

**THE OFFICE OF THE CHIEF JUSTICE
JUDICIARY OF THE BAHAMAS
NOTICE # 6
THE COURT CORONAVIRUS MITIGATION
PROTOCOLS
REVOCATION OF NOTICE # 4 & NOTICE # 5.
EXPANSION OF COURT SERVICES
14 May, 2020**

Definitions:

For the purpose of these Protocols:

“***Application on the Papers***” refers to an application to be decided by the Court without an oral hearing on the written submissions of the parties;

“***BDOCS***” refers to The Bahamas Department of Corrections;

“***Disposition Mode***” refers to an In-Person Hearing, an Application on the Papers or a Remote Hearing;

“***Emergency***” refers to the proclamation of emergency dated 17 March, 2020 made by the Governor-General pursuant to Article 29(1) of the Constitution declaring that a state of public emergency exists in The Bahamas as continued from time to time by Resolutions passed by each House of Parliament;

“***Expiration Date***” means the date of the cessation of the Emergency;

“***hearing***” includes a trial or any hearing fixed for the consideration of an application or matter before the Court;

“In-Person Hearing” refers to a hearing carried out in strict compliance with physical distancing requirements where the parties, their respective counsel and if applicable witnesses are physically required to be present in court unless otherwise ordered by the Judge;

“Remote Hearing” refers to a hearing by teleconference, video-link, live television link, internet link, any other means that will allow the Court and the parties or accused, as the case may be, to engage in simultaneous visual and oral communication or any other manner of instant communication between the Court and the parties or accused, as the case may be, facilitated through the use of technology by the Court;

“Videoconferencing” means one type of a Remote Hearing where the hearing is by video-link, live television link, internet link or any other means that will allow the Court and the parties or accused, as the case may be, to engage in simultaneous visual and oral communication facilitated through the use of technology by the Court.

Introduction:

As a result of the Emergency, the Emergency Powers (Covid 19) Regulations 2020 and the Emergency Powers (Covid 19) Orders made thereunder, the Courts scaled back its operations in order to protect the health and well-being of judicial officers, staff members, lawyers and members of the public. While such action was necessary, the Courts have nonetheless continued to provide public access to essential court services throughout the period of the Emergency. In this regard, the Court Coronavirus Mitigation Protocols were issued (and subsequently amended from time to time to reflect ongoing developments) to govern the operations of the Courts during the Emergency.

On 27 April, 2020 Parliament continued the Emergency, the related Regulations and the Emergency Powers Orders until 30 May, 2020. In view of this development and the imperative to manage the growing backlog of court applications and trials, the Courts will resume hearings

as specified herein in accordance with new procedures to facilitate electronic disposition modes. This will lead to the increased utilization of Applications on the Papers and Remote Hearings. Also, where necessary, additional In-Person Hearings will be conducted.

Revocation of earlier Protocols:

The Court Coronavirus Mitigation Protocols set out in Notice # 4 dated 31 March, 2020 (“**Notice #4**”) and the amendment thereto set out in Notice # 5 dated 14 April, 2020 (both posted on the Judiciary’s website) are hereby revoked and replaced with these Protocols with effect from 14 May, 2020 and will continue in effect until one business day after the Expiration Date unless otherwise rescinded by the Chief Justice. For the avoidance of doubt, the various time periods after the Expiration Date mentioned herein survive the expiration of these Protocols.

Supreme Court – Criminal Side:

1. **New criminal jury trials** – the suspension of new criminal jury trials in New Providence and Grand Bahama will continue until five (5) business days after the Expiration Date or such earlier date as may be fixed by the Chief Justice. The status of new criminal trials will remain under active review throughout the period of the Emergency.

1A. **Part heard criminal trials** will resume on a date and at a time to be fixed by the presiding Judge. Part heard criminal trials will continue by way of In-Person Hearings.

2. (i) **Arraignments** fixed in New Providence for 27 March, 2020 which, under Notice #4, were adjourned to 8 May, 2020 at 10:00 a.m. are further adjourned to 15 May, 2020 at 11:00 a.m. Thereafter arraignments will continue in New Providence on such dates as are fixed by Justice Bernard Turner in consultation with the Chief Justice.

