

**IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA**  
**ADMINISTRATIVE ORDER – COVID-19 RESPONSE PLAN FOR THE 18<sup>TH</sup>**  
**JUDICIAL CIRCUIT- VIRTUAL COURT HEARINGS**

WHEREAS, pursuant to the ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (APPLICABLE STATEWIDE) AMENDED APRIL 3, 2020, and the Supreme Court of Alabama’s ADMINISTRATIVE ORDER #5: EXTENDING ORDERS AND DEADLINES CONCERNING THE SUSPENSION OF IN-PERSON PROCEEDINGS UNTIL APRIL 30, 2020, entered April 2, 2020, ordering the trial courts to continue to utilize available technologies such as teleconferencing and videoconferencing to conduct hearings when it is practical and feasible to do so, and the undersigned Presiding Circuit Judge having ordered that the Shelby County Courthouse be CLOSED to the public effective April 3, 2020, and:

WHEREAS, Supreme Court of Alabama Chief Justice Tom Parker issued an order dated March 24, 2020, for court reporters in hearings using audio-video communication technology 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, the following rules are deemed necessary for the implementation of virtual court hearings in the 18<sup>th</sup> Judicial Circuit;

It is hereby ORDERED that through April 30, 2020, or during any subsequent period of time the Supreme Court of Alabama 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 in any case that is presently pending or hereinafter filed in the 18th

Judicial Circuit in which sworn testimony is taken by the use of video conferencing or audio conferencing equipment.

1. Definitions:

The term "*video conference*" means the use of any interactive technology that sends and receives video, audio, and/or data so that two or more individuals can communicate with each other contemporaneously from different locations using cameras, microphones, speakers, cell phones or telephones, 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.

The term "*virtual court hearing*" means any court proceeding conducted by the use of video conference or audio conference which conforms to the requirements of the above-referenced administrative orders and the requirements set out herein.

2. Alternate Court Facility: The undersigned hereby designates as an alternate court facility for the 18<sup>th</sup> Judicial Circuit the Zoom video conferencing platform, as well as any other video conferencing or audio conferencing platform selected by a judge in the 18<sup>th</sup> Judicial Circuit for the purpose of conducting a virtual court hearing. Each judge or referee in the 18th Judicial Circuit shall have the discretion to require that any non-jury court proceeding be conducted by video conference or audio conference, except as otherwise provided by law or separate Supreme Court of Alabama order. Every court proceeding conducted by the use of audio conference or video conference shall conform to the requirements of the administrative orders issued by the

Alabama Supreme Court and Alabama Supreme Court Chief Justice Parker that are referenced above. Such proceedings shall hereinafter be referred to as “virtual court hearings”.

3. Applicability: Virtual court hearings may be scheduled and held in all non-jury court proceedings, including, but not limited to, pendente lite hearings in domestic relations cases, domestic relations trials, contempt hearings, modification hearings, probate court hearings, protection from abuse hearings, civil motion hearings, child-support hearings, parentage hearings, hearings for injunctive relief, civil non-jury trials, small claims proceedings, traffic dockets, all juvenile court proceedings, including, but not limited to, detention and shelter-care hearings, adjudicatory hearings, disposition hearings, reviews, permanency hearings, aftercare hearings, and termination-of-parental rights hearings; criminal proceedings, including, but not limited to, initial appearance hearings, arraignments, preliminary hearings, hearings on motions to reduce bond, hearings on motions to revoke bond, sentencing hearings, probation revocation hearings, youthful offender hearings, hearings on habeas corpus petitions, and hearings on petitions for post-conviction relief. The above list is not intended to be an exhaustive or exclusive list but is offered as examples of the types of proceedings that may be conducted by virtual court hearing.

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

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

6. Subpoenas. A subpoena issued for the appearance of a witness at a virtual court hearing shall clearly state the address that the witness must appear to offer sworn testimony. Typically, this location will be the law office address of the attorney who requested the subpoena, but may be any location designated in the subpoena as permitted by this order. The subpoena shall also inform the witness that he or she has the option of testifying from his or her home or other location of his or her choice, provided the witness has: (i) a computer, smartphone, tablet, or other device with video conference capabilities (camera, microphone and monitor), (ii) free Zoom video conference software or such other video conference software permitted by the trial judge, (iii) an e-mail address and (iv) internet service with sufficient broadband for video conference. If the virtual court hearing has been designated by the trial judge as an audio virtual court hearing only, video capability is not required. The subpoena also shall instruct the witness that if he or she intends to testify from his or her home, the witness must immediately contact the law office or other person requesting his or her appearance to provide an email address and telephone number where the witness can be reached during the scheduled virtual court hearing. It is the responsibility of the person requesting the subpoena to confirm each of his or her witnesses' ability to participate in a video conference or audio conference. If the witness is not able to participate in the virtual court hearing from his or her home or other selected location, the person issuing the subpoena shall decide whether the witness is material and, if so, it is the responsibility of the person issuing the subpoena to make arrangements for the witness to appear at a location having sufficient video conference or audio conference capabilities.

7. Witnesses: At least seven days prior to the scheduled virtual court hearing, each party shall e-file a list of witnesses who will be called to testify. The list shall include: (i) the name of

each witness, (ii) telephone number where the witness can be reached at the time of the virtual court hearing and (iii) the e-mail address of each witness expected to be called as a witness. If the identity of a witness is unknown to a party seven days prior to the hearing, the identity, phone number and e-mail of the witness shall be e-filed as soon as it is ascertained the witness may testify.

If the witness sequestration rule is invoked at a virtual court hearing, all witnesses testifying must be at different physical locations and unable to hear the testimony of other witnesses, except as may be otherwise agreed by the parties on the record or ordered by the court. If necessary, witnesses may be telephoned by counsel of record or by a party and prompted to log onto the video conference or audio conference when it is time for the witness give his or her testimony. A witness may also be placed on hold by the judge at any time that a discussion needs to be held out of the presence and hearing of a witness.

Notwithstanding the foregoing, a witness need not appear at a location other than his or her residence if, at the time of the scheduled virtual court hearing, the witness is: (1) running a fever, (2) is in quarantine due to possible exposure to someone testing positive for COVID-19, (3) is over the age of 60 years or has an underlying medical condition that would create a greater risk to the witness if exposed to COVID-19, (4) if sick, or (5) if a general State-wide shelter in place order has been issued by the Governor of the State of Alabama or if a similar shelter in place or quarantine order has been issued by a local governmental entity having authority to issue such orders. Further, each subpoena issued for a virtual court hearing shall contain a prominently displayed notice that **“all witnesses are required to have in their possession a government issued photo ID to establish his or her identity at the virtual court hearing.”** Before a witness is administered his or her oath and allowed to testify, the government issued

photo ID shall be shown to the court reporter who is transcribing the proceeding or to the judge presiding over the proceeding, if no court reporter is present.

8. All counsel of record and all self-represented parties shall provide the court clerk written verification of their e-mail address and telephone number within 10 days of the entry of this order. The court clerk shall provide a copy of this order to all attorneys of record and to each self-represented party who does not currently have an e-mail address and telephone number listed in the case record.

9. In the event an attorney wishes to withdraw from a case, a Motion to Withdraw shall be timely filed and 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 court clerk to provide a current regular mailing address, telephone number and email address for future court hearings, including virtual court 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 court clerk with a current mailing address, telephone number and e-mail address.

10. All persons appearing for a virtual court hearing shall adhere to the protocols adopted by the Center for Disease Control to limit the transmission of COVID-19, including maintaining a social distance of at least six (6) feet.

11. 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 party, then directly with the self-represented party) and determine whether all parties consent to holding a virtual hearing pursuant to the

requirements mandated in the administrative orders referenced above, and in the event there is unanimous consent shall recite that fact in the motion requesting the virtual court hearing. In the event an objection is made to the virtual court hearing, the party filing 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. The provisions of this paragraph shall not apply to those types of hearings exempted from the in-person suspension orders of the Alabama Supreme Court referenced above. Those in-person hearings will be held at the courthouse or such other facility designated in the order setting the matter for hearing unless: (i) all parties to the proceeding waive their right to an in-court proceeding and agree to a virtual court hearing, or (ii) the judge presiding over the case makes a determination that a virtual court hearing is necessary to safeguard the public health and to protect those individuals involved in the court proceeding. In-person hearings during any period of time wherein the provisions of this order are applicable due to public health concerns, or during any period of time wherein the Shelby County Courthouse is closed to the general public are extremely disfavored and should not be conducted absent emergency circumstances and/or mandate by law. Nothing in this order prohibits the judge or referee from continuing such hearings where the judge or referee would otherwise have discretion to do so.

12. With respect to all civil cases, including small claims cases and domestic relations cases, a party filing a request to schedule a virtual court 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. This requirement shall not apply to protection-from-abuse proceedings. Counsel of record and any self-represented party may also request that a pre-trial virtual court hearing or

telephone conference call be held with only counsel of record and any self-represented party to discuss the scheduling of discovery, to narrow the issues that may be in dispute, or to discuss other matters that may facilitate a settlement of the case or matter in dispute.

13. Procedure for Virtual Court Hearings. The judge or referee assigned a case will schedule a virtual court hearing and notice of the date and time for the proceeding will be provided to all parties by Alacourt.com, e-mail, and by regular mail or as otherwise allowed by the Alabama Rules of Court, statute or administrative order of the Supreme Court of Alabama. 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 internet bandwidth is adequate for video conferencing. Self-represented litigants shall contact the Clerk of Court's office at least seven (7) days prior to the scheduled virtual court hearing, except when the times have been shortened due to the necessity of scheduling an emergency hearing, and notify the court clerk in writing whether he or she has the ability, equipment, software and bandwidth required to participate in the virtual court hearing and, if so, shall confirm that the court clerk has the e-mail address or telephone number he or she will use to connect with Zoom or other video/audio conferencing platform approved by the judge or referee. If a self-represented litigant notifies the court clerk in writing that he or she does not have the knowledge, equipment, software, or bandwidth necessary to proceed with the virtual court hearing, the judge or referee 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 or referee and parties shall explore other possible options for conducting a virtual court hearing, including the



use of the Zoom video conferencing suite established in the Shelby County Courthouse and any other available local facilities that may be equipped with the appropriate technology for virtual court hearings. Failure to attend and/or cooperate in the virtual hearing may result in contempt proceedings being initiated against the party, attorney, witness, or other person ordered to attend.

It is the responsibility of the parties, whether represented by counsel or self-represented, to have all of their witnesses present at a virtual court 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 and the court, or with other acceptable proof of identification. Shortly before the virtual court hearing is scheduled to begin, counsel of record and any self-represented party shall contact each of their respective witnesses at the telephone numbers provided by them and instruct them to be on standby to give their testimony.

At the time the virtual court proceeding is scheduled to begin, the judge or a member of the judge's staff will connect with all parties and counsel of record 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 court hearings.

If a court reporter will be transcribing the virtual court hearing, before testimony or other evidence is taken, the judge shall obtain the verbal consent of all the parties and attorneys on the record to have the court reporter record the proceedings to create a record, even though the court reporter may not be physically present in a courtroom as provided in Section 12-17-275, Ala. Code 1975. Once all parties and counsel of record consent, the official court reporter shall be present through-out the video conference and able to see and communicate with every witness who appears remotely using Zoom software or such other video conference software that has

been approved by the judge presiding over the virtual court hearing. 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 record the video conference just as though the hearing were being conducted with all parties and counsel appearing in person, but if the court reporter is requested to transcribe the record, the court reporter's transcript shall reflect in the transcript that the transcript was made with all individuals appearing remotely with video conferencing, except for any individuals who may have been physically present with the court reporter during the virtual court hearing.

When the testimony of a witness is needed, the judge or a member of the judge's staff will send an invitation to the witness who is being called to testify by a party or remove the party from Zoom hold. Counsel of record or a self-represented party may contact his or her witness by telephone if the attempt to connect the witness to the video conference is unsuccessful and attempt to determine the cause of the problem and assist with possible solutions. At the conclusion of a witness's testimony, the court shall inquire whether the witness may be excused or released from any subpoena. If a party indicates that further testimony from the witness may be required, the witness will be notified by the court to remain on call at his or her present location pending further instructions from the party who has indicated further testimony may be needed from the witness.

14. Virtual Court Hearings in Which No Court Reporter is Present. In any virtual court hearing in which a court reporter is not present to record the proceeding, the hearing may be recorded in any manner permitted by statute, rule or administrative order of the Alabama Supreme Court. Before the virtual court hearing begins, the judge shall explain to all counsel of

record and to the parties the process that will be used to make a record of the hearing and obtain the verbal consent of all parties to the recording method being employed. Further, all witnesses appearing for the virtual hearing may be administered the oath by the judge presiding over the hearing or as otherwise permitted by statute, rule or administrative order of the Alabama Supreme Court.

15. Recordings Prohibited. No electronic device or other means may be used by a party, attorney, witness, or any other person to capture images, videos, or sound recordings of any portion of a virtual court hearing without the express written consent of the judge presiding over the judicial proceeding. Any person violating this rule may be held in contempt of court.

16. Exhibits. No later than seven days before a scheduled virtual court hearing (emergency hearings excepted), counsel for the parties and any self-represented litigant(s) shall confer with one another regarding the use of exhibits at the virtual court hearing. Consistent with the duty of client representation, counsel and any self-represented litigant shall discuss potential exhibits that may be introduced at the virtual court hearing and stipulate as to the authenticity and admissibility of any proposed exhibit, to the extent they are willing to do so. No authentication or other foundation will need to be established at the virtual court hearing for any exhibit the parties have agreed may be allowed into evidence by their stipulation.

Exhibits Capable of being Displayed in an Electronic Format. Each party shall cause an exact copy to be made of all photographs, videos and documents intended to be shown to a witness or offered into evidence at a virtual court hearing. The original and each copy of the original shall be pre-marked with the same number, with the first exhibit being denominated as exhibit number one and each original and copy thereafter numbered sequentially. Each marked exhibit shall also clearly identify the party who will be offering the exhibit. All originals shall be

retained by the proffering party and copies of the exhibits (hereinafter referred to as “court copies”), shall be placed in either a sealed envelope or sealed box and mailed or delivered to the court reporter who will transcribe the virtual court hearing. The court reporter shall keep the court copies in a secure location and shall not open them until the beginning of the virtual court hearing. Once the virtual court hearing has begun, the court reporter shall unseal the court copies for the judge to view during the course of the hearing. If a court reporter will not be present at the virtual court hearing to record the proceeding, all court copies shall be delivered to the judge presiding over the hearing, who will open the court copies and keep them secure.

*Physical Exhibits not capable of being reduced to Electronically Stored Format and Exhibits used in Rebuttal.*

Notwithstanding the foregoing, any exhibit that is not capable of being reduced to an electronically stored format need not be delivered to the court reporter or judge prior to the commencement of the virtual court hearing. Examples of such exhibits include physical objects such as weapons, equipment, clothing, bullets, etc. Such exhibits may, if properly authenticated and otherwise admissible, be allowed into evidence at the virtual court hearing as permitted by the Alabama Rules of Evidence. The court may also allow exhibits offered in rebuttal to be introduced at the virtual court hearing even though the exhibits have not been provided to the court in advance of the hearing. Any physical or rebuttal exhibit offered by a party shall first be appropriately marked and shown to opposing counsel and to any self-represented party before it is offered into evidence. Prior to a virtual court hearing’s concluding for the day, each party shall place all of their exhibits that have been admitted into evidence or disallowed by the court that day into a large manila envelope(s) or box and the envelope(s) or box sealed in view of the judge, court reporter, if present, and all other parties. Each exhibit envelope or box shall be accompanied by a certification from the offering party that the exhibits have not been altered or

changed in any way once placed in the envelope or box and sealed in the presence of the court and other parties. The admitted and excluded exhibits shall be delivered with the seal unbroken to the court reporter recording the virtual court hearing as soon as possible after the hearing recesses each day. If no court reporter is present to record the proceeding, then the exhibits shall be delivered with seal unbroken to the judge presiding over the virtual court hearing each day.

