain suspended until at least July 6, 2020. . . Nonjury trials may be conducted by remote means or in person with strict observance of social distancing and other public health measures.”

- “22. This Court recognizes that there are procedural issues in . . . dependency . . . matters that many not be encompassed in this Order. Nothing in this Order limits other interested parties in submitting similar orders tailored to the unique circumstances of those matters and other matters not addressed by this Order. Nothing in this Order prevents courts from following specific emergency plans for such matters, including for . . . dependency matters. Where any provisions of this Order may be interpreted to conflict with any provision of another Supreme Court order addressing specific case matters, such as dependency and termination matters, the provisions of the more specific order shall control.”
3. In June of 2020, the Resumption of Dependency Fact Finding and Termination of Parental Rights Trials Workgroup (“Workgroup”) issued guidelines for operations during the COVID-19 pandemic as related to such trials. The Workgroup advised that courts should develop protocols for moving forward with dependency and termination trials.
  4. All but five counties in the State of Washington have advanced to Phase 2 or 3 of the Governor’s phased reopening plan, known as “Safe Start.” Benton and Franklin Counties are two of the five counties that remain in Phase 1.5 (Modified Phase 1) restrictions. As of the date of this Order, COVID-19 infection rates are very recently plateauing or decreasing in both Counties. All counsel, nearly all parents, and most Guardians *ad Litem* elect to appear by telephone or WebEx for dependency matters.
  5. The Court recognizes that dependency and termination trials are necessary and that court operations are essential. Nevertheless, the Court concludes that, it is not reasonable to believe, under the totality of circumstances (including but not limited to the current emergency restrictions on members of the public and the need to prepare procedures to comply with the guidance in the aforementioned Washington Supreme Court Order and instructions), the Court can conduct nonjury trials, while sufficiently protecting the rights of parties nor the safety of parties and participants, including potential witnesses, through September 1, 2020.
  6. The Court recognizes the preference is for in-person termination trials when the court has the ability to conduct such trials safely. If, after weighing the *Mathews v. Eldridge* factors, the court determines that due process requires the termination trial must be conducted in person, and if the court cannot do so safely, the court will consider a continuance of the trial. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).
  7. The Court will advise stakeholders of its protocol for pre-trial case management which will delineate the mandatory procedures and requirements of counsel that shall be deemed a prerequisite before any case will be deemed ready to proceed to bench trial

NOW, THEREFORE it is hereby ORDERED, pursuant to the authority of Washington Supreme Court Order NO. 25700-B-626, and the authority as the Presiding Judge of Benton & Franklin Counties, that the following shall be in effect:

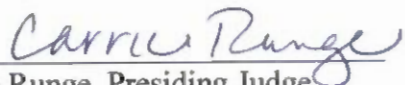
- A. Bench Trials. Court Administration will not schedule a trial unless the parties have stipulated to a virtual trial, whereunder only the judicial officer, clerk and court reporter will be in the courtroom. All attorneys, unrepresented litigants and witnesses shall appear via WebEx. Upon receipt of the stipulation, Court Administration will assign dates for the trial and settlement conference date and send notice of same to the attorneys and unrepresented litigants.
  
- B. The settlement conference will be scheduled approximately 30 days prior to the trial date. The attorneys and unrepresented litigants must comply with LCR 16(a). Settlement conferences may be conducted in person or via WebEx. Those wishing to appear via WebEx must provide an email address to Court Administration. The Court will initiate the WebEx session, and generate an email addressed to all attorneys or unrepresented parties. In the email the recipients will be invited to join the “meeting”. During the settlement conference, the judicial officer may meet privately with one party by moving the other to the WebEx “Lobby”. Any person who appears in person shall wear a cloth or N95 mask and must comply with Benton/Franklin Co. Health Department and State social distancing standards at all times.
  1. Ten (10) days before the trial date, the attorneys and unrepresented litigants shall
    - a. Prepare and file the Joint Trial Management Report, pursuant to LCR 16 (c), (d) and (f).
    - b. Prepare bound exhibit notebooks, with numerical tabs so that the Court, Clerk, and each attorney or unrepresented litigant can refer to exhibits without passing materials to each other. Each notebook shall contain a complete copy of each exhibit where possible, and either a photograph (that is clear and viewable) or description where the item is a non-scannable tangible object. With the exception of non-scannable objects, the Clerk’s copy of the exhibit notebook shall contain the original evidence to be admitted. Each party must provide opposing attorney or unrepresented litigant and the Court with their copies of the exhibit notebook on this date.
      1. Exhibits may be transmitted electronically to attorneys and unrepresented litigants only with the consent of the attorney or unrepresented litigant.
      2. A table of contents must be in the front of every notebook.

3. Copies of exhibits that will be referred to during direct examination shall be provided to witnesses expected to appear virtually by the party calling the witness, with the list of such exhibits provided to the opposing party(ies).
  4. Copies of pertinent exhibits that will be referred to during the cross examination, with a list of such exhibits shall be provided to the opposing party(ies) and/or the witnesses.
  5. Party(ies) will confer to attempt to reach a stipulation concerning the method of presentation and the method of presentation to the Court and Clerk of all non-documentary evidence.
  6. This order supersedes LCR 16(b), concerning exhibits and the pre-trial conference.
- C. The attorneys and unrepresented litigants shall familiarize themselves with the procedure for sharing documents on WebEx for the unlikely event that an exhibit was not provided to a witness appearing virtually.
- D. The attorneys and unrepresented litigants shall file and serve opposing parties their motions *in limine* and trial memoranda no less than five (5) days before trial.
- E. All attorneys, unrepresented litigants and witnesses must appear via videoconferencing. Except for good cause in compelling circumstances, attorneys, unrepresented litigants and witnesses shall not appear by telephone. All attorneys, unrepresented litigants and witnesses must be situated in a quiet room. Unless a witness is at an attorney's office, absent good cause in compelling circumstances, witnesses must be alone when they testify. Witnesses may not possess any document or thing that can be used to refresh their recollection that is not disclosed to the Court, attorneys and unrepresented litigants.
1. The presiding judicial officer shall resolve all evidentiary issues
- F. Dependency Fact Finding Trials: Such trials may be held after October 19, 2020 and must be held in compliance with this Order and all COVID-19 restrictions and local and state guidance.
- G. Termination Trials: No Termination of Parental Rights Trial will be held until after October 19, 2020. The court will conduct an *Eldridge* balancing test for each termination trial at the pre-termination hearing. Termination trials must be held in compliance with this Order and all COVID-19 restrictions and local and state guidance.

H. Prior Orders: This emergency Order supplements the prior emergency orders which remain in full force and effect to the extent that they are not inconsistent with this order.

This Order may be further extended or modified.

DATED this 14 of October, 2020.

  
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Carrie Runge, Presiding Judge  
Benton and Franklin Counties  
Superior Court