(ii) Arraignments in Grand Bahama will continue on 25 May, 2020 and thereafter on such dates as are fixed by Senior Justice Estelle Gray Evans in consultation with the Chief Justice.

(iii) Arraignments will generally be conducted by Remote Hearings. Accused persons who are incarcerated at BDOCS will be taken to the Remand Court to attend Arraignments by live television link. If they are represented by a lawyer, he/she will participate in the Remote Hearing from a venue of their choice which is appropriate for a court hearing.

(iv) Lawyers representing accused persons on bail will be required to arrange for their client to attend the Arraignment which will be conducted by a Remote Hearing unless otherwise directed by the Judge.

(v) Arraignments for Pro se accused persons on bail will generally be conducted by In-Person Hearings in a designated court. Officials of the Court will be in attendance to ensure adherence to physical distancing requirements.

3. (i) **Bail** – Urgent bail applications in New Providence certified by the Deputy Registrar responsible for the Criminal Registry will continue to be heard by the Judge designated in the Urgent Bail Judge Roster which is posted on the Judiciary’s website at www.bahamasjudiciary.com.

(ii) Senior Justice Gray Evans will hear urgent bail applications in Grand Bahama.

(iii) The criteria for urgent bail applications are posted on the Judiciary’s website.

(iv) All urgent bail applications will be conducted either by a Remote Hearing or an In-Person Hearing as directed by the presiding Judge.

(v) Bail applications which had been filed and listed for hearing on 24, 25 and 26 March, 2020 (“**the March Bail Applications**”) will be re-listed for hearing by the assigned Judge at the earliest available date by way

of Remote Hearings unless otherwise ordered by the Judge in a specific case.

(vi) Hearings of other bail applications (i.e. not certified as urgent under the current criteria and not one of the March Bail Applications) will continue to be suspended until after the “lockdown” of BDOCS has been lifted. The position in this regard will remain under active review by the Judiciary.

4. (i) **Other urgent applications on the Criminal Side** (i.e. not an urgent bail application under the existing criteria) will be heard by either Justice Turner or Justice Bethell in New Providence and Senior Justice Evans in Grand Bahama. This Protocol will remain in effect until five (5) business days after the Expiration date or such earlier date as may be fixed by the Chief Justice.

(ii) The party seeking a hearing date under paragraph 4(i) must apply in writing to the Deputy Registrar responsible for the Criminal Registry attaching copies of the relevant filed Court documents.

(iii) If the Court is satisfied that the application should be determined on an urgent basis the Judge will fix the Disposition Mode and give such other directions as are necessary to facilitate the early hearing of the application.

5. (i) **Mention Date hearings, Case Management Conferences and Pre Trial Reviews** - the Court will resume these hearings during the week commencing 25 May, 2020 by means of Remote Hearings unless the Judge directs that a different Disposition Mode is to be used.

(ii) All hearing dates for matters listed in paragraph 5(i) which were or will be adjourned between the Emergency and 22 May, 2020 will be relisted for hearing by means of Remote Hearings unless the Judge directs that a different Disposition Mode is to be used.

Supreme Court – Civil Side (all cases which are not Criminal):

6. (i) **Part heard trials in New Providence and Grand Bahama commenced before the Emergency.** The Judge will conduct a Remote Hearing for directions in each case and after considering submissions on behalf of the parties will determine whether the trial is to continue prior to the Expiration Date or adjourned to a date after the Expiration Date.

(ii) In the event that the trial is to continue prior to the Expiration Date the Judge will direct which Disposition Mode is to be used and give such other directions as necessary to facilitate the completion of the trial.

(iii) In all cases, the parties will be given not less than ten (10) calendar days' notice of the date of the resumption of the trial unless a shorter period is agreed by all parties.

7. (i) **New trials** will continue to be suspended in New Providence and Grand Bahama until 25 May, 2020. Thereafter, where appropriate, trials will proceed in accordance with directions issued by the presiding Judge.

(ii) Where the trial is scheduled to commence on or before 30 September, 2020, the Judge will set a Case Management Conference or Pre Trial Review to determine, after considering submissions on behalf of the parties, whether the trial will proceed on the designated date or rescheduled to a later date. In the event that the Court directs that the trial is to start on or before 30 September, 2020, the Judge will determine the Disposition Mode for the conduct of the trial and give such further directions as are deemed to be necessary.

(iii) All trials fixed for a date between 1 October, 2020 and 30 November, 2020 will be reviewed at a Case Management Conference to be set by the Court prior to 31 July, 2020 at which time the Judge will give directions in connection with the trial of the action.

(iv) At this time, Counsel and parties should be prepared to proceed with all trials set for dates after 30 November, 2020.

8. (i) **Urgent interlocutory applications** in New Providence and Grand Bahama will continue to be heard. For the purpose of these Protocols, an urgent interlocutory application is one which seeks: (a) an injunction;

(b) a domestic violence protection order;

(c) a child protection order;

(d) an order under the Mental Health Act;

(e) an order under an international Treaty;

(f) a writ of habeas corpus;

(g) the arrest of a ship or other order in an Admiralty action regarded by the Court to be urgent; or

(h) any other order deemed by the Judge to be fit for hearing on an urgent basis.

In New Providence these applications will be heard by the Urgent Duty Judge in accordance with the Urgent Duty Judge Roster posted on the Judiciary's website and in Grand Bahama they will be heard by Justice Adderley.

(ii) Until further notice, applications under paragraph 8(i) will be determined on the basis of a Remote Hearing unless the Judge directs that another Disposition Mode is to be used.

(iii) Persons seeking a hearing date for matters under paragraph 8 must complete and submit the relevant on line '*Application for Hearing Dates Form*¹' on the Judiciary's website. The applicant should use the document upload feature on the relevant Form to send to the Listing Officer, or if the action was filed in the Supreme Court Registry in Freeport, the Judge, all filed court documents which are relevant to the application. Unless it is an *ex parte* application, those documents must

¹ The '*Application for Hearing Dates Before a Judge*' or the '*NR Application for Hearing Dates Before a Judge*'.

also be served on the opposing side. Documents filed after the initial request for a hearing date should be sent to the assigned judicial officer by uploading them to the '*eDocument Delivery*' Form on the website and unless it is an *ex parte* application served on the other side.

9. (i) **Other interlocutory applications / Case Management Conferences / Pre Trial Reviews** – the Court will resume hearing these applications in New Providence and Grand Bahama on 25 May, 2020. During the period 14 May – 22 May 2020 such applications will be heard by judicial officers with the consent of the parties and, if they are represented, by their counsel.

(ii) Persons seeking a hearing date for matters under paragraph 9 must complete and submit the relevant on line '*Application for Hearing Dates Form*² on the Judiciary's website. The applicant should use the document upload feature on the relevant Form to send to the Listing Officer, or if the action was filed in the Supreme Court Registry in Freeport, the Judge, all filed court documents which are relevant to the application. Unless it is an *ex parte* application, those documents must also be served on the opposing side. Documents filed after the initial request for a hearing date should be sent to the assigned judicial officer by uploading them to the '*eDocument Delivery*' Form on the website and unless it is an *ex parte* application served on the other side.

(iii) All hearing dates for these matters which were or will be adjourned between the Emergency and 22 May, 2020 will be relisted for hearing. Efforts will be made to agree dates with Counsel but ultimately dates will be fixed by the Court. The parties or their Counsel will be given at least 14 days' notice of the re-scheduled hearing date unless a shorter period is agreed by all parties.

(iv) Applications under this paragraph will be determined on the basis of a Remote Hearing unless the presiding judicial officer directs that another Disposition Mode is to be used.

² The '*Application for Hearing Dates Before a Judge*' or the '*NR Application for Hearing Dates Before a Judge*'.

Hearings - Registrar/Deputy Registrars/ Assistant Registrars (collectively “the registrars”):

10. (i) Court hearings before the Registrar, the Deputy Registrars and the Assistant Registrars in New Providence and the Deputy Registrar in Grand Bahama will resume on 25 May, 2020 by Remote Hearings unless otherwise directed by the presiding registrar. During the period 14 May – 22 May 2020 applications will be heard by the registrars with the consent of the parties and, if they are represented, by their counsel.

