

IN THE 32<sup>ND</sup> JUDICIAL CIRCUIT

STATE OF ALABAMA

ADMINISTRATIVE ORDER 2020-07

An Order Relating to Virtual Court Hearings

WHEREAS, the Alabama Supreme Court has entered an administrative order that “[a]ll in-person proceedings in all state and local courts in Alabama, including, but not limited to, proceedings in the circuit court, district court (including cases on the small claims docket), juvenile court, municipal court, probate court, and appellate courts, are suspended beginning Monday, March 16, 2020 through Thursday, April 16, 2020, subject to [certain] exceptions”; and

WHEREAS, the Alabama Supreme Court has suspended until at least April 16, 2020 any rule that limits a judge’s ability to consider testimony by use of audio or video conferencing; and

WHEREAS, Alabama Supreme Court Chief Justice Parker has signed an order permitting court proceedings to be held using audio video conferencing technology; for court reporters to administer oaths to witnesses who are not physically present before the court reporter; and for trial courts to consider the testimony of those witnesses as evidence; and

WHEREAS, after consultation with all other judges of this judicial circuit, the following rules are deemed necessary for the local implementation of virtual court proceedings;

It is therefore ORDERED that until April 16, 2020 or during any subsequent period of time the Alabama Supreme Court shall suspend or partially suspend in-court proceedings, the following rules and guidelines are hereby adopted and shall be followed by all parties appearing for any hearing or trial that is presently pending or hereinafter filed in this 32nd Judicial Circuit in which sworn testimony is taken by the use of audio/video conferencing equipment.

1. Definitions:

The term "*video conference*" means the use of any interactive technology that sends and receives video, audio, and data so that two or more individuals can communicate with each other contemporaneously from different locations using cameras, microphones, speakers, and computer monitors or screens that allow the individuals participating to view and hear each other.

The term "*audio conference*" means the use of any interactive audio technology, including a cell phone or telephone, that permits two or more individuals to contemporaneously speak with each other from different locations.

2. Each judge of this judicial circuit shall have the discretion to require that any non-jury court proceeding be conducted by audio or video conference. Every court proceeding conducted by the use of audio or video conference shall conform to the requirements of the administrative order entered by Alabama Supreme Court Chief Justice Parker on March 24, 2020 and the March 13, 2020 administrative order of the Alabama Supreme Court. Such proceedings shall hereinafter be referred to as "virtual hearings".

3. Virtual hearings may be scheduled and held in all non-jury cases, including pendente lite hearings in domestic relations cases, domestic relations trials, contempt hearings, civil motion hearings, child support hearings, paternity hearings, hearings for injunctive relief, civil non-jury trials; all juvenile proceedings, including shelter care hearings, adjudicatory hearings, termination of parental rights hearings, all juvenile court review hearings; criminal proceedings, including initial appearance hearings, arraignments, preliminary hearings, motions to reduce bond, motions to revoke bond, probation hearings, probation revocation hearings, youthful offender hearings, hearings on habeas corpus petitions and petitions for post-conviction relief.

The above list is not intended to be an exclusive or exhaustive list but is offered merely as examples of the kinds of proceedings that may be conducted by use of video conferencing.

4. All virtual hearings must be conducted with Zoom software unless the judge presiding over the hearing authorizes the use of a different software or technology that has been deemed trustworthy and reliable for court use.

5. Counsel of record and all self-represented litigants shall be timely notified of the date and time of a scheduled virtual hearing via Alacourt, mail or as otherwise allowed by the Alabama Rules of Court or by statute.

6. Subpoena's issued for the appearance of a witness at a virtual hearing shall clearly state the address that the witness will need to appear to offer sworn testimony. Typically, this will be the law office address of the attorney who requested the subpoena but may be any location designated in the subpoena. Further, each subpoena issued for a virtual hearing shall contain a prominently displayed notice that "all witnesses are required to bring to the virtual hearing a government issued photo ID." The government issued photo ID shall be shown to the court reporter who is transcribing the proceeding before the witness is administered his or her oath.

7. All counsel of record and all self-represented parties shall provide the court clerk with an email to be used to connect with the attorney or self-represented party in the event a virtual hearing is held in a case. All counsel of record and all self-represented litigants are hereby Ordered to provide written verification of their email address to the court clerk within 10 days from the entry of this order, if not previously provided. The Circuit Clerk shall provide a copy of this order to all attorneys of record and to each self-represented litigant who does not currently have an email listed in the case record.

In the event an attorney wishes to withdraw from a case, the motion to withdraw shall contain a certification that the attorney has notified his or her client of the requested withdrawal, that the client has been informed of all pending hearings or trial dates and that the attorney has notified the client that it is the client's responsibility to immediately contact the circuit clerk to provide a current address and email for future court hearings, including virtual hearings. If counsel is unable to communicate with his or her client, the attorney shall provide a brief account of attempts made to notify the client of his or her intent to withdraw and of the client's responsibility to provide the clerk's office with a current mailing address and email.

8. All persons appearing for a virtual court hearing at an office or other location shall adhere to the protocols adopted by the CDC to limit the transmission of COVID-19, including maintaining a social distance of at least six feet, to the fullest extent practicable.

9. If a party wishes to request that a case be set for a virtual court hearing, counsel for the party making the request shall first confer with counsel of record for all other parties involved (or if a party is a self-represented litigant, then directly with the self-represented party) and determine whether all parties consent to holding a virtual hearing pursuant to the requirements mandated by the Order entered by Chief Justice Parker on March 24, 2020. Each party shall thereafter file a notice with the court clerk, giving consent to the virtual hearing or objecting to the hearing. In the event an objection is made to the virtual hearing, the party making the objection shall state specifically each and every basis for the objection and the judge presiding over the case shall make a determination whether the virtual hearing should be conducted.

10. With respect to all civil cases and domestic relations cases, a party filing a motion to schedule a virtual hearing shall first certify to the court in writing that he or she has made a good

faith attempt to communicate with the opposing attorney or self-represented litigant in an effort to resolve the matters in dispute *prior* to filing a request to set for hearing and shall briefly describe the efforts made to communicate with opposing counsel or any self-represented party.

11. Procedure for Virtual Hearings. The judge assigned a case will schedule a virtual hearing and notice of the date and time for the proceeding will be provided to all parties by Alacourt and by mail pursuant to the Alabama Rules of Civil or Criminal Procedure, as applicable. Counsel shall contact his or her client and arrange for the client and all of the client's witnesses to appear at the attorney's office or other designated location AT LEAST 30 minutes before the proceeding is scheduled to commence. Counsel for the parties shall ensure that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing and that bandwidth is adequate for video conferencing. Self-represented litigants shall contact the Clerk's office at least 7 days prior to the scheduled virtual proceeding, except when the times have been shortened due to the necessity of scheduling an emergency hearing, and notify the Clerk in writing whether he or she has the ability, equipment, software and bandwidth required to participate in the virtual hearing and, if so, shall confirm that the Clerk has the email he or she will use to connect with Zoom. If a self-represented litigant notifies the clerk in writing that he or she does not have the knowledge, equipment, software or bandwidth necessary to proceed with the virtual hearing, the judge presiding over the case may hold an audio conference with all parties and counsel of record to determine the best way to proceed. The judge and parties shall explore other possible options for conducting a virtual hearing, including the use of the local access computer in the Cullman County law library and any other available local facilities that may be equipped with the appropriate technology for virtual hearings.

It is the responsibility of the parties, whether represented by counsel or representing themselves, to have all of their material witnesses present at a virtual hearing. Each witness who appears must have a government issued photo ID with them at the time of the proceeding or the witness will not be allowed to testify, except by consent of all parties or with another acceptable proof of identification.

At the time the virtual proceeding is scheduled to begin, the judge or a member of the judge's staff will connect with all parties using Zoom software. Once it has been determined by the judge that all necessary individuals are present and able to see and hear what is transpiring at the proceeding, the hearing shall progress as though the parties were physically present, subject to the rules specifically adopted for virtual hearings.

The official court reporter shall be present through-out the proceeding and able to see and communicate with every witness who appears remotely using Zoom software. Prior to a witness testifying, the court reporter shall ascertain the identity of the witness and administer the oath to the witness remotely. At all times during the witness's testimony, the court reporter shall be able to see, hear and communicate with the witness who is testifying. The court reporter shall transcribe the virtual hearing just as though the hearing were being conducted with all parties and counsel appearing in person, but the reporters transcript shall reflect that the transcript was made with all individuals appearing remotely with video conferencing, except for the judge presiding over the proceeding.

