

Tuesday Docket Plan for Judge Byrne's CPS hearings

(Please note, these procedures are subject to change.)

(Also, Judge Martinez Jones may have a different process for her hearings):

(1) CPS Tuesday Docket Basics:

- a. CPS hearings are not automatically canceled or deadlines suspended by the Supreme Court's Emergency Orders in this Disaster or by the physical closure of the Travis County Courthouse to all non-emergency hearings.
- b. None of Judge Byrne's statutory CPS hearings or trials on the merits should be considered canceled or reset unless expressly stated so by Judge Byrne or her staff. Judge Byrne considers all statutory CPS hearings to be "emergency hearings" which must go forward if at all possible. The Court will make every possible effort to continue to accommodate hearings remotely in accordance with the following procedures.
- c. **Most Importantly: No one should physically come to the Courthouse for CPS hearings, including clients.**
- d. The Court expects court reports to be timely filed in each case and served to all parties in the case. The Court will assume all parties have read the court report in advance of the hearing. For Judge Byrne's docket, court reports should be filed in the District Clerk's file via e-filing.
- e. Please see and use the attached, "**ATTORNEY/GAL REPORT FOR EMAIL HEARING**" for the Tuesday dockets.
- f. **Although the Court will be conducting hearings primarily via email, the Court expects the same level of professionalism and professional courtesy for these matters in all email communications as would be expected of attorneys in a courtroom in a Court of Law.**

(2) Generating Emails: Court staff will make best efforts to generate an initial email for each individual case set on her Tuesday docket to all the attorneys and GAL of record **by noon on the Friday before each Tuesday docket.**

- a. The Court will start the email chain with Attorneys and GALs of record but the Court needs your help to review the email distribution list for each case. If anyone on the email chain believes someone is missing from the distribution list, please "Reply-All" to add their email (you may include an attorney who is subbing in for you, a CRC student attorney, a CASA volunteer, or an attorney who is covering the hearing for another attorney.)
- b. Except for hearings described by Section (5) below and Pro se litigants, **the email hearing distribution list should be limited to Professionals Only** – Please do not add respondent parent or subject children's email addresses to the thread.

(3) If there is agreement by the parties for "Agreed Orders" (Defined under Subsection (f) below):

- a. The DA should Reply-All to the latest email in the chain **by Friday at 5pm** to notify the court. If they do so, no other Attorneys or GALs need reply to the email or tender an "**ATTORNEY/GAL REPORT FOR EMAIL HEARING**".
- b. Note: This will technically still be considered a hearing via submission, NOT a cancelation of the hearing.
- c. Kelly Davis (or other Court staff) will "Reply-All" to supply the date of the next hearing and the dismissal date in the case.