REMOTE HEARINGS:

11. (i) The current COVID-19 pandemic requires the Courts to augment traditional In-Court Hearings with the use of Remote Hearings wherever possible. Such technology is currently used for receiving evidence of distant witnesses in non-criminal cases and for certain criminal procedures conducted between the Supreme Court and BDOCS using video-technology.

(ii) Order 31A(1)(k) of the Rules of the Supreme Court Rules provides for the court to actively manage cases by “*making appropriate use of technology*” and Order 18(2)(n) provides that the Court may hold a hearing by “*...electronic means or use any other method of direct communication: Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear each other and to identify each other so far as practicable.*”

(iii) Section 78C (2) of the Evidence Act as amended by section 2 of the Evidence (Amendment) Act, 2013 provides that in criminal proceedings “*....the court may, at any time during any proceedings relating to an offence other than at a time when the evidence of a witness is being*

taken, direct that the accused appear by live link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communications.”

(iv) This protocol is only intended to provide basic guidance on Remote Hearings. Practitioners and parties are encouraged to familiarize themselves with the technical features of the various methods available for remote hearings, including Skype, Zoom and Webex. Currently, the preferred method for Remote Hearings to be conducted by the Court is Webex.

(v) The provisions for Remote Hearings are intended to be read subject to paragraphs 2-10 of these Protocols, and it will always be in the discretion of the individual judicial officer to determine which matters are suitable for Remote Hearings.

Conduct of hearing

(vi) The presiding judicial officer and/or judicial staff will coordinate the arrangements for Remote Hearings and will send out the necessary invitations to counsel, the parties and any other necessary attendees at least twenty four (24) hours in advance of the hearing. In those matters which would ordinarily be recorded by court reporters, arrangements will be made for a court reporter to attend the Remote Hearings and make a record.

(vii) A Remote Hearing shall be conducted as if counsel and/or the parties are physically appearing before a judicial officer of the Supreme Court in accordance with the Rules, practice, procedures and decorum applicable to an in-person hearing. Procedural propriety must be observed at all times and the normal ways of addressing judicial officers and counsel in court proceedings shall apply.

(viii) When the Court has scheduled a Remote Hearing, counsel and the parties must ensure that they are adequately prepared for the hearing and have the necessary equipment in place for the duration of

the hearing. Where the Remote Hearing is by Videoconferencing, this will include access to a reliable internet connection.³

(ix) Counsel and pro se litigants (subject to the Proviso below) are responsible for ensuring that (a) the presiding judicial officer and the other parties have electronic copies of all relevant filed court documents and the parties submissions and authorities at least three (3) days prior to the Remote Hearing by using the relevant eDelivery Form on the Judiciary's website; and (b) where practicable hard copies of all filed court documents and other documents for the hearing are served on the other parties involved in the Remote Hearing. PROVIDED that pro se litigants who do not have access to the technology to comply with sub paragraph (a) above should, where practicable, deliver hard copies of the above mentioned documents to the office of the presiding judicial officer.

(x) All counsel and/or parties attending a Remote Hearing by Videoconferencing must be seated and attired in a manner customary to that which is adopted when physically appearing before the Court. Judicial officers and attorneys must wear bands and wing collars without robes when attending a Remote Hearing by Videoconferencing which would normally be heard in open court.

(xi) When attending a Remote Hearing all counsel and/or parties shall be at premises that are private and professional. In the case of Videoconferencing, they must have a stationary neutral backdrop away from open windows and sources of noise or distractions.

(xii) Counsel and parties should log in or call in to the Remote Hearing facility at least ten minutes before it is due to start in order to confirm that there are no connectivity issues.

(xiii) At the commencement of the Remote Hearing, the presiding judicial officer will give such directions as may be necessary for the conduct of the hearing. The applicant shall give the appearances and each participant shall state on the record the name of anyone else who

³ It is suggested that your internet connection has a minimum download and upload speed of 20Mbps.

is in the room with him/her. The presiding judicial officer will decide whether such person or persons are allowed to attend the Remote Hearing.

(xiv) Unless granted permission by the presiding judicial officer, counsel and/or parties shall not move out of range of the telephone, the camera and/or the microphone, as the case may be, while a Remote Hearing is in progress.

(xv) Counsel and parties participating in a Remote Hearing are not permitted to record the hearing or photograph or take a screen shot of the screen without the consent of the presiding judicial officer. Unless such permission is granted, counsel and the parties will be required to give an undertaking to that effect at the start of the hearing.

(xvi) A Remote Hearing in proceedings held *in camera* must not be broadcast, recorded or reported by counsel or a party in any manner.

(xvii) Participants in a Remote Hearing should mute their microphone when not addressing the Court and unmute it when they are speaking.

(xviii) In Remote Hearings it is particularly important that counsel do not cross talk or unnecessarily interrupt each other. As far as possible only one person should speak at a time. The court should establish protocols in advance for speaking, and most of the remote platforms have a feature which allows a party to 'raise his hand' or otherwise indicate a desire to be heard.

(xix) Where these Protocols or subsequent Practice Directions are silent on any issue, the Court may give directions or make any order, which is necessary in the circumstances, for the fair and efficient conduct of the Remote Hearing.

(xx) The Court may terminate a Remote Hearing at any time in the event of any non-compliance with these Protocols (or any subsequent Practice Directions made to govern Remote Hearings) by counsel or a party, or where it is otherwise necessary in the interest of justice.

SUPREME COURT REGISTRIES:

12. (i) The ***Civil Registry*** resumed limited operations for its essential workers from its offices located in the BAF Financial Building on George Street, New Providence effective as of 11 May, 2020. Effective 18 May, 2020 the Civil Registry will be open to the public by appointment on weekdays between the hours of 11:30 a.m. – 3:30 p.m.

(ii) ***The Family Registry, the Probate Registry and the Appeals Registry*** in New Providence resumed limited operations from their respective offices in Annex 1 for essential workers on 11 May, 2020. Effective 18 May, 2020 these Registries will be open to the public by appointment on weekdays between 11:30 a.m. – 3:30 p.m.

(iii) ***The Criminal Registry*** in New Providence will continue to operate out of the satellite Registry in Annex 1 during the hours of 1:00 p.m. – 4:00 p.m. until further notice.

(iv) ***The Supreme Court Registry in Freeport*** will continue its limited operations for essential workers on weekdays between 9:30 a.m. – 2:00 p.m. Effective as of 18 May, 2020 the Registry in Freeport will be open to the public by appointment on weekdays between the hours of 9:30 a.m. – 1:00 p.m.

(v) Appointments to visit the Civil Registry, the Family Registry, the Probate Registry, the Appeals Registry and the Freeport Registry can be made through the eAppointment Request Form on the Judiciary's website.

(vi) In appropriate cases, the Registrar can facilitate access by counsel to a court file which is in the chambers of a judicial officer.

(vii) Persons will only be allowed to enter the office of any of the Registries at the appointed time if they are wearing a mask.

(viii) Parties can continue to file court documents in the Supreme Court at the cashier's station in Annex 1 (formerly the Ansbacher Building).

Magistrate Courts – Criminal Side:

13. **Arraignments / first time pleas** will continue by way of In-Person Hearings on weekdays (i) in New Providence between 10:30 a.m. – 2:30 p.m. (ii) in Grand Bahama between 9:30 a.m. – 2:00 p.m. and (iii) in Abaco between 9:30 a.m. – 1:00 p.m. Only persons who must be in the court room will be allowed to enter and in any event no more than 10 persons at any time. The hearings will be sequenced under the oversight of the Police to avoid overcrowding.

14. **Bail / Variation of bail applications** – will continue to be heard in New Providence, Grand Bahama and Abaco at the times and subject to the conditions applicable to arraignments in each of those Islands.