12. Criminal Proceedings. Virtual hearings in criminal cases shall proceed in a manner consistent with the procedures described in the above paragraphs, subject to the additional safeguards provided herein when a defendant is not physically present in the same room with his or her attorney during a virtual hearing.

A defendant in any criminal case may waive his or her right to be present at a virtual hearing. However, if a defendant is incarcerated in the Cullman County Detention Center and does not waive his or her right to be present, the defendant shall be brought into the Detention Center's on-site audio video room before the hearing begins and shall be connected to the virtual hearing so that he or she is capable of hearing and seeing everything that transpires during the virtual proceeding. Further, the defendant shall be afforded an opportunity at any time during the virtual hearing to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication and the defendant shall be informed by the court of this right before the virtual hearing commences.

13. Procedure in Criminal Cases for Guilty Plea Hearings. If the State and Defendant reach a plea agreement, the agreement shall be reduced to writing and signed by all parties and counsel of record. Defense counsel shall submit the signed agreement to the judge assigned to hear the case, along with all other properly executed forms required for the court to accept the Defendant's guilty plea. Once it has been determined that all necessary paperwork has been submitted, the judge will schedule a virtual hearing date and time and notice provided to all parties.

For Defendants on bond at time of Plea. If a defendant is not incarcerated, defense counsel shall contact his or her client and arrange for the client to appear at his or her attorney's office AT LEAST 30 minutes before the scheduled time for the hearing. Defense counsel shall verify that all necessary equipment and software are in proper working order prior to the time of the scheduled hearing. Either the judge taking the guilty plea or a member of the judge's staff will connect with the Defendant and the Cullman County District Attorney's Office using Zoom software. Once it has been determined by the judge that all necessary individuals are present and

able to see and hear what is transpiring at the plea hearing, the judge shall proceed to take the Defendant's plea after first determining that the plea is freely, intelligently and voluntarily made and all other requirements for entry of the guilty plea have been satisfied. The official court reporter shall be present through-out the proceeding and able at all times to see and hear the defendant who is entering a guilty plea and shall transcribe the hearing just as though the hearing were conducted with all parties and counsel appearing in person. It shall be the responsibility of the district attorney to contact any victim that may require notification of the plea hearing and arrange for the victim to appear at the district attorney's office for the virtual hearing or in such other location approved by the judge accepting the guilty plea.

If a plea agreement calls for a defendant to serve a jail or prison sentence, the Sheriff shall be informed in advance of the date, time and physical location of the defendant at the time the plea is entered so that a deputy will be on hand to take the Defendant into immediate custody. If the plea agreement calls for probation or an application for probation has been made, the Defendant shall immediately contact local State of Alabama Probation officials and follow the directions provided by them.

For Incarcerated Defendants. The general procedure outlined above for taking guilty pleas by video conferencing shall apply when a defendant is incarcerated in the Cullman County Detention Facility at the time of his or her guilty plea. The Cullman County Detention Center shall utilize Zoom software at its on-site audio video room, which the court hereby designates as a temporary courtroom, so that pleas can be taken without the Defendant being transported to the courthouse. Other video conferencing software may also be used at the discretion of the judge accepting the guilty plea. The attorney for the Defendant may appear with the defendant at the detention center or may appear from another location, provided that the defendant's right to



communicate privately with his or her attorney is preserved. Each defendant entering a guilty plea shall be afforded an opportunity at any time during the plea to communicate privately with his or her attorney either in person or by use of a phone or video software that ensures confidentiality of the communication.

14. If the judge presiding over a virtual court proceeding determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-court proceeding. However, it shall be the responsibility of a party or counsel for a party to *promptly* inform the court if there has been a disruption at their end of the communication that substantially interferes with their ability to see or hear what is occurring during the video conferencing. An objection to the quality of an audio/video conference will be deemed untimely if made after a court has entered an order or ruling on the matter that is the subject of the virtual hearing.

15. It is ORDERED that the Circuit Court Clerk shall provide the Alabama Administrative Office of Courts with a copy of this Order and a copy shall also be posted on the Cullman Courts official website.

Done this the 27th day of March, 2020.

/s/ Gregory A. Nicholas  
Gregory A. Nicholas  
Presiding Circuit Judge  
32<sup>nd</sup> Judicial Circuit  
State of Alabama