*Procedure for Presenting Electronically Stored Exhibits at Virtual Court Hearing.*

Parties wishing to offer a document, photo, or video as an exhibit at the virtual court hearing shall cause a true and exact copy of the document, photo or video to be created and stored electronically on the computer or other device that will be used at the virtual hearing. Before an authenticating witness is brought into a virtual court hearing or while the witness has been placed on Zoom hold, the party seeking the admission of the exhibit into evidence shall use the share feature available on Zoom (or such other software being used with permission of the court) to show the marked exhibit to opposing counsel and any self-represented litigant. Once the exhibit has been shown to opposing counsel and any self-represented litigant, the authenticating witness may be removed from Zoom hold and returned to the virtual court hearing.

*Retention of Exhibits at Conclusion of the Virtual Court Hearing.* All exhibits admitted into evidence during the virtual court hearing and all exhibits that have been offered into evidence by a party and not admitted into evidence shall be retained by the court reporter in a secure location for the same period of time prescribed for in-court proceedings. If no court reporter is present to record the proceeding, the judge presiding over the virtual court hearing will retain the exhibits as provided by law.

17. Juvenile and Youthful Offender Proceedings. Virtual court hearings in juvenile cases shall proceed in a manner consistent with the procedures described in the above paragraphs, and

subject to the additional safeguards provided herein. The judge presiding over the case shall initiate the virtual court hearing using additional privacy measures provided by Zoom to make the virtual court hearing private, including the use of PIN numbers that are only available to necessary participants. However, despite all reasonable efforts to ensure that privacy and confidentiality are preserved with encryption, it is widely understood that no software can possibly be deemed perfectly secure from a breach and that if a breach were to occur a computer hacker could eavesdrop on a video conference or otherwise gain access to a virtual court hearing. Therefore, as an additional precaution, it is ordered that in all juvenile and youthful offender proceedings conducted with video conference only the initials of the youthful offender or juvenile shall be used and no one at the hearing shall disclose any information that could identify the juvenile or youthful offender, except to the extent that may be reasonably necessary given the nature of the case. Further, prior to the commencement of each juvenile or youthful offender virtual court hearing, the court shall inform all lawyers, parties, guardians ad litem, witnesses and other participants at the hearing of this rule.

Further, with respect to juvenile proceedings in which a child is not physically present with his or her attorney at the time of the virtual hearing, the child shall be afforded an opportunity at any time during the virtual court 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 child shall be informed by the court of this right before the virtual hearing commences. Virtual court 72-hour detention hearings, or pleas taken at these hearings in juvenile delinquency cases, must meet the legal requirements set out by Order of the Supreme Court of Alabama dated June 22, 2006 (and extended by Orders dated June 3, 2008, April 19, 2011, September 17, 2014, and April 17, 2017), the Court's Guidelines for Videoconferencing

Detention Hearings (Temporary), and the Alabama Judicial System Policies, Procedures and Guidelines Governing Videoconferencing Appearances in Juvenile Courts which was approved by memorandum dated September 4, 2009.

Further, with respect to all virtual court hearings held in juvenile or youthful offender cases that are considered confidential by law, the judge or referee presiding over the case shall initiate the virtual court hearing using Zoom's additional privacy measures to make the virtual court hearing confidential.

For detention hearings, the child shall remain at the Shelby County Regional Juvenile Detention Facility in a private location. The child shall be granted access to his or her attorney outside of the presence of the court or any other party by the use of Zoom's breakout room feature. All parties shall comply with the no contact provisions of the Shelby County Regional Juvenile Detention Facility. No party shall exit the meeting without the permission of the court.