- d. The DA should generate the Agreed Orders for the Judge’s signature AND SHOULD PRESENT THOSE AGREED ORDERS FOR THE JUDGE’S SIGNATURE NO LATER THAN 2 BUSINESS DAYS AFTER THE TUESDAY DOCKET ON WHICH THE CASE IS SET. The Judge will NOT require all attorneys to sign “Agreed as to Form” on these Agreed Orders during the period of the public health emergency. The DA’s representation to the Court, as an officer of the court, that the order reflects the agreement of the parties is sufficient for this purpose during the public state of emergency.
 - e. The Orders generated by the ADAs for these cases should include language at the top that states, “Came on for consideration the above styled cause for a hearing via written submission...”
 - f. **“Agreed Orders” is defined for this purpose as “Orders that substantially reflect the agreement of all parties and/or lack of opposition by the other parties and/or are consistent with the Court’s directions under Section (6) below due to the public health emergency)** The Court recognizes that some attorneys may not be affirmatively able to reach agreement (ie. because they have no direction from their client or have no opposition but cannot affirmatively state agreement for some reason).
- (4) **If there is no notice of “Agreed Orders” made to the Court by the ADA by 5pm on Friday:**
 Non-Agreed Tuesday cases will proceed for hearings entirely via written email responses (Except for cases described in Section (5) below which require the taking of a record).
- a. The Court is not able to grant requests for the use of telephone or teleconference for any hearings on the Tuesday docket EXCEPT those described by Section (5) below.
 - b. On the day and at or near the time of each Tuesday setting, Judge Byrne will call each case for an email hearing by hitting Reply-All to the latest email chain for the case.
 - c. Judge Byrne will have read the Court reports and CASA reports and will ask any questions of the attorneys by email that she has from the Court’s perspective.
 - d. Each attorney / GAL may appear for the email hearing by responding to the court’s email and/or tendering the **“ATTORNEY/GAL REPORT FOR EMAIL HEARING”** via the email thread. (note attorneys should always “Reply-to-All” to the latest email in the thread.)
 - e. Filing with District Clerk:
 - i. Attorneys / GALs must also e-file any **“ATTORNEY/GAL REPORT FOR EMAIL HEARING”** tendered via email to the email hearing thread.
 - ii. The Court, after the conclusion of the email hearing, will file a printout of the email thread (but not the attachments) with the District Clerk.
 - f. The GAL may rely on their previously tendered report (ie CASA report) and that will be considered their appearance.
 - g. **All email responses on the thread and Attorney/GAL reports must be sent by no later than 1:00pm on the Tuesday that is the date the hearing is set.**
 - h. After the 1pm closure of the hearing thread, the Court will review the thread and all **“ATTORNEY/GAL REPORTS FOR EMAIL HEARING”** that are attached to emails on the thread and the Court’s goal will be to provide parties with the substance of its rulings (and the date of the next hearing) via email within 2 business days of the hearing.
 - i. The DA will then be expected to draft orders based on the Court’s email ruling in each case. THE ADA SHOULD MAKE BEST EFFORTS TO PRESENT THAT ORDER FOR THE JUDGE’S SIGNATURE NO LATER THAN 2 BUSINESS DAYS AFTER RECEIVING FROM THE JUDGE AN EMAIL WITH THE SUBSTANCE OF THE JUDGE’S RULING.

- j. The Court will not require all parties to sign “Agreed as to Form” on these orders prior to signature unless the Court has a concern that the order does not comply with its ruling.
- k. The Order for these cases should include language at the top that states, “Came on for consideration the above styled cause for a hearing via written submission. After taking judicial notice of the file, the Court makes the following findings and orders:”

(5) Handling of Hearings on Judge Byrne’s Tuesday Docket that Require Presentation of Evidence:

- a. Merits settings on the Tuesday docket will typically be conducted with evidence presented primarily by written affidavit. They may also involve the taking of a record by teleconference or Zoom videoconference on a case-by-case basis as determined and announced by the Court.
- b. Cases set for **Show Cause hearings, Chapter 262 hearings, and Chapter 261 (Order in Aid of Investigation) hearings** which require the taking of a record by the court reporter will proceed with teleconference or Zoom videoconference. Teleconference / videoconference would take the place of day-of-hearing communication by email responses and the tendering of “**ATTORNEY/GAL REPORTS FOR EMAIL HEARING**”, however attorneys should still make certain that everyone who will need to participate in the hearing is included in the conference by adding their name to the email thread or in advance of the Zoom invite going out or by sharing the Zoom conferencing link (See Judge Byrne’s separate Zoom Conferencing Hearing Instructions). A Court reporter will take a record during the hearing.

(6) Additional Judicial Direction and Procedures during the Public Health Emergency:

- a. **Attorneys who are early-appointed for parents in the Ex Parte/Show Cause Order** - If you establish phone contact with your client but cannot get a signed affidavit of indigence from the client due to the public health emergency, **please complete an affidavit of indigence with your client over the telephone and tender it to the court via email**. Signed affidavits of indigence are obviously preferred but, under the circumstances, the court is willing to consider an unsigned affidavit of indigence along with a statement that the attorney is representing to the court, as an officer of the court, that the information they filled out on the affidavit of indigence represents the information the client provided over the phone.
- b. **The Court finds Good Cause in all CPS cases for waiver of in-person client meetings prior to hearings**. Please do your best to meet with clients via telephone, etc.
- c. **The Court will, at this time, defer to the parties to the extent they can agree on the modification of any previously court ordered visitation plans**. Rather than continue to adhere to a previously court-ordered visitation plan that does not make sense during the public health emergency, parties are encouraged to make agreements to modify the visitation plans (including time, frequency, whether supervised, etc.) as is necessary and appropriate in the best interest of children and taking into consideration the health and safety of everyone involved.