

STATE OF MINNESOTA
IN SUPREME COURT
ADM20-8001



**ORDER GOVERNING THE CONTINUING OPERATIONS OF THE
MINNESOTA JUDICIAL BRANCH**

O R D E R

The operations of the Minnesota Judicial Branch have been governed by the order filed on June 28, 2021, which was extended and modified in part by orders filed on July 30, 2021, and October 18, 2021. *See* Order Governing the Continuing Operations of the Minnesota Judicial Branch, No. ADM20-8001 (Minn. filed June 28, 2021) (setting out COVID-19 prevention practices affecting case processing, court facilities, public access, and court administration); Order Governing the Continuing Operations of the Minnesota Judicial Branch, No. ADM20-8001 (Minn. filed July 30, 2021) (modifying provisions of the June 28 order and extending that order indefinitely); Order Governing the Continuing Operations of the Minnesota Judicial Branch, No. ADM20-8001 (Minn. filed Oct. 18, 2021) (modifying provisions of the June 28 and July 30 orders). Since the onset of the COVID-19 pandemic, the Judicial Council has authorized in-person proceedings for certain cases and hearings and remote appearances for others. Because the Judicial Branch is now arriving at the other side of the pandemic, the Judicial Council, through Judicial Council Policy 525, has identified the presumptive format for cases and hearings in the district courts—either in person or remote—going forward. The presiding judge can depart from the presumptive format, either on the court’s own motion or a party’s motion, if exceptional circumstances for that departure exist.

The purpose of the presumptive format standards is to provide statewide consistency for parties and district courts. Statewide consistency will also be beneficial in applying the exceptional circumstances standard. Court rules that govern criminal and civil proceedings do not expressly establish standards for hearing formats or, if the rules do so, do not establish standards for exceptions to that format. Until such rules defining “exceptional circumstances” are in place, this order will govern the district court’s analysis of whether to grant exceptions to the presumptive hearing format.

IT IS HEREBY ORDERED THAT:

1. Effective June 6, 2022, the hearing format standards set out in Judicial Council Policy 525 shall apply to all proceedings in the district courts unless the particular case type or proceeding is expressly excluded from those standards. The presiding judge may depart from the presumptive format only if the judge determines that exceptional circumstances exist in light of the particular needs of the case or the parties, or concerns of economy or efficiency. The parties’ agreement to depart from the presumptive format alone does not satisfy the exceptional circumstances requirement.

2. District courts may consider the following factors when determining whether exceptional circumstances exist, either on their own motion or on the motion of any party, **to allow one or more parties to appear in person for a presumptively remote hearing:**

- i. All parties, and the court, agree that the hearing should be held in person (this factor, by itself, does not constitute exceptional circumstances);
- ii. A party lacks access to technology to participate remotely, and the party cannot reasonably be expected to gain access to such technology before the hearing;
- iii. The importance and complexity of the proceeding;
- iv. There are too many participants in the hearing to easily keep track of them all on a computer screen;

- v. For an evidentiary proceeding, whether appearing remotely would allow for effective examination of the witness and maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- vi. Any undue surprise or prejudice that would result; and
- vii. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

District courts may consider the following factors when determining whether exceptional circumstances exist, either on their own motion or on the motion of any party,

to allow one or more parties to appear remotely for an in-person hearing:

- i. All parties, and the court, agree that the hearing should be held remotely (this factor, by itself, does not constitute exceptional circumstances);
- ii. Holding the hearing in person would cause a hearing participant to reasonably fear for their safety;
- iii. The cost and time savings to any party;
- iv. A hearing participant would need to travel unreasonably far to the hearing location or it would be unduly burdensome for a hearing participant to secure transportation to the hearing;
- v. A hearing participant is in custody or residential treatment and cannot physically travel to the hearing but can participate remotely;
- vi. Inclement weather conditions make travel to an in-person hearing a risk to the personal safety of any hearing participants;
- vii. Unavoidable scheduling conflicts of the parties preventing the matter from moving forward in a more timely way;
- viii. The importance and complexity of the proceeding;
- ix. For an evidentiary proceeding or trial, whether appearing remotely would allow for effective examination of the witness and maintain the solemnity and integrity of the proceedings and thereby impress upon the witness the duty to testify truthfully;
- x. Any undue surprise or prejudice that would result; and
- xi. Such other factors, based upon the specific facts and circumstances of the case, as the court determines to be relevant.

3. Civil commitment proceedings that are before the Commitment Appeal Panel established under Minn. Stat. § 253B.19, subd. 1 (2020), shall continue as scheduled by the panel. The panel may conduct any proceedings or hearings using remote technology.

4. The Office of Lawyers Professional Responsibility and the Board of Law Examiners shall continue to conduct the business of those offices consistent with the sound discretion of the Directors of those offices and the rules that govern the work of and proceedings before those offices. The Directors are authorized to use remote technology or exposure prevention measures as needed or if appropriate for the operations of the office and for proceedings held by the office or before the boards or panels of those offices under the applicable rules. Panels of the Lawyers Professional Responsibility Board and referees appointed by this court to conduct public hearings under the Rules on Lawyers Professional Responsibility shall decide whether a hearing will be held in person or by remote means.

5. Rules of procedure that prohibit holding court proceedings remotely or that constrain the use of remote technology to conduct court proceedings, specifically Minn. R. Crim. P. 1.05, Minn. Gen. R. Prac. 131, Minn. Gen. R. Prac. 309.02, Minn. Gen. R. Prac. 359, Minn. R. Juv. Prot. P. 11, Minn. R. Adoption P. 12, and Minn. Spec. R. Commit. P. 14, are suspended to the extent that those rules contradict the terms of this order or Judicial Council Policy 525.

6. The Supreme Court Advisory Committees on the General Rules of Practice for the District Courts, the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Juvenile Delinquency Procedure, the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, and the Rules of Juvenile Protection Procedure are directed to review the rules that govern the format for proceedings in the district courts. Those committees are directed to consider whether amendments to the rules are necessary to implement the presumptive format for hearings reflected in Judicial Council Policy 525 that are governed by those rules, as well as the exceptional

circumstances standard. Those committees are also directed to consider whether amendments to the rules are necessary to address electronic service of process, eFiling options for self-represented litigants, and livestreaming of proceedings in contemplation of the long-term use of remote hearings. The committees' respective reports and recommendations must be filed with this court on or before December 30, 2022.

7. Self-represented litigants may continue to submit filings by email, and the State Court Administrator's order regarding payment of fees for these filings remains in effect.

8. This order supersedes the orders filed on June 28, 2021, July 30, 2021, and October 18, 2021, which governed the continuing operations of the Minnesota Judicial Branch. The order filed on March 3, 2022, which governs face coverings, remains in effect.

9. This order is effective June 6, 2022. All hearings scheduled on or after the effective date of this order shall be held remotely, in person, or in hybrid as described in Judicial Council Policy 525 and the terms of this order. Hearings scheduled prior to the effective date of this order shall be held remotely or in person as initially noticed to parties, unless an exception is granted by the district chief judge.

Dated: April 19, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice