



State of South Carolina
The Family Court of the Tenth Judicial Circuit

April 28, 2020

To: **10TH JUDICIAL CIRCUIT FAMILY COURT BAR**

Re: Supreme Court Order 2020-000447
Amended supplemental instructions regarding motion hearings

Please take time to carefully review the Order from the Supreme Court issued on April 14, 2020 bearing Appellate Case No. 2020-000447 regarding Operation of the Trial Courts During the Coronavirus Emergency.

We would also ask that you carefully review the Memo that was sent to both the Anderson Bar and Oconee County Bar by us on April 13, 2020. This memo was sent to the Bar to address many significant issues that we are facing during this pandemic. It was our intent to give the 10th Judicial Circuit Family Court Bar a general overview of the procedure that the Bench is going to implement during this crisis.

This memorandum is meant to address the specific provisions of that memo that impact the Motions practice in Family Court here in the Tenth Judicial Circuit. As we begin this process, we are only scheduling hearings where all parties and attorneys agree to participate in the temporary hearing via WebEx. This practice may change as things develop.

Below, I have quoted specific provisions of the Supreme Court's order and explained how we will proceed in regards to the same.

(c)(4) **Minimizing Hearings on Motions.** While the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from

the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

First, I point your attention to the fact that a motion may *be denied without waiting for any return or other response from the opposing party or parties*. Personally, we do not anticipate a situation where this would happen, but the Supreme Court's Order gives the bench that right. However, we do expect that the Bench will need to prioritize the scheduling of motions during this time. The hierarchy that we will use in the scheduling of these motion hearings was outlined in our April 13th memo.

Next, I will point out that *[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers*. In other words, the Court has the right to decide a matter based on affidavits without having a hearing. I feel that the general consensus of our bench is to always grant the parties a temporary hearing. However, there may be situations where the Court may decide to rule on the matter without a hearing. The Supreme Court grants the family court this right. Also there may be situations where the attorneys agree for the Court to rule on the temporary issues by affidavits. If that is the case, you just need to advise the presiding judge of your wishes.

Finally, any hearings that are conducted on motions *shall be conducted in the manner specified by (c)(3)*, which states:

(c)(3) Hearings. A hearing on a motion or other matter may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel. Only if a judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination, will an in-person hearing be conducted. If an in-person hearing is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. The total number of participants should not exceed ten (10) people. Hearings must be staggered to minimize the number of people appearing at the same time.

This paragraph makes it clear that remote hearings are the preference, and if a hearing is necessary to decide a motion, it will be conducted remotely unless *judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination*.

The next question of course is how this all gets put into practice, particularly with regards to Motions for Temporary Relief. For that, we would ask that you review the following specific sections of the South Carolina Family Court Rules that apply in all cases but, specifically will play an important role in the remote hearing procedure.

RULE 8: APPEARANCE OF COUNSEL: Upon retention of counsel in a proceeding in family court, counsel shall immediately notify the court and opposing counsel, if any, of his appearance. The notification shall include the attorney's current address and telephone number.

This rule requires immediate notification to the Court, and it should be strictly followed. In addition, I would ask that your notice include your email address. The Supreme Court's order allows for service through the email address you have used for the AIS system, and that will include service of any remote hearings or of the Court's ruling in lieu of a hearing. If you have not complied with Rule 8, there is no way for you to be served. In addition, you will not be an active participant in the motion process, particularly if the Court decides to rule without a hearing.

As stated above, the Court has the right to decide a temporary hearing without a hearing. However, if the Court decides to have a hearing, we have formulated a procedure that complies with SCRFC Rule 21. We have also tried to develop a procedure that is not that much different than the procedure that the Bar has been operating under with in-person temporary hearing practice.

RULE 21 TEMPORARY RELIEF

(a) Motion for Temporary Relief. A written motion for temporary relief, and notice of the hearing thereof, shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by order of the court. In an emergency situation, such order may be made on ex parte application.

(b) Evidence at Hearing. Evidence received by the court at temporary hearings shall be confined to pleadings, affidavits, and financial declarations unless good cause is shown to the court why additional evidence or testimony may be necessary.

(c) Service of Affidavits. Notwithstanding the provisions of Rule 6(d), SCRCP, affidavits filed at a temporary hearing need not be served on the opposing party prior to the temporary hearing.

In addition, your motions should be specific regarding the requested relief, in compliance with SCRCP Rule 7. No relief will be granted beyond that which is specifically requested in writing.

**Tenth Judicial Circuit
Family Court
Motion Practice**

As to the practical application of all this, the following shall be the procedure of the Tenth Judicial Circuit with regards to WebEx temporary hearings moving forward.

Specifically, the procedure below will be used with motions for temporary relief where all parties **consent** for the Court to hear the temporary hearing by WebEx.

1. Pleadings and motions shall continue to be filed with the Clerk of Court. Please review the Supreme Court's order for additional information regarding the filing procedure.
2. After you consult the attorney for the other party or the self-represented litigant and you determine that all of the parties consent to having a WebEx hearing, you will send the hearing request to the appropriate docketing clerk.
3. The Presiding Judge will schedule the WebEx hearing and send out the invitations. **The email addresses you include on your hearing request must be accurate. Review them carefully before you submit your hearing request.**
4. We have decided that we are going to allow the parties to submit their hearing packages at the time of the hearing, if they choose to do so. The following paragraph will explain the process.
5. The parties will exchange their temporary hearing packets by e-mailing your temporary packet to the presiding judge, the presiding judge's administrative assistant, and the other parties at least one hour prior to the hearing. The Judge would have the right to accept the hearing packages at the beginning of the hearing, for good cause shown as to why you were not able to comply with the one hour request.
6. So you will need to need to scan those documents into your computer prior to the hearing. Specifically, all submissions must be scanned, saved and ready to submit to the court in .pdf format ONE HOUR prior to the time of the hearing.
7. If you choose to submit your temporary hearing package to the Court at the time of the hearing, you are limited to the following:
 - Affidavits (no more than 8 pages total excluding exhibits)
 - Temporary hearing background information

- Proposed parenting plan
 - Financial declarations
 - Attorney fee affidavits
 - Each party shall be limited to 25 pages in their respective submission for the temporary hearing.
8. If any party wishes to submit more than 25 pages, that party shall have the right to do so. However, that party must file a hard copy of their submissions with the clerk of court for the respective county of filing at least 24 hours prior to the hearing. The same documents must be provided simultaneously to opposing counsel. The total submission cannot exceed 40 pages.
 9. Please make sure that you have a financial declaration in your temporary hearing package. It needs to be completed, scanned, and ready to present to the presiding judge at the hearing. Even if your client has not been able to sign it, please have one completed and ready to give to the Court. As you well know, the presiding judge can always question a party during the WebEx hearing about his/her financial declaration and financial situation during a WebEx hearing just like during an in-person temporary hearing.
 - 10. Even though we are allowing the parties to submit the hearing packages at the time of the temporary hearing, we would strongly encourage you to discuss with opposing counsel the possibility of agreeing to submit those hearing packages to the presiding judge in advance of the hearing. This would allow the Court to review the documents prior to conducting the hearing as opposed to spending WebEx time watching us read the hearing packages or taking the matter under advisement.**
 11. When possible, it is our goal to review the temporary hearing packages and issue a ruling during the WebEx temporary hearing.
 12. However, we fully anticipate that there will be times when we will have to take the matter under advisement, and issue instructions.
 13. Either way, the Judge will or may direct one side to prepare an order.
 14. The process for sending the orders to opposing attorney or party shall remain in effect.
 15. On a temporary basis until this shutdown is over or until further instructions are issued by this court or an appellate court, the judges will accept the Orders by e-mail. All parties or attorneys of record shall be copied on the email submission of the order. The Court should also be provided the proper transmittal form indicating that the other party has or

has not approved the proposed Order. Once signed, the Judge shall forward the order to the Clerk of Court for filing. The Clerk shall then forward a clocked copy to all parties.

In closing, the procedure outlined above only addresses the procedure for temporary hearings where both parties consent for the matter to be submitted to the Court. If this shutdown continues, we fully anticipate that additional procedures will need to put into place for initial temporary hearings (where you may not have the other parties' consent to having a WebEx hearing).

Please understand that this is a new process, and things will change as we put this into practice. However, the protocol outlined above will be followed in the 10th Circuit. As the practice continues, the protocol may need to be fine-tuned. If we find the need to change anything, we will inform you immediately.

Stay safe and well!