For Shelter Care hearings, the on-call provisions currently existing for guardians ad litem and parent attorneys shall remain as previously published. The guardians ad litem and parent attorneys on call for each week shall be available for any virtual court hearing conducted during their on-call week. Parents shall download the Zoom app on their smart phone, if available. An attorney shall be appointed for each parent for purposes of the shelter care or emergency hearing. If a parent chooses to retain private counsel or wishes to proceed without counsel, the parent shall communicate that to the court at the time of the virtual court hearing. If the parent does not have means to access the virtual court hearing, the parent shall notify the court by telephone at (205) 669-3730. The court's Judicial Assistant shall notify the social worker for the Department of Human Resources who shall arrange for the parent's access to the hearing. Because emergency hearings, shelter care hearings and detention hearing must be timely conducted, they

will proceed with or without the presence of the parents as set out in the Alabama Rules of Juvenile Procedure. Parents must have a valid government-issued photo ID available at the time of the virtual court hearing.

In the event that a Spanish language interpreter is needed for any emergency hearing, the Department of Human Resources social worker or the Juvenile Probation Officer shall notify Dr. David Valenzuela of the date and time of said hearing and shall notify the court of the necessity for a foreign language interpreter. The interpreter and the non-English speaking party, and the party's attorney, shall be provided access to a breakout room by the court.

All new Petitions and requests for Pickup Orders shall be conducted via the policy set by the Juvenile Probation Office and the court. If a party requests a Pickup Order in a dependent case, the party shall email the court with the completed complaint form, together with any "to-wit:"; a copy of the Relative Resource form; a copy of the Paternity Assessment; and a copy of the I.C.W.A. Affidavit. If a party requests a Pickup Order in a Delinquent/CHINS case, the party shall provide a copy of the complaint and incident/offense report, together with any other information that warrants issuance of a Pickup Order.

18. Procedure in Criminal Cases for Plea Hearings. If the State and the defendant reach a plea agreement, the agreement shall be reduced to writing and signed by the Assistant District Attorney (ADA) prosecuting the case. The ADA will sign and email a PDF file containing all forms required for the court to accept the defendant's guilty plea to defendant's counsel. Any case to be dismissed as part of the negotiated plea shall be attached as a separate PDF file. Upon receipt, and after confirming with the client that an agreement has been reached, defendant's counsel shall e-file a "Motion to Schedule Plea Hearing." The Motion shall include information relevant to the court's scheduling of the plea hearing, and may include a request for a date and



time certain. Defendant's counsel shall also sign all necessary documents and obtain the defendant's signature on those documents (unless the defendant is in jail), and then scan and email the documents in PDF format, and in the page order as received from the District Attorney's office, to the judge conducting the plea hearing and the Assistant District Attorney prosecuting the case.

Once the judge determines that all necessary paperwork has been submitted, he or she will schedule a virtual court hearing date and time and provide notice via email to all parties. If the defendant entering a plea is incarcerated in the Shelby County Jail, the court will email the plea documents, and notice of the hearing, to the jail. Jail personnel will print the plea documents and bring them to the virtual hearing, and the court will provide defense counsel an opportunity to assist defendant in executing the forms before the hearing commences. The court will verify all documents which purport to be signed by the defendant during the hearing, and at the conclusion thereof, the court will sign and enter in Alacourt either 1) the fully executed, scanned documents emailed by the jail, or 2) the fully executed, scanned documents emailed by defense counsel.

The court, in conjunction with the Shelby County Sheriff's Office, has established two Zoom-equipped virtual courtrooms at the Shelby County Jail. These virtual courtrooms, located in spaces formerly known as the "Large Attorney Conference Room" and the "72 Hour Hearing Room" are hereby designated as alternate court facilities for the 18<sup>th</sup> Judicial Circuit for the purpose of conducting on-site virtual court hearings for inmates. The defendant-inmate shall be brought to the virtual hearing room designated by the judge before the hearing begins and shall be connected to the virtual court hearing so that he or she is capable of hearing and seeing everything that transpires during the virtual court proceeding.

Should the defendant be on bond at the time of the plea, the attorney for the defendant shall contact his or her client and arrange for the client to appear at the attorney's office AT LEAST 30 minutes before the scheduled time for the hearing. The attorney for the defendant shall verify that all necessary equipment and software are in proper working order prior to the time of the scheduled court hearing, and that the client is capable of hearing and seeing everything that transpires during the virtual court proceeding. In order to maintain appropriate social distance, defendant's counsel may utilize a second Zoom conference room.

Every defendant shall be afforded an opportunity at any time during the virtual court hearing to communicate privately with his or her attorney, and shall be informed by the court of this right before the virtual court hearing commences. If the defendant is in jail, exercise of this right shall be facilitated by use of a non-recorded landline that has been installed in the "Large Attorney Conference Room" out of the range of the video camera, which ensures confidentiality of the communication. Should a jailed defendant wish to exercise this right, the defendant's attorney will be provided the phone number for the conference room by the court, and shall call that number, but not until he or she has confirmed that the Zoom video and audio client has been muted by jail personnel. The confidential attorney-client communication will be facilitated by use of the breakout room feature of Zoom when the 72 Hour Hearing Room is used.

If the defendant is on bond and wishes to exercise the right to a confidential attorney-client communication, counsel for defendant shall facilitate that communication by employing the breakout room feature of Zoom (if the Defendant is appearing remotely) or, if the defendant is at the attorney's office, by muting the Zoom audio and video features during the confidential communication. The communication between attorney and client may also be facilitated by

phone or text message, provided that the attorney has taken appropriate measures to ensure the confidentiality of the communication.

At the conclusion of the confidential attorney-client communication, the attorney shall so inform the court, and the hearing shall proceed. 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 court shall ascertain that the defendant understands his or her right to be present in open court at the proceeding, and that he or she knowingly, intelligently and voluntarily waives that right in order to participate in the virtual court hearing. The judge shall proceed to take the defendant's plea after first determining that the plea is freely, knowingly, intelligently, and voluntarily made and that all other legal requirements for entry of the guilty plea have been satisfied. Where applicable, a court reporter shall be present throughout the video conference 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 prosecutor 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 court hearing or in such other location approved by the judge accepting the guilty plea.

19. Criminal Proceedings Generally. Virtual court 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 court hearing.

20. Public Access to Some Criminal Proceedings. Because Alabama law recognizes the existence of a general First Amendment right of the public to have access to some criminal

hearings, it is hereby ordered that any person may make a request for access to a criminal virtual court hearing that relates to matters that have traditionally been open to the public. The individual making the request shall be given permission to enter any virtual hearing held in this circuit as a spectator only, unless the defendant or the State asks that the hearing be closed and “advances an overriding interest that is likely to be prejudiced” if the hearing is made open to the public. *Press-Enterprise II*, 478 U.S. at 7, 106 S.Ct. at 2739. *Ex parte Birmingham News Co.*, 624 So.2d 1117, 1124–25 (Ala. Crim. App. 1993).

An individual may request access to a criminal virtual court hearing by filing a written request with the court clerk. The individual making the request shall provide the court clerk with the defendant’s name, the case number, if known, as well as the requester’s e-mail address. Notice of the request shall be provided to the prosecutor, defendant and court and if no objection is filed within 14 days of the notice, the requester will receive an invitation to attend any virtual court hearing held in the case that involves matters that have traditionally been open to the public. If an objection is made by a party within the time provided, the court shall schedule a hearing to determine whether the request for access should be denied and the hearing closed to the public. The court also finds that there is a compelling reason to implement this special access rule due to the community safety threat posed by COVID-19 and finds that any burden placed on an individual by these procedures is substantially outweighed by the need to protect the public from further spread of COVID-19.

21. Access in Civil Cases. Any person making a request to gain access to a virtual court hearing in a civil case may also use the same procedures described in the above paragraphs. After notice to all parties and an opportunity to be heard, the court will determine whether access to the civil virtual court proceeding should be permitted under existing laws.

22. Audio, Video or other Technical Problems. 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 conference. An objection to the quality of an audio conference or a video conference must be made before all parties to the virtual court hearing have rested. Any objection to the quality of the audio conference or video conference made thereafter, will be deemed untimely.

It is ORDERED that the Clerk of Court shall provide a copy of this Order to the Administrative Office of Courts, the Alabama State Bar Association, and post a copy on the Clerk of Court's official website.

Done and Ordered this the 6th day of April, 2020.

/s/William H. Bostick, III  
Presiding Circuit Judge  
18<sup>th</sup> Judicial Circuit