15. **New trials** in criminal cases, juvenile cases and Coroner Inquests will continue to be suspended until two (2) business days after the Expiration Date or such earlier date as may be fixed by the Chief Justice. The status of new trials in these cases will remain under active review throughout the period of the Emergency.

16. Traffic cases:

(i) Where the defendant admits the offence and intends to pay the fine either under a Fixed Penalty Notice or otherwise he/she can do so on weekdays under current procedures (i) in New Providence between 10:30 a.m. – 2:30 p.m. (ii) in Grand Bahama between 9:30 a.m. – 2:00 p.m. and (iii) in Abaco between 9:30 a.m. – 12:00 noon.

(ii) First pleas in traffic cases where the defendant intends to plead not guilty are suspended until one (1) working day after the Expiration Date or such earlier date as may be fixed by the Chief Justice. Unless otherwise notified by the Court, first pleas in such cases scheduled during the suspension period are adjourned from the date on which it was to be heard to the same date in the month immediately following the cessation of the Emergency. If the adjourned date falls on a weekend or public holiday, it is adjourned to the next court business day.

(iii) All trials in traffic cases are suspended until one (1) working day after the Expiration Date or such earlier date as may be fixed by the Chief Justice. Unless otherwise notified by the Court, such trials scheduled during the suspension period are adjourned from the date on which it was to be heard to the same date in the month immediately following the cessation of the Emergency. If the adjourned date falls on a weekend or public holiday, it is adjourned to the next court business day.

17. **Remands** will continue by Videoconferencing with the Remand Court at the Bahamas Department of Correctional Services facility.

18. **Part heard criminal trials, juvenile trials and Coroner Inquests** scheduled to continue on a date between 17 March, 2020 and two (2) working days after the Expiration Date are adjourned to a date to be fixed by the presiding Magistrate or Coroner.

19. **The Office of the Coroner** - during the period 17 March, 2020 until the first working day after the Expiration Date, the Office of the Coroner will be open for signing releases during weekdays in (i) New Providence on Mondays, Wednesdays and Fridays of each week from 10:30 a.m. – 2 2:30 p.m. In the event of an emergency, the Coroner in New Providence can be contacted at other times during the week either through Magistrates Court # 7 or by calling the telephone numbers posted on the door of the court room; (ii) in Freeport on Friday of each week from 9:30 a.m. – 2:00 p.m. and in Eight Mile Rock on Thursday of each week from 9:30 a.m. – 2:00 p.m. The Deputy Coroners in Grand Bahama will be on call at other times during the week to deal with urgent matters and can be contacted through their respective offices; and (iii) in Abaco on weekdays between 9:30 a.m. – 1:00 p.m.

20. **Voluntary Bills of Indictment** will continue to be suspended until further notice.

Magistrate Courts – Civil Side (any cases not criminal, traffic or juvenile):

21. **New trials** will continue to be suspended until two (2) working days after the Expiration Date or such earlier date as may be fixed by the Chief Justice.

22. **Part heard matters** scheduled to continue on a date between 17 March, 2020 and two (2) working days after the Expiration Date are adjourned to a date to be fixed by the presiding Magistrate.

23. **Family Court** - during the period 17 March, 2020 until the first working day after the Expiration Date, payments can be made and funds received in (i) New Providence at the Cashier counter in the Magistrates Court from 10:30 a.m. – 2:30 p.m. (ii) Grand Bahama in the Magistrates Court between 9:30 a.m. 8 – 2:00 p.m. and (iii) Abaco, Marsh Harbour between 9:30 a.m. – 12:00 noon.

Magistrate Courts – General:

24. The Magistrate’s Court in Exuma remains closed until further notice. Exuma will be serviced by Circuit until further notice.

25. All travel by Magistrates for Circuits remains suspended until further notice.

26. Urgent applications for hearing dates in the Magistrates Court until two business days after the Expiration Date can be made (i) in New Providence to the Chief Magistrate or the Deputy Chief Magistrate; (ii) in Grand Bahama to the Deputy Chief Magistrate or such other resident Magistrate in Grand Bahama as is available; and (iii) in Abaco to the resident Magistrate.

Brian M. Moree QC
Chief Justice.